

The Green and the Black: The Complete Story of the Shale Revolution, the Fight over Fracking, and the Future of Energy

By Gary Sernovitz

St. Martin's Press, New York, NY, 2016.

280 pages, \$27.99.

Reviewed by Christopher C. Faille

What is “fracking”? It’s the practice of drilling deep holes in the ground and then shooting a high-pressure water-and-other-stuff mixture called fracking fluid into the holes in order to create fissures, thereby encouraging the release of gas or oil or both. “Fracking” is a shortened form of the phrase “hydraulic fracturing,” with a superfluous “k” inserted into the abbreviation probably in order to make the word seem vaguely obscure.

Fracking is one of a variety of techniques that help get energy-endowed compounds out of geological structures that would otherwise remain barren. It is often used in connection with other such techniques, such as horizontal drilling and micro seismic tomography, and together this range of techniques has enabled a “shale revolution” since the turn of the millennium.

Gary Sernovitz, who gives us his thoughts on this revolution in *The Green and the Black*, has had some convenient observation posts. Back in the 1990s, the final years of the oil industry’s ancien régime, he kept track of such matters for Goldman Sachs. These days he is a managing director at Lime Rock Partners, a private equity firm active in the field.

Sernovitz has sympathies with and friends on both sides of the ongoing controversy over fracking, that is, the controversy over whether its benefits justify its costs, either locally (to the neighbors) or globally (to the ecosystem). In his own politics, he considers himself a New York liberal, and he voted for Gov. Andrew Cuomo, who has banned fracking within that state. Sernovitz accepts the geological consensus on climate change and criticizes the oil industry for spreading misinformation on the subject.

Sernovitz is also of course deeply involved in the industry himself. Lime Rock does more than merely invest other people’s money in companies active in the oil industry. “We also,” Sernovitz says, “directly buy, operate—and, yes, frack—oil and gas fields.”

Good and Bad Arguments

But this isn’t a memoir; it is a discussion of policy issues. Sernovitz is quite sympathetic to certain of the anti-fracking arguments. He believes that, in order to avoid killing the planet, the human species must move away from reliance upon the hydrocarbons at the heart of its energy mix. The problem with the shale revolution is that it has worked so well that it has created a glut of oil, leading the world to “double down on fossil fuels [despite] good evidence that this is a fatal mistake.”

But there are a lot of *bad* arguments against the revolution, and much of this book is devoted to their refutation. Sernovitz blames the director of the 2010 documentary film, *Gasland*, Josh Fox, for sending the debate down a blind alley “with a particularly lousy argument,” namely the idea that people should worry about “the upward migration of chemicals and gas into the groundwater” that they use to drink.

In the most dramatic scene of the movie, in Colorado, a man lights on fire the water coming out of his faucet. There clearly are flammable chemicals in that water, and the implication of the scene is that this has something to do with nearby oil and gas operations. But the Colorado authorities looked into that very claim (they did so before the movie was made) and determined that the dissolved methane in the relevant well has nothing to do with those operations and is probably “biogenic in origin,” as the water in question tested positive for the bacteria associated with biogenic methane.

That homeowner clearly has a problem, but it is a problem that, like other cases in Colorado and Wyoming that *Gasland* highlights, has, as Sernovitz puts it, “nothing to do with fracking at all.”

Let’s return to the issue of the chemical composition of the stuff poured into the ground to create the fractures in shale. “Broadly speaking,” Sernovitz writes, “a frack job is made up of about 90 percent water, 9.5 percent sand ... and 0.5 percent chemicals.” A typical multistage frack operation uses about 5 million gallons of fracking fluid, so the 0.5 percent amounts to 25,000 gallons of chemicals. This is not a trivial quantity of stuff to pour into a hole, and environmentalists unsurprisingly became curious about it.

A Boring Website

Aside from water or sand, the largest component of fracking fluid these days is guar, a gelling agent that comes from the bean of a tropical plant and that is often used in chewing gum. There are generally other chemicals in the fracking fluid, but there is no mystery about what they are. Interested readers can find lists on the internet. A website sponsored by the Ground Water Protection Council and the Interstate Oil & Gas Compact Commission allows the public to “search for nearby well sites that have been hydraulically fractured to see what chemicals were used in the process.” The URL is <https://fracfocusdata.org/DisclosureSearch/Search.aspx>.

