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Ethical Issues in the Trump Era: A Conversation with Walter Shaub, Former Director of the U.S. Office of Government Ethics

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On October 17, 2017, CAPI hosted Walter Shaub, former Director of the U.S. Office of Government Ethics, in a conversation with Columbia Law School Professor Richard Briffault before a crowded room of students, faculty, and practitioners. Shaub, now a Senior Director at the Campaign Legal Center, spoke about his 15-year career at the Office of Government Ethics (OGE) that ended with his resignation in the summer of 2017. Most of the hour-long event focused on the work and the role of OGE, what Shaub intended to accomplish there, and why he resigned. Shaub indicated that his goal while serving as Director of OGE was to foster public confidence in the federal government by enabling the public to engage in oversight through increased transparency. After citing frustration at the Trump Administration's lack of cooperation and information sharing, Shaub explained his departure by stating, "I quit when I didn't think I could make a difference." The full event video can be found here.

Before delving into questions regarding the Trump administration, Shaub described the anti-corruption mechanisms within the federal government. At the outset, Shaub indicated that "the federal workforce is probably the most heavily scrutinized, overseen, investigated, reported-on workforce in the world." Following Watergate, Congress passed sweeping ethics reform to improve public confidence in the government. The Office of Government Ethics is one piece of that oversight structure, which also includes the Offices of Inspectors General (housed inside most federal agencies to prevent fraud, waste, and abuse) and the Office of Special Counsel (designed to protect federal employees from improper personnel actions, among other things).

Within this framework, the Office of Government Ethics focuses on financial conflicts of interest in the executive branch. OGE itself is a small agency consisting of only 70 employees, but it oversees an ethics program for the 4,500 full and part-time ethics officials employed in the executive branch. The challenge for Shaub, as with every OGE director, was the lack of direct supervisory control over these 4,500 ethics officials who work in different agencies. Without independent enforcement authority, which is left to the Department of Justice in the case of criminal activity or the individual agencies in cases not rising to that level, OGE must get creative in seeking compliance. According to Shaub, it takes everything from "menacing, to coaxing, to persuading, to pleading, to begging, to shouting, to back-slapping" to get conflicts cleared.

Shaub also discussed OGE's important role in working with presidential nominees before their Senate confirmation hearings. This is one area where OGE is able to leverage compliance, because nominees typically cannot schedule their Senate hearings until after OGE has signed off on their financial disclosure reports and ethics agreements.

Professor Briffault next asked Shaub about the conflation of ethics and morality with conflicts of interest. Shaub emphasized that the Executive Branch's ethics rules are based on a complex legal structure, not general notions of right and wrong. Shaub indicated that the laws in this area range from criminal statutes to civil penalties to standards of conduct. Shaub noted that federal employees are accustomed to complying with complicated and elaborate regulations and thus may not think about their underlying ethical principles. The danger of over-emphasizing the legal aspect of ethics - as opposed to the underlying principles - is that an agency official may face disciplinary action not for violating a statute but rather an ethical principle. Shaub cited an executive order issued by President George H.W. Bush which laid out ethical principles for government employees. Violating these principles can result in suspension or even termination. Finally, Shaub continued, ethics laws are predicated on the idea that certain norms will be followed. "There are some things the rules don't cover because nobody thought they would need to be covered."

With those thoughts in mind, Professor Briffault transitioned the conversation to the Trump administration and Shaub's ultimate resignation. Initially, Shaub stated, both campaigns' transition teams "played nicely in the sandbox." However, while the Trump transition team was eager to engage with OGE before the election, afterwards its cooperation dropped off. According to Shaub, the original transition team was pushed out and replaced soon after the election with Donald McGahn, now White House counsel, at the helm, and he had a different attitude toward OGE. Shaub said that it took three weeks to finally get a sit-down with McGahn, and in their meeting McGahn seemed wholly unaware of OGE's critical role in the transition process. "It went downhill from there pretty fast," said Shaub. One example, Shaub noted, was the President's announcement of new nominees before they underwent ethics screening processes such as background investigations and the Senate questionnaire. Normally, the initial ethics clearance process happens privately, before the nomination is announced, so that a conflicted person can quietly withdraw. By skipping the traditional early ethics clearance process, a nominee who subsequently faces clearance issues might face the embarrassing prospect of walking away from a post after the public announcement of his or her nomination.

In general, the lack of cooperation from the Trump White House led to a frustrating stalemate. "Everything was a fight," Shaub stated. Additionally, the three-week delay from the election to the initial meeting with Donald McGahn, the new Trump administration nomination liaison, meant that OGE became very pressed for time as the staff worked through nominees' complicated financial disclosures. The Senate, frustrated by the delay, started scheduling hearings before OGE had finalized the ethics clearances. "This was a real threat to OGE," said Shaub, harkening back to his earlier point that OGE's leverage comes from the Senate not holding a confirmation hearing until the ethics work is completed. Fortunately, the Senate responded to letters urging them to allow for the completion of OGE's work and rescheduled the hearings. Shaub also opined that President Trump's decision not to resolve his own financial conflicts of interest paved the way for his nominees to push back against OGE in unprecedented ways. Shaub stated, "I had to go public with this administration as a last resort because the existing procedures were not working."

Shaub then spoke about the continuing ethical problems plaguing the White House. He recounted a recent quote by Trump in an interview asserting that the president cannot have a conflict of interest. "That's just baloney," said Shaub. Although the law does not criminalize a president's conflicts of interest in the way it does for other federal officials, there can still be a conflict if the president's private interests conflict with his public duties. This reality is why presidents can and should implement financial safeguards to avoid conflicts before assuming office. Most presidents have divested their financial interests or entered them into a blind trust. In President Trump's case, Shaub recommended that he roll his assets into diversified mutual funds, which would be better suited to the President's holdings than a blind trust. Instead of following either of the blind trust models recommended to him, President Trump instead created what he called a "semi-blind trust." According to Shaub, however, "there is no such thing as a semi-blind trust." He called the President's current arrangement with the Trump Organization "worthless" in terms of avoiding problems arising from conflicts of interest.

Additionally, Shaub condemned the Trump Organization's enrichment from Trump's presidency. Shaub specifically criticized the President for the so-called "Mar-a-Lago Problem," whereby the Trump Organization financially benefits from indirect and direct advertising of its properties like Mar-a-Lago. For example, a Trump property has advertised that the president may stop by when it is booked as a wedding venue – a promise he has kept. Shaub also noted that Trump's visits to his properties are extravagantly expensive, with taxpayers picking up the tab. He recounted that the Secret Service has reportedly paid the Trump Organization hundreds of thousands of dollars for the rooms it requires to protect President Trump on his many trips to his properties. Shaub maintained that the lack of ethics compliance and the departure from traditional norms by the current White House has contributed to the many scandals currently plaguing cabinet members: “It is inconsistent, this idea that you will hold cabinet and sub-cabinet officials to a higher standard than their boss.”

Shaub emphasized that ethics has always been and should be a non-partisan issue. He also stated his hope that the Trump administration’s flouting of ethical norms will be seen as an aberration from a long history of bipartisan support for OGE and its mission. “Ethics doesn’t belong to either party,” he asserted.

Although best known for his resignation from the government, Shaub also spoke about his long career as a government lawyer. “I always wanted to go into public service,” he said. Speaking directly to students interested in a career in public interest law, Shaub touted the benefits of practicing law for the government. “At a very young age you get a very broad range of experiences, especially if you ask for those kind of assignments and seek out that breadth of experience – it is there to be had in the government.”