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Elizabeth Gingerich

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Interview with Richard Painter

May 14, 2024



Interviewer: Elizabeth F.R. Gingerich, JVBL Editor-in-Chief

[With a polarized world and a bitterly divided nation, the need for measured guidance to navigate issues of decency, civility, mutual respect, collaboration, human and civil rights, caring across differences, the existential threat of climate change, an unhindered press, and a respect for the arts and for scientific knowledge, ethicist-commentator-legal educator, Richard Painter, has given the time and thought to answer a wide breadth of inquiries, many of which were submitted by friends of the JVBL].

Q: So many issues of Business and Government Ethics are relevant today and need specific focus and comment. Very recently, there was a *Washington Post* story of former President Trump offering a group of oil executives the promise to reverse President Biden's environmental regulations in exchange for a campaign contribution of \$1 billion dollars. You were quoted as calling this a bribery, a felony, and followed up by emphasizing that even a candidate who loses can be prosecuted for bribery. And that includes the former president asking for a billion dollars in campaign cash from oil companies in exchange for rolling back environmental laws. Are you calling on the Department of Justice (DOJ) to take immediate action on this?

A: *Proper justice here would start with an investigation as to what exactly was said to these company executives. Depending on the facts, the Justice Department must decide when to take action: now or after the election. If Donald Trump loses the election, it is still possible to pursue this as a solicitation of a bribe. There is some precedent for this, including a New Jersey case that I posted on X where an unsuccessful candidate for mayor was prosecuted for making campaign promises, explicitly in exchange for cash and then the microbial carryover to the federal bribery statute if Donald Trump were to win the election and then start to roll back regulation of well-drilling after what he said at Mar-a-Lago. The bribery statute very clearly applied to that the matter; soliciting the money before you enter public*

office does not exempt you from application of the bribery statute. Once again, we'd have to investigate exactly what was said at Mar-a-Lago, to whom, and in what context. But there are reports that I read in the New York Times and elsewhere that were very, very concerning. We know that there's a lot of campaign money given by special interests who expect the elected officials to pursue whatever agenda they want. The explicit quid pro quo of it – give me lots of campaign money, and if I win, I will do what you want in return. When it gets to that point, we are implicating the federal bribery statute.

Q: But if Trump does win, though, what are the chances that a newly-reformed DOJ under his second administration would do anything?

A: *Without a special prosecutor, that would be very difficult. That's why we need to bring back the old independent counsel law that we had from 1979 to 1999. An independent counsel could be appointed by the D.C. Circuit Court. In this situation, the United States' Department of Justice has the power to appoint a special prosecutor on its own. Now, if he did win the election, Attorney General Garland could, I assume, appoint a special prosecutor to conduct such an investigation. But if Donald Trump assumes the presidency, he's just going to fire the special prosecutor. Firing Jack Smith would be a great risk to the integrity of the Justice Department.*

Q: Hence the importance of this upcoming election. There appears to be a growing movement towards the right. For instance, the recent student protests in Tbilisi, Georgia, are calculated to expose the legislature's attempts to undermine its democracy and pursuit of EU accession. Russia appears to be usurping both the physical boundaries and political governance of Georgia. Do you think this is another attempt to topple a democracy?

A: *This environment is starting to resemble, in some respects, what we saw going on around the world in the 1930s. Authoritarian countries are making common cause with each other to push back against the world's democracies – whether it be Russia, Iran, China, North Korea – and then at the same time here at home in the United States, we have political extremists who are threatening to undermine our own democracy. And so now is the time to draw the attention of people in the world as to how important representative democracy is. It is imperfect, but representative democracy is far better than the totalitarian regimes that offer cheap solutions and often end with the tragedy.*

Q: These are definitely uncertain times. Now in your book, *Getting the Government America Deserves*, you wrote that federal regulations are inadequate in addressing the issue of federal employees pursuing self-interest to benefit themselves financially, given that reality and the mutual self-interest of the lawmakers who actually create and oversee the laws and policies governing their own ethics. What do you think needs to be done in order to create the pressure required to change current ethics standards for federal officials?

A: *We shouldn't have to deliberate about whether Donald Trump crossed the line and engaged in bribery when he's asking a whole bunch of oil company executives for a billion dollars in return for rolling back environmental laws. We should not have a political system where a handful of these executives could themselves decide to direct \$1 billion toward any political campaign – whether or not they're receiving something in return – and have that*

type of an impact on the outcome of the federal election. We have been struggling with campaign finance reform ever since 1907 under the Tillman Act¹ with Congress specifically prohibiting corporations from spending money from corporate treasuries for a political campaign. Yet ever since 1907, we've had corporations trying to figure out ways around it through various trade associations and political action committees – and now these 501(c)(4) civic organizations are making electioneering communications. Once in a long time, Congress tries to plug the gaps so we have had the McCain-Feingold Act back in 2002,² signed by President Bush. This bipartisan legislation put a stop to some of these electioneering communications. And then the U.S. Supreme Court intervenes.

Q: Citizens United?

A: It decides on constitutional grounds that corporations have free speech rights. If you're going to say that the oil company billionaires and oil companies have the same free speech rights, well the fact of the matter is that they have got a megaphone that's 1000 times bigger. And they're going to use it and they're going to expect something in return. That's the corruption we have. So, fixing our campaign finance system will mean getting the Supreme Court to reverse its position on the Citizens United case or passing a constitutional amendment. That's absolutely critical.



Q: I remember when the *Citizens United* case was decided and specifically during President Barack Obama's first State of the Union speech when he chided those Supreme Court Justices

¹ The *Tillman Act of 1907* (34 Stat. 864) was the first campaign finance law in the U.S. This Act prohibited monetary contributions to federal candidates by corporations and nationally-chartered interstate banks.

