

(Intro music)

Amanda Pampuro: Welcome to Sidebar, a podcast by Courthouse News. I'm your host, Amanda Pampuro in Denver. Lately I've been thinking back on an episode from last season where we followed Texas Attorney General Ken Paxton's rise to power and the number of lawsuits he led against the Biden administration. I've kind of been waiting to see which legal teams would rise to challenge President Donald Trump's promises to reshape the nation as we know it, but something else seems to be happening on that front.

President Donald Trump: We have excellent lawyers, excellent. Have you noticed that lots of law firms have been signing up with Trump? \$100 million, another \$100 million, for damages that they've done, but they give you \$100 million and then they announce that, "But we have done nothing wrong," and I agree, they've done nothing wrong, but what the hell? They give me a lot of money considering they've done nothing wrong. And we'll use some of those people, some of those great firms, they are great firms, too. They just had a bad moment.

AP: That was Trump, on April 8th, signing an executive order at the White House where he told coal miners he would deploy some of the country's top law firms to advocate for America's declining coal industry. Our New York City courts correspondent, Josh Russell, has been watching the Trump administration coerce, ahem, court, several major American law firms to carry out his policies rather than challenge them. Hey, Josh, how are things in the Big Apple?

Josh Russell: Hi, Amanda. 2025's frigid winter continues to drag on into springtime's sniffing allergy season out here, but nonetheless I'm happy to be back behind the mic on Sidebar.

AP: So, Trump is suing the suers, litigating against the litigators. What exactly was Trump bragging about in that clip?

JR: So, starting on February 25th, Trump kicked off this seeming crusade against major U.S. law firms when he signed a series of executive orders and presidential memorandums against individual so-called Big Law firms, including Paul Weiss and Covington and Burling, that accused the large firms of engaging in quote-unquote "conduct detrimental to critical American interests" and directed federal agency heads to review and scrutinize attorneys' security clearances and any government contracts, as well as barring attorneys from government buildings.

AP: I didn't think a president could just order lawyers to shut up if he didn't like what they said.

JR: So, those targeted executive orders and the looming threat of more to come against other law firms ultimately triggered several of those firms to quickly agree to provide tens of millions of dollars in pro bono legal work aligned with the priorities of the administration to avert Trump's executive actions, in addition to other policy concessions.

AP: So, how exactly did those firms cut deals?

JR: When those firms settled with Trump, the president rescinded their executive orders. Trump has said the law firms have so far pledged over \$300 million of such pro bono legal work on his behalf, including, as he said in the clip earlier, legal representation in cases against state regulations that impede coal mining and production.

AP: Before I go any further, could you explain what we're talking about when you refer to pro bono work?

JR: Pro bono legal services, meaning for the public good, are free or low-cost legal services provided by volunteer lawyers and other legal professionals on behalf of low-income clients who would otherwise be unable to pay for legal counsel. Firms often assign pro bono work to younger employees and associate attorneys to train and develop their staff. Lots of big firms do it and many of the firms targeted by Trump were recognized in the industry as top leaders of pro bono work.

AP: Whenever I hear, like, an attorney is doing a case pro bono, I just think, oh wow, what lovely volunteer service, how kind of you. And a lot of cases brought pro bono probably wouldn't be filed if the client footed the entire bill. What kinds of cases are these firms bringing?

JR: Well, for example, Perkins Coie, one of the big law firms fighting back against Trump's executive orders, says they partner with nonprofit and community-based organizations to advocate for asylum seekers in immigration cases, and also champion civil rights causes such as housing, education, benefits, food and economic justice for individuals in their communities. They said in a court filing that Perkins Coie lawyers and business professionals last year spent over 89,000 hours in pro bono service, valued at nearly \$70 million. So, the aggregate pro bono hours Trump has won through these settlements total in the hundreds of thousands of hours of legal services from some of the country's top firms on issues the administration is aligned with. The settlements announced by Trump also enumerate other causes for those pro bono legal services, including assisting veterans and other public servants, members of the military, Gold Star families, law enforcement and first responders, quote-unquote "ensuring fairness in our justice system" and combating anti-Semitism.

AP: So, which firms caved and settled, rather than facing those promised penalties?

JR: As of this recording, three firms Milbank, Wilkie Farr and Skadden Arps each agreed to provide \$100 million in pro bono services to projects mutually supported by Trump and the firms, while a fourth, Paul Weiss reached a \$40 million pro bono agreement. As part of those settlements, the firms also pledged a commitment to merit-based hiring and to use an independent counsel to make sure its employment practices are legal and don't rely on considerations of quote-unquote "diversity, equity and inclusion initiatives," a frequent target of the Trump administration's executive actions. At least three other firms, including Perkins, Jenner & Block and WilmerHale, have now sued the administration over their respective executive orders and each won a temporary restraining order suspending major portions of Trump's orders, the judge ruled, are likely illegal.

