

Litigation Leaders: Morgan Lewis' Gordon Cooney on Crisis Management, Data Analytics and the Importance of Teamwork

By Jenna Greene
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Meet **J. Gordon Cooney Jr.**, who heads the nearly 1,000-member global litigation department at **Morgan, Lewis & Bockius**.

Based in Philadelphia, Cooney joined the firm 1986 and has a broad-based civil and commercial practice. He also spent 25 years working pro bono representing John Thompson, who was wrongly convicted in 1985 of murdering a New Orleans hotel executive, ultimately winning a not guilty verdict on re-trial.

In this Q & A, he shares his thoughts on overseeing the litigation practice at Morgan Lewis and the firm's goals for the future.

Lit Daily: Tell us a little about yourself—beyond what's in your law firm bio.

Gordon Cooney: My father was a lawyer in what was, for that time, a large law firm. He was fascinated by the law and enjoyed helping clients solve problems and achieve opportunities. Both of my parents had a significant impact on me and my career choice.

I participated in team sports throughout my school years, served as captain of the lacrosse team at Wesleyan, and continue to compete athletically to this day. The satisfaction from winning played an enormous role in my decision to become a litigator. Moreover, understanding the importance of teamwork has carried over into my professional life.

Our large matters depend on a team-first approach, and our one-firm culture at Morgan Lewis genuinely prioritizes putting the team before the individual. I was struck by the teamwork and collaboration at Morgan Lewis when I was a summer associate many years ago. Despite significant growth, the importance of teamwork and true collaboration remain one of the distinguishing hallmarks of the firm today.



Gordon J. Cooney, Morgan, Lewis & Bockius.

I benefited from professional role models. I was deeply fortunate to serve as a law clerk for **Judge J. William Ditter Jr.**, in the **Eastern District of Pennsylvania**. He taught me the importance of civility, respect for the profession and the need for rigorously clear, simple and concise advocacy. And I have had countless mentors and teachers among the many partners and friends I have worked with at Morgan Lewis, which I joined immediately following my clerkship.

If I were to talk with a younger person trying to decide whether or where to practice law, I would counsel them to focus on “why” he or she wants to become a lawyer

or join a particular firm, and to self-test whether those “whys” are compelling.

My “whys” have been that I enjoy the challenge of solving difficult client problems; finding the points of clear, concise and compelling advocacy; and being part of and, later, leading a talented team of professionals.

How big is your litigation department and where are most of your litigators concentrated geographically?

Globally, we have nearly 1,000 lawyers who are primarily litigators, about half of them in our core litigation practice. To ensure proper attention to that huge bench of litigators, we have several focused litigation practices, including labor and employment, antitrust, intellectual property, finance and tax.

Nevertheless, we function as one firm across the globe. Our litigators are concentrated in the most active financial, business and litigation centers, and reside in 17 offices in the US and 11 offices outside the U.S.

In what three areas of litigation do you have the deepest bench?

In our core litigation practice, although we have great breadth and depth across the board, our capabilities are particularly deep in white collar and government investigations; commercial and securities litigation; and product liability, environmental and associated insurance recovery.

Many on our team are former **U.S. Department of Justice** lawyers, senior attorneys from the **U.S. Securities and Exchange Commission**, state prosecutors, and leaders from other government agencies. We have 14 fellows of the **American College of Trial Lawyers**.

As head of the litigation department, what are some of your goals or priorities?

We have had tremendous success in building what we consider to be one of the most effective crisis management teams in the profession. We have guided clients through traumatic and threatening challenges, including those arising from environmental incidents such as **Deepwater Horizon** and the recent **Aliso Canyon** methane release, the fallout from the 2008-09 financial crisis, numerous multi-faceted product-related crises, the ongoing opioid crisis, and the **#MeToo** era.

In the latter, for example, we have established Morgan Lewis as perhaps the leading firm helping businesses

prevent and mitigate **#MeToo** crises. My partner **Grace Speights** recently was recognized by The American Lawyer as Attorney of the Year for her work in leading high-profile internal investigations and helping corporations navigate the new workplace paradigm in the wake of the **#MeToo** movement. The publication said Grace has “redefined the employment lawyer's role in the movement.”