² Also known as the *Bipartisan Campaign Reform Act of 2002*, the BCRA is a U.S. federal law which amended the *Federal Election Campaign Act of 1971* which regulates the financing of political campaigns.

who moved this forward. He cautioned about the dangers they had just created,³ forever catapulting electioneering into the Dark Ages and ever since then, I don't see them reversing themselves.

A: *President Obama did urge Congress to pass legislation that would require transparency for all this money flowing into electioneering communications and was curious as to why that Congress – even controlled by the Democratic Party – was not willing to listen to the President and pass the legislation. I think this is because all members of Congress seemed to have their own money coming into their political action committees (PACs) from these various groups or through these electioneering communications which are, of course, completely independent from their campaigns...the same way the Russians were independent from the Trump campaign in 2016. You don't coordinate enough to get caught, but you know they're doing their own thing. Well, these members of Congress are dependent on that dark money, so, of course, they didn't want to be too transparent. The President of the United States gave that speech – but he was just a leader shaking his head, and members of Congress didn't listen; they didn't pass the legislation and the Republicans aren't going to either. That's the situation: the people needed someone to change campaign finances to get complete transparency. Now I think the Supreme Court would not strike this down and expose the flows of money. So, let's work on some substantive regulations and that may be putting a lot of pressure on the Supreme Court to overturn Citizens United or have a constitutional amendment. Americans of all political persuasions are sick and tired of this system and with arch conservatives; they don't really like Justice Clarence Thomas.⁴ This is not going over well with conservative Middle America.*

Q: I remember when Justice Thomas's confirmation occurred. His former employee and now current law professor, Anita Hill, testified before an all-white male, Senate Judiciary Committee. Thereafter, he had a bone to pick after he was confirmed and was immediately on the wrong side of a trio of gender discrimination cases in the late 1990s.

A: *I guess this is what can happen when people are appointed. I never expected George H. W. Bush to appoint someone that far to the right; he also appointed Justice Souter⁵ who unfortunately left the court a while ago. But Thomas's wife is making a lot of money with her right-wing consulting supported by The Heritage Foundation.⁶ I don't know who pays for these services but it's made things much worse. So, we have Clarence Thomas getting involved in cases over the January 6th insurrection when his wife was part of that business. And I've made it pretty clear in judicial ethics that we need to shake that up too. We need the Inspector General in the Supreme Court; we need to enforce the laws. Justices should not be going on these junkets with billionaires and not reporting it on their national disclosure forms. They're required to disclose that. Thomas should be recusing himself from those cases. That's pretty*

³ During the address, Obama chastised the Supreme Court's ruling in *Citizens United v. Federal Election Commission* which held, in part, that as corporations were "legal persons," they were entitled to Free Speech Rights under the 1st Amendment. And since money was a form of speech, political spending restrictions were unconstitutional. Obama stated: "Last week, the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections." Justice Samuel Alito was seen frowning and mouthing the words "not true" when Obama criticized the Supreme Court.

⁴ A current Associate Justice of the U.S. Supreme Court, serving since 1991. He was originally nominated by former President George H.W. Bush to succeed Thurgood Marshall.

⁵ David H. Souter was a former Associate Justice of the U.S. Supreme Court, serving from 1990 until his retirement in 2009.

⁶ A conservative think-tank, situated in Washington, D.C.

simple but if the Justice of the Court is married to an insurrectionist, he needs to recuse himself from all of these insurrection cases.

Q: Chief Justice John Roberts who is from LaPorte County, Indiana doesn't seem to be drawing a line in the sand when it comes to the actions or inactions of Justice Thomas. Both were part of the *Dobbs* opinion overturning *Roe v. Wade*, signaling a reversal of human rights. Thomas was even quoted as setting his sights on overturning *Obergefell*⁷ and even revisiting *Griswold*⁸ while ensuring that *Loving v. Virginia*⁹ would not be in that same line of fire. It's a sad story what's happening now.

Turning now to your position as a board member and vice chair of *Citizens for Responsibility and Ethics in Washington* (CREW), the group behind the Colorado Supreme Court ruling barring Donald Trump from the state's ballot, what are your thoughts on SCOTUS overturning the ruling and do you find the court's reasoning to be both legally and morally sound based on the 14th Amendment?

A: *I believe that the Colorado Supreme Court was correct on the interpretation of the 14th Amendment, Section 3,¹⁰ that someone who participates in insurrection or rebellion or who*



"Storming of the Capitol," January 6, 2021. Courtesy, Creative Commons Generic License 2.0/Tyler Merbler.

gives comfort to an insurrectionist is disqualified from holding public office. And the Colorado Supreme Court believed that Donald Trump's conduct met that threshold. I think the U.S. Supreme Court failed to give the serious consideration to that issue as the Colorado Supreme Court had done. I'm not saying the U.S. Supreme Court had to decide that in every state the same decision could be made but should allow a state Supreme Court to disqualify a candidate from

the ballot who's engaged in the type of conduct that Donald Trump engaged in; this is where a very good argument can be made that that violates the 14th Amendment, Section 3, and that he's disqualified from holding office. I believe that the Supreme Court should have let

⁷ *Obergefell v. Hodges* is a 2015 opinion whereby the U.S. Supreme Court held that states must allow and recognize same-sex marriages.

⁸ *Griswold v. Connecticut* is a landmark Supreme Court case decided in 1965, protecting the liberty of married couples in using contraception without government interference.

⁹ A 1967 U.S. Supreme Court case, ruling that laws banning interracial marriage violate the Constitution.