AP: Why did Trump target these guys?

JR: So, according to Trump himself, in the text of those executive orders and elsewhere, he pretty much explicitly explains his grievances against the disfavored political opponents and the attorneys who represented him. Familiar names from the Trump universe. He said WilmerHale rewarded special counsel Robert Mueller for abusing his prosecutorial power. His executive order against Paul Weiss explained that a Paul Weiss partner and former leading prosecutor in Mueller's office brought a pro bono suit against January 6th rioters on behalf of the D.C. attorney general. Trump also noted that a former Paul Weiss partner, Mark Pomerantz, left the firm to join the Manhattan DA's office in its hush money case that led to Trump's first criminal indictment and eventual conviction. He also claimed that Perkins employees having access to government buildings would quote-unquote "threaten the national security of the U.S." because of the firm's work on Hillary Clinton's 2016 presidential campaign. Willkie Farr & Gallagher has ties to the former second gentleman, Doug Emhoff, and the House panel that investigated the January 6th attack on the Capitol, and so on.

AP: Sounds like an extension of his political burn book.

JR: I spoke with UCLA law professor Scott Cummings, who told me that these personal vendettas are just one part of the overall deeper, deliberate damage to the entire system that the administration is carrying out.

Scott Cummings: I mean, I think it's important first of all to identify the multiple purposes to which these executive orders are being put to use. So, there's definitely a retributory component to them. You know, these are firms that have lawyers that, for various reasons, Trump doesn't like. But I think the other component of it is not for retribution, but it's a sort of more systematic and sinister in the sense that they're really trying to disable these firms from both representing interests that are in tension with the administration's interests or

adversary to the administration's interests, and also, I think, perhaps even more destructively, they're trying to disable and co-opt these law firm pro bono programs and so preventing them from representing clients and causes who actually need pro bono assistance and redirecting those resources toward Trump causes or just stopping them from doing the work that they had done previously. So, you know, I think there's sort of multiple goals that these orders are serving, but also they have these more systematic pieces which are really about making it harder for law firms, in these specific cases and more generally because of the chilling effect, to take on interests that are important to take on in this particular moment.

JR: Scott pointed out that among the first law firms attacked by Trump in his second term were firms that have long been understood as leaders in the pro bono world.

SC: There's a list that's put out by the American Lawyer of the top firms every year in terms of the amount of pro bono work that they do. Last year, the top three? You want to know what they are? Jenner & Block, Covington & Burling and WilmerHale. Skadden Arps is always top 10, top 15, Paul Weiss, top firm. The firms that are being targeted are firms that are huge providers of pro bono and most of that pro bono has gone to represent low-income people in various states of kind of vulnerable contexts and liberal public interest organizations that are really antithetical to the Trump agenda.

AP: The top three. All right there, hmm.

JR: I spoke with University of Pennsylvania law professor Claire Finkelstein about how the pro bono legal services won by the Trump administration are likely to compare to the type of pro bono legal services these large law firms typically provide.

Claire Finkelstein: It does suggest that, with this list of pro bono activities, firms are not going to also do other pro bono activities that tilt against the administration. This pretty much will max them out, and, of course, they won't dare use their services to fight the administration. They are basically giving up their right to freely decide who they represent, even though I predict that some of these firms will say, "OK, we've carried out the agreement that we struck, we've represented the causes that we agreed to, and now we're going to go represent anybody we want." And they're going to find that they come under the hammer of the Trump administration once again and that this initial appeasement is not going to be enough and they're going to go through it all again. So, once you start making deals with a dictatorial administration, it rarely ends at the first pass.

AP: How often does this kind of thing happen?

JR: Legal experts I talked to said Trump's executive bully pulpit against the law firms strikes a message of punitive retribution to his political opponents that is unprecedented and

untested in the courts. But Claire Finkelstein pointed out one case that she says may very well stand as precedent against Trump's strong arming of Big Law. The 1952 Supreme Court case *Youngstown Sheet & Tube Company v. Sawyer*, also known as the steel seizure case. Justice Hugo Black reasoned in his majority opinion that the president's power to see that laws are faithfully executed refuted the idea that he is also to be a lawmaker.

