Donald *Trumped* Ethics

A Review of Federal Laws & Presidential Ethics

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The front cover is the introduction to the ethics pledge that President Biden signed into law with Executive Order #13989.

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decisionmaking on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients."

A man who crafted his career around breaking laws, degrading others, and infamously firing his subordinates in front of America should have brought us no surprise that he would break many ethics laws, but the sheer amount of ethic rule violations that former President Trump managed to break was *astonishing*. President Trump and his Executive Office of the President were groundbreaking in disregarding ethics laws, rules, and norms that were carefully crafted even after a dark moment in our democracy—the Watergate Scandal. This paper will review our current ethics laws, outline Trump's major ethics violations (including his blind trusts, the Muller Report, and his impeachments), and review Biden's ethics violations. Then I will compare past administrations (Presidents Barack Obama, Donald Trump, and Joe Biden) and end with a discussion on how we can strengthen our ethics laws.

Review of our Current Ethics Laws

There is currently a web of ethics laws that the Office of Government Ethics (OGE) tracks and enforces. The main three that I will cover all were passed after the Watergate and Saturday Night Massacre: first, the broadest is the Ethics in Government Act of 1978, second is a revamp of the EGA called the Ethics Reform Act of 1989, and third and most recently passed the Stop Trading on Congressional Knowledge Act of 2012 (AKA the "STOCK" Act).



President Jimmy Carter signing the Ethics in Government Act on October 26, 1978 (Lawrence 2020).

Ethics in Government Act of 1978

This was the *pinnacle* legislative achievement of the government after the Watergate scandal and created many of the baseline laws that we have today. Most notably, it created financial report requirements for federal personnel, restrictions on lobbyists, it created the Office of Government Ethics, it created independent counsel provisions (which since has been removed due to a sunset clause)[1], and other changes to practices ("S.555 - 95th Congress (1977-1978): Ethics in Government Act." 1978).

Ethics Reform Act of 1989

This update to the Ethics in Government Act was a necessary but less critical update to our ethics laws in the US. The Ethics Reform Act of 1989 sought to restrict some forms of employment after service in the Executive and Legislative branches, updated the financial reports required for federal personnel, changed rules regarding gifts to federal employees and outlined travel regulations, and some other updates ("H.R.3660 - 101st Congress (1989-1990): Ethics Reform Act of 1989." 1989).

The STOCK Act of 2012

The Stop Trading on Congressional Knowledge Act of 2012, more commonly known as the STOCK Act of 2012, was another update to the original Ethics in Government Act. This act outlawed insider trading and increased the materials needed to submit financial reports for federal government employees (Fern 2021). It passed with overwhelming bipartisan support in the House (with a vote of 417/2, with 14 members not voting) and the Senate (with a vote of 96/3, with one member not voting) ("Actions - S.2038 - 112th Congress (2011-2012): STOCK Act." 2012). Even with the support from almost all of our Congresspeople, just 13 months after the original bill passed an amendment passed that weakened the financial reporting requirements; it passed both Houses of Congress with unanimous consent ("S.716 - 113th Congress (2013-2014): A bill to modify the requirements under the STOCK Act regarding online access to certain financial disclosure statements and related forms." 2013).

A Not-So-Blind Trust

The first, most important, and brazen disregard to ethics that President Trump forwent was not placing his business interests in a blind trust. Former Presidents Lyndon Johnson, Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush have voluntarily placed their assets in a blind trust ("Legal Sidebar: Conflicts of Interest and the Presidency" 2016)[2]. A "blind trust" is where one person transfers their business holdings to someone else who exercises control, the original owner of the assets is not allowed to control the assets until the trust is dissolved (Kenton 2021). Presidents have used this financial tool to remove the ethical question of using inside knowledge/insider trading (clearly before the STOCK Act was passed). Trump and his lawyers claimed that he continued to control his assets because he could not "unknow [*sic*] he owns Trump Tower" (Geewax 2018). However, that goes against one of the key ideas behind both blind trusts and ethics. First, blind trusts temporarily remove business control of the asset, not that one is selling off their interest (Kenton 2021). Second, one of the fundamental ideas behind ethics rules is to remove even the appearance of ethical violations before they become actual violations (we will discuss this more in the "Recommendations for Better Ethics" section). All of these "blind trust" problems did not just stop when Trump took office. Ethical violations persisted throughout his entire presidency and were only dwarfed by other, more critical, ethical issues.