¹⁰ Section 3 of the 14th Amendment to the Constitution of the United States reads as follows: *No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.*

the Colorado decision stand. There was a reason for this section adopted after the Civil War. Congress passed the 13th, 14th, and 15th Amendments as the Reconstruction amendments to the Constitution. Congress wanted to be quite clear. And the states ratified those amendments, reasoning that we're going to move beyond the insurrection, the Civil War, and we're going to have a true representative democracy. We were not going to have insurrectionists being elected to public office who were extremely dangerous unless Congress made an exception. And Congress can make an exception by a vote of two-thirds of each house. Under the 14th Amendment, Section 3, very few Confederates were able to obtain that exception for they were disqualified as they had engaged in insurrection against this government that cost 500,000 Americans their lives in the Civil War.

Well, we also had an insurrection in 2021 that was not as deadly; it did not result in four years of war. But some of those people who invaded the Capitol certainly wanted to see another civil war and all of them were old enough to go to prison and many are there now. But the question is, WHAT ABOUT THE MAN WHO INCITED ALL OF THIS? This was something that I believe the Colorado Supreme Court correctly decided.

Q: We were surprised that Justice Ketanji Brown Jackson sided with the majority on this one, basically reasoning that Section 3 of the 14th Amendment does not provide a list of disqualifiable offices; she stressed that logic again to justify joining the majority opinion.

A: *I think there's some concern about the 14th Amendment, Section 3 – that it could be applied in an overly broad matter and we see some of that concern coming from several libertarians on the left, particularly in times of civil disobedience. Now we have protests on campuses these days. Maybe people went too far within the Black Lives Matter movement and now plan to run for public office, but fear that various state supreme courts will point out that you got arrested at a rally for building a tent on your college campus somewhere. Therefore, now they are going to call you an insurrectionist and attempt to disqualify you. You can always take any law and apply it too broadly or any constitutional provision for that matter. I believe the court should give them more serious consideration, though, to the meaning of the 14th Amendment, Section 3. I think it's explicit enough with respect to the range of conduct that's covered – giving aid or comfort. An insurrection attempt to overturn the United States government is not like a protest in Minneapolis against police brutality or getting arrested for building tents on the college green. This was an attempt to overthrow the United States government! That's what we saw in January, 2021.*

Q: Looking at Justice Brown's acquiescence to the majority opinion on this might arguably be a *quid pro quo* move – I'll do this for you, if you do that for me – so when we get to the “absolute immunity” issue, we will collectively exercise common sense and vote it down.

A: *I don't know what they'll do on that. I don't think the Justices necessarily work well together on any of this, but we'll see what they do. But giving immunity is so extremely dangerous. You don't want an insurrectionist getting into a position of power – that's the 14th Amendment, Section 3. The second thing is when someone's in power, you don't want them to be able to commit crimes with impunity knowing that they'll never be prosecuted for the crimes they commit in their official capacity. I think we need to take both seriously. The 14th Amendment, Section 3, was put in there for a reason. One of the things I point out is that if the United States Constitution, including the 14th Amendment, Section 3, had been put into*

the constitution of the Weimar Republic after World War I in Germany prohibiting anyone who was an insurrectionist from obtaining public office, then their chancellor¹¹ would never have been appointed in January of 1933 because he actually served time for an insurrection back in 1923. So if you put an insurrectionist into power, you're asking for trouble and it isn't necessarily going to be as horrific as what happened there, but there's a great risk. Then the other risk is you can't have anyone in the presidency being told that you are immune from prosecution for your official acts. I submitted a brief with the U.S. Supreme Court in the immunity case on behalf of about a dozen generals and admirals.¹² We said that this simply would not work in military law to have the Commander-in-Chief immune from criminal prosecution. He could order military officers to commit war crimes, knowing that he was immune from prosecution under this "absolute immunity" theory that Donald Trump's lawyers are putting forward. What's the military officer going to do with that? I mean if you don't follow a legal order, you could be court-marshaled, but if you follow an illegal order, and knowingly commit a war crime, you could be tried and convicted for that too.

<p>No. 23-939</p> <p>IN THE SUPREME COURT OF THE UNITED STATES</p> <hr/> <p>DONALD J. TRUMP,</p> <p><i>Petitioner,</i></p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p><i>Respondent.</i></p> <hr/> <p>On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit</p> <hr/> <p>BRIEF AMICI CURIAE OF CLAIRE FINKELSTEIN AND FOURTEEN NATIONAL SECURITY PROFESSIONALS IN SUPPORT OF RESPONDENT</p> <p>Richard W. Painter Counsel of Record University of Minnesota Law School 229 19th Avenue, South Minneapolis, MN 55455 (612) 626-9707 rpainter@umn.edu</p> <p>April 8, 2024</p>

Q: Just the fact that they took up this appeal on this issue is dangerous in and of itself. It certainly provides the delay that the Trump lawyers were looking for.

A: Yes, this delays the courts. If there's no absolute immunity given, and if he gets a second term, he knows he could be theoretically prosecuted. If he commits more crimes while in office, the other problem not addressed in this case will be if he takes the position that you can't indict a sitting president. So, if he's in office, he can't be touched for four years. This is scaring me minute by minute.

Q: Let's move to the Israeli-Hamas War since we've mentioned tent cities on campuses. Earlier today pro-Israeli protesters were trying to block aid coming into Gaza. The United States has designated Israel to be a major non-NATO ally and our two countries have long held strong ties. What are some of the most important ethical considerations for our country to keep in mind as we weigh our historic support for Israel and Israel's right to defend itself against the devastating humanitarian crisis in Gaza?

A: Unfortunately, Israel has, over the past decade, had extremists certainly trying to get into politics and that is not in and of itself dangerous, but with Benjamin Netanyahu as the prime minister, he himself is under criminal indictment for bribery and fraud. This may affect his

¹¹ Adolf Hitler was sworn in as the chancellor of Germany on January 30, 1933, putting the Nazis firmly in power.

