When the Elected Official is the Problem:

What to do when they say (or do) something horrible

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I hit a nerve, apparently, last year when I decided to host a table at the Annual Conference Wonk Breakfast entitled, "When the Elected Official is the Problem." That table oversold and required assistance to adequately address the numbers and issues we face in working with elected and appointed government officials who are wont to run their mouths. From the Sandusky/Penn State scandal, or the Nassar debacle at Michigan State, the #MeToo movement, multimillion dollar lawsuits against Big Law Firms for pay equity or harassment, or the Grand Jury Report into sexual abuse by clergy in Pennsylvania, or…..well, you get the idea, it seems people continue to say and do stupid, harmful, and evil things. Despite their protestations to the contrary, public officials remain people.

But public officials have long said and done stupid things. The most significant new challenge facing the lawyers representing them is the perception of reality. There seems to be little agreement on what is true or false, what is fake, or what is real. InfoWars can be one person's true and accurate source of information causing them to show up at a pizza restaurant to rescue imprisoned and exploited children (who aren't there), while MSNBC or The Huffington Post could be another's. The national debate over accuracy filters down to local government, and our clients are berated, belittled, and accosted for trying to do the "right" thing, whatever that may be. How many times have we each suffered through public comment when some self-styled "community leader" or "engaged citizen" starts falsely claiming that we are short 35 (or more) sworn police officers (which would mean that there would be no officers on the streets on some shifts, a verifiable falsehood), that the City can't manage its money (despite superior credit ratings, consecutive clean audit reports, or recognition by the Department of Community Affairs for good financial management practices), or that the City needs to ignore recognizing its youth sport teams, or allowing children to gavel the meeting into order because such "feel good" or "Kodak" moments detract from the council's real obligation of running the city/county "like a business" (can someone please help me understand what it is that a local government manufactures, creates, or otherwise "sells" to the local economy?) despite a fiscally conservative and balanced budget, a reserve exceeding state minimums, and retention of our senior employees for 3 years or more (what business can say that?). Or maybe that's just my clients.

Against this backdrop of "fake news", attacks <u>on</u> media, attacks <u>from</u> the media, policy in 140 characters or less, expectations that government will

communicate important data via Tweet or Facebook post, and the insatiable desire of news outlets to be "firstest with the mostest," local government has to find a way to credibly and responsibly respond to communications challenges that address the needs of their community.

I. What if it's an elected official?

I'm confident none of us has ever sat in a public meeting and wished for divine intervention to stop the elected official with the floor from continuing to talk. The problem is that intercession almost never occurs and you are left with statements on the record that are damaging at best, and horrific at worst. And I'm not yet talking about what they say in social media (am I the only one who wants to shut down Next Door?).

In the heat of that moment, all you can hope for is to protect the client, which (of course) is the entity not the individual official. Statements like, "the Councilmember was explaining his vote, not advocating for other votes," or "All of the other members had already explained how they were voting, thus, there is no evidence those statements were meant to persuade or speak for the council as a whole" can mitigate the damage, but not eliminate it.

I once defended a case where a member of the body was supposed to have said something in executive session that was lamentable even if factually accurate, but the plaintiff claimed established illegal animus. Not only did the Court order us to disclose confidential deliberations in Executive Session as part of discovery, it also denied summary judgment claiming that the jury could conclude that the vote swayed enough others to vote a particular way that it tainted the entire process. Lesson learned: work with your electeds about what they should say. If you focus on what they should not say, they will not hear the "not" and that is all they will talk about.

The greater problem is posed not by what they say at meetings, though that can be its own challenge, but what they say to their constituents or in social media, or better yet, when the "apologize" for what they said on social media. The question of what role or impact a comment by a public official may have on the City presents a unique set of concerns. Is it the City's problem? Are City interests implicated? Do the 1st Amendment rights of the official supersede the ability of the local government to respond, sanction or address the conduct?

II. It's Not Just Going to Go Away

The most common response to bad news is to hope it doesn't really exist. It is simply human nature. It is also likely that some other event, disaster, scandal, or larger story will steal the interest or headlines created that morning. However, true preparation and adequate representation of local government should mean taking a proactive and directed response.

Just like the First Gulf War changed the way people expect to receive their news, the Internet has vastly altered the way news is gathered. A purely local event posted to the Internet can become an international sensation in hours, if not minutes. Bloggers, reporters, producers, and people simply looking for their 15 minutes of fame can gather, repackage, and disseminate stories in seconds. We have all witnessed the odd or fantastic or strange video that friends or acquaintances are sharing. Sometimes they are funny. Sometimes they are poignant. Sometimes they are horrifying. What they all share is the completely democratic means by which the story is spread. Once spread, more traditional news outlets may decide to become part of the dissemination process and make the story their own.

