Why Big Law Firms Aren’t Standing Together Against Trump’s Assault

The arms race for talent seems to have made collective action, within and between firms, nearly impossible.

Credit...Thomas Fuchs

Years before the law firm Paul Weiss struck a deal with President Trump over an executive order that threatened its business, the storied New York partnership made another fateful decision. It raided a competitor for a group of lawyers with an exceptionally profitable client, the private equity and credit firm Apollo Global Management.

Listen to this article with reporter commentary

Listen · 20:24 min

Though Paul Weiss had done some work for Apollo, seizing so much of the client's business all at once, in 2011, was seen as a coup. Over the next decade, Paul Weiss reportedly brought in hundreds of millions of dollars in revenue as it helped the acquisitive Apollo gobble up everything from the University of Phoenix to Chuck E. Cheese.

Poaching those lawyers identified the firm as a major player in an escalating arms race for legal talent. That race, however, began to weaken the bonds among lawyers that had long held firms like Paul Weiss together. And, over time, that weakening may have made them more vulnerable to pressure from President Trump.

Large law firms have traditionally cultivated talent from within, hiring young lawyers out of law school or clerkships and promoting the very best to partner after several years. While that convention still exists, it has been eroding over time, as firms increasingly view their peer firms as a recruiting pool.

In the past decade, the competition has become especially fierce for so-called transactional lawyers, who advise clients on deals like mergers and acquisitions. Firms court the partners who handle this lucrative work with promises of guaranteed paydays that can exceed $10 million or even $20 million a year with the expectation that they will bring in new business.

This free-agent model is great for individual lawyers and firm profits. The downside is fragility. When prominent law firms largely promoted from within, most partners stayed put for much of their career. But when a firm's biggest moneymakers feel empowered to come and go, they have little incentive to ride out adversity. Over the past two decades, the prospect of bumpy times ahead has occasionally become self-fulfilling, leading to an exodus of lawyers who take clients with them and prompting a firm's collapse. A Yale Law professor, John Morley, has compared this process to a bank run.

It was the risk of such a run that appeared to weigh on Brad Karp, the chairman of Paul Weiss, as he negotiated with the White House. "We learned that certain other firms were seeking to exploit our vulnerabilities by aggressively soliciting our clients and recruiting our attorneys," he wrote to colleagues after announcing the deal.

Image

Brad Karp, the chairman of Paul Weiss, suggested to colleagues that partners and clients might have left for other firms absent a deal with the White House.Credit...Carly Zavala for The New York Times

A similar anxiety may have motivated Paul Weiss's peers. In the days after its White House deal, the large law firms Skadden, Arps, Slate, Meagher & Flom, Milbank and Willkie Farr & Gallagher all reached deals that appeared intended to avoid executive orders targeting their own business. The firms did not respond to requests for comment.

When prominent law firms first ramped up their efforts to pry moneymakers away from rivals, they could not have anticipated landing in a president's cross hairs someday. Mr. Trump's actions fall outside longstanding norms. He has berated firms for their diversity policies and their connections to lawyers he perceives as enemies, and he has signed executive orders impeding them from doing business with the federal government or federal contractors.

Legal scholars have called the orders unconstitutional, as have some of the targeted firms. But others have stayed silent. At a time when many prominent lawyers say it is essential for firms to stick together and fight back, the shift toward free agency has made collective action increasingly difficult, said Nate Eimer of the litigation boutique Eimer Stahl.

Mr. Eimer is a co-author of a legal brief supporting law firms targeted by Mr. Trump's executive orders that hundreds of firms have signed. But so far almost none of the country's largest or most profitable firms — generally the most active players in the market for high-priced legal talent — have joined them.

"The idea of a profession that is sort of dedicated to a certain ethic is maybe less prevalent," Mr. Eimer said. "Instead, it's more of a culture of profit-making that drives almost all the big law firms."