¹² Brief Amici Curiae of Claire Finkelstein and Fourteen National Security Professionals in Support of Respondent filed on April 8, 2024 in the U.S. Supreme Court case of Donald J. Trump v. United States of America, and found at https://www.supremecourt.gov/DocketPDF/23/23-939/307065/20240408151425926_23-939%20Amicus%20Brief%20of%20Claire%20Finkelstein%20et%20al.pdf. The primary argument put forward as posted on X on same date is that "presidential immunity is dangerous for the military chain of command and for national security."

judgment and may have been a distraction before the October 7th attacks. And we also know that there was some funding permitted by Israel of Hamas during before October 7 and he was trying to play Hamas off against the Palestinian Authority in the West Bank. Before the October 7th attacks, there was a lot of concern about Prime Minister Netanyahu, but that's a matter the Israeli people need to decide in their own elections. But I do want to emphasize that throughout the world, we've seen a trend towards more authoritarian governments; we see Donald Trump in the United States and some of the behavior of Prime Minister Netanyahu. We see this in Turkey¹³ and Hungary.¹⁴ In some other places, representative democracies are under pressure from authoritarian forces. And so, we need to recognize we have that problem and Israel has that problem, too. We need to work with the government of Israel now trying to fight Hamas and recognize that they are terrorists, but in compliance with international law. Unfortunately, the United States has not set a good example with the "Torture Memos"¹⁵ we had under Bush and now we hear that some of the same stuff is going on with some of the Palestinians. Before the Bush administration's issue with Israeli law back in 1989, they were a bunch of bogus philosophers, advocating how you ought to be able to torture people if you could get information from them and save the city from the ticking time bomb or something crazy like that. So, unfortunately, some of the collaboration between our two countries has not been constructive and focused on complying with international law – even in areas such as torture. The United States has backed off on that. We need to make it very clear to Israel they need to comply.

There's a very unfortunate decision that the Israeli Supreme Court decided in 2017¹⁶ that seemed to give an excuse to justify the mistreatment of Palestinians in some situations. With respect to the IDF,¹⁷ fighting a war in a place like Gaza – which is extremely densely populated – I think most people agree you need to get Hamas out of Gaza and then get the IDF out of Gaza and have an independent Palestinian state that recognizes Israel that's democratic. Israel must recognize the two-state solution. That's what has been



Israeli security forces detain to Palestinian protesters during a demonstration. Courtesy, Issam Rimawi – Anadolu Agency.

¹³ Tayyip Erdoğan's presidency has been increasingly marked by democratic backsliding and a shift to a more totalitarian style of government.

¹⁴ Victor Orbán has been Prime Minister of Hungary since 2010 and is known as a far-right extremist.

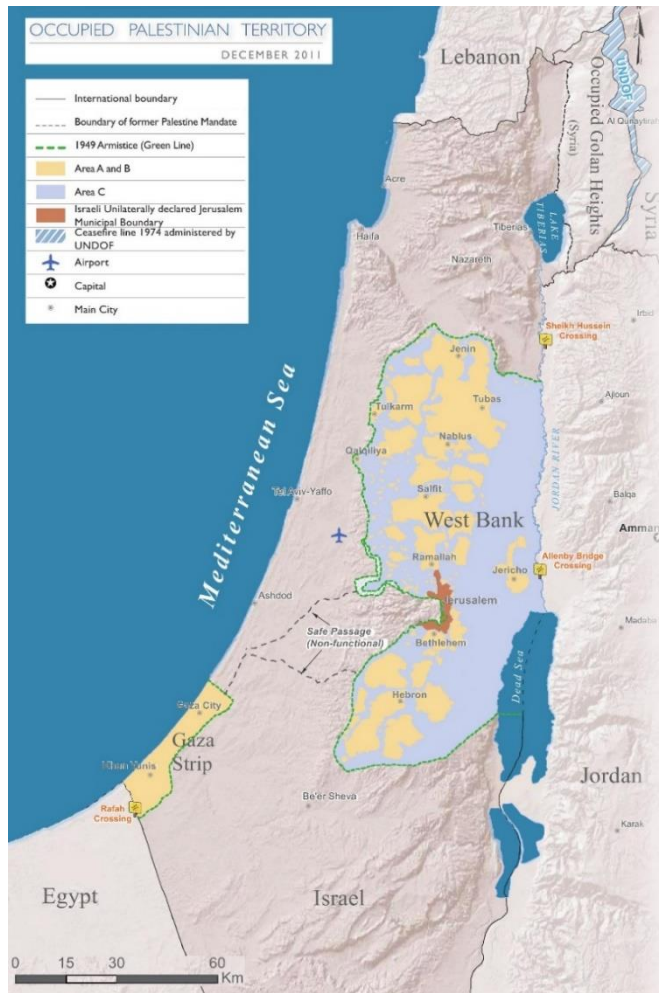
¹⁵ Officially known as the "Memorandum Regarding Military Interrogation of Alien Unlawful Combatants Held Outside the United States," signed by the U.S. Department of Justice in 2002, advised the Central Intelligence Agency (CIA), the U.S. Department of Defense, and President George W. Bush on the use of "enhanced interrogation techniques" – widely regarded as forms of torture – to exact information during America's "War on Terror."

¹⁶ The decision has been criticized as leaving Palestinian prisoners more vulnerable to abuse and blocking those victims who had suffered from physical and psychological trauma the ability to seek redress.

¹⁷ Israel Defense Forces.

American policy for a long time. But I'm not so sure that Prime Minister Netanyahu is, in good faith, pursuing this.

Q: When you mentioned the George W. Bush Memos, I'm thinking about the prior U.S. Policy of "Extraordinary Rendition"¹⁸ all the way. But even before the October 7th massacre, you had a prime minister who was facing charges of bribery and corruption and scared to death of going to jail. So now you have a legitimate excuse to start a counterinsurgency – as disproportionate as it's been. You're looking at a strip of land the size of Washington D.C. with 2 million people. 35,000 people have been killed already. What happens next?