Sernovitz says that this site competes with Actuary.org as the most boring reading

on the net. Items on the lists of additives include acids to prime the rock, friction reducers, and some chemicals that help maintain the viscosity of the gel. The friction reducers include “sometimes diesel fuel.”

So Fox and those he has inspired have this much surely right: *Some* portion of the 0.5 percent of the mixture used for fracking does consist of chemicals that one would not want in one’s drinking water. Is this a sufficient reason to support a ban on fracking? Or to support regulations that would micromanage the formula? Sernovitz thinks not. The Environmental Protection Agency studied this question and released a 998-page report last year acknowledging that it could find no cases in which water supply contamination has ever resulted from fracking in deep low-permeability shales (the shales involved in the ongoing boom).

As Sernovitz writes, “the threats to groundwater come from above and from the sides, not from fracking a mile or two below.” You might spill coffee on your rug. Possibly, too, the family that lives in the apartment above you might spill coffee on its rug, which might seep through the floor, and also eventually contaminate your rug. But the coffee spills in the apartment below yours are no danger to your rug.

Sernovitz makes a sound case that the instances usually cited of contamination that supposedly results from fracking turn out upon examination to have other causes.

Back to the Better Argument

Let’s get back to the better argument to oppose fracking: climate change. Sernovitz writes that it once seemed likely that the world would stop using fossil fuels because “it has to,” because those fuels would become prohibitively expensive, so renewables would take their place. Now, though, it seems that the world has doubled down on fossil fuels. Should policymakers prohibit fracking in order to make oil and gas scarce again, and thereby restore the momentum to renewables?

With some hope and surprise in his authorial voice, Sernovitz observes that “the cheaper oil and gas prices arising from the shale revolution” are *not* halting the market momentum of more renewable sources. Their continued progress overturns the expectations of the “black” and the “green,” oilmen and environmentalists, alike, as of the 1990s. The former were confident of, and the latter were afraid of, “the unsubsidized

unprofitability of solar panels and wind turbines in a low energy price world.”

But there has been good news in that area. Chinese overproduction has led to a glut of solar panels, which are now 70 percent cheaper than they were five years ago. This is an example of a broader truth, that “globalization leads to less expensive stuff.” Likewise, technological improvements have given rise to a 90 percent decrease in the cost of wind turbines over the last 20 years. This, too, is an example of a broader truth, that innovations happen, and that they change the premises of many a question.

Sernovitz is confident that the globalized and innovating world can make the necessary change to more renewable fuels without inciting the disasters that a peak oil scenario would imply. I’ll explain. “Peak oil” is a hypothesis that industry has already reached or is about to reach the maximum rate of extraction of oil from the earth, and that a sharp drop-off will follow that peak. If this occurs, then, because of the law of supply and demand, the price of oil will shoot up, and the resulting worldwide tensions would surely make warfare endemic and civilization precarious. In a sense, Sernovitz is suggesting that fracking helps buy us the time necessary for solar, wind, and other non-extractive sources of energy to come on line. Indeed, the fracking revolution has helped limit coal use and its emissions, and has helped keep Canadian tar sands in the ground.

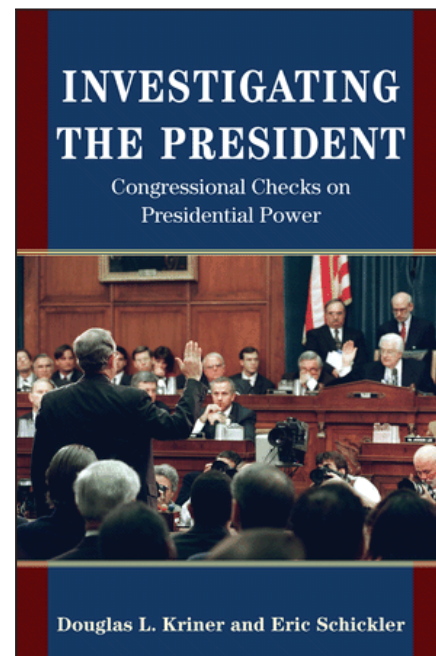
Bottom Lines

What’s the bottom line of this book? Sernovitz, unsurprisingly, doesn’t want laws or regulations that will kill off the profit of many of the investments of Lime Rock. But, perhaps surprisingly, he does want shifts in market demand that will have the same effect, and he isn’t averse to some governmental role as a “guiding hand” facilitating that shift.

