

EVERY BUSINESS LAWYER MUST TAKE ACTION TO DEFEND DEMOCRACY AND THE RULE OF LAW

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January 16, 2021

Democracy and the rule of law in the U.S. has been assaulted. It could not have happened without the extensive involvement of business, witting or unwitting. Business lawyers are industry leaders and trusted advisors, with power to influence corporations, financing, and resources. We can take action and we must.

The invasion of Congress

On January 6, 2021, a mob of thousands of enraged supporters of the current President, Donald Trump, stormed Congress following his exhortation to stop Congress from certifying the votes of the electoral college, premised on baseless and judicially repudiated claims that the election was fraudulent and rigged. They overpowered a thin blue line of Capitol police, trashed the building and offices, chased, [dragged, and beat police officers](#), and were only minutes away from assaulting and kidnapping members of Congress and their staff. Five people died as a result of the mob violence. Had the mob broken through to the Congressional chambers in time, the death toll would likely have been higher, the violence more widespread, and the Presidential election could have been derailed. This was a coordinated assault on democracy, and the rule of law.

The response of businesses and law firms to the assault

In response, dozens of horrified corporations stopped contributing to members of Congress who supported decertification of the election, banks stopped extending loans to the Trump organization, media platforms such as Twitter and Facebook blocked Trump, industry associations such as the [National Association of Manufacturers](#) condemned the assault and dozens of law firms and thousands of individual lawyers publicly called for Trump's removal. .

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Seyfarth Shaw [announced on January 13](#) that it would no longer serve as counsel to the Trump Organization.

Airbnb has cancelled all reservations in Washington DC for the inauguration. The threat of violence is not over.

The corporate responsibility to respect human rights

These business and legal reactions are linked by the universally recognized corporate responsibility to respect human rights as articulated by the [2011 UN Guiding Principles on Business and Human Rights](#). They constitute the authoritative global [standard](#), and have been increasingly incorporated or reflected in hard and soft law, the practices and policies of leading companies, and the demands of ESG investors representing trillions of dollars of assets under management. The Guiding Principles expect that businesses will not cause, contribute to, or be directly linked to violations of internationally recognized human rights, and that they will use or build their leverage to influence those entities whom they do business with not to do so.

Involvement of business in the assault

The assault on democracy and the rule of law could not have been launched without extensive business involvement. This involvement includes: the use of media companies as platforms to spread lies and hate speech about the election; lobbying and political contributions to Congress persons who denied the election's validity and attempted to disrupt it even as the mob had broken through the doors of Congress; bank loans to Trump and his organization (from which he has never really separated), and the use of law firms to file dozens of baseless lawsuits in an effort to overturn the election.

The role of business lawyers

It is highly likely that external and internal legal counsel are deeply involved, as they should be, in the shaping of business responses to dissociate themselves from the attack on democracy. According to the Harvard Center for the Legal Profession, business lawyers play three overlapping [roles](#). They are technical experts who advise the company on what it can and cannot do under the law. Beyond that, they are wise counselors who help the company decide what is right in the company's sustainable interest. And they are also leaders who shape public policy. They have a fiduciary obligation to their business clients to advise them how they can avoid involvement in the attack on democracy that has just occurred, and may continue to occur, as events unfold.

What should businesses do next?

For companies, the responsibility to respect human rights means that businesses should promptly assess the risk that their business operations involve them, directly or indirectly, in the attack on democracy. This is particularly true for companies that provide platforms for

online dissemination of baseless attacks on the electoral process, or purchase advertising space on them. They should assess whether and how those platforms are being used to spread falsehoods about the election's validity and to encourage violence, and seek to limit such abuse. All companies that engage in lobbying activities with governments should examine whether and how they are supporting politicians who are spreading the same lies, and turn off the funding faucet.

What should business lawyers do next?

In the short term, lawyers who practice business law should begin to engage with their peers and clients, if they have not already, to raise greater awareness of the threat to democracy and the rule of law, and their role in defending against that threat. Lawyers are not the amoral adjuncts of their law firm or company, but have their own, independent moral agency, particularly when acting as wise counselors to their business clients or as leaders in shaping public policy.

To that end, here are concrete actions that business lawyers can take today, based on examples drawn from personal conversations with lawyers at law firms and corporations in the days following the invasion of Congress:

- 1. Make your [personal views and fears known](#)**, to one other person, or more publicly. If one person makes their views known, it makes it easier for the next one to speak or to take action, to believe they should trust their own fear, and to know they are not alone.
- 2. Engage in a thoughtful conversation** at an internal firm or company meeting, with a client or colleague, with your law school class email group, at a bar association or networking event, or with friends, family, neighbors, or others you know. Conversation clarifies our own thoughts, helps us understand and influence each other's views, surfaces potential allies, provides social support, and makes joint action possible.
- 3. Organize, draft, circulate, sign, or ask your firm, company, bar association, or contacts to sign a petition or letter to elected officials.** Organized by Crowell & Moring, 19 law firms, including DLA Piper, signed a letter to Vice President Pence [calling for the use of the 25th Amendment](#). Lawyers for Good Government sent [a similar letter](#) to Vice President Pence and House and Senate leaders, signed by 6,500 lawyers from every state. The New York City Bar Association has [also called](#) for the removal of President Trump.

It isn't necessary to wait for an invitation to sign. A new partner at a small firm saw a news article about the Crowell & Moring effort to recruit big firms to sign, contacted the Crowell partner, asked for her new partners' support, and got her firm on the list.

If there is no letter to sign, write one. If your firm or company signs a letter that you're proud of, let people know.

4. **Withdraw financial, professional, or other support.** There have been many examples in the last week of organizations withdrawing support. GCs and other senior in-house counsel and outside counsel are often well positioned to make or influence those decisions.
5. **Create space for others to take action.** A managing partner declared election day 2020 a firm holiday, adding that he would be volunteering at the polls. An in-house VP/senior counsel offered to take on more of her team's work in the fall so that they could do volunteer voter protection work.
6. **Commit to and take some small, concrete action this week. Challenge others to do that too.** Large problems are overwhelming, leading us to do nothing. Think of something very small that you aren't at all sure will do any good. Do that. And then do something else.

As wise counselors to their clients and as leaders in shaping public policy, business lawyers should not merely offer technical legal advice on what the law requires and prohibits when it comes to responding to an attack on democracy and the rule of law. They should acknowledge and support the need for corporations to respond responsibly, as many have already done. Given the continuing serious threat, they should make their views known now.