Courtesy, Wickey-nl - Own work, based on http://www.ochaopt.org/documents/ochaopt_atlas_opt_general_december2011.pdf on [1], CC BY-SA 3.0, <https://commons.wikimedia.org/w/index.php?curid=31797179>

A: This is what I've seen in the Middle East for a long time. Now what you're starting to see in this country are the "extremes" – I mean people start talking about the "River to the Sea"¹⁹ and stuff like that or not recognizing Israel's right to exist as a Jewish state which that was decided back in 1948 and people don't want to accept that. This is just going to create more and more violence. Other people who don't want to accept the fact that the Palestinians have a right to their own independent homeland are also perpetuating this problem which is going to lead to violence. So it's the extremes that need to be soundly rebuked on both sides. This idea that Israel doesn't have the right to exist as a Jewish state is going to feed the right-wing in Israel. If people said the United States didn't have a right to exist and people around the world were talking that way, people would run out and vote for Donald Trump or worse. So we need to push back hard on the "River to the Sea" crowd and anyone who would ever excuse what happened on October 7th. On the other hand, Israel's response may not be in line with international law; parts of their response appear to be, in President Biden's point of view, excessive and in violation of international law. This

¹⁸ Refers to the U.S. policy of abducting terror suspects abroad and transferring them to 3rd countries where they were subjected to torture and other forms of ill treatment to provide information during interrogation. This purposefully kept them outside the U.S. legal system.

¹⁹ Refers geographically to the area between the Jordan River and the Mediterranean Sea – an area historically called Palestine and which currently includes Israel, the Israeli-occupied Palestinian territories of the West Bank, and the Gaza Strip. Hamas used the phrase in its 2017 charter, advocating for the dismantling of Israel.

takes it back to 9/11 and how we reacted to 9/11. I served under President Bush as the Chief White House ethics lawyer. I did not agree with how we handled it, including the interrogation policy. I made that clear from the beginning that it did not look like we had much of a justification for going into Iraq. When we were attacked on September 11th, no one was going around college campuses saying this invasion was a justification for that attack. So, I find it just absolutely disgusting that any professor or student would say that there was any excuse for what Hamas did on October 7 but criticizing what President Bush did even though I served under President Bush. I think that was an important part of our political dialog. Our current governor of Minnesota, Tim Walz, was elected to Congress standing up to President Bush's foreign policy and military policy.²⁰ I believe Israel needs to have that conversation as well.

Q: Do you think that the talks in Doha with Arab mediators are making any inroads?

A: *I do not know. But in the Middle East generally, the United States getting involved in Iraq was not the core problem cause of 9/11. And the idea that we somehow created a democracy in Afghanistan? So many countries have tried to deal with Afghanistan over many centuries, from Alexander the Great to the British and the Russians.²¹ You just don't "change" Afghanistan. So now Israel has suffered this horrific terrorist attack but the question is, how do you respond? That is going to be primarily their decision but they do have a substantial amount of military aid coming from the United States and that can't be a blank check. President Biden is right to demand some accountability there. And that has to be part of the conversation. I think he's doing a good job with that. What's not helping are the campus protests and anybody who says Israel doesn't have a right to exist. There's a feeling around the world with people pushing that argument. You are not going to tell Israel they don't have a right to exist. Protestors on college campuses aren't going to change that and neither are jihadists. But Palestinians have rights that need to be pursued. I don't think Benjamin Netanyahu, the current prime minister, is pursuing peace in good faith.*

Q: As there appears to be a growing presence of antisemitism around the world, one of the recent complaints registered with the International Court of Justice (ICJ), the judicial arm of the United Nations, adjudicating country versus country complaints, came from South Africa in January and then most recently from Nicaragua. Nicaragua was going after Germany through the back door, labelling Germany a co-conspirator in genocide with Israel and alleging violations of the 1948 Genocide Convention. A more obvious way, one would think, would be to go after the United States with similar charges. This way, Nicaragua was putting Germany up against the wall; they knew that Germany was not going to lessen its financial and diplomatic relations with Israel, especially in light of the Holocaust. The complaint was recently dismissed by the ICJ, without issuing an injunction.

A: *And with an injunction, if you breach the injunction, you're in breach of international law; you're in violation of a court order. Now people do that – just like Donald Trump can shoot off*

²⁰ Timothy James Waltz was a former U.S. Army non-commissioned officer. He has been the governor of Minnesota since 2019 and is a member of the Democratic–Farmer–Labor Party. He was elected to the U.S. House of Representatives, representing the state's 1st Congressional District, from 2007 to 2019.

²¹ The term "Great Game" has been used to describe the rivalry between Great Britain and Russia to control their respective spheres of influence. Beginning in 1830 and lasting throughout the 19th century, the British used Afghanistan as a buffer zone to ward off possible attacks by Russian forces against British-controlled India.

his mouth in violation of the court's gag order. But you have to start making those alleged breaches explicit and not just advance general allegations of genocide. The court should be clearer about what would be a violation of the order. Now we have had 7 months of this, talking about what is a proportional response and that there are other ways to get rid of Hamas. The ICJ would have a lot of credibility if it was to reaffirm that 1) Israel has a right to exist under international law (so those arguments, that "river to the sea" stuff, is just unacceptable); 2) Israel has a right to defend itself; and 3) Hamas is a terrorist organization and needs to be eradicated but Israel needs to find a way to do that without murdering tens of thousands of civilians. At a certain point, you violate international law. But how disproportionate the amount of civilian deaths is is something that people can argue about. But there should be a point where the court could very well say, "enough is enough." These prohibitions might include that certain areas cannot be bombed. This should be an order of the court. And if they violate the court's order, then we can talk about the actions of the United States or Germany and so forth. But I think that's really not the way to go – to go after countries like Germany. We need to focus on what Israel needs to do and tell them exactly what they need to do. But they're right to defend themselves as a Jewish State recognized by the United Nations.