Former Fulton County, Georgia, prosecutor Nancy Grace, now on Sirius/XM radio, has fashioned a second (maybe 3d?) career for herself out of sensationalizing one story at a time. Local media outlets compete with each other with their investigative reporters, their I-Teams, or by "asking hard questions." The more sensational the local news broadcast, the larger the viewership, and the higher the resulting ad rates can be to support the station's operations. Accordingly, sensational sells and the old adage that "if it bleeds it leads" may be truer today than it was when it was first coined. Not only are traditional outlets competing for those sensational stories, anyone with a smart phone can break the next great story (remember the poor guy from Abottabad who broke the Osama bin Laden raid as it was happening via Twitter?)

Wishful thinking is not the same as good advocacy. County and city attorneys are paid to identify and minimize risk to their clients. Simply wishing bad events away does nothing to minimize risk and can instead expose the client to even greater risk or greater exposure, even if that exposure is little more than bad publicity. In Gwinnett County, Georgia, the private Facebook posts of one commissioner about Congressman John

Lewis caused terrific publicity and a claim of damages by the commissioner (which he has not as yet turned into a lawsuit). But more on those challenges in a bit.

III. It's all about Relationships

Which really means it's about leadership. As we all know, we have no actual power in the legislative process. We have no vote. Officials can (and often do) ignore our advice, counsel, or suggestions. So where, then, does our ability to influence decisions arise? Where is our authority?

Fundamentally, our authority (or power, if you will), arises from 3 sources: credibility, persuasiveness, and relationships with our officials. The first two are pretty self-explanatory. Let's focus, then, on the last one.

First, a disclaimer: I am not suggesting we should be friends with our elected officials. I have been fortunate to genuinely like and admire most of my elected and appointed clients over the years. There are many I would not trust out of reach or out of sight. Some have outright lied to me while looking me in the eye (that's always most fun when I know they are lying and they know I know). But, notwithstanding their credibility, the willingness of members and department heads to listen and mostly accept my legal advice has been the key to any professional success I have enjoyed over the years.

Nonetheless, historical models are effective for learning how and when political and non-political roles or relationships work. During the Civil War, President Lincoln went through commanders of the Army of the Potomac like locusts through a wheat field. The fundamental similarities with all of the generals prior to Grant is that none of them fully believed in their Lincoln and his political leadership and all of them aspired to higher political office (McClelland, for instance, became the Democratic nominee for President in 1864). Neither of those qualities, standing alone engenders a wealth of confidence between the elected official and the appointed official. If the elected thinks you are out for their job, why should they listen to you? Similarly, if you have no confidence in their leadership, and you make that known (and it does not matter if it is overt, covert, or even mistaken), the elected official has no reason to trust the motives of your

advice and counsel. (Put anecdotally, I tend not to play poker with other local government lawyers.)

By the end of 1863, Ulysses S. Grant had defeated and subdued most of the Western Confederacy. He was promoted to the rank of Lieutenant General in March 1864, a rank not in use since George Washington and the founding of the Republic. Grant made clear following his victories at Donelson in Tennessee and Paducah in Kentucky 1862, and his victory over Vicksburg in 1863 that he had no interest in political office. He was continually put forward by his supporters for this or that office, but always vehemently denied any interest in political office (which his detractors put down to false humility). He continued to decline and disclaim interest in political office after being made the commander of all Union forces against the states in rebellion in 1864. With the war going badly in the summer of 1864, prior to the fall of Atlanta, many in the nascent Republican Party floated his name as a replacement for Lincoln's at the top of the national ticket. When that failed, as the summer progressed and no real progress occurred, some wanted to substitute Grant for Lincoln, despite the fact the nominating convention had already occurred and the push toward election day in November was fast approaching. During all of this time, despite all of the efforts by his supporters or those who had long questioned Lincoln's leadership, Grant steadfastly refused to become embroiled in politics.

