

THE AM LAW LITIGATION DAILY

Litigators of the Week: A Pair of Wins for Law Firms in Fights Against Trump Executive Orders

By Ross Todd

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Our Litigators of the Week—**Michael Attanasio** of **Cooley** and **Paul Clement** of **Clement & Murphy**—led separate teams representing **Jenner & Block** and **Wilmer Cutler Pickering Hale and Dorr**, respectively, in constitutional challenges to executive orders targeting the law firms.

In a 51-page opinion issued Friday, U.S. District Judge John Bates in Washington, D.C., wrote that the executive order targeting Jenner was an “unconstitutional abuse of power against Jenner’s lawyers, their clients, and the legal system” and granted summary judgment to the firm.

Then, on Tuesday, U.S. District Judge Richard Leon granted summary judgment to Wilmer in its case, finding that the executive order targeting the firm violated the First, Fifth and Sixth Amendments. “The Order shouts through a bullhorn: If you take on causes disfavored by President Trump, you will be punished!” the judge wrote.

The law firm wins come in the wake of a summary judgment win for **Perkins Coie** earlier this month in an executive order challenge where the firm was represented by a team at **Williams & Connolly**. A summary judgment motion challenging the executive order targeting **Susman**



Courtesy photos

Paul Clement of **Clement & Murphy**, left, and **Michael Attanasio** of **Cooley**, right.

Godfrey remained pending as of the Litigator of the Week deadline. **Susman** is represented by counsel at **Munger, Tolles & Olson**.

Attanasio led the Cooley team representing Jenner along with colleagues **David Mills**, **Kristine Forderer** and **John Bostic**. Clement led the team representing WilmerHale alongside colleague **Erin Murphy**.

Lit Daily: How would you characterize what was at stake here?

Michael Attanasio: As many others have observed, the executive orders were intended not only to punish the targeted firms, but also to chill advocacy and free speech more broadly.

The message was clear—get on board with the administration’s favored causes and positions or face the consequences. This is antithetical to the Constitution and the rule of law, so the stakes were as high as they could be.

Paul Clement: While Erin and I are used to working on matters with high stakes for the client, the stakes here for the whole legal profession could not have been higher. As we made clear in court and in our filings, the principle at the heart of these cases—that lawyers have to be free to represent controversial or unpopular clients without fear of retribution—traces back at least to John Adams and is critical to our adversarial system and an independent judiciary.

How did you and your firms get brought into these matters?

Attanasio: Several of us, including Cooley partner **Kathleen Hartnett**, enjoy relationships with Jenner partners. We have tremendous respect for the firm generally, which has only grown throughout this litigation. When we got the call, we immediately mobilized our team.

Clement: Our involvement started with a phone call from **Seth Waxman**, co-chair of WilmerHale’s appellate and Supreme Court litigation practice, a few weeks before the executive order was issued. Erin and I quickly got to work. Thanks to the advance planning by WilmerHale and the strong working relationship we had with them as our client, we were able to file a lawsuit within 24 hours of the order.

Did you worry at all that taking on this case might put your firm at risk in some way?

Attanasio: I think it’s fair to say that when the executive order against Jenner landed, the legal industry was in turmoil. But we never wavered in our commitment to our client, come what may. That’s what lawyers do. Our CEO, **Rachel Proffitt**, and firm leadership deserve enormous credit for supporting our representation of Jenner despite the fraught environment in late March.

Clement: Erin and I founded our boutique out of a conviction that lawyers need to be free to take on clients of all stripes. Our clients understand and appreciate that core value of our firm, and they have been supportive of it both before and after we took on this representation.

Who all was on your teams and how did you divide the work?

Attanasio: The team is an extraordinary collection of talent, including my partners David Mills, Kristine Forderer, John Bostic and Kathleen Hartnett. We divided and conquered as one would expect given the tight timelines, and we had an incredibly devoted team of special counsel and associates led by **Carlton Forbes** and **Patrick Hayden**. It’s no surprise given the stakes, but I’ve never seen a team more committed to a case.

Clement: In addition to Erin and myself, our core team consisted of our partner **Matthew Rowen** and our associate **Joe DeMott**. Joe, in particular, endured many late nights preparing filings on very tight deadlines. WilmerHale is obviously no ordinary client, so they were able to provide us with invaluable resources. Our litigators were supported by an amazing paralegal team headed up by **Ashley Britton**, with substantial assistance from **Ethan Yan**.

Was there any coordination between the law firms in these cases? How closely were you watching what was going on in the other executive order cases?

Attanasio: We watched the other cases very closely and kept in touch with some of our counterparts for moral support and, ultimately, to convey congratulations.

Clement: The dynamic of four similar challenges proceeding before four different judges in the same district was quite unique. Though we did not coordinate directly, we followed developments in the other cases closely, and we ensured that there were no inconsistencies the government could exploit, even as we emphasized different points.

With these orders now in hand, are there any moments that stand out from your oral arguments in these cases?

Attanasio: At the conclusion of the TRO hearing, Judge Bates commented that he was troubled by the fact that the executive orders took particular aim at pro bono work for “the most vulnerable individuals and social groups.” I’m speaking for myself and not the judge, but that resonated with me because it underscored that in some ways what we were opposing was just old-fashioned bullying cloaked in an executive order.

Clement: After we secured a TRO limited to particular sections of the executive order, a principal focus of the oral argument was to get the court to view the order as a whole and enjoin it in full, including the provisions suspending security clearances of WilmerHale attorneys. It was very gratifying to see the permanent injunction go beyond the scope of the TRO and enjoin the order in toto.

What are the next steps? Do you anticipate the DOJ will appeal the court’s decision? If so, how are you preparing for the appeals process?

Attanasio: I won’t speak for DOJ, but of course we will be ready for an appeal. The record is not complicated, particularly since the unconstitutional dimensions of the executive orders are plainly stated on their face.

Clement: This decision vindicates the rights enshrined in our constitution protecting the First Amendment, our adversarial system of justice, and the rule of law. The final order in our cases anticipates a process for ensuring full compliance with its terms. As for the possibility of an appeal, the ball is in the government’s court.

Besides the few big firms that signed the amicus brief, how much support did you see

from the rest of Big Law? Was it significant or too little in your eyes?

Attanasio: We received sustained and powerful support from all corners of the legal community, including many voices within Big Law.

Clement: We and our client very much appreciated the support of the firms who joined amicus briefs. It would have been great to see more firms join, but this all made us at Clement & Murphy admire WilmerHale and the other firms that fought these orders.

Do you think the firms that fought these cases or served as their counsel will get different treatment from talent and clients in the future than the firms that made deals with the president?

Attanasio: I believe the stance these firms took will continue to be seen as a huge positive by clients, lateral recruits and law students. Jenner’s statement said it best—“Clients deserve fearless advocates.” That’s what we all proved ourselves to be.

Clement: The experience Erin and I have had in forming our boutique is that clients want lawyers who are willing to stand by their clients and their principles—no matter the circumstances and no matter the subject matter at hand. We have found that the talent we most want to recruit values those same things.

What will you remember most about achieving these results for your clients?

Attanasio: There are many things, but top of the list is successfully defending a great law firm based on constitutional principles and alongside a group of Cooley litigators for whom I have limitless respect and affection.

Clement: The packed courtroom. I have never seen so many lawyers in the spectator section. That really underscored the stakes in this case for the client, and the whole legal profession.