

Litigators of the Week: Cooley, Kaplan Hecker and Paul Weiss Hold White Nationalists Accountable for Charlottesville Violence

After four years of litigation and a four-week trial, a federal jury returned a verdict of more than \$26 million for plaintiffs in the case against the organizers of the 2017 “Unite the Right” rally.

By Ross Todd
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White nationalists march with tiki torches on the University of Virginia campus.

They scream antisemitic chants.

James Fields drives his car into a crowd of counter protesters, killing Heather Heyer and injuring several others.

The sights and sounds coming out of the “Unite the Right” rally remain vivid memories for many of us who were nowhere near Charlottesville, Virginia, back on August 11 and 12, 2017.

This week’s Am Law Litigation Daily Litigators of the Week are **Roberta Kaplan** of **Kaplan Hecker & Fink**, **Karen Dunn** of **Paul, Weiss, Rifkind, Wharton & Garrison**, and **Alan Levine** of **Cooley** represent clients who were there and injured during the racially-motivated violence of that weekend. The trio of lawyers led the effort to hold the organizers of the rally accountable for intentionally bringing a violent mob to town with hopes of sparking a race war. Last week, after four years of litigation and a four-week trial, a federal jury returned a verdict of more than \$26 million for their clients.

Litigation Daily: Who were your clients and what was at stake?

Karen Dunn, Paul Weiss: Our clients were nine Virginia residents who were seriously injured during the events of August 11 and 12, 2017. While they came from a diverse range of backgrounds, they were all there that weekend to stand up, peacefully, for their beliefs and for their community. Seven of the plaintiffs suffered injuries as a result of the car attack on August 12, two were surrounded by torch-wielding white supremacists at the Thomas Jefferson statue on August 11, and one of the plaintiffs, a Columbian-American woman and first-generation college student at UVA, was injured at both events, suffering a skull fracture, among other injuries. The defendants in this case were the key leaders of the white supremacists movement in



Courtesy photos

(L-R) Karen Dunn of Paul Weiss, Roberta Kaplan of Kaplan Hecker and Alan Levine of Cooley.

our country, the groups they led, and the most violent foot soldiers they relied upon. While publicly they called it “Unite the Right,” privately, they called it the “Battle of Charlottesville.”

What was at stake was some measure of accountability and closure for our clients after four long years. But also at stake was whether, at this moment of growing violent extremism in America, a jury would find that the defendants’ conduct – the meticulous planning, execution, and celebration of racially-motivated violence – would be countenanced under our laws.

How did this coalition of firms come together to handle this litigation?

Robbie Kaplan, Kaplan Hecker: Like almost everything in life, much of this happened by happenstance. When I originally came up with the idea for this case, one thing I knew is that I needed help. For one thing, our firm back then consisted of only a handful of lawyers. But even more importantly, I knew the case was going to involve potentially complicated issues about the intersection between conspiracy law and the First Amendment. I immediately thought of Karen since I knew she already had experience

in that area, not to mention had been a prosecutor in EDVA. I called her up out of the blue and asked whether she wanted to join me in suing white supremacists. She immediately agreed, with the understandable caveat that the non-profit funding the lawsuit (**Integrity First for America**) would provide security. With Alan, as I recall, I was sitting next to him one Saturday morning at synagogue. Amidst the prayers, I had the thought that Alan would be the perfect guy to depose a bunch of neo Nazis so I asked him and again, he agreed enthusiastically.

Who all was on your team?

