

THE EMERGING **CRISIS** **MANAGEMENT** PRACTICE

By Xenia Kobylarz

Political insiders and powerbrokers showcase the appeal of a law practice—at firms big and small—that combines traditional legal skills with the inexact science of managing public relations during crises.



IN THE AGE OF DIGITAL MEDIA,

when any tweet or blog post can go viral and practically everyone who has Internet access can claim journalist credentials, most lawyers would agree that dealing with the media can no longer be handled with a simple “No comment.” For many clients and their lawyers, winning in the court of public opinion is as important as winning in court.

Enter Michael Chertoff and Lanny Davis, two lawyers who know more about the law and its intersection with the media than most legal practitioners, based on their deep legal and political experience. Both are longtime D.C. insiders and powerbrokers who have held high-profile positions: Davis was a special counsel and spokesperson for the Clinton administration, and Chertoff was Secretary of the Department of Homeland Security during George W. Bush’s administration. And both are two of the most respected lawyers today in the field of crisis management.

Chertoff operates from the broader base of Covington & Burling, while Davis runs his own high-end niche solo practice at Lanny J. Davis & Associates. Both platforms show the potential of turning the inexact science of crisis management into a profitable and increasingly visible legal practice today — and one that is increasingly sought-after by the most sophisticated clients. In the Big Law world, Covington’s team is joined by other prominent firms that have built practices with star lawyers with a wealth of high-end government service. Gibson Dunn & Crutcher’s team, for example, was the brainchild of partner Ted Olson, the former U.S. Solicitor General.

The practice has gained prominence in recent years as clients have realized the importance of having lawyers at the core of a PR strategy in a fast-moving media environment. Lawyers have greater access to client information than non-lawyer media professionals, and they will be more adept at crafting messages that do not expose clients to legal liabilities.

“Being able to give legal advice is key,” Davis said. “If you are actually a lawyer and part of a litigation team, you qualify for attorney-client privilege. I can’t give what you call ‘media savvy’ advice unless I know all the facts, even the facts that other lawyers in the team don’t want to tell me.”

Clients involved in high-stakes litigation or government investigations are now likely to first turn to their lawyers for advice on talking to the media, as well as other audiences whose opinion they value, such as shareholders, lawmakers and regulators, according to Chertoff, a co-founder of Covington & Burling’s strategic risk and crisis management practice.

He said Covington, which already had a thriving legislative and regulatory practice that involves similar strategic legal counseling, formally created a practice group in January 2011 because clients were asking for the services.

“We found that in advising clients, we were increasingly giving broader advice that required coordinating legal issues, concerns affecting stakeholders, general public reputation, potential congressional interests and regulatory matters,” Chertoff explained.

But building a crisis management practice is not as easy as simply creating one and marketing it to clients. “Every lawyer is not a crisis manager,” Chertoff said. “In our case, we had that rare, broad combination of senior lawyers with strong experience in public policy plus hands-on experience in actually managing crises at a very high level.”

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—ANDREW TULUMELLO

Among the media-savvy at Covington are Chertoff’s fellow partners Stuart Eizenstat, former adviser to Jimmy Carter and ambassador to the European Union; former DC Attorney General Peter Nickles; former NFL Commissioner Paul Tagliabue; and Thomas Williamson, former U.S. Solicitor of Labor.

Chertoff’s own extensive credentials include being co-author of the USA PATRIOT Act, serving as a judge on the United States Court of Appeals for the Third Circuit, as a federal prosecutor, and as Assistant U.S. Attorney General.

“The special sauce for advising clients on crisis management is having advisers who have real experience managing a crisis,” Chertoff said. “When we go to clients and give advice, it is helpful to be able to say that ‘I’ve sat in your seat and have been through the same thing.’”

Covington’s crisis management team, which now has 50 lawyers firmwide, works with clients on everything from litigation media strategy to prepping C-Level executives for shareholder’s meetings or Congressional testimony. Chertoff did not name clients but said that the firm is hired not just for crisis but also pre-crisis management.

“The speed and intensity of a crisis has increased tremendously over the last five years because of the technology and it is wise to do some pre-crisis planning,” Chertoff said.

At Gibson Dunn, Olson also leads a celebrity-studded group of veteran lawyers such as former U.S. Attorney Debra Wong Yang, former New York City deputy mayor and litigator Randy Mastro, appellate heavyweight Theodore J. Boutrous, Jr. and former federal prosecutor Orin Snyder, one of the nation’s top trial attorneys.