Q: When you mentioned 9/11 and you were in the White House, many of my students still believe that the hijackers were from Iraq and directed by Saddam Hussein to do this. And when they find out that the majority were from Saudi Arabia, their question is then, "So why did we invade Iraq and not Saudi Arabia?"

A: Well, that is a good question. I didn't go to the White House till 2005 so that was already a fait accompli. That's true – not that I would as the White House ethics lawyer



(Lower Manhattan, New York City, World Trade Center), Courtesy, UpstateNYer, CC BY-SA 3.0 <<https://creativecommons.org/licenses/by-sa/3.0>>, via Wikimedia Commons

have had any input. I think Vice President Dick Cheney was determined to get into Iraq; he'd been the Defense Secretary under George H.W. Bush during the first Gulf War. Saddam was really a bad guy and had done a lot of really evil things. But 9/11 wasn't one of them. So, the question is what we should have been doing at that point instead of focusing on going after the Al Qaeda – the terrorist organizations that were responsible for 9/11? I think the other mistake was pressing too much idealism and thinking that we were going to turn Afghanistan into a representative democracy. That wasn't happening. It took 20 years to leave and then Biden gets blamed for the pull out. It was a messy pull out; he should have handled it differently. But 20 years of trying to turn Afghanistan into a democracy was not going to work.

With respect to Saudi Arabia – we sold them \$110 billion worth of weapons under the Trump administration – \$110 billion! And Jared Kushner got on the phone and got Trump to lower the price and then a year after leaving the White House lands a \$2 billion deal for the Kushner Companies with the Saudi Sovereign Wealth Fund.²² The fund's financial advisors now say that was a bad deal for the Saudi royal family.

Q: Will there be an investigation opening on this?

A: *No American administration has neglected the arms needs of the Saudis. To do this, one will really need to think about whether U.S. weapon sales around the world, U.S. group deployments around the world in intervention, make any sense. I'm not going to be puritanical about this but we've got ourselves into a lot of trouble. Going back to Iraq – you throw out Saddam Hussein, he's a really evil guy, but now we've got a government in there that's better than Saddam Hussein but it's weakly governed and Iran is taking advantage of that. They are sending their agents into a wreck and then we try to take them out in Iraq, and then that makes people in Iraq angry at us. The question is did we do what we intended to through all of these interventions? And by the way, this goes way, way back to 1953 with the elected leader of Iran overthrown in favor of strengthening the monarchical rule of the shah, orchestrated, in part, by Kermit Roosevelt, Jr., a grandson of Theodore Roosevelt, and the CIA.²³*

Q: And then the shah was overthrown during the Iranian Revolution with the return of Ayatollah Khomeini?

A: *Yes. And then that gets everyone angry in the United States. Then they end up with the Ayatollah in 1979 and they've been vilifying the United States ever since then. So, the question is whether we did more harm than good? Did we get anywhere near our goals by intervening in Iran's internal affairs back in 1953? Mr. Roosevelt and other folks over at the CIA persuaded President Eisenhower that he could do whatever they were doing. We really need to rethink what we do all over the world. with interventions and so forth. This is not very constructive.*

Q: You mentioned the change of power in 1979 in Iran. With the Iranian Revolution there was a freezing of Iranian assets in the United States and during the Obama administration,

²² One of the largest in the world with a total estimated assets of \$925 billion. It was created in 1971 for the purpose of investing funds on behalf of the government of Saudi Arabia.

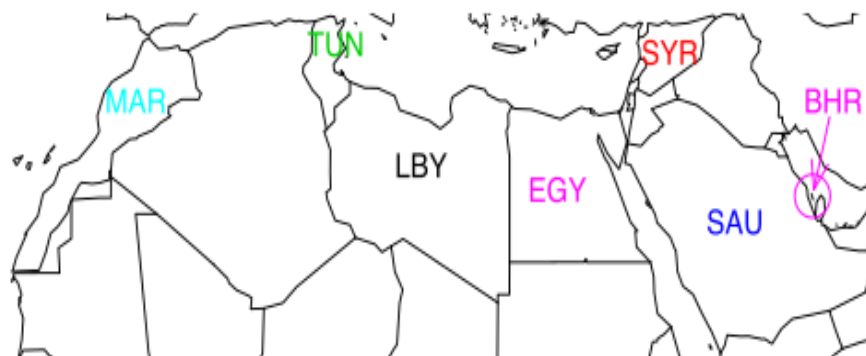
²³ Mohammad Reza Shah Pahlavi was the shah of Iran from 1941 to 1979. He was said to have maintained a pro-Western foreign policy.

his second administration, they basically unfroze some of those assets – bank accounts – as this money legitimately belonged to Iran. But so many people who don't know this history really condemned Obama and the Democrats for “giving into” Iran. Do you agree?

A: *I thought the Obama administration tried to have an effective foreign policy visibly around the world, but there were criticisms of the Iranian nuclear deal – the fear that the Iranians were not going to comply. Some of these were either legitimate concerns and some of President Obama's advisors disagreed with him on how to handle that. I think those would say that President Obama was coddling them or somehow would be supporting terrorism. I think he was doing the best he could; this was not an easy situation because if you don't try to work some sort of deal with Iran then they were not going to comply with the nuclear agreement at all and try to accelerate a nuclear weapons program. And if they had had nuclear weapons a couple months ago, the attack on Israel could have been catastrophic.*

Q: Do you think that former Secretary of State John Kerry was on the right path in pursuing the JCPOA?²⁴

A: *He kept a lid on that when he was involved. But with President Obama, my biggest criticism was with the so called “Arab Spring” and the hope that with all these revolutions in these places like Libya or Syria would usher in some form of democracy in the Middle East; with Qaddafi gone, Libya*



Map identifying some of the countries associated with the “Arab Spring”: Bahrain (BHR), Egypt (EGY), Libya (LBY), Morocco (MAR), Saudi Arabia (SAU), Syria (SYR), and Tunisia (TUN). Courtesy, David McEddy, CC BY-SA 4.0 <<https://creativecommons.org/licenses/by-sa/4.0>>, via Wikimedia Commons, 2017

must be a democracy. You get rid of one bad guy and in comes another. We didn't put troops on the ground the way we did in Iraq to get rid of Saddam Hussein. But President Obama was able to – with the exception of Afghanistan – largely scale down the military presence in the Middle East. But with Iran, that's hard to figure out how to deal with. Clearly Iran is not a democracy; they are intent on having this nuclear program. I'm afraid at some point the Israelis are going to launch an attack and take out whatever they've got. Iran attacking Israel recently is going to increase the chances of that. And these are very challenging situations for any president. But overall, I think President Obama was trying to do a good job.