Similarly, Grant had shown himself a faithful follower of the policy objectives established by the National Command Structure. On New Years Day, 1863, Lincoln issued the Proclamation 95, otherwise known as the Emancipation Proclamation. Grant immediately put the letter and spirit of Lincoln's directive into effect in the Tennessee and Mississippi. He expressed his whole-hearted support for the policy. Thousands of former slaves were utilized by Union forces in the West to rebuild rail lines, to serve as laborers, to run kitchens, and to tend the injuries and illnesses of soldiers. Later, male troops were trained for combat and demonstrated without exception (there is no historical record of any Regiment of black troops running from the enemy, despite widespread promises and actions by Southern armies to put any former bondsman found under arms against the Confederacy to death) the courage and esprit de corps that would later add the Tuskegee Airmen to annals of exemplary military conduct.

In both instances Grant demonstrated his willingness to support and defend the work of the President and defer to political leadership on

matters of policy. Local government lawyers can learn from this example by Grant. As a result of his deference (and in no small part due to his general success on the battlefield), Lincoln listened and relied upon his field generals to prosecute the War. The President's confidence in Grant's work and his character gave Grant more authority and more ability to conduct his part of national policy than any commander before him. At no time in the history of the Civil War had any one battlefield leader held the reigns of strategy in his hands. The South had been divided into military districts with different field officers in command of each district. Only Secretary of War Stanton possessed even titular control over any general strategy for Union Forces. Until Grant's promotion in 1864, each commander was only responsible for the forces in front of him. In Grant, the Union for the first time saw a coordinated strategy that relied on the field expertise of Sherman in the West (which after Chattanooga's fall included Georgia), General Banks at Mobile in southern Alabama, General Butler and the Army of the James, the Army of the Potomac under General Meade, and the cavalry and armies led by General Phil Sheridan in the Shenandoah Valley, all answered to Grant and all responded to a single strategy designed to eliminate the Confederate army in the field.

With great authority comes great responsibility. Despite the military authority in the field, the civilian pressure to assume a more political role, and opposition to the principal of Emancipation, Grant resolutely refused to enter the political fray and steadfastly supported national policy. For local government lawyers, the history lesson describes our role perfectly. Lawyers don't set policy. We take direction from our clients and pursue that direction so long as it is lawful and comports with our duties under the Rules of Professional responsibility. That is precisely what Grant did. He let the elected leaders fashion policy and followed his orders and directions to the best of his ability. In other words, he stayed in his lane.

When local government lawyers advise councils, boards, commissions, or administrators and department heads, the goal must be to establish a frame work and relationship with the officials that establishes the limits of our sphere and the boundaries of our authority. Every consideration needs to be made to address those boundaries in a way that is respectful but leaves no room for misunderstanding. Once that is done, the local government lawyer has a better chance of interceding when an elected or appointed official runs off the rails and lands themselves in the National Spotlight.

IV. Can We Do This Ourselves or Should We Retain an Outside Investigator?

It may seem that the short news cycle and aggressive reporting would require a fast, off-the-cuff, and in-house response. Usually nothing could be further from the truth. One readily available object lesson is found in the Atlanta Public Schools cheating scandal. A first "blue-ribbon" panel supervised by the Superintendent of Schools found nothing wrong. A second inquiry, appointed by the Governor and headed by former Attorney General and Gubernatorial candidate Mike Bowers, found extensive and wide-spread evidence of cheating, answer changing, and other misconduct and led to the incarceration of a number of administrators and teachers. *Timeline of APS Cheating Scandal*, ATLANTA JOURNAL CONSTITUTION (April 2, 2015), https://on-ajc.com/2MyDIpj.

There is a general perception that any internal investigation will simply be a cover-up of misdeeds or wrongdoing. One writer, in describing an internal investigation into an allegation of test cheating in Philadelphia schools, wrote, "Asking [Superintendent of School's Anne] Ackerman's minions to conduct an internal investigation into cheating is akin to asking Bernie Madoff's traders to investigate the outsized returns on his investments." Paul Davies, "ACKERMAN'S LATEST TROUBLES: Will there be a thorough investigation into the allegations of cheating in the Philadelphia School District?" (https://bit.ly/2BkXEYx). Even if the internal investigation reveals misdeeds, the public may still be left with the perception that other misconduct could have been found had the right inquiry been made. Where the internal investigation exonerates the officials, it is even more susceptible to scrutiny. Thus, an investigation conducted by unassociated outside personnel may be the best means of avoiding such criticisms; but even this option is not immune from criticisms of internal control and interference.

