

BRIBE, SWINDLE OR STEAL



White House Ethics Czar – Norm Eisen

[00:00:07] Welcome to the podcast Bribe, Swindle or Steal. I'm Alexandra Wrage, and today's guest is the former Special Counsel for Ethics and Government Reform in the White House under President Obama. As ethics czar, he helped draft the executive order that limited the influence of lobbyists in that administration. He later served as ambassador to the Czech Republic until 2014, and today, he has returned as chairman of the board of Citizens for Responsibility and Ethics in Washington — CREW — an organization that he co-founded in 2003. Norm Eisen, thank you for joining me.

[00:00:41] Alexandra, thanks for having me. Glad to be on the pod.

[00:00:45] It's such a pleasure, Norm. We first met in Prague in 2011 when you were the ambassador there, and you hosted an anti-bribery and governance conference, but to what extent was transparency your own agenda item while you were in Prague, and to what extent was that driven by the White House?

[00:01:05] One of the wonderful things about serving as a United States Ambassador is that one gets to have a substantial agenda-setting capacity, and certainly, what we refer to as "open governance transparency, accountability and participation" — they go together — that was a high priority of the Obama administration for its ambassadors abroad. However, out of all of the possible issues, I probably took that group of issues and ran with it as much as any U.S. Ambassador and more than most. That was how I had the pleasure of first making your acquaintance at our Prague World Forum on Governance, to get good governance, transparency and anti-corruption, which I hosted after about a year in my job, and I hosted one of those every year. It was a mix of administration priorities and my own.

[00:02:18] It was a great event with some really fabulous speakers. Prior to your time in Prague, you were, as I said, President Obama's ethics czar, also referred to on occasion as "Mr. No" or "the fun sponge," my personal favorite. What sort of things crossed your desk on a regular basis in that role? What was your overarching responsibility?

[00:02:40] The overarching responsibility that I enjoyed, that I had the privilege of as President Obama's ethics czar from 2009 to 2011, was broad. It was a broad portfolio, Alexandra. I had responsibility for the ethics rules, which in the United States, we find some in the Constitution. You can't take foreign government cash or other benefits if you're an official — that's the Emoluments Clause, the original ethics rule of the United States for public officials. There are statutory rules on ethics — which gifts you can take, what are conflicts of interest. There's regulatory rules. 5 CFR 2635 — that's our regulatory code. Code of Federal Regulations, the fifth volume, Section 2635 going forward. Then Obama added to those by having an ethics pledge, which I wrote with him — a one-page list of additional commitments on top of all those others, above and beyond the call of the daily existing legal requirements, which people have to contract to and agreed to court enforcement. That was only the beginning of my day. I also had lobbying rules, transparency, putting government information online. I had all of the political law. I had to advise the president and the people around them, what they could and couldn't do in political campaigns. I had everything else with reform in the title, except for healthcare reform. I had

financial regulatory reform, what became the so-called Dodd Frank law. I helped scooch that out. It was a huge portfolio.

[00:04:30] It's interesting when you talk about individual contracts being signed to a higher standard. To what extent would you say — even if you had to give it rough percentages — are these rules embedded in law or regulation? To what extent are they norms or president-specific requirements that are no longer applicable after the presidency changes?

[00:04:57] The secret sauce, of course, of democracy, of any functioning governance system, is the norms that reinforce the laws. In the United States, there's no law requiring the president to divest his personal businesses, for example. There was a longstanding norm. Since the passage of the Ethics in Government Act of our fundamental anti-conflict statute in 1978, presidents of both parties have done it, so that's an example of a norm. In the Obama administration, we took a set of what we thought were best practices or norms that went above and beyond the call of law, and that's what we put in our ethics pledge. We tried to codify it. For example, we put in revolving door rules. For those coming into the administration and going out, handcuffing them — they're not allowed to work on the same things to try to close the revolving door. I'll say something very interesting about that. I think it's interesting anyhow, Alexandra. When Trump came into office, he had the power to dump our ethics pledge, to keep it or to modify it, and he chose not to throw it out. It's very interesting. He kept some of those norms. He changed others. And he did his own ethics pledge, which if you're not an expert, you look at ours and you look at his. The paper looks very similar. Now, the problem was they didn't enforce it. It was not a bad piece of paper, but it's been flouted by the Trump administration in practice. At any rate, we tried to codify some of those norms in our ethics pledge, and if any of your listeners are interested, we put it on one page so that everybody would understand what they were signing. Now, there's many pages of instructions and definitions. The pledge itself is on one page, and you can simply google "Obama ethics pledge," and you'll find it.