Sernovitz says there is no “grand synthesis” possible in energy economics and policy, so he does not offer one. There are only “compromises and imperfect solutions and best available decisions based on data, probabilities, and hope.”

What’s the bottom line of this reviewer? The book is factually dense, and it doesn’t always wear its erudition well: Some readers may find large passages difficult. But for those who are already enmeshed in, or who are fascinated by, the ongoing controversy, Sernovitz brings a fresh perspective and an insightful voice. ©

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Investigating the President: Congressional Checks on Presidential Power

By Douglas L. Kriner and Eric Schickler

Princeton University Press, Princeton, NJ, 2016.

284 pages, \$95.00 (cloth), \$29.95 (paper).

Reviewed by Louis Fisher

In *Investigating the President*, Douglas Kriner and Eric Schickler analyze the impact of congressional investigations in countering presidential actions and anticipated initiatives, studying the period from 1898 through 2014. To what extent do these investigations exert pressure on the President and affect policy outcomes? The book explores how legislative inquiries affect the President’s public approval ratings and the extent to which Presidents, in anticipation of congressional oversight, have moderated or reversed their policies.

The authors begin by saying that, in exercising their Article II powers, “presidents have repeatedly stretched the bounds of their authority by shifting policy unilaterally, by tightening their control over the

bureaucracy to enhance their influence over the policy implementation process, and by making broad assertions of wartime power in both the international and domestic arenas.” When the President oversteps or exercises poor judgment, how can Congress retain a check on the executive branch, beyond holding public hearings and insisting on receiving documents from administrative officials? The book concludes that “presidents who have experienced heavy investigative oversight are more reluctant to use force in response to international disputes than are presidents who have experienced a relatively quiescent Congress.”

In studying the record from 1898 through 2014, Kriner and Schickler “find that investigative activity erodes presidential approval.” That should be presented as a general point, allowing for significant exceptions. If legislative investigative activity is performed poorly because of inadequate planning or obvious partisan objectives, it is likely to erode public approval of Congress. The authors believe that “investigative hearings should be most likely to negatively affect the president’s standing among the public.” That depends on the quality, importance, and credibility of the hearing. Later in the book, in a chapter on President Barack Obama, Kriner and Schickler state: “we demonstrated that investigative fervor on Capitol Hill routinely erodes presidential support among the public.” Legislative fervor by itself does not weaken a President. Hearings that are poorly run and lack focus will not attract the attention of the media or the public. In their concluding chapter, the authors note that congressional investigators “risk provoking a backlash against hearings that are perceived to be simply political.”

Kriner and Schickler conclude that “for more than a century the House of Representatives has investigated the president more aggressively when the partisan opposition controls the committee gavels than when the president’s co-partisans wield them.” That sounds reasonable, but the question is not the number of hearings but their effectiveness. Of interest is the book’s finding that the volume of investigative activity in the Senate “seems unrelated to partisan control of the chamber.” Later in the book, however, Kriner and Schickler conclude that partisanship in recent decades has substantially reduced the number of congressional investigations.