In some cases an internal investigation can and should be done by inhouse personnel. Police agencies, frequently quick to call in the GBI, are particularly suited to investigate themselves--that is after all what they routinely do and they are well-suited to examine misdeeds not only for criminal conduct but also violation of policy or procedure. In other departments the agency head or other decision maker needs to objectively determine if she has experienced personnel to conduct the inquiry, if they can and will dedicate appropriate time to a thorough examination of the

event, and if the claim is sufficiently focused that the investigator will not be asking questions of senior officials or supervisors. Frequently, the department head may be too close (or potentially involved) in the scope of the allegations to correctly address these concerns without assistance. It is too easy to say, "that employee is accused of misconduct, I believe he did it, that ends it." As we all know, that may not be the end of it, neither factually nor legally.

There are three questions that should be evaluated and weighed in determining whether to retain an outside investigator. First, the local government should consider the scope of the public relations issues. Second, the presence or absence of counsel for the Claimant or allegedly harmed party as well as the presence or absence of legally cognizable claims must be considered. Third, the governing body should consider its own political will in being willing to accept and deal with the consequences of the outcome of any investigation performed.

How bad is it? Obviously, the answer to this fundamental question will vary on a case-by-case basis. Not every public relations challenge will be caused by an opening appearance on Good Morning America or media inquiries from the United Kingdom. Allegations of political favoritism or official corruption may require external inquiry simply to satisfy the local public's quest for information without regard to any wider or broader audience. The more broadly a particular crisis is reported the more likely an outside investigation will be required to put the allegations and claims to rest, at least in the public's eyes. In addition, adding an outside investigator to address a broadly publicized claim of official misconduct can provide an automatic face and spokesperson for the local government to respond to inquiries for information.

What does the legal landscape look like? If the challenge being faced includes allegations or assertions that might turn into a lawsuit, hiring someone from outside of the entity to do the inquiry satisfies two obligations. First, assuming the investigator is a lawyer, there are obviously protections provided for some if not all of the inquiry performed in anticipation of litigation. Even if the investigator is not a lawyer, having an outside, nonemployee conduct the inquiry creates an objective witness for the government's approach and response to the allegations of misconduct and may still be protected from some required disclosures. While the objectivity of the of the investigator may be both legally helpful and harmful

(depending on the investigation's outcome), the credibility of the government gains by retaining and relying on an objective outside person may outweigh any legally harmful facts developed during the course of the investigation.

The investigator hired should have a demonstrable knowledge of the legal claims that might be made as result of the complaint being aired in the media. Public officials may often want the most narrowly focused inquiry possible. The investigator must be able to cogently explain why the inquiry asked the questions and came to the conclusions reported. For instance, if a single low level official is accused of grossly negligent misconduct, the natural inclination (as discussed above) is to investigate what that person did and stop there. However, as we all know, that is not the end of the legal inquiry. In order to get to the deep pockets of the public entity, the complainant will need to show the conduct of the official was ministerial (and is not subject to any state law immunities) or that the alleged misconduct was pursuant to an act or omission (such as action pursuant to policy or a failure to train and supervise) by the local government resulting in a constitutional violation. In either case, the investigation must go beyond the particular facts and the particular allegations of misconduct and examine the culture and environment in which the act of misconduct occurred to determine whether there is potential liability on the part of the governmental entity. In other words, stopping at the particular act in question answers none of the litigation or legal questions necessary for the decision-makers to make informed choices. They may not want the answers, but that is not the same as not needing the answers.

How willing are the council members or commissioners to accept the outcome of the investigation? This is mostly a question of political will. A divided board may be less willing to accept the consequences than a board that is united on facing the situation head-on. This conundrum is further complicated if it is one of the board members, or more than one of the board members, who may be the subject of the investigation.

In one instance, the Board was fundamentally divided on both the need for the investigation (which had been requested by the chief administrative officer) and its potential outcome. At one point, members nearly came to blows over the events. Ultimately, the recommendations for discipline was carried out for lower level employees and supervisors, but the ultimate decisionmakers, the ones who the investigation demonstrated had utterly

failed in their duty to supervise, train, and communicate their expectations to their troops clearly, consistently, and directly were never sanctioned at all. That was their choice, as the elected body. It is not for me to say whether it was the right choice or not.

V. How Long Should the Investigation Take and What Happens in the Interim?

Needless to say, media and public scrutiny will not end upon the appointment or announcement that an investigation is being conducted. Furthermore, the longer the investigation takes the more likely will be the outcry or suspicion of corruption or cover up.