[00:07:07] We talk a lot in the compliance and governance world about tone at the top. How, in a place as chaotic as the White House, does a leader — in your case, President Obama — communicate the appropriate tone at the top? I don't mean, "How does he determine it?" But how does he communicate that, just as a practical matter?

[00:07:29] The Obama administration — we did it as follows, and, of course, you know this because you and TRACE are leading experts on these issues and on compliance. Tone at the top is the first rule. If you want to have a high-performing organization that follows compliance standards and is good, is ethical, is moral, everybody in that organization has to believe that the leader is good and ethical and moral, and that he'll behave that way, and that he'll be personally disappointed with you if you fall short. I came to the Obama job, not as a government compliance expert, but rather as an outside counsel and as a watchdog. I had not worked in government on these issues. I had represented people in every one of the biggest corporate and financial and political scandals of the past 20 years, before 2009, up to and including the subprime financial collapse and as a watchdog that went after the wrongdoers. What I designed, President Obama wanted to have a system for strong tone at the top. What we worked out was, No. 1, he signed this ethics pledge and the executive order, making it law, on his first full day in office on international television. There were five things he signed that first day. It was his first official actions, so it was covered all over the world. This was one, so that sent a message — "This is important to me" — and he talked about it that day and otherwise how important ethics were. He got a friend to be in charge. He didn't silo ethics to signal his tone at the top commitment. I had gone to law school

with the president. We had been friends for 20 years. When I came to the White House, he gave me — as you heard from my big portfolio — a very senior role with a lot of responsibility. He got somebody who was like him, a similar age, to signal, "Hey, this matters to me." And he told his cabinet, "This is important." Then he sent me to talk to the members of the cabinet to convey to them, "The president will be personally disappointed. Take this seriously." They all had to sign this pledge, and he talked about it. As a result of all that, he did stuff. For example, transparency: He put all the White House visitor records on the Internet. We didn't just stop with signing the ethics pledge. We kept the message alive. All of those things signaled the strong tone at the top, the strongest of all — and the president gets all the credit for this — he himself is a man of towering integrity, President Obama. He did not try to cut corners, nor did Michelle, for themselves. They sent out a strong message by their personal behavior. That combination of actions, modeling, delegation, timing — all of that established the strong tone at the top that we enjoyed.

[00:10:53] That roll-out and follow through is so important. You wear a number of hats now. You are, of course, a senior fellow in governance studies at Brookings and a frequent political commentator on CNN, but I'd like to talk for a minute about your role as chairman of the board of CREW. Can you help our listeners understand the work that that fantastic organization does?

[00:11:19] CREW is Citizens for Responsibility and Ethics in Washington. We formally incorporated in 2003, but the organization was actually born in 2001 when I concluded my post-election work in the Florida election recount, famously the subject of litigation — Bush v. Gore — here in the United States. I was working on those issues, and I stayed in Florida after the recount was over because I felt so strongly that, as a matter of justice, we had to get those ballots, get them counted, which I ultimately did. Then I said, "We need a strong organization in the United States to be a litigation organization with progressive values," because there were many, many I saw when I was fighting the fight. There were many organizations on the center right and the far right who were litigating those issues, but there weren't litigation outfits — going to court, suing, fighting in court. There weren't as many doing this kind of work — government integrity, accountability, transparency, anti-corruption — on the center left, so I said, "Well, let's start one." That's how the organization was born. It took us a couple years to find an executive director and get up and running. We did that in 2003. The first big case we handled was a notorious one here in the United States: Tom DeLay, one of our most senior parliamentarians, the House Majority Leader, was accused of some terrible wrongdoing. We wrote the complaint that resulted in him ultimately leaving the House. One of the most powerful men in Washington and the world. We've worked on many, many other issues since then in both Democratic and Republican administrations. CREW denounced me when I went in government, and sometimes they didn't agree. They didn't think I was being transparent enough. They held a press conference that, "Eisen, our founder, is letting us down." And I loved it. I loved it, Alexandra. I think you got to have a very thick skin when you're in government, and people are too thin-skinned. When people complain, I say, "Hey, I know how you feel because CREW's criticized me." Today, we have over 180 open legal matters against the Trump administration, fighting to get them to be ethical and transparent.

