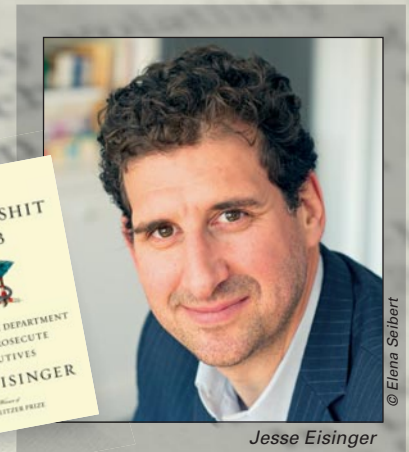
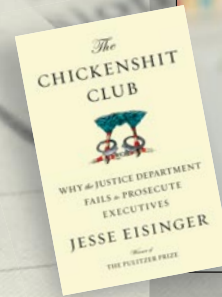


WEBCAST RECAP: Jesse Eisinger

The Rise of Corporate Impunity



Jesse Eisinger

BLB&G hosts the Real-Time Speaker Series — webcasts featuring candid conversations with academics, policy makers, commentators, and other experts about the financial markets and topics of importance to the institutional investor community.

In a recent installment of the Speaker Series, Pulitzer Prize-winning investigative journalist Jesse Eisinger joined us to discuss his investigation of enforcement practices at the Department of Justice. Echoing the themes in his book — “The Chickenshit Club: Why the Justice Department Fails to Prosecute Executives” — Eisinger outlined a variety of factors, excerpted below, that have resulted in the “rise of corporate impunity.”

White collar prosecutions down

“Fifteen years ago, the DOJ did white-collar cases twice as frequently. They’re on track for the lowest number of white-collar cases in 20 years. So they’ve really shifted away from white-collar cases. There is a resource issue, especially at the FBI.

Failure to prosecute individuals

Prosecuting individual white-collar criminals at the highest levels in corporate America will serve as a deterrent for white-collar crime....White-collar executives want to preserve their reputation, and they’re very well informed about the world, so if you prosecute a few of them...they’re gonna pay attention and they will be deterred from committing crime.

Courts more friendly to business

The courts...have become extremely friendly to white-collar defendants, especially individuals — a dramatic change over the last 15 or 20 years. It’s poorly understood and not studied well by academics but the business friendliness of

the appellate courts like the Second Circuit is dramatic and partly due to the rise of the Libertarian right-wing judge. The traditional Republican judge was more serious-minded about law and order but the Libertarian judge is more concerned with government overreach and government power.

Self-policing

[T]oday what we have is this enormously, incredibly lucrative practice of big law firms conducting internal investigations of corporations and then handing those results to the DOJ for them to kind of peruse to figure out what to do with them and to come up with a settlement....the dirty secret of corporate law enforcement in America is that we have outsourced it and privatized it to the corporations themselves.

The revolving door

The revolving door has gotten much worse over the period of about 40 years and this has coincided with a change in the way the DOJ approaches these cases and the change in the career path for prosecutors.

Back in the 70s [prosecutors] started to focus on more serious white-collar criminals at the biggest companies....as well as criminally prosecuting the lawyers, accountants and investment bankers who enabled corporate fraudsters....Then white-shoe law firms realized that “this is a steady business, the DOJ is going to start prosecuting our clients more, we should keep this in-house”....Often, a young prosecutor is negotiating across the table with someone who is essentially their boss’ former boss, ...or perhaps their future partner — a very deeply pernicious set of circumstances and incentives if you want justice in America.

Inequality

People are very conscious of inequality in our society. This is the flip-side of inequality: we punish a certain class of people, disproportionately poor, disproportionately people of color...and then we also let the rich and powerful off; we don’t punish them enough. And that undermines the fundamental legitimacy of our government and our justice system. This is the scandal that I’m trying to expose.”