

ON SAME DAY WSJ CONFIRMS BORIS EPHSTEYN NEGOTIATING TRUMP'S LAW FIRM SETTLEMENTS, AMICUS RAISES BRIBERY CONCERNS

The other day, I did a post of all the entities that have filed amicus curiae briefs in support of Perkins Coie's fight against being blackballed by Trump.

I updated the post today with an amicus from six ethics law professors.

- 1. George M. Cohen, Brokaw Professor of Corporate Law at the University of Virginia School of Law.*
- 2. Susan P. Koniak, Professor of Law, Emerita, Boston University School of Law.*
- 3. Jonah E. Perlin, Associate Professor of Law, Legal Practice and Senior Fellow of the Center on Ethics and the Legal Profession at Georgetown University Law Center.*
- 4. Nancy B. Rapoport, UNLV Distinguished Professor*

*& Garman Turner Gordon
Professor of Law at
William S. Boyd School
of Law, University of
Nevada, Las Vegas.*

*5. Mitt Regan, McDevitt
Professor of
Jurisprudence and
Director of the Center
on Ethics and the Legal
Profession, Georgetown
University Law Center.*

*6. W. Bradley Wendel,
Edwin H. Woodruff
Professor of Law at
Cornell Law School.*

I'll come back to the substance of the brief in a bit.

But first, I wanted to point to this story, confirming something I had begun to suspect based on who was getting scoops about upcoming agreements with law firms: That Boris Ephsteyn is at the heart of negotiating Trump's kickback schemes with law firms.

The story has a rather curious emphasis (but not a surprising one from Trump whisperer Josh Dawsey).

In ¶13, it describes in passing that Epshteyn was indicted in the Arizona case charging Trump's attempt to steal the 2020 election (but doesn't mention that he was indicted for, among other things, fraud).

Trump's personal lawyer Boris Epshteyn, who has been indicted in Arizona on charges related to Trump's 2020 election loss, has emerged as the face of the Trump administration's campaign against large law firms that it views as hostile

to the president and his causes,

In ¶6, the story repeats dubious claims that some law firms had qualms about negotiating with someone who wasn't in government – but made no mention of qualms about negotiating with someone indicted for fraud.

Some of the law firms privately worried about negotiating with a lawyer who wasn't employed by the government and didn't have a government email address, some of the lawyers said. But they decided talking with Epshteyn was their best path to avoid a government investigation or executive order, the people said, after determining he had serious sway with Trump.

Then finally, in ¶¶20-21, the story returns to Ephsteyn's indictment and only then mentions that David Warrington tried to oust Ephsteyn for soliciting kickbacks – precisely the kinds of kickbacks at question here – from people seeking jobs in the new Administration, up to and including Scott Bessent (who did get the job) and Bill McGinley (who at first got the job of White House Counsel, then was demoted to DOGE counsel, then left altogether).

WSJ doesn't mention a lot of details about the alleged shakedown that were reported last November, such as the report that was done. It describes mostly that David Warrington warned Trump to cut ties with Ephsteyn.

Epshteyn is a polarizing figure among Trump advisers, and many question his tactics, according to campaign and administration officials. He was indicted in Arizona last year following an investigation into efforts to overturn Trump's 2020 election loss in the state, and has pleaded not guilty there. He previously pleaded guilty to disorderly conduct as part of a bar

incident. He was accused by Trump's campaign lawyer of shaking down potential administration nominees for consulting contracts. Epshteyn has denied the allegations.

In a November email viewed by The Wall Street Journal, David Warrington, who was then-campaign counsel and is now the White House counsel, urged Trump to cut ties with Epshteyn.

And that's it.

WSJ buried the Trump-friendly reports (including from John Solomon!) about this alleged shakedown, with no discussion of the import it would have for law firms – law firms!!! – to deal with someone indicted for felony fraud and alleged by Trump friendly insiders of unethical kickbacks.

How was that not the lead of the story? That Skadden (implicated in Paul Manafort's corruption as well as an attack on US DNS experts) and Kirkland & Ellis (which represented Alfa Bank on related issues) – among other leading US law firms – were dealing with a guy accused by *Trump's own insiders* of soliciting kickbacks in return for Administration jobs? Oh gosh, it's unseemly, the WSJ story suggests the lawyers said, but what choice do we have?!?!?!?

Which brings us back to the amicus from Legal Ethics professors. It raises several real concerns about conflicts and informed consent for law firm clients.

But it also raises a point I had been contemplating. How does this not raise concerns about bribery? How is exemption from these Executive Orders not an official act traded for millions in pro bono support?

Just as the President's decision to issue executive orders that sanction certain law firms is an official act, so too is the President's decision to

withhold issuing executive orders that would sanction other law firms. See *McDonnell v. United States*, 579 U.S. 550, 574 (2016) (holding that for purposes of construing § 201, an “official act” essentially has two components: (1) “the public official must make a decision or take an action” on (2) “something specific and focused that is ‘pending’ or ‘may by law be brought’” before a public official). A law firm’s commitment to provide valuable pro bono services to the President’s preferred causes, made “with intent to influence” the decision whether to issue or withhold an executive order targeting those law firms, would appear to meet the quid pro quo requirement of federal bribery law.

The amicus notes, more politely than I have, that Pam Bondi’s DOJ is never going to prosecute bribery of any sort (aside from certain DC officials). Then it notes that DOJ used *the threat of a bribery prosecution* to coerce Eric Adams.

In the present circumstances, the Department of Justice likely would conclude that it is not in the public interest to prosecute law firms that offer pro bono services in exchange for avoiding the consequences of an executive order, even if that offer arguably constitutes a violation of § 201.3 Regardless, the President’s exertion of pressure on law firms to engage in conduct that could violate federal anti-bribery law further illustrates the ethical quandaries these executive orders create. Allowing Executive Order 14,230 to take effect would put more pressure on law firms to reach agreements with the President to avoid a similar fate, and in doing so compromise themselves to potential

criminal liability.

3 Or perhaps not: the threat of criminal prosecution is a potent form of influence the federal government could exert to compel law firms to continue complying with the President's demands. Cf. *United States v. Adams*, No. 24-CR-556, 2025 WL 978572, at *36 (S.D.N.Y. Apr. 2, 2025) (stating that the government "extract[ing] a public official's cooperation with the administration's agenda in exchange for dropping a prosecution . . . would be 'clearly contrary to the public interest'" because it "violate[s] norms against using prosecutorial power for political ends" (quoting *United States v. Cowan*, 524 F.2d 504, 513 (5th Cir. 1975))).

A guy already accused by Trump insiders of improper influence peddling is the guy offering these kickback settlements to white shoe law firms.

And the most concern they can muster, at least for the benefit of the WSJ, is a concern that Ephsteyn doesn't have a government email address?