Another major area of focus involves our global disputes and investigations platform. We are ideally positioned, given our presence in the litigation hotspots of the United States and international business-dispute venues, such as the United Kingdom, Singapore, Hong Kong and Dubai. We have been expanding strategically throughout Asia in recent years, allowing us to enhance our capacity to serve clients involved in global investigations, litigation and arbitrations.

Finally, our overarching goal is to solve problems through creative, clear, concise and compelling advocacy. We are committed to fully developing the professional excellence of every lawyer by embedding a key set of principles into how we practice.

These principles are reinforced through training, feedback and evaluation, mentoring, and rewards and recognition. Among our signature programs are our in-house NITA-style Trial Academy and Trial Skills programs and our Elite Advocacy program. The objective is for our lawyers to practice elite advocacy from day one and hone their talents so that we can deliver superior outcomes and value for our clients.

What do you see as hallmarks of your firm's litigators? What makes you different?

We are guided at every step by our clients' business objectives. This is true whether those objectives are best met by taking a case through trial and appeal or through an alternate resolution strategy. The depth of our understanding of the client's industry and business is combined with our focus on their business objectives.

Our focus on client needs also drives innovation. We have put together a cutting-edge business operations team whose primary responsibility it is to facilitate the cost-efficient delivery of services. Combining data analytics and business insights complements our legal advice.

For example, we developed our own in-house web-based tool known as **Parallex** which helps manage and analyze massive multijurisdictional matters, such as are common in mass and serial product liability cases. Both were recognized by The American Lawyer last year. Our business operations team was named the Best Law Firm Business Team, while Parallex was one of seven finalists in the Best Use of Technology category. Most importantly, these tools equip us to deliver significant efficiencies for clients.

How many lateral litigation partners have you hired in the last 12 months? What do you look for in lateral hires?

We welcomed 23 litigators in the past year, including those who joined in our focused litigation areas.

We seek elite advocates who embrace our business-oriented approach to handling litigation and investigations. They also need the disposition to collaborate with our colleagues around the globe, including those in other practice areas. Indeed, we are finding that outstanding, team-oriented lawyers regularly seek us out when they are dissatisfied with the lack of teamwork at their firms.

We do not chase practices for the sake of growth or in order to acquire “books of business.” Our philosophy centers on bringing in lawyers who will not just bring practice but who can both contribute to our overall capabilities by serving our existing clients and also take advantage of the other capabilities we offer by introducing our other partners to their client relationships. In that way, our lateral hires succeed in growing their own practices and our firm’s overall practice.

What were some of your firm’s biggest in-court wins in the past year?

It is hard to choose among the many significant wins we have recently achieved for clients, including those for our pro bono clients, in a broad variety of areas, including asylum seekers and families separated at the border. With my partner **Susan Baker Manning** assuming the role of Senior Pro Bono Trial Lawyer, we are excited about the social justice impact.

Our securities litigation practice is very active. One high-profile area of **Delaware Chancery Court** litigation concerns appraisal actions in which stockholders of

companies targeted in mergers object to the acquisition price and demand a judicial calculation of the fair value of their stock.

Many of these actions settle quickly or have resulted in the court awarding dissenters amounts above the acquisition price. *Verition Partners Master Fund v. Aruba Networks* represented one of the first times dissenters were awarded less than the deal price—approximately 30 percent less. The decision has achieved wide-spread attention.

Our trial win in *Cannon Electric Incorporated v. Ace Property and Casualty Insurance Company* represents one of the most important product liability policyholder trial victories in recent years. At stake for ITT were multiple billions of dollars from insurance policies needed to reimburse thousands of product liability claimants who alleged illnesses as a result of exposure to asbestos-containing products.

We secured key victories including the finding that asbestos injury occurred from the first exposure to the substance—something that likely occurred decades earlier—thus triggering multiple policies. Total recoveries in this matter exceeded \$1.8 billion.

