



FALL 2016

PERSPECTIVES

The Magazine for the University of Minnesota Law School

GARRY W. JENKINS:

Lawyer. Scholar.
Leader. Dean.

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Sotomayor Visits
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Richard W. Painter



FACULTY PROFILE: RICHARD W. PAINTER

S. Walter Richey Professor of Corporate Law



Professor Painter joined the Law School in 2007 after serving as President George W. Bush's chief White House ethics lawyer for two years. His areas of expertise include business law, corporate governance, government ethics, securities law, and professional responsibility.

In the tumultuous political environment of the last year, Professor Richard Painter, one of the country's leading experts on government and corporate ethics, has found himself consulted on a host of highly charged issues. The *New York Times* and *Star Tribune* interviewed him about presidential candidates' tax returns, the *Times* quoted him about the White House forbidding cabinet members to address the Democratic National Convention, and the *Wall Street Journal* and *Washington Post* interviewed him several times on presidential candidate conflicts of interest. In addition, over the past few months the *Times* has published three opinion pieces by Painter—on the Clinton Foundation, campaign finance reform, and Supreme Court nominee Merrick Garland—plus a fourth, co-authored with President Obama's former chief White House ethics lawyer, on Donald Trump's tax returns.

Painter acknowledges this has been an unusual year—for him and the nation. “Much of what I have focused on in my career has been at the center of our country's debates,” he says. “It has been, to say the least, an extraordinary time.”

Painter was drawn to the topic of ethics early in his career, when he worked in the financial services sector. “I quickly became concerned

about debt and junk bond deals happening in the early '90s,” he says. “During the savings and loan crisis, I observed firsthand the role lawyers played in encouraging clients in the wrong ways. Lawyers were partially responsible.”

That experience led Painter to co-author an ethics book with John T. Noonan Jr., a judge on the U.S. Court of Appeals for the 9th Circuit, with whom Painter had clerked after graduating from Yale Law School in 1987. That casebook, *Professional and Personal Responsibilities of the Lawyer*, is now in its third edition.

Painter was the leading contributor to a key provision in the Sarbanes-Oxley Act of 2002, aimed at deterring securities fraud and improving lawyers' ethics. Section 307 of the Act—“up-the-ladder reporting,” as he terms it—was a direct response to what he had observed in corporate behavior. “There's a scandal on the trading floor and the lawyer tells the CEO to report it to the Treasury Department,” Painter explains. “The CEO ignores the advice, and the lawyer doesn't feel compelled to go to the full board. That's a problem, and that's what section 307 fixes.” It is one of the few ways in which the federal government regulates the conduct of lawyers. As a result of the provision, he says, “There's a lot better communication between lawyers and directors, not just the CEO.”

During his time in the White House Counsel's office, Painter served as the chief ethics lawyer not only for President Bush, but for White House employees and nominees to Senate-confirmed positions in the executive branch as well.

“The White House was looking for somebody who had experience in financial conflicts of interest, which is what I had focused on for most of the previous decade,” he says. In his role, he helped more than 150 people rid themselves of conflicts each year. “Most of these people were new to the public sector, so they had very little experience in this arena. It was an interesting but labor-intensive job. Long, long hours.”

After leaving the White House, Painter wrote a book about government ethics, *Getting the Government America Deserves: How Ethics Reform Can Make a Difference*. “That book began my journey into campaign finance reform, what I call ‘the elephant and donkey in the room,’” he says. He continued to investigate the topic with his latest book, *Taxation Only with Representation: The Conservative Conscience and Campaign Finance Reform*. That book was the product of a residential fellowship at Harvard University's Safra Center for Ethics during the 2014–15 academic year. In 2015, with his colleague Professor Claire Hill, Painter co-authored *Better Bankers, Better Banks: Promoting Good Business through Contractual Commitment*, a book about the personal responsibility of investment bankers, which he calls “a high point” of his work at the Law School.

Painter is passionate about shaping his students' understanding of the role of ethics in the legal profession. “I like helping a new generation of lawyers understand how ethics plays a role in every area of the law.”

By Kathy Graves, a writer based in Minneapolis