

THE AMERICAN LAWYER

An **ALM** Publication

americanlawyer.com

APRIL 2019



KAREN DUNN, LEFT,
AND JAMIE GORELICK
ARE READY TO HANDLE
CLIENTS' MAJOR CRISES.

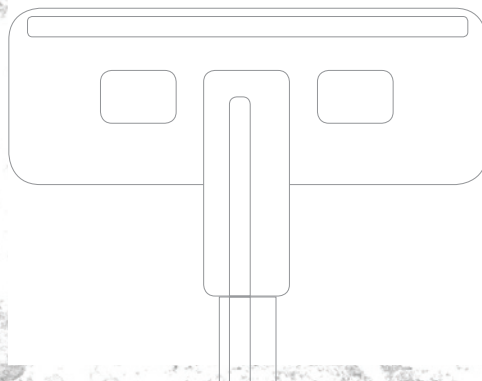
MEET THE CLEANERS

When clients have a mess on their hands, crisis management lawyers are there to do the dirty work.

By Dan Packel

WHEN LITIGATOR KAREN DUNN started to think about joining Boies Schiller Flexner in 2013, the rising star ran into a minor sticking point with firm co-founder Jonathan Schiller. After a career that involved stops as communications director for Sen. Hillary Clinton, associate counsel to President Barack Obama and assistant U.S. attorney in the Eastern District of Virginia, she wanted to do two things in private practice: try cases and put out fires.

When Dunn told other firms that she wanted to specialize in crisis management, many had no



idea what she meant. Even after she explained that she wanted to handle the types of multifaceted legal problems that put companies and individuals squarely in the public eye, some still struggled to understand.

Not so at Boies Schiller, where she met a welcome response from Schiller: "Of course, this is what we've been doing for years." But when Dunn suggested that the firm label the work crisis management and list it on its website, Schiller was skeptical.

"People don't like to think that they're in crisis," he told Dunn.

Ultimately, Schiller conceded. Clearly, Dunn's lengthy resume helped her bargaining position. And, in the years since, his perspective has changed, she reports. Now, clients are telling him, "I'm so glad you have crisis management, because we have a crisis that needs to be solved," she says.

Dunn has another shorthand label for the work she does—work that, in recent years, has included defending Uber against a lawsuit over its driverless car technology while it faced multiple federal investigations and intense media spotlight, and advising the owner of Washington, D.C.'s Comet Ping Pong on how to talk to the press the night a North Carolina man walked into the restaurant and fired off three rounds with a semi-automatic rifle in response to a debunked internet conspiracy theory.

"I sometimes think of this as the 'big mess' practice," Dunn says. As in, "this is just going to be a big mess."

"She stole that phrase from me!" interjects Dunn's close friend Jamie

Gorelick, seated across from her at a window-lit conference table at Boies Schiller's D.C. offices. The pair can't remember the first time they met, but Gorelick recalls hearing from her own longtime friend and protégé Merrick Garland about Dunn's promise as his clerk on the Court of Appeals for the D.C. Circuit.

"People say to me, 'What is your practice?'" continues Gorelick, the co-chair of the crisis management and strategic response group at Wilmer Cutler Pickering Hale and Dorr and the former deputy U.S. attorney general in the Clinton administration. "I say, 'Well, if I could put 'big messes' on my business card, I would.'"

NO LAW FIRM IS PRINTING OUT "BIG mess" business cards, but more and more are adding the concept to their roster. To do so, they're zeroing in on attorneys like Gorelick and Dunn who have gained invaluable experience in the upper echelons of the federal government to complement their skills as litigators.

When Debevoise & Plimpton announced in early 2017 that Mary Jo White was returning to the firm after chairing the U.S. Securities and Exchange Commission, the firm said crisis management would be part of her brief. In January, Willkie Farr & Gallagher hired Dunn's former Boies Schiller colleague Michael Gottlieb, who also spent time in the Obama White House counsel's office, to helm its new crisis management practice. Quinn Emanuel Urquhart & Sullivan launched its own crisis management practice in September 2017

with Crystal Nix-Hines, a former litigator at the firm who had left to serve as U.S. ambassador to the United Nations Educational, Scientific and Cultural Organization. And earlier that year, Morrison & Foerster brought on John Carlin, previously the top official for national security at the U.S. Department of Justice, for its new global risk and crisis management practice.

