

Skadden's Sheila Birnbaum: Handling Companies' Biggest Crises

An Interview with Sheila L. Birnbaum, Esq., Practice Leader,
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EDITORS' NOTE Sheila L. Birnbaum, known as the "Queen of Torts" and "Madame Products Liability," began practicing law in the early '70s at Berman & Frost in New York. After a few years in private practice, she became a professor at Fordham University School of Law, later serving as a professor and the first woman associate dean at New York University School of Law. She joined Skadden, Arps, Slate, Meagher & Flom LLP, initially as a part-time counsel, in 1979. The head of Skadden's Complex Mass Torts and Insurance Litigation Group, Birnbaum has argued twice before the United States Supreme Court and won both times. A former president of the New York Women's Bar Association and executive director of the Second Circuit Task Force for Racial, Ethnic and Gender Fairness, she is the recipient of numerous awards, including the American Bar Association's Margaret Brent Women Lawyers of Achievement Award, the John L. McCloy Memorial Award from the Fund for Modern Courts, and the New York University Law Alumni Award for outstanding achievement in the legal profession. She was profiled in *The National Law Journal* as one of the three outstanding lawyers of 2003 and was named by *Fortune* magazine as one of the "50 Most Powerful Women in Business" in 1998.



Sheila L. Birnbaum and senior partner Joseph H. Flom

FIRM BRIEF Founded in 1948, Skadden, Arps, Slate, Meagher & Flom LLP (www.skadden.com) is one of the best-known and most highly regarded law firms in the world. With a practice that includes mergers and acquisitions and other areas of corporate law, litigation (including mass torts and insurance, government investigations, antitrust, international arbitration, and intellectual property), corporate restructurings, and tax, Skadden serves a broad spectrum of clients, including approximately 40 percent of the Fortune 250 industrial and service corporations; financial and governmental entities; small high-technology start-up companies; and cultural, educational, and charitable institutions. The firm employs approximately 1,800 lawyers and a total of 4,400 people in 22 offices around the world.

In recent years, corporations have increasingly needed legal advice in connection with crisis situations. What factors are driving this trend?

The whole area of corporate regulation has become more complicated in recent years. Added to that, many attorneys general, including New York State Attorney General Eliot Spitzer, have become increasingly active in the regulatory sphere. When there is a government investigation, whether at the state or federal level, private attorneys are usually waiting in the wings to pursue civil litigation based on the same allegations. The combination of these circumstances is forcing corporations and law firms to view corporate crises in a new light.

In this environment, it is important for corporations to turn to law firms with

significant experience, and I believe that Skadden's ability to respond to corporate crises is unmatched. Our roots are in hostile takeovers, which are often considered the ultimate corporate crises. And as corporations become increasingly global, our one-firm approach and breadth and depth of practice allow us to bring enormous resources to bear across various disciplines. In short, it's important to view a corporate crisis from all angles, in order to preserve the integrity and position of our clients within the markets, as well as the investment community.

To what extent do you carry out this type of work as a team, rather than as individuals?

We have always been very team-oriented, and as corporate crises multiply and become more complex, I find myself work-

ing more than ever with lawyers from different disciplines. It's very exciting to be dealing with my partners in this way. Part of the Skadden credo is to respond quickly and to offer a 360-degree view of the situation at hand, in order to provide the client with the best possible service. The results are optimal when attorneys from various appropriate disciplines are familiar with each other and are comfortable working together.

A number of major law firms have a significant international presence. What makes Skadden unique?

We have seen, both internationally and domestically, a substantial increase in the size of a number of law firms through mergers. This has changed the face of the legal profession, in that regional firms have become national firms, and national firms have become international firms. But what makes Skadden unique is the fact that we've grown organically rather than merging with or acquiring other firms, and we have dealt holistically with large-scale legal and business issues for more than 40 years. Further, our culture encourages people to work together. This makes a very big difference in the quality of the service we can provide to our clients. Skadden remains at the top of its game because of the collegial, team-oriented approach of an extremely talented and committed group of lawyers. In the end, that's rather unique, and our clients appreciate it.

Is your crisis management work primarily focused in the United States, or is it more broadly based? To what extent do you see this type of work increasing overseas?

Our crisis management work has increased tremendously in the U.S. as well as overseas. I think we're going to see even more of it internationally, as investigators in foreign jurisdictions become more aggressive and follow the lead of their counterparts in the United States. The regulatory environments in Europe and Asia seem to be evolving into more of a U.S. model. Of course, there are different types of corporate crises. Reorganizations and bankruptcies are common examples; we have handled these types of matters in Europe and Asia, and I expect that will grow.

You mentioned a few of the types of corporate crises with which you have been involved. What other types of crises do corporations face?

