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Keker Partners Highlight the Benefits and Challenges of Being Litigation-Only in the Current Political Climate

By Ross Todd

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As classes wrapped up at UC Berkeley School of Law this week, I made my way over to campus for a panel discussion featuring **Dean Erwin Chemerinsky** talking about the role that lawyers and law firms have in protecting the rule of law with two partners at **Keker, Van Nest & Peters**: the firm's managing partner, **Laurie Mims**, and partner **Ajay Krishnan**.

My colleagues at The Recorder ran a story I wrote, which focused on the dean's remarks encouraging students to consider their market power as potential future law firm associates. Chemerinsky said he had declined to bar law firms that have cut deals with the Trump administration from on-campus recruiting. But he told the Berkeley Law students that if they banded together with students from other top schools to decline to interview with firms that "capitulated" to the



Courtesy photos

Ajay Krishnan, left, and Laurie Carr Mims, right, of Keker, Van Nest & Peters

administration, it could send "a very important message."

This morning, I want to highlight more of what Mims and Krishnan had to say, because I think they were insightful about the benefits and challenges of being at a single-office, litigation-only firm in the current environment.

Keker has been one of the most vocal firms in speaking out against actions by

the Trump administration targeting law firms and lawyers. The firm issued a statement last month shortly after the administration issued a broad memorandum threatening sanctions against law firms seen as unfairly challenging the administration. "Our liberties depend on lawyers' willingness to represent unpopular people and causes, including in matters adverse to the federal government," the firm said. "Our profession owes every client zealous legal representation without fear of retribution, regardless of their political affiliation or ability to pay."

The following week, the firm's name partners—**John Keker**, **Bob Van Nest** and **Elliot Peters**—wrote an op-ed in The New York Times calling on those in the legal profession to stand behind firms, including **Perkins Coie**, bringing legal challenges to the administration's targeting actions. "If we stand together and fight, we will win," they wrote, encouraging other law firms to sign onto an amicus brief in Perkins Coie's lawsuit against the administration. Keker was among more than 500 law firms that signed the brief filed in the case earlier this month. The group of signatories did not include any of the top 20 firms in the Am Law 100 rankings, Chemerinsky pointed out Monday.

Although the firm was not specifically targeted by the administration, Mims said partners watched "in horror" and "in shock" as firms including **Covington & Burling**, **Perkins Coie** and **Paul, Weiss, Rifkind, Wharton & Garrison** were singled out. As a firm with

48 partners and one office, she said it was easy to see that everyone at Keker was on the same page. "The partnership was of one mind," she said. "This is horrible. It's an affront to the Constitution, separation powers, our democracy."

"While we were not specifically targeted, we thought now is the time we really need to stand up and let other lawyers know that we stand against this," she said.

Krishnan pointed out that the firm represented the city of Santa Clara during the first Trump administration, challenging policies withholding federal funding from sanctuary cities. The firm has also handled a more recent pro bono matter involving immigration raids in Bakersfield.

"We work with a lot of nonprofit organizations who are telling us that they are now having a very hard time finding law firms who are willing to take these types of cases," Krishnan said. "Law firms are very, very worried about getting on the wrong side of the administration." Krishnan said many nonprofits that partner with law firms have seen funding from the federal government slashed. "At the same time, the law firms that they partner with to bring these cases are being more and more skittish about actually taking on these obligations."

Wayne Stacy, the executive director of the **Berkeley Center For Law & Technology**, which hosted this week's event, asked Mims to address the difficult decision faced by firm

managers dealing with executive orders that barred lawyers and staff from federal facilities and called on federal agencies to cut contracts with clients of the targeted firms.

Mims acknowledged the challenge that leaders of larger firms, with thousands of employees relying on them for their livelihoods, faced. "It is a hard decision if you're making it based on your business," she said.

"But lawyers are put to hard choices, often on behalf of their clients, and we are supposed to uphold the Constitution," she said. Mims said, at some point, there has to be some consideration of the profession as a whole and the adversarial system, which underpins the judicial process. "Really, you can see from a business-only perspective why these firms felt that they had to make the choices they made," she said. "But if every law firm does that ... even if a large percentage of these firms do it, it really has this chilling effect and does make it really hard for unpopular causes—or unpopular at the moment, causes—to get the representation they need."

Chemerinsky noted that all four law firms that have gone to court have won so far in court. He surmised that if all firms chose to fight, they would have won in court and the administration would have changed course. "I think this would have gone away relatively quickly," he said.

Krishnan said that many of the settling law firms had "a fair amount of cushion in terms of profit at their partnership level" and that they could have withstood "a significant amount of business risk." He noted that during the early days of the pandemic, many law firms struggled. "When that happened in law firms, partners took a big hit," he said. "You can eat some of the hardship there. It's not as if everything will necessarily put you out of business."

"So much of this issue really is about having the courage to stand up," he said.

But Krishnan also acknowledged that law firm partners have another set of obligations to their clients. Krishnan said that he's had conversations with clients who are "very concerned" about the public stance Keker has taken. "We talk about the lawyer's obligation to zealous advocacy. There's also the lawyer's obligation to loyalty to your clients," Krishnan said.

"When a client is telling you: 'Hey, what are you doing going out there, taking these positions publicly? I have a case that involves the government. Why don't you shut up?' you know that it means something," Krishnan said.

Krishnan said that lawyers have to do what's needed to protect their client: "It sometimes means getting them other counsel because of their concerns [and] legitimate fear that something might happen."