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## When Lawyers Abandon Ship

By [Joel Cohen](#)

**Lawyers are differently obligated to the bar and their clients in ways and by regimens that may seem counterintuitive to the rest of the world. The willingness or even enthusiasm for lawyers to go out of their way to protect their backsides when conduct by the client has gone awry should never be their default position.**

**W**e are watching—maybe enjoying—rats leave a sinking ship. That’s what rats do. When the food supply or whatever they’re there for is gone, they simply abandon ship in the dead of night. Chris Christie. Mick Mulvaney. Lindsey Graham. Stephanie Grisham. Mitch McConnell. Mike Pence (?). William Barr. Betsy DeVos. Elaine Chao. There’ll be more, once they’ve placed their licked finger to the wind to determine which way it’s now blowing. They who have enabled Trump for so long have now decided—transparently, in self-interest—to go. And, poignantly, some have chosen, and will choose, to rat him out in self-defense.

There’s no “ethical” duty for individuals to hang in to the bitter end, even if there’s a “moral” duty, as some might perceive it, to stay until January 20th simply as a matter of personal loyalty. Indeed, there’s nothing different about Trump’s conduct on January 6th from what he has done all along. Except that the consequential conduct on Capitol Hill is greater, given the violence and death in the wake of his explosive remarks. After all, he’s made this incendiary call to action for four years now. So, make no mistake, these backstabbers (if I may use that word in this context) are only abandoning him now because his “pouring-gas-on-fire” remarks might otherwise reflect on them.

But what about Trump’s lawyers? Maybe they were earlier blinded by believing in the legitimacy of his election fraud claims. Maybe they were political allies and believed in the America he purportedly stood for. Maybe they were motivated, as are many lawyers, by simply having the President of the United States as a marquis client, no matter how repulsive some of his views. Maybe it was simply about money (assuming Trump, as a client, actually pays his bills). All lawyers are motivated by something, although not always something good.

I’ve written about this before on these very [pages](#). Lawyers have in fact had the legitimate need to resign a representation of Trump (or others). Sometimes because of the “Cancel Culture,” when the law firm’s attorneys or client base have threatened to leave unless the firm withdrew from their bringing meritless Trump litigations intended to “Stop The Steal.”

Of course, withdrawing for such reasons is not typically ideal. These lawyers (and presumably their law firms) had undertaken the representation in the first place after presumably vetting the merits of what they were called upon to do. But, okay, stuff happens. Billy Joel said it best in “Goodnight Saigon”: “And who was wrong? And who was right? It didn’t matter in the thick of the fight.” Lawyers sometimes do, indeed, get retained before they fully appreciate the war in which they enlisted.

But when they seek to withdraw, how do they do it? Do they say they were appalled by the client's conduct, or because they determined, at the end of the day, that the case was meritless? Do they tell the world in a "noisy withdrawal" that the client has gone overboard and used them, or sought to use them, for a criminal purpose? No. Lawyers with savvy—perhaps seichel, if I may—and experience know exactly what to say: "Irreconcilable Differences." Just like Hollywood actors who choose to end their marriages well in the public eye—even if they're at one another's throats as one of them packs their bags and leaves.

And so, one wonders why a lawyer in Pennsylvania, Jerome Marcus (of Marcus and Marcus), representing "Donald J. Trump For President, Inc." against the Philadelphia Board of Elections (over whether observers had been adequately allowed to observe the vote count), felt the need to say the [following](#) in a one sentence motion to withdraw, literally the day after the coup on Capitol Hill: he "respectfully request[ed] leave to withdraw as counsel for Plaintiff in this action pursuant to Pennsylvania Rule of Professional Conduct 1.16(b)(3) and (4) inasmuch as the client has used the lawyer's services to perpetrate a crime and the client insists upon taking action that the lawyer considers repugnant and with which the lawyer has a fundamental disagreement."

I work with the assumption that Marcus was speaking his truth: Trump was perpetrating a crime. As Marcus later told [CNN](#), Trump had purportedly used Marcus's "factually based" court filing and other court cases to incite the Capitol Hill violence.

But why did Marcus need to say all that in his motion to withdraw, or subsequently to the press? Wouldn't "fundamental disagreement" (or "irreconcilable differences") have been sufficient—like most astute lawyers would have done? Couldn't he have asked for an in camera session with the judge if the judge called him on a generic withdrawal motion, asking Marcus to be more specific? Except, that is, if Marcus's purpose was, pardon me, to cover his own ass, literally on the very day that followed the conflagration caused by "the Plaintiff," or its principal. One doubts that Marcus even talked to his client about his intentions before publicly filing his "incendiary" withdrawal motion.

When I've taught legal ethics, I've told my class on Day One to leave the ethical mores they've learned from their priest or rabbi or Oprah at the door. Lawyers are differently obligated to the bar and their clients in ways and by regimens that may seem counterintuitive to the rest of the world. The willingness or even enthusiasm for lawyers to go out of their way to protect their backsides when conduct by the client has gone awry should never be their default position.

I'm as unflinching a Never Trumper as there is. I'm not bothered in the least that attorney Marcus victimized Trump this way after what Trump so cynically did leading up to and on January 6th. Rather, I'm bothered that *any* lawyer would do this to *any* client. He should have left such a course of conduct to Trump's enablers—rats who abandoned ship, or ran for other hills when the going on *Capitol Hill* got rough.

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