There is no model for the corporate crisis – it can take any form, ranging from corporate control contests, corporate governance issues and directors' and officers' liability claims to accounting restatements, tax controversies, state and federal government investigations, Congressional hearings, and securities or mass tort class actions. Skadden has experience in advising on all types of crisis situations and is well-positioned to find solutions for our clients.

What do CEOs expect from your firm, and how has that expectation evolved over the years?

I don't think it has changed all that much. Good CEOs are always looking for the same thing: advisers who are both practical and smart about the law and business. It's a combination. To help manage a crisis, you have to understand not only the legal consequences of what you're doing, but also the public relations and financial consequences. Legal advisers assist the corporation in responding to all the groups that need to be managed, which might include employees, customers, and shareholders. All these constituencies must be communicated with; the days of "no comment" are over, which I think CEOs understand. That said, it's not helpful if their attempts to communicate make things worse from a legal perspective. So they expect us to provide them with a balanced and practical approach.

Has Sarbanes-Oxley (SOX) affected the way corporations and their leaders deal with crises?

Yes. Indeed, Sarbanes-Oxley has led to a great deal of change. CEOs are now more directly involved in more aspects of corporate oversight. This can be both challenging and time-consuming, and they need a great deal of help. Now, everyone in the corporate world needs to have a better-than-passing knowledge, if not an in-depth understanding, of the rules laid down in Sarbanes-Oxley, and how they work.

How is public perception affected by this new emphasis on corporate malfeasance? Is there now a sense that corruption is endemic throughout the business world?

Yes, I think there is. In environments like this, the pendulum always swings too far to one side or the other, but I do think it will swing back to the center soon. After all, we don't want to cripple our businesses. It would be a great mistake to over-regulate, because that would negatively affect the enterprises that keep the American economic engine growing. We certainly don't want to destroy ingenuity and innovation.

You mentioned consolidation within the industry. Does a law firm need to be of a certain size and scope in order to compete successfully?

I think it does, but it is more important to have the right people in the right places, with the right talents and expertise. Skadden has never wanted to be everything to everybody. Because of that, we have chosen to place our foreign offices in financial centers that are important to our clients. In those markets, we want to work on cross-border deals, high-level arbitrations, and litigations – the types of practices we engage in in the United States. In order to succeed on a global scale, we must have the talent, a vision of where we want to be, and a sense of clarity regarding what types of work we want to do. And we are very pleased with the global position we have today.

What do you consider the greatest difference between young lawyers

today and lawyers of your generation?

It's difficult to generalize about young lawyers today. When I came into this profession, we worked all the time. I'm not sure that was entirely good, but that's what we did. Work came first, and families came second. A lot of young people now don't want to do that. They want to find a better balance, and I think that's a positive thing. But it's a change, and it's not yet clear what kind of adjustment must take place within law firms to accommodate that shift. Are young people going to adapt to the old way, or are we all going to adjust to the new way? I would prefer the new way. However, the law is a very interesting business, and nothing is predictable. After all, there's a reason they call our work "practice." We're always practicing; we never get to be perfect.

Is it difficult to retain the young people whom you train? Does it ever cause problems when people decide to move on?

I've been with this firm for 26 years, and many people still work here who joined long before I did. There is a core group – lawyers and non-lawyers – whose first and only job has been at Skadden, so retention is not really an issue. For example, my research assistant in 1980 went on to become a partner in this firm. That said, not every associate is going to become a partner, so inevitably people will leave. But generally speaking, we do a very good job of keeping the people we want to keep, and I think those who leave agree that their experience at Skadden has been a great platform from which they can build exciting careers in law, business, government or the non-profit sector. In fact, many of them become Skadden clients.

Also, we make it a point to stay in contact with our alumni by identifying partners to serve as liaisons to them, inviting alumni to periodic reunions, publishing a newsletter specifically for former Skadden attorneys to keep them apprised of what's going on at the firm and with their fellow alumni, and maintaining a section for alumni on our Web site. And recently, we created an alumni career network to assist both alumni seeking new employment and clients who need to fill key positions.

Women play an important role within the firm. What has been the driving force behind that?

From the time Skadden was founded, all facets of diversity have been extremely important, and they remain so. Giving diversity top priority is absolutely the right thing to do as a matter of principle as well as for our business. We pride ourselves on the fact that more than 60 of our partners are women, and we have women partners in numerous leadership positions, in every specialty, and in nearly every office. Skadden has been at the forefront among law firms in trying to help women balance work-life issues, which sometimes involves working part-time. We also work

very hard at promoting ethnic diversity at our firm. It's important to keep this emphasis on diversity at our core, because we live in such a heterogeneous world.

All of Skadden's women partners are invited to participate in an annual retreat with clients and other women leaders. What is the rationale behind this event?