Alan Levine, Cooley: We had an all-star team of attorneys and staff that worked together from Cooley, Kaplan Hecker & Fink, and Paul, Weiss. In addition to Robbie and Karen, **Bill Isaacson** and **Jessica Phillips**, both partners at Paul, Weiss, as well as **Michael Bloch**, counsel, **Julie Fink**, managing partner, and **Alex Conlon** at Kaplan Hecker, played substantial roles in the trial. Cooley's team consisted of three partners, **David Mills**, **Bob Cahill** (not at trial) and myself supported by a cadre of associates: **Josh Siegel**, **Dan Roy**, **Khary Anderson**, **Allegra Flamm**, **Amanda Liverzani**, **Gemma Seidata** and two paralegals **Julie Ruse** and **Courtney Fisher**. Our two super paralegals supported the larger collective team. The Paul, Weiss team on the ground in Charlottesville included associates **Makiko Hiromi**, **Arpine Lawyer**, **Giovanni Sanchez** and **Nicholas Butto**, as well as paralegals **Jerren Holdip**, **Jared Zecco**, **Shirley Song** and **Sarah Lee**. The Kaplan Hecker team included counsels **Ray Tolentino** and **Shawn Crowley**, associates **Yotam Barkai**, **Alex Conlon**, **Emily Cole**, **Jonathan Kay**, **Ally Daniels** as well as paralegals **Mike Deluca**, **Morgan Awner** and **Charlotte Karlsen**. We divided our team into groups responsible for the plaintiffs that we were calling as a witness and responsible for the entity defendant and its leaders who we were calling as a witness. It was a true team effort.

How did you divide the work?

Dunn: This case was a true team effort among the firms. In the pre-trial phase, each firm was assigned certain plaintiffs and defendants to focus on. At trial, each firm presented the testimony of the plaintiffs with whom they had worked – David Mills, Jessica Phillips, Alex Conlon, Robbie Kaplan and I all presented plaintiff testimony. Cross-examinations were also divided up among the firms – Michael Bloch, Jessica Phillips, Bill Isaacson, Alan Levine, and I all cross-examined defendants. Robbie and Jessica each handled experts. Robbie and I split both the opening statement and closing argument. There were more dramatic courtroom moments than we have space to recount here – but in general, I loved watching the other lawyers in action and appreciating each person's different courtroom style.

The goal of this litigation was to hold the organizers and the groups behind the violence in Charlottesville accountable. Were there other cases that you could draw from as a model?

Kaplan: Many years ago, when I was still an associate at Paul, Weiss, then partner **Maria Vullo** and my mentor **Marty London** tried a case in Portland, Oregon against the individuals responsible for the anti-abortion website known as the "Nuremberg Files" (you can't seem to get away from the Nazis in this case) that targeted doctors performing abortions with harassment, and violence. As I recall, at least one doctor had been killed as a result of those efforts. Maria and Marty ultimately won a very large verdict that was affirmed at least twice on appeal. They then embarked on enforcing those judgments both to collect compensation for the plaintiffs and as a deterrent to others who might be considering doing the same. While the relevant law and the facts are obviously quite different, after the horrific weekend of violence that occurred in Charlottesville on August 11-12, 2017, that case immediately came to mind as a model for what I hoped to accomplish here.

How did the key pretrial wins your team secured help pave the way to this verdict?

Dunn: The hard work done pretrial, in particular by Jessica Phillips and Michael Bloch, set us up for victory. Perhaps unsurprising, many of the defendants in this case had trouble obeying discovery orders. An unusual number of devices went missing or fell in the toilet. Following innumerable motions to compel and several contempt hearings, our team was able to secure crucial sanctions including not just jail time and financial penalties but also adverse inferences against five defendants and conspiracy findings against two defendants. We also withstood challenges to the introduction of expert testimony by Professor Peter Simi, an expert in the white supremacist movement who had actually embedded with white supremacist groups, and Professor Deborah Lipstadt, a preeminent scholar on Anti-Semitism. And we overcame a motion to move the trial to Lynchburg, Virginia, and away from Charlottesville, Virginia, the community traumatized by the defendants' actions. Finally, the deposition admissions secured by Joshua Siegel connecting James Fields, the driver in the car attack, to the conspiracy were invaluable.

How do you manage the emotions of a trial like this where violent images and racist language are a daily constant for a month straight?

Dunn: I began to think of the courtroom as a bubble of hate and violence. The defendants played their own racist diatribes over and over, which one of their counsel admitted post-verdict was a strategy to desensitize the jury. As we did the jury addresses and cross-examinations, we had

to repeat these things ourselves. Pretty soon, what had felt so shocking at first had become part of our daily lexicon. In closing, I dealt with this by being upfront about it – I urged the jury to reject this strategy of the defense and not allow themselves to be desensitized as they deliberated. Clearly, the defense strategy didn't work.