The Talent War Begins

Courting legal talent at rival firms has happened for generations. But it seemed to accelerate in the 1980s, after The American Lawyer, a legal trade publication, began publishing annual rankings of firms by profits per partner, the amount of money each partner netted the firm on average. Almost overnight, it became much easier for lawyers to recognize if they were paid less than their peers, and for competing firms to identify them and offer a pay increase.

Longtime recruiters and lawyers say the war for talent escalated again in the wake of the dot-com meltdown in 2000, led in part by the Chicago-founded firm Kirkland & Ellis. As investors sought higher returns, tens of billions of dollars flowed into private equity funds, which have traditionally acquired companies with an eye toward boosting their profits and then selling them or taking them public.

At the time, Kirkland was known primarily for doing litigation, but its leaders saw that they could make large fees advising this growing industry. While litigation clients are likely to scrutinize their legal bills closely, the ones doing multibillion-dollar deals don't tend to get uptight about a few million dollars here or there, said Bruce MacEwen, the president of Adam Smith Esq., which advises law firms on business strategy.

Image

An aggressive effort by Kirkland & Ellis to recruit lawyers from other firms helped start a bidding war for legal talent in the 2000s.Credit...Jeenah Moon for The New York Times

Though the biggest private equity firms already had top law firms, Kirkland sought out more obscure funds that were becoming flush during the boom. Then, with its profits surging from the new business, Kirkland turned around and did something almost unheard-of: It began luring deal-making lawyers away from the most prestigious firms by offering to raise their pay, sometimes even doubling or tripling it.

Kirkland exploited the fact that some prominent firms were still using lock-step compensation — meaning similarly tenured lawyers made similar amounts, regardless of their value to the partnership. By contrast, Kirkland paid highly productive lawyers what they were actually worth.

“Kirkland was willing to take big swings knowing that not all of them would work out, but most of them did,” said Jon Truster, a longtime recruiter at Macrae, a legal recruiting firm.

- Kennedy plans to phase out eight common food dyes.
- In a phone call, Trump told Hegseth that he stands behind him despite Signal chat reports.
- Four Democrats land in El Salvador to seek release of wrongly deported man.

Over the next decade, Kirkland hired lawyers away from venerable New York firms like Cravath, Swaine & Moore and Skadden Arps. It poached so many lawyers from Simpson Thacher & Bartlett that the firm, one of the country's most pedigreed, was called "Kirkland's AAA farm club" by a Kirkland partner. (A Kirkland official said that it was a mindless comment made by a former partner many years ago and that the firm had nothing but respect for Simpson Thacher.)

Rivals sometimes complained that the strategy trampled on the genteel norms of the industry. But the strategy was a commercial success: Since 2007, Kirkland's profits per equity partner have more than doubled after accounting for inflation. That figure topped $9 million last year, according to ALM, the parent company of The American Lawyer.

Among the firms that did not stand by while the pirates from Kirkland raided the industry was Paul Weiss. Though it did transactional work, Paul Weiss was best known for its litigation practice. Under Mr. Karp, whom former colleagues describe as a relentless litigator with a competitive streak, the firm recognized deal-making as a growth area.

Mr. Karp had done some litigation work for Apollo in 2008, the same year he became Paul Weiss's chairman, and saw an opportunity to vault his firm into another stratum. In 2011, he pried loose roughly half a dozen lawyers from a rival firm, many of whom worked with Apollo on acquisitions.

Then, five years later, Mr. Karp followed up the success by luring Scott Barshay, one of the most prominent deal makers in the industry, from Cravath. Mr. Barshay had made a name for himself working on blockbuster transactions like the merger of United Airlines and Continental.

By 2023, Mr. Karp and Paul Weiss were raiding the raiders, grabbing a dozen transactional lawyers from Kirkland. Today, the two firms regularly rank in the top 10 in work on mergers and acquisitions.

Eroding Loyalty

Image

Scott Barshay, a prominent adviser to companies on mergers and acquisitions, was among the high-profile deal lawyers that Paul Weiss lured away from a rival in the 2010s. Credit...Kathleen Flynn/Reuters

As the deal makers proliferated at Paul Weiss, they began to gain influence. Mr. Barshay heads the firm's corporate department and is one of a small number of partners on the firm's so-called Deciding Group, which oversees compensation decisions.