CF: During the Korean War, as is well known, President Truman was afraid that the steel workers were going to strike and so he seized the steel mills to prevent them from going on strike, which would have made meeting the requirements for the war very difficult, and the Supreme Court held that that was unconstitutional. And it was interesting because we were in the middle of fighting a war, so, you would think, if there was any time that it was permissible for a president to take over private industry and dictate how it was going to run, it would be in the middle of a war when we needed that industry to be all hands on deck for the war. But nevertheless the court said, "No." But this does set a kind of precedent in this case, because it does suggest that the president can't just dictate to private law firms how to run their businesses and tell them, you know, we are going to take, in effect, take over your business and force you to conduct your business in a different way and force you to negotiate with us on pain of not being able to function as you've been able to function.

AP: So, the executive orders themselves raise a ton of legal questions about the rights of law firms. But what else does Trump gain from these settlements?

JR: I asked Scott Cummings about the provision in these law firm settlements deals agreeing to walk back from so-called diversity, equity and inclusion initiatives.

SC: I think the DEI agenda is a double-edged agenda. I think it's clear that the Trump administration does not like DEI and would like to eliminate DEI in law firms, universities and corporate America. But I also think that DEI serves a purpose to justify the deeper and more troubling attack on these democratic institutions. I think, you know, one of the main elements of this autocratic legal playbook is to, I would say, conflate legitimate policy change with illegitimate attacks on democratic institutions, which is to say, to use the rhetoric of legitimate policy change, like, "I support DEI, they don't support DEI." That's a legitimate policy conflict and you could pursue your ideological policy preference through the normal zone of political change and in some respects that's what they want everyone to think they're doing. But this DEI piece is really being, to use their own phrase, weaponized in service of this deeper agenda which is to destabilize these democratic institutions. DEI is, it's operating almost like a legal pretext for the ultimate objective, which is to impose sanctions, withdraw funds and control the institution. I mean, the ultimate objective is control, and the way that they're effectuating control is through these agreements.

AP: If these legal firms are no longer choosing their own apparently progressive cases to take on pro bono, then who will they represent?

JR: It appears some potential recipients vying for these firms' pro bono hours could include far right groups such as America First Legal, which is Stephen Miller's self-proclaimed, long-awaited answer to the ACLU, as well as the oversight project from Project 2025 creator Heritage Foundation.

AP: Also, is this like a way for law firms to pivot from Biden's progressive agenda to Trump's anti-wokeism, without seeming to bend to the political wind? How are those who settled benefiting?

JR: I asked both professors if they believe that the firms that caved to Trump's demands would suffer reputational harm. Here's Scott Cummings.

SC: You know, one of the things that these firms have historically focused on with respect to their pro bono is to promote themselves within the broader legal community, which has meant recruiting and retaining lawyers, and particularly young lawyers who are entering into big firm practice early in their stage or, for the first time, being recruited through law schools at these elite firms. Students do really care about the kind of pro bono opportunities that they will have once they get to firms. It's why firms have aggressively marketed their pro bono activities to law students in trying to recruit them to the firms, and I think doing a 180 on pro bono and starting to allocate pro bono away from the kinds of causes that actually need pro bono representation to causes that do not is going to have a lasting negative impact in terms of the perception of young lawyers and their interest in going to these firms.

JR: Professor Finkelstein also concurred that the firms that settled with Trump and will be taking on Trump-aligned pro bono work could face difficulty attracting college students to get on board.

CF: A lot of law students are going to pour into these firms as summer associates or as new associates newly graduating from law schools, and they're going to be asked to work on these cases pro bono. It's very typical to put new associates on pro bono matters and they may not want to litigate against their alma maters. So, this is going to be a tricky, tricky position to be in. But many of those people might say, yeah, my, you know, especially my Jewish graduates might say, "Yeah, I would like to see my university change in certain ways," and would be very comfortable having pressure put on their universities by the Office of Civil Rights. But when it comes to actually litigating and having their firm be the one to do the litigation, they may say, "No, I don't want to be involved in those."

JR: More than 500 law firms signed on to an amicus brief backing Perkins in their legal challenge to Trump's threats of sanctions, calling the Trump attacks on the legal profession a grave threat to our system of constitutional governance and to the rule of law itself. Trump's order called on agencies to suspend Perkins lawyers' security credentials, to bar the lawyers from accessing government buildings and to terminate any contract they had with the firm, effectively paralyzing the firm's ability to represent clients dealing with the federal government. I asked Courthouse News Washington reporter Ryan Knappenberger to weigh in on the Perkins suit filed in D.C. federal court.