Kaplan: For the last four years since the events of August 11-12, 2017, and even though I don't think it would come as a surprise to anybody that I am Jewish, I have proudly worn a Star of David around my neck as a symbol that this country belongs to all of us and that I would not be intimidated by the rise in anti-Semitism and hate. At one of the very first court conferences just after we had arrived in Charlottesville, one of the defense attorneys asked Judge Moon to exclude references to the Holocaust on the ground, as I recall, that he was concerned about the "Jewish stereotype" that Jewish people "can't go an hour without talking about the Holocaust." Doing my very best to control my temper, I stood up and calmly (at least I think calmly) told the court that we didn't really need to rely on our own characterization of what defendants said since we intended instead to use the defendants' own words like "gas the kikes." Needless to say, that was only the first of many occasions when I had to find enough internal strength to do my job on behalf of our clients.

Levine: The vile and despicable views and conduct of the defendants were actually additional motivation to succeed on behalf of the plaintiffs. At the end of the day, however, we were trying a case, and like all complex cases, one had to keep on track presenting the evidence that would persuade the jury and assuring that the court's schedule was followed.

How did you prepare your witnesses from the sorts of questioning they would face from defense counsel, including pro se defendants Christopher Cantwell and Richard Spencer?

Kaplan: Put simply, it wasn't easy. And while we certainly spent a lot of time in witness preparation, I don't think we deserve that much of the credit. One of the most amazing things about the trial was the courage of our plaintiffs who were willing to be questioned by pro se defendants like Christopher Cantwell and Richard Spencer who were responsible for what had happened to them. While every single one of the plaintiffs showed superhuman levels of fortitude on the stand, the two who come to mind were the first two witnesses in the case, Natalie Romero and Devin Willis. Both Natalie and Devin are minorities and were rising UVA sophomores when they stood around the Thomas Jefferson statue on August 11 by men holding lit torches who were assaulting them, spewing vile racial

invective, etc. Devin testified for approximately an hour and a half and was cross examined for nearly five hours. Even worse, both Natalie and Devin were called back as part of Cantwell's case in chief for yet more torture. To this day, I don't know how they did it, but neither one broke a sweat and their testimony will serve as a model for how to stand up with dignity and tell the truth in the face of hatred and violence.

What comes next? How do you intend on trying to collect on judgments that result from this verdict? And do you intend to retry the federal claims jurors deadlocked on?

We ended this trial with the best of all worlds – a finding of conspiracy as to each defendant to commit racially motivated violence, compensatory and punitive damages for our plaintiffs, and the option to keep these defendants – who have said repeatedly how debilitating litigation has been for them – in litigation for years more. So we are considering that. As to the judgments, we are very persistent and have the will to pursue these defendants for what they owe. We fully intend to hold these defendants accountable to the maximum possible extent, no matter how long it takes.

What will you remember most about this matter?

Dunn: While I am sure I will never forget many moments from this trial, what may stay with me the most is not anything that happened at the trial but what happened in response to the trial. After the verdict, I heard from people across the country – including non-lawyers and people I had never met – who told me what this verdict meant to them, their families and their communities. At this moment, people are looking to the rule of law, to courts, and to lawyers who understand how these things work, to reassure themselves about our institutions, and to give them some degree of hope and optimism. If we contributed to that in some small way, that is itself a victory.

Kaplan: I think for me, it was the overwhelming sense of relief I felt when the verdict was read by the judge combined with our joyous return to the office to meet with our clients shortly afterwards. This case in many ways was a real test of the capability of our legal system to function in the most extreme of circumstances – its ability to determine actual (not fake) facts, uphold the law, and hold people accountable. I am someone who has lived most of my life based on a belief in that system and I cannot overestimate how relieved I was that it actually worked.

Levine: The most significant part of this experience will be the personal opportunity to participate in the actual confrontation in a court of law with these white supremacists who were challenged for their conduct in a public courtroom and made to account for what they said and what they did.