“We were almost certainly the first among law firms to establish a crisis management practice,” said Andrew Tulumello, partner and co-chair of the firm’s crisis management group. “When Ted Olson came back from government service in 2004, he recognized immediately that the legal landscape had fundamentally changed.”

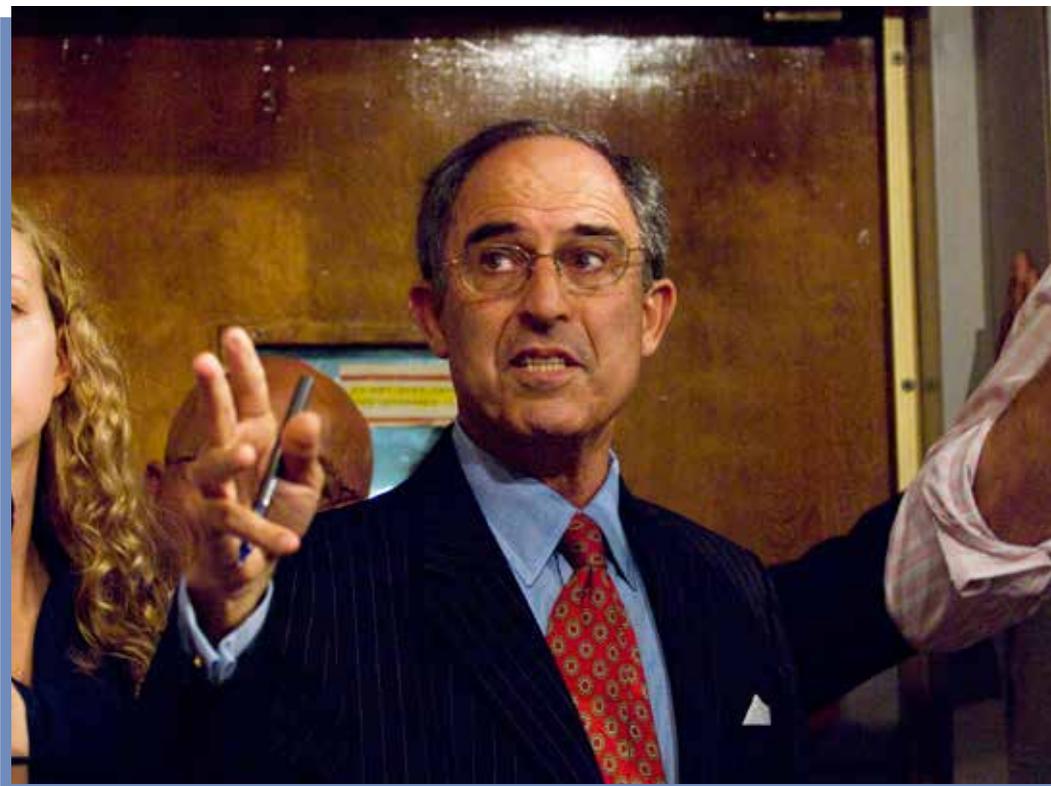
He added, “Some of the largest companies were facing multiple lawsuits, government investigations and congressional inquiries, and Ted saw that companies have significant need for a law firm that could deploy a team to handle and manage the crises that many companies face from all fronts.”

Over the years, Gibson Dunn’s team has advised Chevron, Dole Foods, Facebook and Goldman Sachs on crisis management involving some of the companies’ most high-profile litigation and government investigations. Most of the team’s

work is highly confidential and happens behind the scene.

DAMAGE CONTROL:
Lanny Davis during his representation of Rep. Charles Rangel in 2008.

“Lawsuits are not solely legal problems,” Tulumello said. “Often they are problems of perception, and as lawyers we need to help shape the



environment in which our defense of our clients is viewed. Often that requires being more affirmative in the media than some lawyers typically are comfortable doing.”

Davis, whose client list includes major corporations and celebrities embroiled in some of the most messy and high-profile scandals in the recent past, has extensive war tales to share, numerous enough to be the subject of a book. His third and latest book, which chronicles his own experience helping clients such as Martha Stewart, Trent Lott, Whole Foods and Penn State University, was published in March.

