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Willkie, College Admissions and the Crisis Management Playbook

The firm's public response has been limited. But there's every reason to expect that, below the surface, it's been working hard to contain the damage.

By Dan Packel | Originally published on [The American Lawyer \(/americanlawyer\)](#) | March 15, 2019

Willkie Farr & Gallagher has now had four days to address the fallout from its former co-chairman Gordon Caplan being charged in a nationwide college admissions scandal.

On Tuesday, when news of the scandal broke and Caplan was charged, arrested and released on \$500,000 bond, the firm was quiet.

On Wednesday, Willkie issued a statement—on firm letterhead but referencing an outside PR consultant—indicating that Caplan had been placed on a leave of absence from the firm and no longer held any management responsibilities.



Willkie Farr & Gallagher's Washington, D.C., offices. Photo: Diego M. Radzinski/ALM

Since then, the firm has resumed its silence, but one can only assume that the duck metaphor applies: Above the surface, the firm is placidly gliding forward; beneath, it is paddling furiously.

Willkie's public response offers a window into what law firms should and shouldn't do when the unexpected occurs. And the allegations against Caplan and the Hollywood stars, fashion designers, investors and others named in the scandal are nothing if not unexpected.

"There is no way anyone could have guessed that something like this would happen. It's out of left field, which is exactly why there's such public outrage," said Gina Rubel, a lawyer and marketer who routinely puts together crisis preparation plans for law firms.

While firms plan for natural disasters, cyber breaches and, increasingly, the prospect of seeing lawyers ensnared in #MeToo allegations, anyone predicting a \$75,000 payment aimed at fixing a college test score would be offered long odds. Still, it's a fair assumption that a powerhouse firm like Willkie was sitting on a precise crisis plan, one thorough enough to take into account related scenarios, like the more general prospect of a criminal misstep by a top partner.

California-based law firm public relations specialist Elizabeth Lambert says the best crisis plans involve imagining a wide range of contingencies.

"You have to be thorough," she says. "You have to be creative."

The plans will indicate who to bring into the room, or get on the phone, as soon as the unexpected strikes. For a reputational crisis, like the one currently facing Willkie—with client relationships, industry and public perceptions, and attorney and staff morale at stake—that means having the firm's general counsel, outside counsel and outside PR in place.

"They need outside, objective counsel that says, 'This is how we should handle this,'" Rubel said.

With that team assembled, the first step is to make sense of what may be a muddled picture.

“It always begins with the facts, making sure you understand what happened, and that you communicate it transparently and truthfully to everyone who matters,” said Joshua Galper, a crisis manager and founder of law firm Davis Goldberg & Galper.

That means immediate communications with Caplan’s clients, and being forthright with other lawyers and staff.

“Their first duty is to their clients and employees,” Rubel said.

An internal investigation, probing Caplan’s work on behalf of his clients, would likely follow, as would a referral to state bar regulatory authorities, reporting the unethical conduct. The firm has not addressed whether it has taken either step, a point that some outside observers have found jarring.

“They need to make a commitment publicly to finding out what else Mr. Caplan has done at the firm that would lead to some inappropriate conduct or poor judgment,” said Wayne Pollock, managing attorney at PR firm Copo Strategies.

Acknowledgment of such an investigation isn’t out of the question, considering recent examples of lawyers being accused of missteps while at their firm. When a Hogan Lovells attorney was spotted watching pornography at his London office in November, the firm both suspended him and announced an investigation.

(<https://www.law.com/americanlawyer/2018/11/09/hogan-lovells-suspends-partner-for-watching-adult-video-at-work-396-9099/>) Likewise for Dentons, when it was exposed to

allegations that a male partner engaged in inappropriate behavior

(<https://www.law.com/americanlawyer/2018/01/19/dentons-suspends-partner-following-allegations-of-inappropriate-behaviour/>) at a Scottish firm it absorbed in

2017.

The legal questions here may be more complex, from whether the disregard for morality Caplan expressed in recordings extends to his handling of client matters, to whether any of the activities spelled out by the U.S. Department of Justice took place on office computers on work time. All of this speaks to the challenge of balancing obligations to the court of public opinion and the court of law.

With the firm's sole public communication about the issue a lean, five-sentence statement that goes no further than highlighting the "seriousness" of the matter, it's easy to critique what's missing. (It's harder yet to be in the crisis manager's shoes.)

For several onlookers, that's a more forceful condemnation of the scandal itself, a story that's galvanized national attention and prompted widespread scrutiny of the college admissions process.

"The firm, from a reputational perspective, needs to project a message that is consistent with its beliefs and values," Galper said, noting that clients, associates and staff, as well as others in the wider legal community, want to know that it recognizes that gaming college admissions while keeping one's children in the dark is a lamentable act.

"It's not too much to expect a large institution to have an opinion about something that happens in the news," he added.

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