

Litigators of the Week: The Boies Schiller Duo Pushing Back Against a Vile Conspiracy Theory

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By Jenna Greene
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Our Litigators of the Week are Boies Schiller Flexner partners Michael Gottlieb and Joshua Riley, who won an important victory in a case that highlights so much of what's gone wrong with political discourse these days.

The Boies Schiller duo represents Aaron Rich, whose brother Seth was murdered—an event that conspiracy theorists see as part of a larger plot involving WikiLeaks and the 2016 presidential election.

In March, Rich sued the Washington Times and several right wing activists in U.S. District Court for the District of Columbia for defamation, intentional infliction of emotional distress, false light, invasion of privacy and civil conspiracy. "Our constitutional system leaves wide room for debate on issues of public concern, but individuals like defendants poison that deliberate space when they flood it with fabricated information about private figures," wrote Gottlieb in the complaint.

On Sunday, the Washington Times issued a lengthy retraction and apology for an op-ed column it published in March touting the conspiracy. The column included statements "that we now believe to be false... The Washington Times apologizes to Mr. Rich and his family."

Gottlieb and Riley discussed the case with Lit Daily.

Litigation Daily: Who is your client?

Mike Gottlieb: We represent Aaron Rich. His brother Seth Rich was a staffer at the Democratic National Committee who was murdered in 2016. Aaron and Seth were very close growing up, and they remained close



Mike Gottlieb, left, and Josh Riley, right, with Boies Schiller Flexner.

as adults even as they moved to and lived across the country from each other. In 2015, Seth was Aaron's best man in Aaron's wedding.

What facts are known about Seth Rich's death?

Josh Riley: There are some known facts, but unfortunately the question of who murdered Seth remains a mystery. We know that Seth was killed early in the morning of July 10, 2016, close to his home in the Bloomingdale neighborhood of Washington, D.C. Law enforcement has investigated the murder, and the theory of the case is that this was a robbery gone wrong, but the case remains unsolved.

How long did it take for the conspiracy theorists to latch on to it and what were they saying?

MG: Conspiracy theorists seized on Seth's murder almost immediately. By August of 2016, a widely retweeted message (including by Roger Stone) claimed

that Seth was murdered while “on his way to meet with the FBI to discuss election fraud,” and Wikileaks sent a tweet offering a reward for information on Seth’s death.

The narrative, however, did not really explode until early 2017, when allegations of Russian meddling in the 2016 election became a leading news story. For the first half of 2017, that narrative was focused on Seth, and the theory that he was murdered due to his role in stealing and leaking the DNC’s documents to Wikileaks.

Then, out of nowhere, in the summer of 2017, a new narrative emerged that Aaron had provided the IT “know how” to steal and leak the DNC documents, that Aaron received money from Wikileaks for his role, that Seth was murdered as a result, and that Aaron had covered up his role in the affair.

How awful was this for your client and his family? What have they been going through emotionally?

JR: The past two years have been an unimaginable nightmare for Aaron and his family. Aaron lost his only brother, the best man at his wedding, and the killer has never been brought to justice. He has spent an enormous amount of time assisting law enforcement’s efforts to investigate the murder.

But, because of these lies, a significant portion of the United States now believes that Aaron committed theft, fraud, and obstruction of justice, and was complicit in his own brother’s murder. What’s more, every time Aaron tries to defend his name, he’s accused of either covering up his brother’s murder or being indifferent to finding his brother’s murderer.

You previously represented Comet Ping Pong owner James Alefantis, helping him win an apology from InfoWars. How relevant was that experience?

MG: The Pizzagate matter shared many similarities with this one. Both matters have presented enormous challenges in finding ways to allow our clients to clear their names in a world where viral memes generally have more staying power than irrefutable logic. So we have had to adapt the traditional legal and communications playbooks to think about objectives that preserve our clients’ legal rights while finding ways to break through a fragmented media environment.

Both matters also involve conspiracy theories that originated from at least some amount of objectively verifiable wrongdoing—in Pizzagate, the reality that child

sex trafficking is a worldwide epidemic; here, the reality that Seth Rich was murdered—but superimposed on top of that reality numerous false accusations about real people in order to advance a political narrative. And both conspiracy theories involve a complex mix of false factual assertions alongside conjecture and opinion.

All of this requires being able to isolate with precision false factual allegations that are actionable from the kind of tin-foil-hat theorizing that likely is not.