“Crisis Tales: Five Rules for Coping With Crises in Business, Politics and Life,” has a chapter detailing how he helped advise Penn State’s board of trustees after they decided to fire Joe Paterno over the Jerry Sandusky scandal. The decision caused a “humongous uproar” within the Penn State community, according to Davis.

“Penn State was being sued by the children so the lawyers didn’t dare to talk to the media or to the PR firm they hired. The PR firm didn’t have any facts to share with the media,” Davis recalled. “So when I was brought on, the first thing I did was meet with the attorneys and convince them to allow me to interview all the trustees to find out the facts and legal problems. I then developed the strategy of getting the information out to a major newspaper without giving up attorney-client privilege.”

The result was a long profile on the front page of the New York Times sports section where each trustee told his or her personal story. “It was a miraculous result,” Davis

1 UNDERSTAND YOUR CLIENT'S BUSINESS. Key to advising clients in this multidisciplinary practice is being able to address the full spectrum of a client's business and how each issue intersects with the other, according to Michael Chertoff: "In a complicated crisis, you may have legal issues at the core, but you also have to think of the stakeholders, the health of the business and the general public. Sometimes lawyers are overly narrow and they only look at the problem to make it easier to represent the client in court." He added that in some cases, winning the case might not be the best result for the client. "The collateral damage might be too much and your client's business or reputation might not be able to sustain it," he explained.

2 GET ALL THE FACTS OUT AND GET AHEAD OF THE STORY. Rule #1 and Rule #3 in Lanny Davis' "Five Rules of Crisis Management" promote the virtue of being proactive. Pitching a story before it breaks, Davis writes, allows you the luxury of "getting an entire story written, all at once, with all good and bad facts summarized fairly and accurately."

3 HUMANIZE YOUR CLIENT. Part of navigating out of the crisis is presenting a "genuine and authentic response to what's happening," advised Andrew Tulumello. "You're not going to be able to humanize the situation or earn the trust of the public unless you take steps to go forward and really engage the media."

4 DON'T IGNORE SOCIAL MEDIA. "You can't dismiss certain content because of the source," Tom Becker cautioned. That's a mistake many people and businesses still make. "Social media is very powerful and we are pretty

much to the point now that there's almost no need to separate it from other media," he said. Anyone, he added, can post anything at any time and can influence a large pool of people. A lot of people doing Google searches are not going to pay attention to the source of the information, whether it's a blog or a tweet. "People only pay attention to content and content is out there and people are influencing other people," Becker said.

5 MONITOR WHAT PEOPLE ARE SAYING. Being vigilant to what other people are saying not only gives you a sense of how to maneuver your PR strategy, but also provides useful information. "Some of the information might actually be helpful if you're investigating something or might show some of the legal challenges that might come your way," Chertoff said.

6 FIGHT LIES WITH TRUTH. What happens if your client gets misrepresented on the Internet and everybody keeps repeating the same distortions a thousand times? Davis likens the experience to "being in the middle of a swarm of bees with honey on your hair." And his advice is to "whack at them with the truth." Use social media and post your side of the story on blogs and websites. Get the truth out there to help drown out the lies, Davis said. "Never give in, even though it is hopeless. Those who care about the issues will find your facts and truth."

7 DEVELOP A NOSE FOR NEWS. Understanding what is likely going to gain traction in the press and what's likely to interest people can help in developing your PR strategy. "Something might not be interesting to you or your client but it could be important to other people," Becker said.

said. "Rather than giving the reporters the trustees' stories, I allowed the trustees to tell their own stories about what a difficult decision it was to fire Joe Paterno."

Davis' professional approach to crisis management is original and personal, as the title of his first book on crisis management describes, "Tell It Early, Tell It All, Tell It Yourself." And in almost every case he's handled he has not deviated from his own advice: "What I hope my fellow lawyers learn from my experience is that you can't just hire a PR firm, you have to do the work yourself."

Covington and Gibson Dunn's crisis management lawyers do work with PR consultants, but the lawyers themselves

manage the PR team, and most of the time, clients ask their lawyers to recommend a PR agency.

"Lawyers need to be at the center of the strategic process because you don't want to do something that achieved a public benefit but you've made statements to the media that imply liability," Chertoff said.

Tom Becker, a veteran crisis manager and co-director at crisis management firm Sitrick And Company in New York, says the majority of Sitrick's work today comes from lawyer referrals. "In almost every case we work closely with lawyers who play a crucial role. Our job is supporting the legal strategy," Becker said. ■