Ryan Knappenberger: Over the last week now, three federal judges have now heard and continued arguments in the Jenner & Block case, Perkins case and the WilmerHale case, they're all at a kind of a joint motion for summary judgment on the law firm side and motion to dismiss on the government side stage. So, we're kind of getting to a point where we'll probably see actual injunctions or not the coming weeks. In all three of the cases, all three judges, they basically all indicated that they're going to rule in the law firm's favor, mainly because the Justice Department has not been able to provide the standard of answers that these judges are expecting behind the administration's rationale for the targeting executive orders. They clearly view the executive orders all as unconstitutional. They have repeatedly expressed their determination, that this is, for the most part, all viewpoint discrimination and retaliation for these law firms' viewpoints. The only, I think, question will be like, have to watch out first, what, how they take the national security national interest point.

JR: Former President Barack Obama also weighed in during a recent speech at Hamilton College on the threat such deal-making with Trump poses to the institutions of American democracy and similarly urged law firms to stand up against encroaching authoritarianism.

President Barack Obama: It is up to all of us to fix this. It's not going to be, it's not going to be because somebody comes and saves you. The most important office in this democracy is the citizen, the ordinary person who says, "No, that's not right."

JR: And Vermont Senator Bernie Sanders also recently called out the absolute cowardice of some of the firms who quickly cut deals with Trump.

Reporter: What do you make of the law firms cutting deals?

Senator Bernie Sanders: Absolute cowardice.

Reporter: Some of them seem pretty eager to cut a deal.

BS: Because for them, you know, they're zillion-dollar law firms and money, money, money. So, they're going to sell out their souls to Donald Trump in order to continue to be able to make money here in Washington.

JR: Professor Cummings told me the hundreds of legal professionals joining the amicus to the Perkins case sends an important message of solidarity, but he noted that many large firms had not signed on, specifically none of the top 10 Big Law firms by revenue.

SC: These orders targeting law firms are facially illegal. They're facially unconstitutional. I think they will be, and they have been and will be, ultimately found to violate the legal rights of the law firms. And so, what we need is, yeah, this collective action, people speaking out, getting court orders that will actually allow other firms to have more protection and move forward from there. So, these settlements make that harder, but this action, I think, does the right thing and it sends a positive signal. The negative signal is that the top 10 law firms by revenue are not part of this amicus brief, as I saw it. So, it really does require everyone, right, it requires everyone. No matter what you have to lose. These Big Law firms, you know, they might lose in the short term, right, they might lose some clients. The partners might have to make less money per year, lawyers might get laid off. A law firm might even go under. I mean, that's something that's possible. But the alternative to that is a world in which law firms only get to represent clients that Trump wants them to represent, and I don't think that's worth all the money in the world.

JR: Scott warned that such an autocratic consolidation of power has historically led to the downfalls of other democracies.

SC: I think the time for action is now. I think there is still hope and there are still opportunities to push back, and I think that our institutions are strong, and they can be preserved and protected, but we have to start at least acting like the ultimate objective is our destruction. We can hope that that's actually not true, and you know, imagine that these are all, you know, these are all efforts that have some underlying legitimate reason to them, have some underlying legitimate reason to them, but I think we need to start acting as if this autocratic legal playbook that we're seeing unfold is going in the same direction that it's on in other countries that have seen their democracies die, and we need to start acting as if that's the case and taking really serious action to stop it. There is still time to do that, but the time is closing.

JR: I reached out to the Trump White House for comment on how the hundreds of millions of dollars in pro bono legal services would be dispersed, and a Trump spokesperson replied, "President Trump is making Big Law great again. Instead of using their power and influence to make our country dangerous and less free, Big Law is working to use its access to the federal government for good. This is only possible because of the swift leadership of President Trump to hold Big Law accountable." Keep following our reporting on Courthouse News and Sidebar to stay informed and up to date on the latest Trump administration battles and all your other legal news needs.

AP: That's going to be it for this episode of Sidebar. A special thank you to our guests, UCLA Law School professor Scott Cummings and University of Pennsylvania law professor Claire Finkelstein, and thank you to all those pro bono firms out there helping the little guy. Sixty years ago, the science fiction writer Philip K. Dick wondered whether androids dream and what about. As AI moves from the realm of sci-fi into daily reality, helping companies and governments analyze data and make decisions, the questions of what mechanisms motivate AI and whether these programs can overcome human limitations remain unanswered. Join me and Hillel Aron next time as we stand on the edge of this uncertain future and explore the challenges of laying out the law for humans and computers alike. Don't forget to like and subscribe so you don't miss it.

(Outro music)