Credit the 24-hour news cycle and the ubiquity of social media for pushing firms in a new direction. Dunn says her work on behalf of Uber is a prime example of the change.

"I'm not sure that 10 or 20 years ago a case like that would have had, on an almost daily basis, a new difficulty to deal with," she says. "Maybe on a weekly basis, or maybe it would have evolved over time. This felt much more frequent and much more acute."

Gorelick says the foundation for her work was laid by a lawyer who was born in 1917 and served as White House counsel for both Jimmy Carter and Bill Clinton: Lloyd Cutler, a co-founder of the predecessor to Wilmer in 1962. When Gorelick joined the firm, in 2003, after her time at the DOJ and later Fannie Mae, she wanted to follow Cutler's lead in handling existential crises for businesses and individuals.

"It didn't have the name of crisis management, but if you look at what he did and a good part of what the firm did, it was handling these issues that traverse the branches of government," she says.

Gorelick inherited Cutler's practice, gave it a name and has led it ever since.

Her client list includes companies with sizable legal teams that have nonetheless been set up by the political climate for their “time in the barrel,” as she calls it. That’s recently involved preparing leaders of tech giants Google and Facebook for congressional investigations. She also handled BP’s legal response to the 2010 Deepwater Horizon oil spill and, more recently, the response from Columbia Gas of Massachusetts, whose gas distribution system suffered an overpressurization event, prompting a series of explosions across a 45-mile stretch of pipeline.

In addition to addressing the resulting physical injuries, which included one death, and the economic damage dealt to 30,000 residents displaced from their homes, Columbia Gas also had to respond to concerned local, state and federal politicians making inquiries on behalf of their constituents. The utility faced two federal regulators and a state regulator. Congress held a field hearing, and the U.S. Attorney’s Office made an inquiry. And every step was closely covered by the press.

“That’s a lot to say grace over, particularly for a company which is very well run but has no standing army,” Gorelick says. “And that’s where we try to be of help.”

Plenty of other times, the work stays under wraps due to the sensitivity of a matter. Asked about the first time they worked together on a shared project, both attorneys laughed.

“It’s very interesting,” Gorelick says, “but it’s not something we can discuss.”

WHILE BOTH GORELICK AND DUNN have ties to the two most recent Democratic administrations, the field of crisis management includes accomplished names from both parties. Gorelick relies on the judgment of her practice vice chair, Reginald Brown, a special assistant and associate White House counsel to George W. Bush, to anticipate how figures on the other side of the aisle will respond.

And Gibson, Dunn & Crutcher’s Ted Olson, who served as solicitor general for Bush, identifies his work in Tallahassee, Florida, facing off against David Boies in the 2000 presidential election recount, as one of the earliest crises he handled. Prior to his time in the Bush administration, Olson handled a few other client matters that required an immediate, multidisciplinary response, including a petroleum industry disaster. They helped plant the seed for launching a crisis management practice

at Gibson Dunn after he returned in 2004.

“I knew I was an appellate lawyer, but I also thought we, as a major firm, needed to be practicing law in the 21st century,” he says.

That meant harnessing experts across the firm’s practices to spring into action in the event of emergencies and to prepare clients for contingencies.

Reed Brodsky, the former Southern District of New York prosecutor who now co-chairs Gibson Dunn’s crisis management practice, points to the importance of companies having a game plan: which employees are involved, from managers to the general counsel’s office; who coordinates; which outside advisers and vendors are to be brought in.

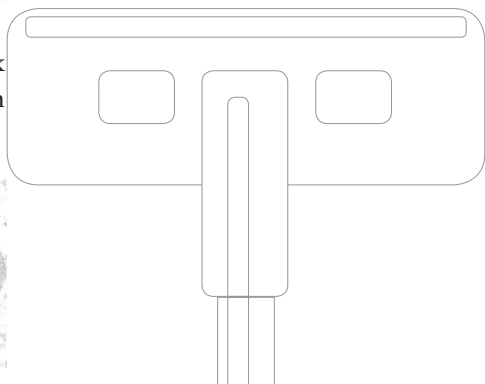
“If you have that lined up, it makes it a lot easier than if the company is scrambling,” he says. “That will lead to mistakes and problems.”