He also had another major scandal that



Then President-Elect Donald Trump at a press conference on January 11th, 2017 annoucing his plan to divest himself from his business interests (Schwartz 2017).

lasted his *entire* presidency, stemming from not placing his assets into a blind trust. Trump used his hotels, resorts, and other properties to his advantage and has encouraged his supporters, his appointees, Congresspeople, and foreign government officials to stay at those properties. CREW (Citizens for Responsibility and Ethics in Washington) tracked all his ethical violations and has noted that he has had 3,740 ethics violations during his presidency (CREW 2019). He held 100 events at his properties, and there have been 471 promotions of his properties by White House Officials (CREW 2019). Furthermore, and much more notably, were overnight visits to his properties. He visited a property in his collection 542 times, other Executive Branch Officials visited 981 times, Members of Congress visited 356 times, and Foreign Government Officials visited 177 times (CREW 2019). This shows a brash disregard for the Hatch Act and Emoluments Clause. This, coupled with his lack of a blind trust, has led officials and citizens to assume that those in positions of power were using staying at his properties for personal favors — a major ethical violation.

These are just two (conjoined) examples of how Trump abused his power, ignored the many long-standing ethics rules and laws, to enrich himself and his business partners while leaving the American people out of the deal, but that is not the end of it!

Trump Stands Impeached

There can be no discussion of Trump's ethics without reviewing his impeachment trials. He was only the third President to be impeached but the first to be impeached on two separate occasions. Once again, Trump's brazen disregard for ethics in his office led to all three of his impeachment articles and both of his impeachments. While the Senate acquitted him on all three accounts, his ethical violations (and possibly illegal activity) still stand.

First Impeachment, First Article

This article alleged abuse of power by asking Ukraine to "announce an investigation into former Vice President Joe Biden and his son Hunter Biden, conditioning $400 million in US security aid, and a one-on-one White House meeting on the investigation" (Herb and Raju 2019). This was an ethical violation because he abused his power as President for personal political gain.

First Impeachment, Second Article

The second article of his first impeachment alleged Obstruction of Congress, specifically, by "stonewalling all the subpoenas from Congress trying to investigate his conduct" (Herb and Raju 2019). This was also an ethical violation because he forwent checks and balances by blocking and denying Executive Branch officers to testify and did not submit any documents after the Executive Branch was subpoenaed (Fandos and Shear 2019).



Speaker Nancy Pelosi presenting after signing Trump's second impeachment bill (Mascaro et al. 2021).

Second Impeachment, First Article

Just five days after the deadly January Sixth insurrection attack at the US Capitol, the House announced Trump's third Article of Impeachment. This time, he only had one article, which alleged: "incitement of insurrection" (Naylor 2021). This has less clear ethical violations, as many sources are divided on whether he "incited" the actual riot. However, it is not questionable that he did abet the attack.

The Lengthy & ~~Redacted~~ "Muller Report"

The Muller Report, more formally known as the "Report on the Investigation into Russian Interference in the 2016 Presidential Election," is a 448-page document cumulated over almost two years (Vesoulis 2019). The report, written by Special Counsel Robert Mueller, investigated three ethical violations:



Then FBI Director Robert Muller swearing in to testify before the US Senate on September 17, 2008 (Prokop 2019).

1. Whether Russia interfered with our 2016 Presidential election;
2. If Trump or his campaign coordinated with Russia's interference attempt; and
3. If Trump or his campaign obstructed justice.

It is named the Muller Report because Trump fired then Director of the Federal Bureau of Investigation James Comey, and so the then-Deputy Attorney General Rod Rosenstein appointed Robert Muller to investigate. While Trump, his campaign, and his allies called the report a complete exoneration of guilt, *that was far from the truth*. The report found numerous ethical violations by Trump as a candidate and his campaign and by Trump as President but not by his Executive Branch (many officials denied his orders) (Apuzzo and Goldman 2019). Ultimately, there was no indictment because sitting Presidents cannot be indicted under an opinion of the Department of Justice (Moss 2000). Muller ultimately stated:

If we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, we are unable to reach that judgment. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him. (Mueller, III 2019)

Is Biden Better?

While we have only been under Biden's Administration for just under a year now, one thing can be said about his and his administration's ethics—its leaps and bounds better than the Trump Administration. He ran on a campaign to save the "soul of the nation," and if part of the soul includes a spot for ethics, he has done his job. Biden, so far, has had no real-large scale ethical violations, except for the recent alleged violation of the Hatch Act (I will discuss that more in the section below). While the only major ethic rule update that Biden has signed into law was his Executive Order on Ethics (as discussed in a section below), his campaign had many promises of updates. A memorialized version of his campaign website stated the following:

- Reduce the corrupting influence of money in politics and make it easier for candidates of all backgrounds to run for office;
- Return integrity to the U.S. Department of Justice and other Executive Branch decision-making;
- Restore ethics in government;
- Rein in Executive Branch financial conflicts of interest; and
- Hold the lobbied and lobbyists to a higher standard of accountability. (Biden for President, n.d.)

