

THE LEDE

WHAT IF THE BIG LAW FIRMS HADN'T CAVED TO TRUMP?

It's not inconceivable that, had the firms resisted the President's executive orders, his momentum for lawlessness might have been curbed.

By Fabio Bertoni

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The New York office of the law firm Paul, Weiss. Photograph by Melissa Bender / NurPhoto / AP



Saved

Toward the end of the 1954 film “On the Waterfront,” Marlon Brando’s character, Terry, makes one of the most famous speeches in the history of movies. The most often quoted line is “I could have been a contender,” but the full emotional impact of what he has to say hits just before it. Terry refuses to accept his older brother Charlie’s attempt to blame someone else for Terry’s failed boxing career. “It wasn’t him, Charlie. It was *you*,” Terry says. He recounts how, early on, Charlie told him to throw a critical match because the “smart money” (i.e., their mobster-like boss) had placed a bet on the other fighter. “You was my brother, Charlie,” Terry tells him. “You should’ve looked out for me a little bit. You should’ve taken care of me just a little bit, so I wouldn’t have to take them dives for the short-end money.”

That expression of the corrosive damage done by the failure to protect people to whom we owe a duty has new resonance lately. In just the past few weeks, President Donald Trump has successfully pressured the Department of Justice to bring baseless criminal charges against the former F.B.I. director James Comey and New York Attorney General Letitia James, whom he perceives to be his political enemies, and he has threatened to arrest both the mayor of Chicago and the governor of Illinois. Trump has ordered the National Guard into blue cities in violation of the Posse Comitatus Act. His close adviser Stephen Miller has said that judges, prosecutors, and lawyers are protecting a movement of “leftwing terrorism,” and that “state power” should be used to dismantle “terror networks,” with the clear implication that those judges, prosecutors, and lawyers who oppose the Administration are part of those networks and should be punished accordingly. Then there are Trump’s long-term efforts to shred the Constitution, such as his executive order purporting to eliminate birthright citizenship, which is enshrined in the Fourteenth Amendment. Bedrock legal principles of prosecutorial independence, separation of powers, and rule of law have been shattered, and it’s not clear when, or even if, they can be restored.

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A central goal of the first nine months of Trump's second Administration has been to establish an unbridled and unopposed "unitary executive"—a fever dream of the far right which holds that the President has absolute authority over the entire executive branch, and that any independence of agencies or departments of the federal government is impermissible. It is obvious now, if it was only hypothetical in the early days of the second term, that achieving that goal requires making the Justice Department merely a tool of his political aims and forcing lawyers and judges to go along with his demands, or else.



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It is worth considering how we got here, and whether we could have done anything to slow this downward spiral. Counterfactuals are impossible to prove, but it doesn't require a giant speculative leap to conclude that, had major U.S. law firms not so quickly surrendered to Trump, this spring, he would have been denied

early momentum for his lawlessness. Perhaps a united opposition might have even provided the opposite momentum, toward a defense of the rule of law.

The story of Paul, Weiss, Rifkind, Wharton & Garrison L.L.P., one of the leading law firms in the world, stands out. It employs twelve hundred and fifty lawyers in offices around the globe, and pulls in annual revenues of \$2.63 billion, resulting in yearly profits of more than \$7.5 million per partner. The firm boasts some of the most accomplished lawyers in the U.S., and has a widely feared litigation practice. It also has a venerable tradition of civil-rights work, including assisting Thurgood Marshall on desegregation cases, in the nineteen-fifties, and representing the plaintiff Edith Windsor in the landmark 2013 Supreme Court case, *United States v. Windsor*, which struck down as unconstitutional a federal statute defining marriage as solely between a man and a woman.

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Trump had it in for Paul, Weiss for several reasons. Jeannie Rhee, who was then a partner at the firm, had worked for Robert Mueller, the former special counsel who investigated possible Russian interference in the 2016 election, and, after the events of January 6th, she took on a pro-bono case against some of the rioters; Mark Pomerantz, a former partner, had helped prosecute Trump in New York courts for falsifying business records; and Trump was angered by the firm's D.E.I. employment practices. On March 14th, he issued an executive order that cited these alleged sins and directed federal agencies to review any security clearances previously granted to Paul, Weiss attorneys, to restrict their access to federal buildings, and to potentially terminate government contracts with the firm.

Around the same time, Trump issued executive orders against a variety of other firms because he disliked lawyers who worked for them or clients they represented, or both. The executive order against the law firm Perkins Coie L.L.P., for example, cited its representation of Hillary Clinton's 2016 campaign.

The consequences of these orders could be devastating to a firm like Paul, Weiss. If its lawyers were unable to enter federal buildings or courthouses, representation of clients before federal courts and agencies would become impossible. The firm's work with multinational corporations seeking licenses and permits before government agencies (such as energy companies requesting development permits or investment companies negotiating with the Securities and Exchange Commission), or even litigating in federal court, could evaporate.

But efforts by the government to punish speakers and speech that it disfavors are blatantly unconstitutional. Any attempt to stop private lawyers from representing the clients they choose is an assault on those lawyers' basic right to practice law, and a clear infringement of their and their firms' First Amendment rights. And going after firms because the Administration has a grudge against a specific lawyer who works there is unprecedented, and represents a crude weaponization of executive power. This is not a close constitutional call.