Approximately one in every three children in the U.S. has their care paid through Medicaid. In *Children’s Hospital Association of Texas v. Azar*, we achieved multiple wins for our 12 children’s hospital clients and hospitals across the country which will no longer be denied the supplemental Medicaid Act’s Disproportionate Share Hospital funding critical to the care and treatment they provide to indigent patients nationwide. My partners **Sue Harris** and **Geri Edens**, were recognized as Texas Lawyer 2018 Attorney of the Year and The Am Law Litigation Daily Litigator of the Week, respectively, for their impactful advocacy on behalf of these clients.

Late last summer, we scored a victory for long-time client **PepsiCo** in a seven-year battle over the funding for product liabilities faced by a former Pepsi subsidiary. The arbitration panel ordered the defendants to immediately pay an additional \$292.9 million to satisfy PepsiCo’s former subsidiary’s product liabilities and to release another \$49.5 million from an escrow account controlled by the defendants.

The case involves multiple disciplines, including the interplay between insurance and other indemnity arrangements; the understanding of multiple, sophisticated transactions; qualified settlement funds as legacy liability vehicles; and financial reporting for insurance and “long tail” liabilities.

We have a leading class action defense practice. Last fall, **Troy Brown** was also recognized by The Am Law Litigation Daily as its Litigator of the Week for his leadership of the team in securing the denial of a class certification motion filed against **Point Blank Enterprises** over allegations that the company's self-sustaining ballistic vests were defective. The litigation was important to the client given the critical, life-saving nature of its product and the fact that no officer had been injured wearing the [vests]. To the contrary, the vests had saved many officers in the field during confrontations.

In *TS Patents LLC v. Yahoo! Inc.*, plaintiff claimed infringement of four web-based technology patents by Yahoo!'s Tumblr and Mail products. In one of the few cases decided under the Federal Circuit's new ineligibility framework, the district court granted our motion to dismiss the complaint and the Federal Circuit affirmed.

Can you give an example or two of tactics you've employed that exemplify your firm's approach to litigating cases?

Our victories on behalf of **Shire ViroPharma** in an antitrust action brought by the **Federal Trade Commission** are emblematic of the clear, creative and concise advocacy we practice. The team, led by **Steve Reed**, eschewed conventional wisdom, opting instead to attack the action with a novel challenge to the FTC's authority to invoke the federal court's jurisdiction under a statutory provision that had not been tested in the 45 years since it had been enacted. The FTC claimed

violations of the antitrust laws all with respect to conduct that had been completed.

Before this case, no court had ever directly addressed the scope of the FTC's authority to sue in federal court under 13(b,) which limits the FTC's authority to sue in federal court to those cases where it has reason to believe the defendant “is violating or is about to” violate the law, or granted a motion to dismiss based upon the conclusion that the FTC lacked such authority.

Undaunted by accepted practice, the team still chose to focus on the express language of FTC Act Section 13(b) and argued that the FTC had not met the statutory prerequisite for invoking the court's jurisdiction because its complaint was based upon alleged conduct in the past, rather than a violation that was “about to” occur.

The district court agreed the FTC could not bring the action and dismissed the suit. In an opinion that is garnering attention, the decision was affirmed in the **U.S. Court of Appeals for the Third Circuit** just last month.

Where are you looking to build or expand in the next year?

We see the potential for significant increases in all of our disputes and investigations practices. Outside the United States, we are seeing a rise in collective actions, group litigation and class-action litigation. As a result, we are focused on uniting our market-leading U.S. class-action defense practice with our significant disputes capacity in jurisdictions outside the United States to offer a premier practice in this emerging area.

The recent Representative Action Directive, a part of the New Deal for Consumers, launched in April 2018 by the **European Commission**, is just one example of how the landscape in this area is changing. We also have seen increasing activity in cross-border disputes and investigations generally, and will continue to invest in our capabilities to offer solutions to clients in these areas.