Turning to the impact of congressional investigations on public opinion, the authors

regard foreign policy as “a realm where presidents are commonly thought to enjoy particular advantages over Congress.” The advantages here are not obvious. President Harry Truman paid a political price for going into Korea in 1950 and sending U.S. soldiers across the 38th parallel into North Korea, moving toward the border with China. The result was an influx of large numbers of Chinese Communists, driving U.S. and allied soldiers southward and leading to a stalemate with heavy costs on both sides. Truman’s misjudgment helped the Republicans win the White House in 1952 with Dwight D. Eisenhower. Escalation of the Vietnam war by Lyndon B. Johnson turned the public against both him and the Democratic Party, leading to Richard Nixon’s victory in the 1968 elections. Similar criticism of presidential actions abroad surfaced with Ronald Reagan’s Iran-Contra, George W. Bush’s war against Iraq, and Barack Obama’s intervention in Libya, which left it a broken country and a breeding ground for terrorists.

In Chapter 6 on “Investigations in the Age of Obama,” Kriner and Schickler appear to part company with some of their generalizations earlier in the book, noting that “today’s intense polarization has transformed American politics.” Because of the heightened partisanship in recent decades, they say that many scholars see “a significant decline in the legislature’s institutional capacity.” The number of days set aside for committee hearings appears to be “smaller than those observed in previous eras of intense investigative activity.” One factor, the authors point out, is the heavy reliance in recent decades on independent counsels selected to investigate corruption within the executive branch, including Nixon’s Watergate, Reagan’s Iran-Contra, and Bill Clinton’s activities that led to his impeachment.

According to Kriner and Schickler, the “intense partisan polarization of the contemporary era has not undermined Congress’s capacity to use the investigative arm of its committees to cause political headaches for the executive branch.” Only headaches? That would not greatly worry Presidents and executive officials. The authors return to this issue at the end of the chapter on Obama: “Investigations in a polarized era may be less likely to increase the prospects for legislative action to rein in wayward executive-branch policies than investigations in earlier eras.”

The issue of partisan polarization deserves close analysis. As a staff member

of the Congressional Research Service beginning in 1970, for 25 years I worked closely with lawmakers and their staffs, both in their personal offices and in committees and subcommittees. Throughout that period I was impressed by the deep commitment and understanding of Congress with regard to separation of powers and the system of checks and balances. Lawmakers and staffers were proud of their institution and highly knowledgeable about how to use their constitutional powers to maintain a balance between the branches. Staffers often made a career in Congress, acquiring the skills and techniques needed to protect Congress and self-government. Committee and subcommittee chairs, in place for many years, developed substantive and procedural expertise to carry out their duties. That expertise carried over to conference committees in which the two chambers hammered out their differences.

During the 1980s and early 1990s, it was frequently argued that just as the President is strong because power is concentrated in one person, it was a mistake for Congress to have a decentralized system of various committees and subcommittees. In fact, that decentralized system served Congress well. Presidents and executive officials could not easily control Congress with its many diverse centers of power.

Matters changed fundamentally with the arrival of Newt Gingrich as Speaker of the House in 1995. Instead of strong and independent committees and subcommittees, power in the House shifted to the Speaker, who would decide which members to place on what committees and whom to select as committee chairs. If you met your quota of raising money for the party, you could continue as chair, but the Republicans adopted a rule that you could remain as chair for only six years. The experience you developed would leave with you. The new chair might hire his or her own staff, losing the expertise of the existing staff. Members of the House who failed to raise the assigned amount of money for the party, no matter their level of competence and dedication to the institution, would be kicked off a favored committee and permanently blocked from ever serving as committee or subcommittee chair. Loyalty was now to the Speaker, not to the institution or to the member’s oath to support and defend the Constitution.

Those issues are carefully explored by Charles Tiefer in *The Polarized Congress*:

The Post-Traditional Procedure of Its Current Struggles (2016). He explains that in recent decades the congressional process has downgraded the role of standing committees. Committee chairs lost power under Gingrich in 1995, and a premium was placed on party discipline. Polarization reduced the ability of Congress to produce major legislation and provide effective oversight of the executive branch.

Conference committees, where experienced lawmakers met to handle complex technical and political issues, often with bipartisan cooperation, have declined. Through a process that Tiefer calls ping-ponging, amendments between the two Houses are not settled by conference committees and committee leaders, but through floor votes controlled by party leaders. Committees had the capacity to represent the parties in a more bipartisan manner than party leaders. The shift of political power to party leaders accelerated the development of a polarized Congress.

