

THE
AM LAW LITIGATION DAILYLitigators of the Week: Holding Rudy Giuliani
Accountable for Defaming Georgia Election Workers

Willkie Farr & Gallagher partners Michael Gottlieb and Meryl Governski, Von DuBose of DuBose Miller and John Langford of Protect Democracy led a trial team that showed how the lives of Ruby Freeman and Shaye Moss were turned upside down by Giuliani's lies and won a \$148 million verdict.

By Ross Todd

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These are the sorts of messages that Georgia election worker Shaye Moss and her mother Ruby Freeman received after Rudy Giuliani began spreading lies about them.

"We. Know. Where. You. Sleep," read one.

"U better get on the phone with Uncle Rudy Giuliani an cut a deal," said another. "It might keep u out of the big house."

Moss and Freeman may never see their lives return to anything resembling normal. But thanks to their legal team—led by **Michael Gottlieb** and **Meryl Governski** of **Willkie Farr & Gallagher**, **Von DuBose** of **DuBose Miller** and **John Langford** of **Protect Democracy**—they did get at least some measure of justice last week when a federal jury in Washington, D.C. hit Giuliani with a \$148 million verdict in their defamation case.

Lit Daily: How did you and your firms come to represent Ruby Freeman and Shaye Moss?

Von DuBose: I was initially contacted to assist Ms. Freeman in finding a safe place after the FBI recommended that she leave her home due to the threats she was receiving. For most of 2021, the mission for



Courtesy photos

L-R: Von A. DuBose of DuBose Miller, John Langford of Protect Democracy, and Willkie Farr & Gallagher partners Meryl Governski & Michael Gottlieb.

Ms. Freeman was to ensure her safety and work to put together a legal team to prosecute her claims. Ms. Moss initially struggled in silence, as her ordeal left her shying away from interacting with people. Eventually, she courageously stepped forward and indicated that she would be interested in joining her mother to seek legal redress. After discussing the potential cases with several law firms, I was connected with **Brittany Williams** and **Rachel Goodman** at the nonprofit organization, United to Protect Democracy ("Protect Democracy"), through a trusted contact. From the beginning, Protect Democracy was

eager to assist in ensuring that Ms. Freeman and Ms. Moss were safe, and also immediately began assembling a legal team to prosecute their cases. Protect Democracy brought Willkie Farr & Gallagher partners Mike Gottlieb and Meryl Governski into the fold, and the Willkie team immediately began committing substantial time and resources, spearheading the team's efforts on the ground in federal court in D.C.

Meryl Governski: Well before this lawsuit, Mike and I had worked with Protect Democracy, and had discussed ways to use the law to help protect victims of disinformation. Mike already had represented the owner of Comet Ping Pong in the "Pizzagate" conspiracy theory, and at that point we were representing the brother of Seth Rich in a defamation lawsuit in response to false claims that the two of them (not Russia) were responsible for hacking the DNC. Shortly after Protect Democracy formed Law for Truth, they contacted us about this matter. Mike and I had just finished litigating the Rich matter, and we had no hesitation about jumping in to help. It has been non-stop ever since, and we feel so fortunate for the opportunity to partner with Protect Democracy, and Von DuBose of DuBose Miller, and to have the unwavering support of and investment by our firm to do this work pro bono.

Who was on your team and how have you divided the work—both in the litigation that led up to trial and at the trial itself?

John Langford: Our litigation was a true partnership between two law firms, Willkie and DuBose Miller, and our non-profit, Protect Democracy. The trial presentation itself reflected that partnership, with Von and Mike delivering opening statements, Von taking the testimony of a witness on our clients' security concerns, myself taking the testimony of Ms. Moss, Meryl handling the testimony of Ms. Freeman, Mike taking the testimony of plaintiffs' expert and closing argument.