Q: Earlier this year, in an opinion piece for the *Guardian*, Robert Reich²⁵ pointed out that corporate profits reached a record high in the 4th quarter of last year (2023), while prices for

²⁴ The *Joint Comprehensive Plan of Action* (JCPOA) was the culmination of 20 months of negotiations and was signed in 2015 between Iran and the P5+1 (the five permanent members of the United Nations Security Council – China, France, the United States, Russia, the United Kingdom + Germany) – and the EU.

²⁵ Served as Secretary of Labor from 1993 to 1997 under President Bill Clinton.

consumers have remained extremely high. What measures, if any, do you believe should be taken to mitigate corporate profiteering at the expense of higher prices for American consumers?

A: *I think we've had some issues with that in the food industry. We saw there were several added anti-trust suits brought against the pork industry and there were other industries targeted as well. The concentration of market power is going to lead to, at some point, price gouging. When we came out of the pandemic, there was even more vulnerability to price gouging. Using anti-trust laws with respect to price-fixing is critical but also is trying to reduce industry concentration and encouraging competition to grow small businesses. That will help create downward pressure to control prices and grow the economy. I think a pro-business platform is critical for any administration, but pro-business doesn't mean just big businesses that are fixing prices and ripping off consumers. We need to have growth and medium-sized and smaller businesses bring down the prices. And then on energy – we're not going to bring down prices on energy long-term, and actually have affordable energy, until we confront the need for clean energy. If we can make clean energy affordable by developing more electric vehicles and expanding the grid for generation of electricity through hydropower, solar power, wind power, etc., we can produce cheap energy in this country. Fossil fuels are not the way for the future and just trying to pump more oil into the market to drive down the price at the pump temporarily is not going to solve long-range, affordable sustainable energy needs. Once there is an opportunity for businesses to make money from renewables, there will be long-term economic growth from clean energy sources.*

Q: This is now happening in the State of Indiana. Just 45 minutes South of Valparaiso, the second half of Mammoth Solar is going up. Mammoth Solar is a project of outgoing Governor Eric Holcomb (R) with Dolar Renewables out of Israel. This is over a billion-dollar project. Mammoth is slated to be the largest solar array in North America and will add to Indiana's other renewable array: one of the largest onshore wind farms in the world, Fowler Ridge wind farms, owned by BP. And this is not a very sunny state with a regular pattern of strong winds. Other predominantly conservative states are now established leaders in renewable energy: wind in Iowa and Texas, hydro in the southeast – with an expansion of the Tennessee Valley Authority (TVA) system. Unfortunately, this transition is not because of a collective stewardship of the planet, no ideals involved here, but simply money to be made. And this has been aided by the *Inflation Reduction Act of 2022* investments, where lines of Tesla superchargers are being installed under a one-plug-fits-all concept. I'm worried now with this alleged attempted bribery with Trump and the oil company executives, if he comes in, do you think that this progress will be jeopardized? Put on hold?

A: We have to remember how these EVs are being charged, so the focus should also be on how clean energy is used – not just on charging the electric vehicles but on the generation of that energy used. This requires solar and wind and I do see this in Indiana and Illinois and in southern Minnesota – actually throughout the Midwest, with wind power generation in particular supplemented by solar power. This could be fabulous for the economy, especially for the economy in rural America. This is so – whether it's the Republicans who now have a lot of political power in rural America or the Democrats who want to get back into rural America

where the Democrats used to have their power base. Going back to William Jennings Bryan²⁶ all the way up to George McGovern,²⁷ rural America has given a lot of support to the Democratic Party in the past. Whichever political party wants to focus on wind power and solar power and clean energy in general as a product that could be generated in rural America, create jobs, and repopulate cities, that's what needs to be done. This is not just going to create money for business, but I think it's going to create jobs for Americans in parts of the country where we've seen fewer and fewer jobs as farms are getting bigger.



Wind Turbines and an old windmill at the Roscoe Wind Farm in West Texas (2014), Courtesy, Matthew T. Rader, MatthewTRader.com, License CC-BY-SA.

Q: There's no doubt about it that they're corporate mega farms.

You mentioned antitrust which leads me to the lawsuit recently filed by the Department of Justice against Apple, the first trillion-dollar-market valued company, which asserts violations of the Sherman Anti-trust Act. But I see this almost as a repeat of what happened in the 1990s against Microsoft.

A: *Either are a match for business competition, threatening innovation. This goes back to Standard Oil. Teddy Roosevelt went after the Standard Oil Company and the Rockefellers. And the Justice Department – when it wants to do its job – can enforce the antitrust laws when it wants and when they don't, monopolies occur. Both Apple and Microsoft probably wouldn't be here today if the Justice Department had not gone after IBM back in the 60s and 70s when IBM was dominating the market for computers – and not only business machines. But had they moved in too quickly, businesses and homes would have been hit. IBM is a fabulous company – imagine, though, being told that basically the only computer products you're going to get are from IBM. I mean we'd be living in a whole different world. But the Justice Department took the antitrust laws seriously in the 60s and 70s and opened up a huge case against IBM that lasted for years. IBM was waiving some of the anti-competitive*

²⁶ Former Secretary of State under President Woodrow Wilson from 1913-1915 and known as a powerhouse in the Democratic Party. Dubbed “the Great Commoner,” Bryan had uniquely defined his relationship to the common person.