The chair of Paul, Weiss is Brad Karp, who assumed the role at the comparatively young age of forty-eight. He has been described as one of the best litigators in the country, representing some of the largest financial companies in the world in billion-dollar lawsuits. And Karp is not ignorant of the risks posed by threats to the rule of law: he served on the board of trustees of the World Law Foundation, a non-for-profit organization of more than eight thousand U.S. and international lawyers dedicated to "promoting the Rule of Law as a guarantor of freedom and peace, and strengthening democracy and its institutions throughout the world." The foundation hosts biannual congresses, with panels devoted to discussing recent threats to the rule of law, and awarding honors to lawyers who defend it. Past honorees have included Ruth Bader Ginsburg, Andrew Young, and Nelson

Mandela. (I spoke on panels at the congresses in 2023 and 2025, on issues related to press freedoms.)

But, instead of standing up for the rule of law and suing the Administration for its unlawful executive order, Karp and Paul, Weiss settled a mere *six* days after Trump issued it. That settlement obligated the firm to provide forty million dollars in pro-bono services to “support the Administration’s initiatives,” and to “not adopt, use, or pursue any DEI policies.” Eight other global law firms quickly followed suit, reaching settlements totalling a reported nearly billion dollars in pro-bono services for causes championed by the Administration. And, although all the firms claimed to have retained control over what specific pro-bono work they will do, Trump clearly doesn’t see it that way, suggesting during one Cabinet meeting that he could use the legal work as sort of a personal piggy bank of services even after he leaves office, saying, of the accumulated total, “Hopefully I won’t need that,” he said, “after it ends—after, after we leave. Maybe I’ll need it.”

Some of the firms that were targeted, including Perkins Coie L.L.P., sued the Administration and won orders blocking the specific restrictions on them. And many lawyers resigned in protest from the firms that settled. (After Paul, Weiss capitulated, Jeannie Rhee left to start a new firm with a group of former partners, including Karen Dunn, who had reportedly urged people within the firm to approve the settlement.) But Paul, Weiss’ decision to fold was shocking at the time, and was taken as a signal within the profession of where the “smart money” was betting.

It would be unfair to say that everything that has happened to debase the legal system since Paul, Weiss reached its settlement is the firm’s fault. There have been many shameful moments along the way, as when Emil Bove III, who at the time was a senior Justice Department official, allegedly told department lawyers that

they should say “fuck you” to courts trying to stop the Trump Administration from deporting detainees without any due process. (Bove denied telling lawyers to defy court orders during his successful confirmation hearing to become a federal judge.)

The Administration has also been extremely canny in going after institutions rather than individuals. It has figured out that large institutions, rather than being protected by their size and their wealth, are in many instances actually more vulnerable, because they have more pain points—federal grants, licenses, merger approvals—that the Administration can use to exert leverage. Individuals, conversely, are more able to at least attempt a legal fight on principle, especially when they can line up pro-bono or crowdfunded representation. (Now that Trump has also scored victories against universities and media companies, we will likely see him turn his attention more fully to individuals. Indeed, last week, the *Times* reported that he has urged the F.B.I. and the D.O.J. to go after other perceived enemies, including former Deputy Attorney General Lisa Monaco and the special counsel Jack Smith.) And Karp has insisted that the risk to the firm from the E.O. was existential: even in that first week, clients were leaving or threatening to leave, and rival firms were attempting to poach its lawyers.

But law firms are in a special position. They don't just use the legal system; they play a critical role in creating and upholding it. Even more than other private actors, such as universities and media companies, law firms and lawyers have an established duty to uphold the integrity of the system they work in, not only for their own benefit but for the benefit of society. As the inscription on the New York State Supreme Courthouse in lower Manhattan says, “The true administration of justice is the firmest pillar of good government.”

Indeed, mastery of the legal rules, procedures, and principles is how lawyers distinguish themselves. If the rules don't matter anymore, then lawyers are glorified fixers, who lobby politicians for favors. And, usually, those favors are bestowed in exchange for something—a sixteen-million-dollar donation to a

Presidential library, perhaps, or shares in a cryptocurrency scheme. We are currently witnessing a Precambrian-like explosion of corruption, enabled by the lack of any independent prosecutors and enforceable rules.

The law firms must have understood this. Collective action by firms—leadership by the individuals who run each of them—would have been one solution. There were reportedly some early attempts at forming a coalition among targeted law firms, but those that settled apparently could not see beyond their own interest of attempting to put the immediate threat behind them. It may sound naïve to think that intensely competitive law firms should have been able to work together, but firms frequently collaborate when they have clients on the same side of some legal dispute, either by drafting amicus briefs or entering into joint-defense agreements. And now, with the independence of the legal profession at risk, firms must advocate not just for their own clients, or for their short-term business survival, but for the profession itself.

A firm of the size and power of Paul, Weiss should have looked out for the system a little bit. Karp, his partners, and their peers at the other firms that settled should have taken care of the system just a little bit. Instead, they took a dive for the short-end money. ♦

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