Prior to and throughout trial, Mike and Meryl led the Willkie team, while associate **Annie Houghton-Larsen** managed the day-to-day operations of the case. The Willkie trial team also included newly elected partner

Kristin Bender, newly promoted counsel **Aaron Nathan**, and, in addition to Annie, associates **Tyler Knoblett**, **Perri Haser**, and **Maggie MacCurdy**, and legal assistants **Ashley Moore** and **Kashia Adams**. Other members of the team at Willkie who contributed to the case prior to trial included counsel **Bart Schwartz** and associates **Logan Kenney**, and **Tim Ryan**, and legal assistant **Ann Staron**. Throughout the case, Von represented DuBose Miller. In addition to me, the Protect Democracy litigation team included Rachel and Brittany, as well as attorneys **Christine Kwon** and **Sara Chimene-Weiss**, with support from, among others, **Rebecca Lullo**, **Izzy Gray** and **Jessica Nicholson**.

Prior to trial, pleadings and motion practice were a team effort. Willkie handled much of the work tracking down and deposing Mr. Giuliani and his "legal team," while Protect Democracy obtained depositions and evidence from Georgia officials and others on the falsity of Mr. Giuliani's claims. Offensive discovery was largely fielded by the capable Willkie team, while Protect Democracy led defensive discovery. Willkie and Protect Democracy collaborated on the critical motion to compel Mr. Giuliani to produce records—which Meryl argued—as well as the sanctions motion that led to the default judgment, under the leadership of Mike and Annie. Christine led our omnibus consent motion in limine, Meryl and Aaron crafted jury instructions, and Annie oversaw progress on both, in addition to taking charge of the pretrial submission. Throughout the case, Brittany, Rachel, and I counseled the clients, coordinated security and monitoring, and worked to field incoming requests from journalists.

Throughout this case you had to deal with a defendant who wasn't complying with discovery obligations and witnesses who—because of their involvement in other election-related cases—were at times invoking the Fifth Amendment. How did you navigate those complications?

Governski: With patience, persistence, and a goal-driven strategy. We followed our typical Willkie method of approaching litigation from the outset as though our case would go to trial, and later an appeal.

We were meticulous at documenting and creating a record about our conferral efforts with opposing counsel, including 20-plus page single-space deficiency letters cataloging the various repositories we knew Giuliani had in his possession, custody, or control but about which he would not confirm any preservation, search, or collection efforts. The successful outcome of our efforts is a credit to the tenacity of Annie, who led our discovery efforts, along with an incredible team of attorneys armed with case law and a roadmap for what we needed and what the rules permitted and required. With respect to third parties, we were purposeful, exhaustive, and aggressive, serving discovery on dozens of people and entities, and seeking judicial intervention where necessary. We did not end up with a default judgment or jury-ready third-party depositions accidentally. It was the result of a careful approach from the inception of the case to question, press, memorialize, and pursue.

Who on the team had prepared to cross-examine Mr. Giuliani? What did that preparation look like? And how do you think his decision not to testify landed with the jury?

Gottlieb: I drew that assignment. I had taken his deposition, so we started there. Working with Willkie associates Annie and Maggie, we inventoried Mr. Giuliani's numerous prior statements relevant to our case, and then built out lines of cross-examination based on that material. I spent a lot of time watching archives of Mr. Giuliani's old speeches, press conferences, debates, and campaign ads, and re-read his book. There was no shortage of material from which to draw—the challenge, as always, was narrowing it down to what mattered. Although we didn't know exactly what he was going to try to accomplish with his testimony, we were ready to cross-examine him by the time we closed our case. We were very disappointed when he decided not to testify.

Mr. Giuliani's decision not to testify did him no favors with the jury, especially after his counsel said in openings that they would hear from him. Even so, he probably made the right decision—I believe he would have

hurt himself even more had he taken the stand and continued to defame our clients.

Governski: I think I speak for everyone in saying we were all very disappointed not to witness Mike cross-examine Giuliani, and to see the incredibly hard work of Mike, Annie, and Maggie put into action.