²⁷ George McGovern was a politician from South Dakota, serving as a U.S. representative and a three-term U.S. senator. He was the Democratic presidential candidate in 1972, running unsuccessfully against incumbent Richard Nixon on a pledge to end the Vietnam War.

practices that kept other people out of the industry but after intervention, we saw an explosion of innovation both in Silicon Valley and the Route 128 complex of Boston and other parts around the country that I don't think would have been possible if you had simply continued to have an IBM monopoly.

Q: Successful against AT&T too, right?

A: *Oh, yes.*

Q: But now, with respect to the Telecom industry, growth seems to be going back the other direction. Individual companies are starting to merge with each other and now we've only got four or five different options. So, if you don't force out those companies pegged as "too big to fail," you might stifle innovation?

A: *You also consolidate the political power of these companies so they can influence public officials. What I'm really concerned about right now is social media because they resist controls: there's Twitter (X) and of course you've got Facebook (Meta). Mark Zuckerberg has repeatedly been called before Congress and Elon Musk has cozied up to Trump and of course has his own social media company.*

Q: Truth Social?

A: *Yes. So we could end up with someone who's President of the United States, has a controlling interest in his own social media company, and who also is in charge of the Federal Communications Commission. And I can easily see him as a potential buyer for ByteDance²⁸ for TikTok. And so the concerns about the Chinese running TikTok is one thing, but if they want to force a quick sale, that might put it into the hands someday of someone who could be very close to the sitting president in the United States. We literally could have a "Citizen Kane"²⁹ situation. We saw the newspaper industry change when TV and radio were put under Federal Communications Commission (FCC) control. The FCC is supposed to require diversification and it used to have an "equal-time" rule in politics.³⁰ But they got rid of this. Now with social media, there is more and more consolidation. And isn't this a risk to democracy?*

Q: Very true. Last question and it relates to public funding for professional sports teams. What are the right factors that governments should be considering when deciding whether to provide public funding for professional sports stadiums? We see recent examples of the tension in Oakland, Las Vegas, Kansas City, Chicago, and the District of Columbia.

A: *We must use public funds for public purpose. We've got public schools. We have police and fire departments throughout our country. And this year in Minnesota, they worked out a deal to build U.S. Bank Stadium and I know U.S. Bank has money in it so they could get their*

²⁸ A Chinese internet company.

²⁹ *Citizen Kane* is an American film, regarded by many as the greatest film ever made. It tracks the life and career of character, Charles Foster Kane, and is based on the life and legacy of media mogul, William Randolph Hurst, politician and American newspaper publisher. The film presents an early portrayal of a mass media manipulation.

³⁰ The equal-time rule specifies that American radio and television broadcast stations must provide equivalent access to competing political candidates this rule has largely been suspended

name on the stadium. The Vikings play over there; it's a very impressive stadium. But they got \$100 million worth of taxpayer money in there too and that's money we really should have spent on the public schools in the state of Minnesota.

Q: Corporate welfare?

A: *Exactly. The test scores that are coming from the public schools have a better track record than the Minnesota Vikings but regardless, I would have say that every state in America ought to prioritize education, law enforcement, and basic services like healthcare. There's a lot we can say is the responsibility of the government's use of public funds, but sports stadiums for professional football teams and basketball teams isn't on the list. And I think those who want to complain about big government and socialism need to take off the goody list a professional sports stadium.*

About the Interviewee



Painter received his B.A. in history summa cum laude from Harvard University and his Juris Doctor from Yale Law School. Painter began promoting ethical decision-making very early in his career. From 2005 to 2007, he served as the Chief White House Ethics Counsel in the George W. Bush Administration. A self-described moderate, Painter is currently the S. Walter Richey Professor of Corporate Law at the University of Minnesota, and since 2016 has served as vice-chair of government watchdog group, Citizens for Responsibility and Ethics in Washington (CREW). Painter is also a frequent CNN and MSNBC contributor to issues of principled governance – both in

government and business.

In early April, 2024, Painter authored an amicus brief on behalf of former military leaders in *DONALD J. TRUMP v. UNITED STATES OF AMERICA*, rejecting Petitioner's plea to the U.S. Supreme Court to grant him absolute immunity from prosecution for trying to overturn the 2020 presidential election. Such request represents "the single greatest threat" the country has ever seen and a favorable ruling would be tantamount to condoning a dictatorship. On other national issues, Painter rejects "dark money" in political campaigns, advocates for infrastructure spending, and supports common-sense gun reform, akin to the license-and-registration process of motor vehicles. He has proposed a comprehensive ethics reform package, designed to combat corruption in Washington. Specifically, Painter would apply a previously existing criminal statute that prohibits all unelected federal executive branch officers from participating in any matter with which they or a spouse had a personal financial conflict of interest to the President, Vice President, and all members of the House and Senate. Additionally, he would require the President and all members of the House and Senate to divest from individual companies' stocks, bonds and other securities that create conflicts of interest, and instead invest in broadly diversified stock mutual funds, life insurance, bank accounts, and other conflict-free assets as defined in already existing Office of Government Ethics regulations. New term limits would be imposed and a lifetime ban on former members

of the House and Senate serving as paid lobbyists would be activated. With respect to healthcare, Painter supports a single-payer system and would ensure that no American would pay more for pharmaceuticals than their counterparts in other developed nations. And on environmental matters, Painter acknowledges the existential threat of anthropologically-created climate change and calls for sound action, including the adoption of a carbon tax.

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