Tiefer explains that the institutional power of committees further declined when Speaker Gingrich decided to depend on task forces with only Republicans as members. Committees were further undermined by a procedure that allowed unreported bills to come directly to the floor by direction of the majority leadership “rather than receiving full committee hearings, markups, and reporting.” Adding to polarization and the decline of Congress is the trend in the House to gerrymander districts in a manner that makes some lawmakers subservient to a narrow political circle. Tiefer notes that members from those districts have little incentive “to tuck to the center in their voting.” Any move in that direction would leave them vulnerable to defeat in the next primary.

A book by Walter Oleszek, *Congressional Procedures and the Policy Process*, discusses several reforms in the 1970s that severely limited the power of House committee chairs. They no longer had unilateral power to create subcommittees, name the majority members, and determine the resources for subcommittee staff, including staff and budget. No longer did committee chairs automatically go the majority party member with the longest continuous service on the committee, “regardless of ability or receptivity to new ideas.” Because of safe congressional districts in the South, Oleszek points out, chairs were often conservative Democrats “sharply at odds with Democratic

presidents, congressional leaders, and northern Democrats.”

Further insight into congressional investigations comes from a study by Morton Rosenberg, who served for over 35 years as a researcher and Specialist in American Law at the Congressional Research Service (CRS). His book, *When Congress Comes Calling: A Primer on the Principles, Practices, and Pragmatics of Legislative Inquiry*, was published in 2009 by the Constitution Project and issued in a second edition in 2016. He points out that when Gingrich became Speaker in 1995, he cut committee staff by a third, reduced legislative support at the Government Accountability Office by a third, and failed to increase CRS funding beyond incremental inflation rises.

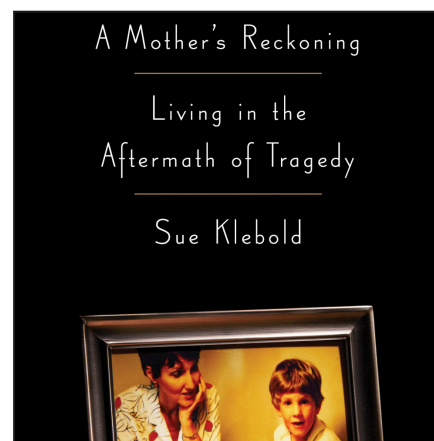
Rosenberg states that the decline in expert senior analytic personnel at CRS, available to support legislative efforts to oversee the executive branch, “has been particularly disturbing.” In the Legislative Reorganization Act of 1970, Congress authorized the appointment of Specialists (GS-16) and Senior Specialists (GS-17) within CRS. Congress concluded that, in the decades following World War II, its decline in institutional strength made it too subordinate to presidential power. The purpose of creating high-level analysts within CRS was to restore Congress as a coequal branch.

In 1989, CRS had 18 Senior Specialists and 38 Specialists. Rosenberg points out that by 2016 there were only three Senior Specialists and three Specialists, all at retirement age. The numbers will soon drop to zero, directly contrary to what Congress required by statute in 1970. At the same time, as Rosenberg notes, CRS management “began to assign the titles (and pay) of these senior positions to administrative officials with none of the necessary qualifying credentials, or even research responsibilities.” They lack the capacity to fulfill the functions of Specialists and Senior Specialists: preparing analytical reports, meeting with members of Congress and their staff to discuss substantive issues, and testifying before congressional committees on complex matters.

As a final point, the capacity of Congress to investigate the President depends on the time available to lawmakers. With the Supreme Court’s decision in *Citizens United* opening the door to unlimited corporate expenditures in elections—treating corporations as “persons” entitled to express

“speech” under the First Amendment—the amount of time devoted to raising money for individual campaigns and for the party has increased. Members of Congress now spend fewer days in Washington and thus have less opportunity to prepare for oversight and participate in committee hearings. Nor is it the custom of members to spend weekends in Washington, as they used to, providing opportunities to meet with members of the other party and their families, building a base for bipartisan cooperation in supporting the institution of Congress.