Mike, you asked the jurors for \$24 million apiece pointing to testimony from your social media expert about what it would take to repair their reputations, but you didn't put a number on emotional and punitive damages. Walk me through that approach. Were you surprised by where the jury ultimately landed on damages?

Gottlieb: Our goal was to provide a measure of reputational damages tied to the "cost to repair" our clients' reputations. We knew that our expert, Dr. Ashlee Humphreys, could estimate that cost based on methods she had used in other litigation, and the \$24 million (\$48 million in total) we requested was driven by that estimate. For emotional harm, we knew there was no precise formula or calculation to capture the indignity, anxiety, and humiliation that our clients suffered, and we didn't think a "cost to repair" model worked for that kind of harm. But we were confident that the jury would view our clients' emotional harm as severe based on their testimony, and had faith that the jury would value that harm at an amount that would be similar to, or even greater than, their reputational harm. Punitive damages are always hard to predict, but Mr. Giuliani sealed his fate the moment he walked out on the courthouse steps after the first day of trial and told the press "I don't regret it."

What can other people in your clients' position—who are defamed by someone with a large, public megaphone—take from this outcome?

Langford: As both Ms. Freeman and Ms. Moss have conveyed, we all hope that others who become the subject of lies and conspiracy theories untethered to reality will see the result in this case and take hope. The First Amendment right to free speech is a deeply held value in this country with roots in the origins of our nation. But no one has a right to spread

defamatory lies about others. Those lies have real-world consequences and the potential to ruin lives. Even powerful people like Mr. Giuliani and his co-conspirators have no right to steamroll others with a barrage of falsehoods.

But those in Mr. Giuliani's position should take note, too. Lies about civil servants and elections are especially dangerous to our democracy. Democracy is government by public opinion, where the people are sovereign and their collective opinion charts the course of the nation. For a democracy to function, there must be a shared factual reality, especially when it comes to the integrity and outcome of elections. Those who lose elections and, rather than accept defeat, choose to target civil servants like Ms. Freeman and Ms. Moss to spread lies about election fraud do terrible and lasting damage to our democracy.

With strong partners like Willkie and DuBose Miller, Protect Democracy's Law for Truth project stands ready to hold accountable those who do so and ensure that the heroes of our democracy—courageous citizens and civil servants, like Ms. Freeman and Ms. Moss—are never alone.

What can other litigators take from what you were able to accomplish here?

Governski: To be creative and aggressive about applying the law, even in the absence of directly helpful precedent. The rules of civil procedure and tort law, especially defamation, are robust but imperfect tools that do not provide every answer, especially as to individuals with no qualms about flouting basic discovery obligations. There were various times when we knew there must be relief even if it was hard to find any directly on-point or helpful law, such as for permission to serve third parties via alternative means when they evaded service or for a default judgment as a discovery sanction for refusal to preserve. As far as default judgment, we faced a difficult strategic choice between continuing to fight for documents and recognizing that we were at a dead end and that, if there ever were a case where default judgment was appropriate, this was it. We made the choice to

push for the remedy of default because we had faith in our clients and the justice system. None of these strategic decisions were the obvious, path-of-least-resistance choices. But we were willing to take risks by seeking to apply remedies that fit the case, even if they are rarely sought and granted. And in our view, those risks paid off!

What will Rudy Giuliani's bankruptcy filing mean for your efforts to collect on this verdict?

Gottlieb: We have been anticipating and preparing for this for some time. We are confident that Mr. Giuliani's maneuver will not succeed in discharging his debts to our clients. As for Mr. Giuliani's representations about his assets and liabilities, we remain skeptical given his repeated refusals to comply with court orders on the same subject. We look forward to the involvement of, and supervision from, a bankruptcy court. For our part, we have an experienced team of bankruptcy lawyers—including the same lawyers who have been pursuing recovery from Alex Jones on behalf of the Sandy Hook families—and we will move swiftly to secure every penny Ms. Freeman and Ms. Moss are owed through whatever legal means available.