As stated, we are still waiting on the

President to announce a more concrete legislative agenda on ethics. Biden also had a presidential transition ethics code, which was 3-times the length of Trump's code, twice as long as Obama and his, and much stricter when compared to both documents ("Biden-Harris Transition Team Ethics Plan" 2019; "Obama-Biden Transition Project Code of Ethical Conduct" 2007; "President-Elect's Transition Team Code of Ethical Conduct" 2016). In short, we can see that he is already off to a much better start than his predecessor. However, it is *not our job*, as citizens/constituents to applaud Biden's lack of large-scale ethics violations; *it is his job, after all, to be ethical.*

Jen Psaki's Violation of the Hatch Act on October 14, 2021

Biden's Press Secretary, Jen Psaki, might have broken the Hatch Act by endorsing then Virginia Governor and Governor-candidate Terence McAuliffe. During a White House Press Conference on October 14th, 2021, she said, "we are going to do everything we can to help former Governor McAuliffe, and we believe in the agenda he is representing" (Brady 2021). CREW states that it is a violation of the Hatch Act by "impermissibly mixing official government business with advocacy for former Governor McAuliffe's election" (Bookbinder 2021). It is unclear, at this time, if there have been any additional investigations (by the Office of Special Counsel, to whom the letter was sent)[3].

However, CREW highlights the fact that this is a minuscule violation compared to many Trump Administration's scandals. The article which the letter was published in states, "Psaki's apparent violation is nowhere near as extreme as those of her predecessors" and goes further to say, "Trump('s) press officials showed a disdain for the Hatch Act, making a mockery of it while they were in office" (Bookbinder 2021a). While a violation of any federal law is a serious charge, they acknowledge that *the previous Administration did much worse more often.*



Press Secretary Jen Psaki leading a White House Press Conference (CREW 2021).

How Other Administrations Hold Up

Now, we will begin looking at how each President has structured their ethics Executive Order. For this, we will be looking at President Obama, Trump, and Biden's Executive Orders, EO #13490 (Obama 2009), EO #13770 (Trump 2017), and EO #13989, respectfully. The following table has information from the Congressional Research Service and CREW (Congressional Research Service 2021; CREW 2021).

See Table 1, on Ppge 8.

As one can see, large parts of each ethics Executive Order is predominantly the same. When looking at the ethics rules from a bird's eye view, the only trend that is very noticeable is that Trump weakened some aspects of Obama's Executive Order, but Biden brought them back in and created new reporting rules. The author of Obama's ethics Executive Order, Norman Eisen, wrote a piece for Politico and stated, in part, "Biden's new executive order on ethics does us one better. It restores the fundamentals of the Obama plan, closing loopholes Trump opened—but going further, including new crackdowns on special interest influence" (Eisen 2021).

So, what makes Trump more unethical than Obama or Biden? It must be their *personal dedication* to the ethics rules in which they signed into law. Time and time again, we received reports that Trump tried to fire an Executive Branch official because he was not pleased with

Item	Obama	Trump	Biden
Gift Ban	Banned almost all gifts from lobbyists.		
Revolving Door	Required two-year recusal from all appointees.	Same as Obama, however it weakened the two-year ban on lobbyists entering the government.	Restored Obama's recusal.
Shadow Lobbying Ban	None.		Added a new section to disallow senior appointees from assisting others for one year.
Waivers	The Director of the Office of Management & Budget can grant waivers for ethical rules that would inhibit the work of individuals.	Reorganized and weakened how waivers were granted.	Reinstated Obama's ruling.
Golden Parachute Ban	None.		Added a new section to ban payments for accepting a government position.
Hiring on Qualifications	"Any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience."		
Enforcement	"Enforceable by "any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief."		

Table 1. *This shows how President Obama, Trump, and Biden's ethics Executive order compare. The following table has information from the Congressional Research Service and CREW (Congressional Research Service 2021; CREW 2021).*

their work, or their work interfered with his idea of his presidency (Shear and Apuzzo 2017). Only when our government officials, leaders, and managers alike understand what the ethics rules require and believe in their enforcement.

Recommendations for *Better* Ethics

I have written quite a bit of information on what not to do when thinking about government ethics, but now the question stands: how can we start doing better? I have three leading suggestions on improving government ethics to ensure our government officials are working for the people.