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A Mother's Reckoning: Living in the Aftermath of Tragedy

By Sue Klebold

Crown Publishers, New York, NY, 2016.

305 pages, \$28.00.

Reviewed by Elizabeth Kelley

School shootings are nothing new. They did not begin in Columbine, Colo., in 1999, when Eric Harris and Dylan Klebold held their high school hostage for several hours as they murdered 12 students and one teacher and wounded 24 others before they killed themselves. School shootings also did not begin at the University of Texas in 1966

when Charles Whitman climbed a tower and sprayed bullets, murdering 14 and wounding 32 before he killed himself. Indeed, Wikipedia's "List of school shootings in the United States" stretches back to 1764 in Greencastle, Penn., when three men entered a schoolhouse and killed the schoolmaster and nine children. According to that list, every decade since the 1840s has had the dubious honor of at least one school shooting.

But it is the scale of recent tragedies, such as those at Columbine High School and Sandy Hook Elementary School in Newtown, Conn., that have captured our concern, caused some to point fingers, and provoked the simple question: Why?

Sue Klebold, the mother of Dylan Klebold, has spent the past 17 years asking that question. She also asks the question that only she, as the person who gave her son life and nurtured him until the day he committed suicide, can ask, "What could I have done differently?" *A Mother's Reckoning: Living in the Aftermath of Tragedy* is her attempt to answer those questions. For us, as lawyers, her responses can be instructive.

On the surface, the Klebolds seemed like a model family. They were a two-parent, middle-class family in suburban Colorado. Dylan had an older brother. The parents were affectionate and involved in their children's lives. They disciplined them when needed. They ate meals, vacationed, and watched old movies together. The family had no history of mental illness or substance abuse. Yet, in a chilling passage, Klebold recounts how, immediately after Dylan's birth, as she held him in her arms, she "experienced a deep and unsettling sense of foreboding, strong enough to make me shiver.... I was overcome by a strong premonition: this

child would bring me a terrible sorrow."

Roughly speaking, the book can be divided into two parts. The first tells story after story of how normal the family was and how utterly devastated Klebold was after the shooting. One could get tired of reading of how adorable Dylan was, but this amount of detail underscores how two well-educated and alert parents missed any warning signs that might have existed of the heinous act that their son was to commit. Any parents would be devastated by their child's participation in a mass murder followed by his suicide, but the isolation and blame that the Klebolds suffered in the aftermath is astounding. Justifiably, victims and their families received support and solace. But the Klebolds were literally forced into hiding. It was months before Klebold could return to work. On the advice of counsel, because of the spectre of civil suits, she could not attend support groups. The emotional, human impact of Dylan Klebold's actions on his family cannot be ignored.

The second part of *A Mother's Reckoning* is more clinical. It is filled with Klebold's research and her journey to recovery, insofar as that is possible. In the years following the shooting, Klebold became a passionate advocate for suicide prevention as well as a resource for other families who have suffered similar tragedies. She notes: "Someone in America dies by suicide every thirteen minutes—40,000 people a year.... More than a million people in the United States attempt suicide each year—which means three attempts every minute."

In writing *A Mother's Reckoning*, Klebold consulted a host of experts on topics such as bullying, suicide, school shootings, and violent video games. Attorneys seeking

to broaden their knowledge could certainly further explore the work of these experts. Armed with this knowledge, Klebold dissects virtually every encounter she ever had with Dylan. Were there any sins of commission or omission? More to the point, how do you know the difference between normal teenage moodiness and the seeds of being a school shooter?

Because of the loving relationship that Klebold had with her son, one would hate to think that he intended to hurt her as well. But, although Dylan did not point a gun at her, he killed her life as she knew it. Her marriage ended in divorce, the family's finances were devastated because of legal bills, and, for years, she was a walking shadow of herself. Even today, her biography on the book's website states: "Sue is currently not available on Facebook, Twitter, or any other social media platform."

Klebold doesn't want us to pity her, but, nonetheless, our hearts should go out to her. Above all, we should use *A Mother's Reckoning* to attempt to answer the questions of why school shootings happen, as well as why young people of such promise commit suicide. ☺

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