Regardless of how a firm prepares, the job requires attorneys to adapt to rapidly changing conditions. And their pre-existing political commitments, whether they spent time in a Republican or Democratic administration, are going to be irrelevant in that moment.

“It’s triage,” Olson says, “and you have to have the right doctor standing by with the right instruments and the right procedures and the right experience to deal with someone who’s bleeding to death, and that’s your client.”

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GORELICK AND DUNN INSIST THAT crisis management, as they conceive it, can’t be done outside of Washington.



"You have to have the underlying regulatory expertise. You have to have deep familiarity with Capitol Hill. You have to understand the news cycle, for issues that are in public policy. And you have to be able to surge—you really do need a substantial number of people who have had that sort of government experience," Gorelick says. "If you don't have those things, you're unlikely to be able to do this. You could be a fabulous litigator, and not be able to do this. You could be a fabulous regulatory lawyer and not be able to do this."

That hasn't stopped traditional Wall Street firms, including Debevoise, Willkie, Sullivan & Cromwell and Simpson Thacher & Bartlett, from advertising their crisis capabilities. Some of this work clearly corresponds with the increased demand from companies and institutions touched by the #MeToo movement. And it covers terrain that also falls under the ambit of internal investigations. Witness how the NFL, Ohio State University and CBS all turned to White and Debevoise to lead investigations after they were blemished in the public eye: the NFL, by inappropriate sexual and racial comments by a former franchise owner; OSU, by the head football coach's handling of domestic violence accusations against a top assistant; and CBS, by the sexual misconduct allegations against former CEO Les Moonves.

No company or institution wants to be in any of those predicaments. But an internal investigation alone doesn't necessarily make for a full-scale, hair-on-fire *big mess*.

Dunn has had time to think about what turns a matter into a crisis that needs to be managed.

"At the heart of it, there is generally some sort of big legal problem, and that can be litigation, but it doesn't have to be, and the outgrowth can be something that is government-facing, like a governmental inquiry that requires high-level executives at a company to have to go before Congress or regulators," she says. "Another facet could be media scrutiny or public outcry of some variety."

And time is of the essence, Gorelick adds.

"That time intensity can be driven by a congressional hearing, a subpoena, or by a story that pops up in a major news outlet," she says, "but whatever it is, it's something that really puts pressure on the company or the individual not to handle it as business as usual."

Olson emphasizes that synergies among regulatory agencies, the press and the plaintiffs bar mean that more and more of these matters have the ability to snowball.

"I pick up the Wall Street Jour-

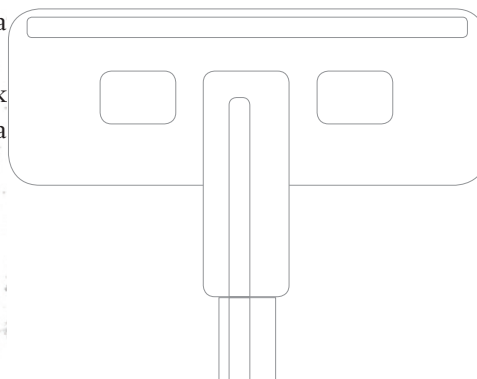
"It's triage, and you have to have the right doctor standing by with the right instruments and the right procedures," Olson says.

nal or The New York Times every day and see one of these problems," he says. And yet Gibson Dunn, where he has sat on the executive committee for years, has come to a different conclusion on the question of geography. While Olson remains a Beltway stalwart, the leadership of the firm's crisis practice is now in the hands of Brodsky in New York and another former federal prosecutor, Debra Wong Yang in Los Angeles.