[00:14:01] I'm a big fan of transparency and think it cures a great deal. How do you go about getting more transparency? I know that you have really perfected the art of Freedom of Information Act requests. In the engine behind a number of lawsuits, as you describe, what are some of the other tools you have available to you?

[00:14:22] We do have the Freedom of Information Act that you mention. It's a tremendously powerful tool in the United States. You need an organization or a major media outlet or somebody else behind you because you have to sue often in order to get the most important materials. We're not afraid to go to court, and we've had some major results with that now, for over 15 years. Of course, another tool that we use is straight litigation. We're suing Trump in multiple courts now over constitutional violations, including that anti-corruption measure that I described — cash or other benefits from foreign governments. He's getting them because of his businesses. That's called the Emoluments Clause. We do a tremendous number of regulatory complaints where we file with the Office of Government Ethics or the Office of Special Counsel, Inspectors General, other groups within the Executive Branch that are responsible for enforcing rules. We were one of those who complained about our Attorney General Jeff Sessions working on the Trump — Russia investigation because, under the ethics rules, if you work on a campaign, you can't work on an investigation of that campaign. We, together with others, forced him to recuse himself. We've had some substantial wins in this first year with these administrative complaints. We filed them in Congress as well. Then there's a tremendous amount, when you get your FOIA requests, that you can do. There's been a big scandal here in the U.S. about private plane travel. One of the members of the president's cabinet — his Secretary of Health, Dr. Price — was forced to resign. I'm very proud that CREW helped unearth that information. We also have an active time in the court of public opinion.

[00:16:24] This president's behavior is more worrying than most from a governance perspective, but your organization is now pretty thoroughly bipartisan. Is that a fair assessment?

[00:16:36] It's heavily bipartisan. We have a pretty much balanced board. I'm the chair of the board, and I'm a liberal. The vice chair, Richard Painter, was the George W. Bush ethics czar. He's a Republican, a very conservative one. We have a number of other progressives and conservatives on the board. It's a nonpartisan organization, and we try to be balanced in those political views, and that has given us a lot of credibility, Alexandra.

[00:17:09] I would agree. Richard Painter has been an extraordinary critic of this administration's conduct. Before we leave CREW, perhaps you could describe the work that you're doing? We talked about norms and regulations, but shifting the longstanding norm of producing tax returns when you are running for the highest office and switching that over into a legal requirement — making that a requirement to get a name on a ballot in each state.

[00:17:40] I would have never imagined in my lifetime there would be a president who could be elected without providing the tax returns. It is a norm, but I think it should be a law. We see now that there will be some who refuse to do it. In the United States, we give a lot of authority to the states to construct their ballots, so we are working with state legislators around the country to establish these ballot requirements. There will be a constitutional challenge, but we have Larry Tribe, who has written on this with me and with Painter. We have a great team that is going to knock down those constitutional challenges. I think it's very important. You can't fully judge a president's conflicts or situation without his financial picture. You need the tax returns for that. Given the power the president has, we must have them, and this is one way to go.

[00:18:38] Absolutely right. Regardless of what your political affiliation is, once one president has just ignored this longstanding protocol, future presidents will feel that they can as well, and that is a very dangerous precedent. You travel a great deal. You were, of course, ambassador representing President

Obama overseas. Can you give me your impression of how U.S. business and politics are currently perceived overseas?