It is simplistic to say an investigation takes as long as it takes. Mr. Bowers' and Mr. Wilson's investigation into the APS cheating scandal took 10 months. The inquiry into the Spalding County firefighter video of a single car fatal accident that ended up on the internet and was sent to the decedant's parents, took 6 days (including the time to write and present the report), and was still criticized as being done too quickly and for investigating too much. Various investigations (inside and outside the University) into allegations that former Michigan State and USA gymnatics physician Larry Nasser assaulted and molested athletes for decades took over 2 years and some of the fallout continues for the University and for United States Olympic Gymnastics.

Saying an investigation should take as long as necessary does not mean the investigator should have carte blanche to draw out the investigation without good reason. What may seem straightforward or initially indicate a limited scope of inquiry may, upon completion of early interviews, become substantially more complex or open other questions to be resolved. For instance, what may initially looked like a fairly straightforward inquiry into allegations of an inappropriate relationship between a department head and a subordinate may result in broader questions surrounding the motivation of the complainant and/or the general knowledge of the employer concerning the relationship. In one particular investigation involving a small police department, the municipality initially identified only two witnesses who need to be interviewed, but during those conversations other witnesses quickly came to light that were necessary to understand the scope and risk associated with any Title VII or §1983 claims against the municipality. Whatever committee, or person, or Board, is

overseeing the investigation and will receive and act on the report's recommendations and conclusions must be kept apprised of the course of the inquiry and approve any expansion of its scope and purpose.

Not only can the scope of the investigation change based on the information provided by witnesses, the cooperation, or lack of cooperation, from affiliated agencies or entities can dramatically increase the length of time an investigation may take. Unlike police agencies, an internal investigation usually does not have subpoena power to compel the cooperation of anyone who is not an employee of the employing agency. In one investigation, the public entity outsourced some public tasks to outside entities. Those entities, understandably concerned about the safety and welfare of their employees, at first declined to cooperate in the enquiry. It was only after careful negotiation (and ultimately a decision to rewrite the contract to require cooperation in such circumstances in the future) that the contractor's employees were made available for interview: interviews that provided much-needed confirmation and corroboration of the complainant's allegations and further evidence of misconduct by the supervisor.

All of those challenges make things take longer. The potential for criminal sanctions can make things take longer still. While public entities have the ability to use *Garrity* warnings (*Garrity v. New Jersey*, 385 U.S. 493 (1967) to compel testimony without criminal consequences, that does not end the conversation about what may be discovered and how long it will take. Where the interviewer does not want to extend the protection of *Garrity* to the subject of the enquiry, the assertion of the right against self-incrimination may slow or terminate the ability to get to the heart of the subject. Both the local counsel, and the investigator, and perhaps involving the governing body or at least senior leadership, need to weigh the competing needs for information, for clarity, and for closure to determine how long is too long. A simple spat between co-workers, while disruptive or even morale-killing is a far cry from evidence or allegations of sexual assault or other criminal behavior. In short, not all incidents are created equal and none are endowed with any inalienable rights.

What's to be done while the investigation is continuing to keep the media and public apprised of the circumstances, if not exactly satisfy them? No amount of information released during the pendency of an investigation will satisfy the media or, most times, the public. This is simply because not all of the answers are known—yet. At a

minimum the decision-maker should ensure it maintains as many avenues of communication as possible and apprise all media outlets and concerned citizens that a thorough and comprehensive investigation is underway. No details of the investigation should be revealed until the investigation is concluded; however, the community should know when the investigation is expected to be concluded and when they may have the results of that investigation. The public must be informed if the anticipated release date is changed and the reason for any such change. Any delays encountered will not be met with universal acceptance or understanding.

In addition to making sure avenues of communication with the public and media are open and well maintained, the Government should decide early on who will be authorized to communicate regarding the inquiry. A common question is whether the investigator will be made available or not. That answer should be made in conjunction and consultation with the investigator. Regardless of the investigator's direct involvement in communicating with the public or media, reasonable updates should be provided, at least through written press releases. Ideally, someone authorized to answer questions should give the updates. The appearance of openness and the flow of information are important to alleviating concerns the investigation is neither a cover-up nor a hatchet job.

Not only is the public kept informed, but a plea for their assistance can be made through the media and public communications channels, greatly enhancing the ability of the investigation to answer the questions posed by the particular crisis.