NEITHER BOIES SCHILLER, WILMER nor Gibson Dunn can take credit for being the first large firm to pin the label "crisis management" on a practice. That likely goes to Patton Boggs, the D.C. firm that had already helped to invent the modern lobbying practice. In the early 2000s, after former White House special counsel Lanny Davis returned to the firm where he spent the first two decades of his career, his work gradually evolved into guiding business leaders in how to respond publicly to emergencies. Then, in 2003, Davis and several colleagues moved the practice to Orrick Herrington & Sutcliffe under the label "crisis communications."

Davis is now at his own firm, alongside two partners who worked with him at those earlier Big Law stops. Meanwhile, Orrick and Squire Patton Boggs have both wiped the slate clean: neither firm now highlights its crisis management capabilities, at least not under the banner of a standalone practice.

That might owe to an emerging distinction between the work Davis pioneered and the multiple hats worn by attorneys like Gore-



lick, Dunn and Olson, who continue to spend ample time either in the courtroom, directing businesses' and individuals' responses to regulators, or both. For large firms, it makes sense to go beyond communications and to build—or attempt to build—a crisis practice that takes advantage of the expertise of other attorneys already on the roster.

Gorelick, for example, leans on colleagues in Wilmer's financial institutions regulatory practice, its energy and environmental practice, its tech practice, and its privacy practice. It only works if there's an integrated team.

"We're preparing a telecom company executive right now for a hearing," she says. "Knowing and understanding the telecom, privacy, antitrust and national security underlying issues makes you more efficient and also much more effective at figuring out what the questions are and what the answers should be."

But that shouldn't undersell the importance of media savvy. Experience dealing with the press is critical, not just for advising clients on how to respond to reporters, but also for suggesting how they should speak to regulators, Congress and, yes, juries.

"The communications skills that I got even before I knew I wanted to become a lawyer are so embedded that it helps me communicate to people, whether it's on a jury or whether I'm preparing an executive to testify for anybody watching on a TV at home," says Dunn, who spoke to the media on a near-constant basis when handling communications for Clinton before starting law school.

Part of that work involves disabusing clients of their notions of what will fly.

"You just have to be in a position to say, 'I don't think that works and this is why. Here's what will work and why,'" says Gorelick, who emphasizes that as deputy attorney general she spent half of her time on substantive legal questions and the other half sorting out their intergovernmental and public affairs ramifications. "Unless you've done that ... you can't really persuade a client to do the thing that will be most helpful to them."

Olson comes to a similar conclusion.

"If you have to tell a company that their CEO is not very good on television and should stay away from it," he says, "you have to have someone who's knowledgeable and mature and respected enough that they will listen to you. People who are at the top of major companies have substantial egos—otherwise, they wouldn't get there. They have an instinct to react the way their judgment tells them to react."

IF SOCIAL MEDIA HAS RENDERED AN already fragmented media landscape even more complex, amplifying the intensity of a crisis through its infinite stream of news, it's also provided clients with a new tool.

In 2018, Dunn represented The Wing, a feminist co-working space, in response to an anti-discrimination investigation from the New York City Commission on Human Rights.

The traditional side of the response involved interviews with the commission. But after the press reported on the investigation, the company was able to quickly orchestrate a social media campaign on its own behalf.

"We were able to mobilize the most incredible outpouring of membership support I have ever seen over social media, which had an enormous effect on the public perception of the wisdom of such an inquiry—whether or not that's where the city ought to be putting its human rights resources at that time," Dunn says.

Gorelick often likens the position of clients in crisis to landing a plane.

"You're in flight, you have a decision to make," she says. "You generally do not have time to look up the manual, consult broadly, turn the plane around, do a bunch of loops. You have to land the plane."

In that analogy, social media is just another instrument in the cockpit. But regardless of which levers the crisis manager elects to pull, time is of the essence, and there's no room for worrying about the prospect of being second-guessed.

"For many lawyers, that's a very uncomfortable place," Gorelick says.

Dunn agrees with the analogy, with an addition: "You have to remain calm."

"You can't land the plane if you are not calm!" Gorelick inserts.

"In this circumstance, are we air traffic control?" Dunn asks, putting a spotlight on a crucial ambiguity in her friend's initial formulation: Whose hands are on the controls? The lawyer or the client?

"No," Gorelick answers. "You're the pilot!"

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