[00:19:08] They were perceived better, I believe, before the current situation. I don't like to be critical of my president. He is my president. I respect the office greatly, particularly having worked in the White House, but I think that the tone at the top is lacking. Now, let me say, before I explain why, that I'm not a reflexive, anti-Trump critic, although I am liberal or progressive. I did not vote for the president. I helped the president's transition. I had multiple meetings. It's been publicly reported here in the United States. It was later leaked out. I confidentially met with the senior people managing the transition on how they could meet the highest ethical standards, adapt our ethics pledge. Then there was a change after they won the election. They threw out the people who were managing it, Governor Chris Christie of New Jersey, and they brought in a new crowd that was totally uninterested and no longer wanted to talk to me. So I'm open to this administration, Alexandra. I was. But what's happened is the tone of the top has been so rotten, with the president himself breaking the norms of unloading his businesses. He's hung onto his businesses. He studies how they're doing. He knows who's spending money at them. He's getting domestic and foreign cash from governments all over the world where we have strong interests. How can he be objective? We pointed out, for example, when he promulgated his first Muslim ban EO, there wasn't a single country on there that he did business with, and countries where he did do business, he didn't put them on that ban, even though they posed a greater threat, looking at past terror statistics. The conflicts are so outrageous, and then you have the violations of the norms, the ethics rules, the cons. The courts here are constantly striking down actions of the Trump administration as unconstitutional. The whole situation is a tremendous mess, and that has finally — to come back to your question — that has affected the international reputation of the United States. I think we've taken some damage, but the good news is people understand this may be transitory. Our good laws are on the books. The FCPA — the Foreign Corrupt Practices Act — the strong enforcement by state attorneys general, SEC having to make corporate disclosures that civil justice courts where you're exposed to securities litigation or other forms of civil justice. I think that people understand that America is more than one man, and they're waiting to see if we bounce back. I don't think the world will wait forever. We're going to need some dramatic changes. But if, as some say might happen, there's a change in Congress later this year, that will affect how the world sees this. It's the tone at the top, too. Congress can do some good things, so it's not all it should be, but I believe that our international reputation will bounce back.

[00:22:37] Great. Thank you. Now, changing directions pretty dramatically, can I impose on you to tell the story of the residence that you lived in while you were the ambassador to the Czech Republic?

[00:22:49] Of course. I told you the story, I think, when you visited us, and I love to tell the story to people when they actually were in this magnificent building where the U.S. ambassador lives in Prague, the Petschek Villa. Over 150 rooms. So numerous, nobody knows how many. The most beautiful building built in the city in the 20th century. It inspired me for the following reason, gave new energy to my anti-corruption and transparency work: The building was built by Otto Petschek, the richest man in the country that was then Czechoslovakia after World War I. He believed the promises of Woodrow Wilson about the new international order, the League of Nations and that that was the war to end all wars, and he built the house for his family to live in a thousand years. He was displaced, of course, as we know, tragically, by world events. He soon found himself displaced in the late '30s by the Nazi German invaders, and the German general, General Toussaint, the Wehrmacht general, occupied that house. Then, at the end of World War II, it was seized and occupied by the United States to protect it from the

Soviets who were also in Prague. The United States bought the house. A movie star came to that house, and I'm writing about all these people. A movie star came to that house in 1968 to see the famous Prague spring, the thaw of communism, communism with the human face. She was there in Prague when the Russians invaded — Soviet invasions — and she was so traumatized by that, she said, "I'm going to quit movies, and I'm going to become an ambassador, or I'm going to come back here and help end communism." And that's just what Shirley Temple Black did in 1989 from that same house. I write about all of that, and then I write about a fifth character, a Czechoslovak Jewish woman, and if Otto Petschek was the richest Jewish person in Czechoslovakia, she was the poorest one. This woman was born the same year as ground was broken on this house. She survived the Nazis, concentration camp, returned from concentration camp at Auschwitz only to flee the communists a second time and come to the United States. She had a son who she sent back to live in that house that had been in her native land, that had been occupied by the Nazis. This gentleman served as United States ambassador. Of course he, as you know, made the house kosher. A former Nazi house was made kosher, observed the Sabbath there, put our mezuzot on the door — our little prayer scrolls. We put it on every door. And that person was me. So I tell the story of the people who lived in that house, and of my mom in this book, and it's the story of a century of European life, the secret history of democracy in Europe over the past hundred years, and the name of the book is "The Last Palace." That comes from the famous American writer John Updike who came to the house on a visit, and he wrote in an article that he had visited the last palace built in Europe, and it was, because after the house was opened, war soon came, and they stopped building palaces. So that's what the book is called, "The Last Palace."

[00:26:45] The whole story is this wonderful forum of historical justice. Thank you for sharing that. I so look forward to your book. I think it'll be out later this year, "The Last Palace." Thank you for that, and thank you for the great work you were doing with CREW, Norman, and for your time today.

[00:27:02] Thanks, Alexandra. It's a pleasure being with you.