What will you remember most about this trial?

DuBose: What I will remember most is how our team rallied around Ms. Freeman and Ms. Moss. Our efforts were rooted in sincere concern for our clients' well-being. They suffered greatly when powerful people used them as scapegoats to further their political objectives. These powerful people targeted Ms. Freeman and Ms. Moss because they believed they would never have to answer for doing so. The verdict we obtained on their behalf is historic and will be recognized as one of the most significant examples in our time of speaking truth to power.

Gottlieb: There's so much to remember about this trial, from the bizarre and self-destructive out-of-court antics of Mr. Giuliani and his "spokesman," to the inspiring commitment displayed by each and every member of our multi-firm team. But for me, I will always remember the feeling in the room when the jury

announced its verdict, as the entire room experienced an authentic moment of accountability and justice. At times during the trial, Mr. Giuliani's counsel had argued that our clients' reputations were not worth millions of dollars in damages, because they were "ordinary" rather than rich or famous people. The jury's verdict sends the unmistakable message that Ruby Freeman and Shaye Moss's reputations, and indeed their lives, are valuable—that they matter just as much as those of the powerful and wealthy. I will never forget the feeling, as the jury announced its verdict, of the validation the jury had sent to "ordinary" people everywhere.

Governski: I will never forget the courage our clients showed on the witness stand, sharing their experiences without reservation—in front of the man who spread lies about them around the world—while knowing their words would be scrutinized, published to millions of people, and subject to cross-examination. They did so with the same commitment, grit, and bravery that they exhibited throughout this process. I was privileged to help Ms. Freeman tell her story in direct examination, and will always cherish the bond of trust we formed, and the pride we felt in how she conveyed how it feels to have powerful men steal your name and identity for personal and political goals. My family, including my two children, were in the courtroom that day to hear Ms. Freeman, and it will be a moment, and a history lesson, they will never forget either.

From a behind-the-scenes lawyering perspective, I always will remember the night before closing. As holiday music played on a loop in the lobby of the hotel where we set up our war room, a team of attorneys worked every hour of the night to help prepare closing. Mike drafted in one corner, with the Willkie associate team, led by Kristin, working in the other, dividing and conquering the slide-making process. They worked in shifts and they worked all through the night (alongside graphics tech extraordinaire, **Matt Spalding** of **Legal Media**). I picked up the baton

around 4 a.m., with Ashley's support. And the result was a 64-slide deck complete with video, animation, testimony, and documents, which matched Mike's words perfectly (and without a single typo!). It was our version of a symphony coming together in a matter of hours. And, man, did Mike's closing sing! And, in parallel, Aaron, John, and Von were busy preparing for the charging conference that would take place the morning before closing, including to dissect the 25-page single-spaced final jury instructions the court provided a few hours earlier. I will never forget the ability of our team to seamlessly come together, multitask, and produce greatness for two incredible clients who deserve every hour we devoted to their case, and more.

Langford: On day two of the trial, we played deposition videos of two Georgia investigators who investigated Mr. Giuliani's claims and one of the poll observer Mr. Giuliani has claimed was "kicked out" of the tabulation center by Ms. Moss and Ms. Freeman. The investigators explained, at length, how they thoroughly investigated Mr. Giuliani's claims within hours of him publishing them in December 2020 and found them to be false and unsupported by any evidence; the poll observer stated simply that she was not kicked out of the tabulation center and, asked if she would have told Mr. Giuliani had he asked her, responded, "Absolutely."

While the depositions played, Ms. Moss began to cry. Having spent enough time with her, we knew that, in that moment, she was letting go of a great weight. Finally, the world was hearing what she'd known all along: all of Mr. Giuliani's claims were lies and she was, in fact, no fraud but a very talented election worker who cared deeply about following the rules. After she dried her eyes, Ms. Moss began to smile while the videos continued. She smiled more broadly than we had seen during the course of the previous two years, mouthing silently, over and over again, "Thank you. Thank you. Thank you."