

GUEST ESSAY

A Simple Proposal for the Legal Profession to Regain Its Dignity

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Last year was not the proudest year for the American legal profession. The Trump administration took unconscionable and manifestly illegal measures against law firms that had represented clients and causes the administration disliked. In response, several large firms made deals to eliminate diversity efforts and agreed to provide nearly \$1 billion of free legal services to causes favored by the government. While a handful of firms fought back and won, most simply remained silent, no doubt wary of making themselves a target of political ire.

As federal judges who have retired after more than five combined decades on the bench, we have no such professional concerns. But we have seen firsthand how fragile the rule of law is, and how powerful the pressure from the federal government can be. We have joined together with dozens of retired federal district and appellate judges who were appointed by presidents of both parties to defend the legal profession. Today, we offer a set of principles of legal independence, a reaffirmation of values and obligations designed to guide and to strengthen law firms, bar associations, law schools, businesses and nonprofits.

In 1977, the Rev. Leon Sullivan wrote what came to be known as the Sullivan Principles, a set of ethical guidelines for corporations operating in apartheid-era South Africa. Many American corporations adopted these principles, including equal pay, to signal to their customers, competitors and employees their unwillingness to abide by the nation's brutal system of discrimination. These principles were an important recognition that private institutions are complicit if they do not resist unjust policies. Some companies and organizations went further, choosing to divest entirely. By the late 1990s, the apartheid government had been toppled, replaced by a functional democracy.

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A set of ethical principles adopted by all members of the American legal profession could similarly help protect our democracy.

The principles, which we have posted in full online, call on lawyers and their organizations to reinforce the most basic professional commitments. That starts with something that federal courts have already affirmed: Representing clients, donating to causes they support, and expressing beliefs regarding the value of equal opportunity are activities protected by the First Amendment. We have a right to pursue them free from government coercion or retaliation.

Beyond that, the principles declare that lawyers and their organizations have a duty to challenge government actions when clients' interests require it. We have a duty to help individuals or groups that can't afford counsel — and donating our services to wealthy and powerful clients does not count. We must work to promote public confidence in the integrity of the legal process through all our actions, including being both truthful and candid. And we must refuse demands that would require us to violate any of these obligations.

Judges rely on lawyers to present facts, identify legal questions and speak candidly about their clients' interests. In an environment in which sitting judges increasingly face threats to their independence and their safety, lawyers play an essential role in preserving a reliable forum for the peaceful settlement of disputes. Yet as many around the world now recognize, the administration's actions and the response of several prominent firms have placed that forum in danger.

For major American law firms, the issue is a practical one as well. Many top law students are reluctant to join firms that have failed to defend their independence. Experts in legal ethics and some bar associations have criticized the deals that firms struck with the government. The damage to those firms' reputations will far outlast this administration. Members of Congress have already begun investigations into the legality of the agreements. A letter signed by 16 members of Congress warned one of those firms that its "agreement may seriously hinder your firm's ability to zealously advocate for your clients in matters that conflict with the administration's priorities, and thus also pose a threat of disbarment for your attorneys." And several major corporations have either moved work away from firms that cut deals, or sent new work to firms that didn't.

For all but the most powerful firms, however, the cost of speaking out may simply be too high. That's why these principles should be adopted unanimously. We are stronger when we act together. We encourage all firms and attorneys to endorse these principles publicly, by proudly affixing their signatures to the principles online. Doing so will enable our profession to show law firms, lawyers, law students, clients, courts and all those watching that the United States legal profession remains a model for the world. That should be a common goal for all who hold dear the rule of law, and the democracy on which it is based.

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