As at Kirkland, the tilt toward deal-making was a financial success. Between 2007, the year before Mr. Karp took over as chairman, and 2024, profits per equity partner at Paul Weiss nearly doubled after an adjustment for inflation. They reached more than $7.5 million last year, according to ALM.

But the growing dependence on transactional lawyers created a certain instability. The poached partners might leave as abruptly as they arrived and could take clients with them. A law firm's customers, unlike those of a software company or an auto manufacturer, often care more about their relationship with individual lawyers than with the firm.

And while any partner can jump to another firm in principle, deal-making business tends to be more coveted by rivals. "There is definitely more of a premium for partners from a transactional background," said Katherine Loanzon of Kinney Recruiting.

Data from Macrae, the recruiting firm, shows that among the country's 100 highest-grossing law firms, more than twice as many deal-making partners as litigators have switched firms since 2018 — about 5,700 versus about 2,600.

When President Trump returned to office and started attacking law firms, all big firms felt the chill.

But some have argued that deal makers are professionally and perhaps instinctively more susceptible to government pressure. Young litigators are often trained on pro bono cases in which they fight the government in court. “It brings home that that’s what lawyers are there for, to make sure that what the government’s doing is in line with the law,” said Erin Elmouji, a former Paul Weiss associate who worked on a case challenging stop-and-frisk policing in New York City.

Litigators often take on the government when they represent a paying client, too, like a large bank facing a federal investigation. While many of these cases settle, the relationship is frequently adversarial.

Deal makers, instead of confronting government, often work on matters that require its blessing. “If you’re doing a large M&A deal, you need approval for that deal from an alphabet soup of federal agencies,” said David Lat, author of the Substack newsletter “Original Jurisdiction,” who previously worked as a legal recruiter and an associate at Wachtell, Lipton, Rosen & Katz. Some firms said transactional clients had been much quicker to grumble when they feared the firm might lose favor with the president, though one said its litigation clients were just as concerned.

The upshot is that deal makers may be more interested in seeking a truce with the White House. They may also be more likely to jump ship if they don’t get their way, and to open up a bigger hole in a law firm’s finances if they leave.

Image

WilmerHale, one of the prominent law firms fighting a White House executive order, relies mostly on litigation rather than deal-making for its business.Credit...Andrew Mangum for The New York Times

That may help explain why a handful of firms that lean heavily on litigation have chosen to fight White House executive orders — firms like Jenner & Block, WilmerHale and Susman Godfrey. (WilmerHale said in a statement that it had long represented “a wide range of clients, including matters against administrations of both parties”; Jenner said in response to a query that it did “a lot” of transactional work as well.)

On the other hand, firms that rely more heavily on transactional work than Jenner and Wilmer have generally followed Paul Weiss’s lead. Mr. Trump announced this month that the White House had reached deals with Kirkland, Latham & Watkins and Simpson Thacher, among other firms. All three firms received an extensive request for information about their diversity practices from the Equal Employment Opportunity Commission. Like Paul Weiss, they may have worried that a confrontation with the Trump administration could set off a sudden out-migration of partners and clients.

(In a joint statement issued on April 11, the firms noted that the agreement resolved any matters with the president and the E.E.O.C.Mr. Trump has indicated that he wants to deploy their lawyers for specific roles.)

None other than Mr. Karp, the Paul Weiss chairman, identified this flight risk long before his own showdown with the White House. “There has been a gradual but steady erosion of both client and partner loyalty,” he told The New York Times in 2018. “A generation ago, clients were reflexively loyal to their law firms. The relationship today is more transactional and clients tend to be more loyal to particular partners. This new paradigm creates more opportunity, but also creates more flux.”

That “flux” may have been an acceptable risk when only law firms were on the playing field. Once the president of the United States entered the match, it became a different proposition altogether.

Read by Noam Scheiber

Kirsten Noyes contributed research. Audio produced by Parin Behrooz.