Increase the Educational Aspect of Ethics Managers

In the "Paradoxes of Government Ethics," Dennis Thompson states that members of the ethics community's most significant job responsibility is their "educational responsibility" (Thompson 1992). They state that ethics is not easy to understand, and many reports are not easy to complete; that is why it is the job of ethics

managers to continue to educate personnel and appointees that are governed by ethics laws and practices so they can follow those rules and practices. With that, in my opinion, this can extend far beyond just those who are appointed. I believe that when citizens are more informed about how ethical (*or unethical*) their elected leaders or their appointees are acting, they can better understand what jobs are being completed for the government. Thompson states, "the role of the ethics officer should be more like that of an educator than an enforcer" (Thompson 1992), which goes to tell us that ethics officers are in no way police people, they are teachers of the rules that government officials should be governed by. To quote Thompson again, "government ethics should be seen as a way of reminding officials that they are accountable to the public, that they primarily serve not their administrative superiors or even their own consciences, but all citizens" (Thompson 1992).

Enforcement of our ethics laws is still important, but that is not and should not be the job of the OGE nor ethics officers. As Thompson states, "enforcement, however, remains primarily the responsibility of the inspectors general and the Department of Justice" (Thompson 1992). While I believe there can be better coordination between OGE, inspectors generals, the Office of Special Counsel, and the DOJ, the OGE should approach the partnership from an educational side. If OGE handled both education and enforcement, public employees might be less inclined to learn more about the rules they are governed by or the reports that might need to be filed. "For the most part, OGE is not an enforcement agency; instead, it provides guidance, seeks voluntary compliance, and coordinates with agency officials responsible for directing the daily activities of an agency's ethics program." (Marsco 2018).

Create a Stronger Office of Government Ethics

Most of the criticism of the Ethics in Government Act (opposed from the actual reporting rules it created) was that it did not create the budget that would allow the new agency (OGE) to complete its mission. According to



The former Director of the Office of Government Ethics, Walter Shaub, under Trump (Lizza 2017).

James Carroll and Robert Roberts, "The major issues concerning OGE are its capacity to serve effectively as the overall leader, interpreter, developer, and guardian of the government's ethics policies and programs, *particularly with limited support, prestige, staff, and budget*" (Carroll and Roberts 1988). That same criticism comes from Thompson where he states that the OGE only had 20 members in its first year (Thompson 1992). *The same holds true today*. If we increase the educational burden that the OGE needs to meet, they will inevitably need more resources.

Understand that Appearances Matter

Finally, and on a less concrete point, our government officials and our educational ethics managers need to understand and underline the importance that appearances matter in the realm of ethics. Thompson states, "appearing to do wrong while doing right is really doing wrong" (Thompson 1992). This is for many reasons, much of which comes from the jaded perspective that citizens have of their public employees. He says, "officials who appear to do wrong actually do several kinds of moral wrong: they erode the confidence in government, they give citizens reason to act as if government cannot be trusted, and, most of all, they undermine the democratic accountability" (Thompson 1992). There is a paradoxical loop that the government needs trust to work, but citizens need to see the work to trust it. Without ethical decision-mak-

ing, there is no trust, so there is no work that the government can complete. It is only with ethics rules that we can trust our government to work efficiently and effectively.

Conclusion

To quote the late and Honorable John Lewis, "democracy is not a state. It is an act." Those in power need to be constantly informed of their ethics and we, as citizens, need to be mindful and informed of those actions. Throughout this paper, we reviewed our ethics laws, the ethical violations under the Trump and Biden Administrations, reviewed past administrations, and I gave suggestions on how to better equip our ethics managers in the US. We had an *immense* need to create ethics laws after the Watergate Scandal, but I hope that lawmakers can recognize new and potential ethics violations that will soon come to our democracy and protect us from them *before they occur*.

Endnotes

1. The article that outlined this independent counsel provision was heavily criticized by Democrats and Republicans alike. It created an agency that had a lot of power and little oversight. This provision actually led to President Clinton's impeachment because the Starr report was a special prosecutor (Greenhouse 1998).
2. Former President Obama decided against putting his assets in a blind trust. Jennifer Wang from Forbes stated, "the Obamas bucked the trend when they decided against using blind trusts, but their mix of bank accounts, treasury notes, index funds and college savings was unlikely to pose a direct conflict of interest" (Wang 2016).
3. CREW has since issued another letter to the Office of Special Counsel, acknowledging that Press Secretary Psaki has apologized on two different national news programs (CNN and Associated Press) and in her October 26th, 2021 Press Conference she apologized again (Bookbinder 2021b).

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