The situation actually played out in Seattle, Washington, which faced a scandal over its Regional Small Business Development Program within the local school district (allegations were made (which were largely substantiated) that officials in charge of the program were taking improper payments and favors from entities awarded contracts). Special ethics counsel for the school district released their report on February 25, 2011, revealing that school district General Counsel Gary Ikeda had declined to be interviewed or otherwise participate in the inquiry. When the report, with its interesting and somewhat troubling revelation, was made public, Mr. Ikeda contacted the School System and requested to speak with investigators. The investigators then issued a supplemental report on April 14 detailing those conversations. It would appear Mr. Ikeda's change of

heart could be traced directly to the Investigator's disclosure of his initial reticence to cooperate.

V. "And a final word…"

An outside investigation is useful in two circumstances: if the government is blindsided by allegations of misconduct by media reports; and when the political sensitivity of the allegations require distance from the fact-finding. In either circumstance, hiring a person from outside of the government to conduct the investigation has the potential to provide credibility to the inquiry and (let's be honest) political cover for those not directly involved.

In November 2009, hackers obtained e-mails from the University of East Anglia in the United Kingdom which some claim to cast significant doubts on the scientific veracity of global warming. Those e-mails implicated a researcher at the Pennsylvania State University whose research has been funded by the National Science Foundation. The NSF investigation took 2 years to complete (National Science Foundation Office of Inspector General, Case Number A09120086). Both the NSF and The University investigation concluded that Prof. Mann had done nothing improper or contrary to accepted scientific practices. Nonetheless, public skepticism remains. *Christian Science Monitor*, July 7, 2010. p. 2. A total of seven inquiries and investigations, including those in the United Kingdom, failed to conclude any researcher involved had committed any misfeasance. In fact, one of those 7 included an outside investigation conducted by Sir Muir Russell which obtusely concluded, "We do find that there has been a consistent pattern of failing to display the proper degree of openness, both on the part of CRU scientists and on the part of the UEA." *The Independent Climate Change E-mails Review*. July 2010. p. 11 (just deciphering that cryptic phrase can cause a headache). A lack of openness is not the same as falsifying research data or drawing false conclusions based on available data as the initial "scandal" alleged. Nonetheless, public perception appears to continue that the researchers attempted to dupe the public and failed solely because the emails were made public (despite the fact the person or persons who hacked the University's email server have never been found, identified, or identified themselves, an interesting question itself in light of the News Corp. hacking scandal and cozy relationship which existed in 2009 between senior News Corp officials and officials at Scotland Yard, but I digress).

A middle ground between conducting an internal investigation in hiring a special outside investigator may be to retain or establish an independent ethics board or council. Many larger public entities, such as the Atlanta Public Schools, DeKalb County, the City of Atlanta, or the Seattle Public Schools in Washington State have either a citizens' ethics commission or lawyers specially retained to investigate allegations of ethics violations. Such systems can be effective in responding to allegations of financial or influence–related malfeasance. They are less effective, (like the Georgia Bureau of Investigation is less effective in investigating non-criminal conduct) in responding to other more generic claims of misconduct by employees or officials. Nonetheless, identifying in advance firms or individuals who may be candidates to conduct an investigation can save an entity time and expense when the crisis actually occurs.

Any investigation may be subject to claims of bias or incompleteness. After all, it is the governmental entity which is paying for the investigation and which hires the investigator. Is there an existing relationship between the government and the investigator (either personal or professional)? For publicly traded companies, either could result in the Security and Exchange Commission deeming the investigation incomplete or rejecting the findings completely. Similar relationships could doom even a competently performed investigation to irrelevance if the public does not believe the findings or accept the recommendations.

An investigation should never be subject to a charge of incompetence. Care and attention to detail must be the watchwords of any professional inquiry. If there are unanswered questions, the report should say so. If there were impediments to full fact-finding the report should say that as well. If there are complaints of bias or that the investigation was "a hack job", those assertions should be met head on and not allowed to sully the efforts of the investigator to reach a supportable conclusion. Even if an outside investigator is retained, the governing body must not appear to be disengaged from the process. Maintaining credibility and accountability is, or should be, the first responsibility of elected officials.

Even if the ordinance or charter delegates final decision-making authority to the County manager or other full-time official, elected officials should not be seen as disengaged or acquiescent in the alleged misconduct. They should insist on receiving the report and on its timely and appropriate release. Where the investigation is conducted behind closed doors (as a

ticket-fixing scandal in New York City that began in 2008 is being done), the public's reasonable quest for knowledge is frustrated, and their only recourse is greater and greater outrage over the lack of information as described by Professor Martin in Australia.

An internal investigation is as much about public relations as it is about finding the truth and protecting the public's trust. Like marriage, it should never be entered into lightly or flippantly, but with due consideration of all the competing concerns and challenges presented by the events.