Tell us about who Aaron Rich sued and why.

JR: At this point, there are three remaining defendants in the case. Ed Butowsky is a financial advisor and frequent guest on cable news programs—our complaint identifies Ed as the key driver of the version of the Seth Rich conspiracy theory that targets Aaron. He was involved in early efforts to spread the narrative to outlets like Fox News, and he appears to have actively pushed Aaron’s role to two other defendants in the case, America First Media and its founder Matt Couch.

Couch has made his name (and raised money) by relentlessly promoting the Seth Rich conspiracy theory on social media.

Aaron never wanted to sue any of the defendants. When he first got dragged into this conspiracy theory in the summer of 2017, he sent them personal letters in which he asked them to stop spreading lies about him and his family. Defendants did not honor that request. Instead, Matt Couch mocked Aaron in a live broadcast to his viewers, and Defendants worked to publish their lies about Aaron in the Washington Times column that triggered the lawsuit.

What were some of the most outrageous claims in the Washington Times column?

MG: The Washington Times column appears to have been based entirely on the conspiracy theory promoted by Ed Butowsky and Matt Couch.

According to Couch, the column was published “to help vindicate our team.” The column alleged that it was “well known in intelligence circles that Seth Rich and his brother, Aaron Rich, downloaded the DNC emails and was paid by Wikileaks for that information.” That is completely false. The column also falsely suggested that Aaron had ducked interviews with law enforcement when, in fact, Aaron has fully and actively cooperated with law enforcement in an effort to help solve his brother’s murder.

How important was the paper's retraction to the Rich family?

JR: This is a significant first step towards justice for the Rich family. The Washington Times is the only major national media company that has published these kinds of allegations about Aaron, and this is the first apology that the Rich family has received. So while there is nothing that will erase the pain that Aaron and his family have experienced over the past two years, we see this as a vital step towards restoring our client's reputation and providing some measure of accountability. All of that said, this fight is far from over. Aaron looks forward to his day in court.

Was it a difficult negotiation to get there? Who represented the newspaper?

MG: We don't disclose the nature of confidential settlement discussions. That said, the Washington Times' able counsel—Allen Farber and Jay Barker at Drinker Biddle—advocated zealously and professionally for their client, and we appreciate the Times' decision to clear Aaron's name. I can also say that the settlement required substantial time and persistence to negotiate, and for that all credit on the Boies Schiller Flexner end is due to Josh Riley and Associate Meryl Governski, who drove these discussions from start to finish.

Was there a financial component to the settlement?

JR: We cannot comment on the terms of the settlement.

Is the suit ongoing against other defendants? What's next?

JR: Yes, the litigation continues against Mr. Butowsky, Mr. Couch, and America First Media, and Aaron is eager for his day in court. Motions to dismiss are currently pending before Judge [Richard] Leon. Those motions raise only the issue of personal jurisdiction, rather than challenging the legal sufficiency of Aaron's claims. Should we prevail on those motions, we will move forward promptly with discovery.

As lawyers challenging people on the fringe who believe nefarious things without any solid evidence, have you been targeted or threatened? What makes it worth it to you to take on cases like this?

MG: Yes, but it's been unsurprising and entirely manageable. Apart from threats, my colleague Meryl Governski and I have been publicly accused of being pawns of the DNC who are being paid to help further the cover up of Seth Rich's death. That's laughable.

We're not being paid by the DNC (or any other party) to do this work—we do it because it is important and just. We have seen ordinary peoples' lives ruined by conspiracy theorists. Comet Ping Pong isn't far from where we live. As for Aaron, we reached out and volunteered to do this work because we felt compelled to defend a family that was being attacked after suffering a tragic loss.

Aaron is a decent and honorable American who has worked for the same defense contractor since he graduated from college. Now he is known, in some corners of America, as a traitor who profited off his own brother's murder.

Lawyers and lawsuits sometimes get a bad name. But do you feel like this case is an example of the power of litigation, that it can be a way to right wrongs and defend the truth? What do you hope is the legacy of this case?

JR: We hope this case sends the message that litigation can play a role in the defense of objective truth. Free speech is essential to our democratic values, but so is basic human decency. Our Constitution thankfully protects the expression of diverse political viewpoints, it does not immunize those who choose to further their political objectives by attacking innocent people with lies.

We hope that our work will send the message that those innocent people are not defenseless, and in so doing discourage others from exploiting innocent Americans as tools to score points in political debates.

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