The retreat is an opportunity to deepen our relationships with clients and offer them a forum in which they can network and develop relationships with others. These days, a lot of firms run women's retreats, but I believe we were one of the first, if not the first. We take our women partners and women clients and go off for a weekend. We organize a number of sophisticated programs with top-notch speakers in addition to setting aside time for golf and the spa. At our most recent retreat, three panels of clients and Skadden partners discussed issues ranging from crisis management to dealing with dissident shareholders, to joining a corporate or non-profit board. We also talked more informally about issues that affect women differently than they affect men, including human rights, family responsibilities, maternity leave, and part-time work.

Before joining Skadden, you were teaching at New York University. What made you think the move to Skadden was right for you at that time?

I really loved teaching. In fact, before I was a lawyer, I taught fourth grade in the New York City public school system. However, I felt that the action in my area of interest – products liability – was not in the law school, but in the courthouse. So I wanted to go back to the active practice of law, and I got in touch with Skadden after a conversation with an old friend. Within a week of making contact with the firm, they made me an offer to join as counsel. We all clicked, and I really liked the idea of building the firm's products liability practice from the ground up, as well as the energy, lack of pretentiousness, and entrepreneurial spirit of the firm. And who could turn down the opportunity to work with Joe Flom? Joe's support for building my practice was unflinching. Everyone was incredibly helpful in trying to make my practice work, but he and John Feerick [who later became dean of Fordham Law School] were especially generous.

This has always been a very open firm, and all that really matters here is merit. Skadden's aim is to deliver the best service possible, and for that, you have to have the best people, and help them to stay at the top of their game.

In corporate crises, you're dealing with very tense situations and very tense people. How do you stay calm?

As people get tenser and more hysterical, I get calmer. It's a blessing that's in my genes; it's not something I have to work at. I am very calm in crisis situations;

I keep weighing the available options for resolutions. You have to see the bigger picture. When people ask me, "How are we going to do that?" I just say, "We have to keep moving pieces around." Of course, you have to have a vision of where you want those moving pieces to end up, and you're always trying to get to that end goal. I never begin work on a corporate crisis without first determining where we want to end up. It may be trying to settle, it may be trying to fight, or it may be trying to fight and settle. But wherever you want to be, you have to know how you're going to get there.

In your position, your time is inevitably pulled in a number of different directions. Many of your clients want Sheila Birnbaum, and no one else will do. How important is it for you to make time for direct client contact?

It's very important. Very often, a client will specifically ask for me to lead the team, and I don't think I've ever made a promise to do so that I haven't kept. That means I have to juggle other things, but it is very important for me to be available to clients. Of course, it's much easier today, with cell phones and Blackberries, as you're never really away, no matter where you are in the world. You pay a price for that, but your clients are entitled to that personal interaction, because they come to rely on your involvement and judgment. It's important to the corporation. It's important to the CEO, the general counsel or the litigation counsel – whoever you're interacting with on a daily basis – because when a crisis occurs, those immediate decisions make all the difference in the world. If you misstep in making these decisions, there could be an enormous price to pay, both in personnel and company finances.

As your business continues to grow globally, what are one or two key priorities or challenges for the firm going forward?

Our top priorities are continuing to hire and train the brightest and most motivated legal talent, and having the right

relationships. We need to maintain our relationships with current clients, as well as create new client relationships. You can't just sit back and wait for people to come to you. You have to be out there letting the world know that you have the talent, experience, and ability to assist them and succeed.

You have been responsible for some great wins in your career, including two in the U.S. Supreme Court. Do you ever take the time to appreciate all you have achieved?

For a very short time, and then it's on to the next problem and the next issue. When I look back over everything I've done, it feels good. And I am proud that many of Skadden's victories have had a substantial impact on the corporate world. For instance, our victory in the *Avery* case for State Farm in Illinois last year, in which we reversed a \$1.1 billion judgment against State Farm, has really changed the face of litigation in Illinois. Not only did we get the judgment reversed and dismissed, which in itself was a great victory, but the Illinois Supreme Court also set down some rules of the road concerning class actions that will affect cases all across the state. So we know that the work we do can have implications far beyond the immediate client and the immediate case. Our victories can affect the litigation landscape for the better, and that makes you feel like you've achieved something especially worthwhile.

You still seem to enjoy your job so much, even after all these years. Do you feel that way every morning?

Yes, I do. I feel blessed to be doing what I love to do, and what I have learned to do well. It has been a long time, but I still like coming to work in the morning and tackling the next problem. No two days are ever the same, and there are always new issues. I think you have to evolve over the years to meet new challenges. When I graduated from law school, I could never have envisioned the legal world as it is now. But here I am, still having a great time, and I can't imagine doing anything else. ●



Skadden's women partners at the firm's annual retreat for senior women clients