

Q&A: BuzzFeed's Defense Team on Investigating the Russia Dossier

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"Out of the ordinary" doesn't even begin to describe the fact-finding mission facing lawyers in the defamation lawsuit against BuzzFeed for publishing an unverified intelligence dossier on Russian interference in the 2016 presidential election.

The lawsuit, filed in Miami federal court by a Russian businessman accused in the dossier of hacking into Democratic Party leaders' computers, implicates questions that are the night-and-day obsession of government investigators, the White House press corps and plenty of American citizens. Because truth is a defense in defamation litigation, defense attorneys in the case are trying to verify what's in the dossier through any means necessary, including issuing subpoenas

to the FBI, the CIA, the Justice Department and the Office of the Director of National Intelligence.

Miami attorneys Roy Black and Jared Lopez of Black, Srebnick, Kornspan & Stumpf just took over as trial counsel for BuzzFeed, joining New York and Washington attorneys from Davis Wright Tremaine. The attorneys spoke with the Daily Business Review on Wednesday about the work they're tackling in the discovery phase of the case, which is set for trial before U.S. District Judge Ursula Ungaro in March 2018.

Answers were edited for length and clarity.

Q: What are the biggest discovery challenges in this case? You're seeking to depose and collect documents from several government agencies and employees, including former FBI Director Jim Comey, former Director of National Intelligence James Clapper and former CIA Director John Brennan.

Black: You can just imagine. Not only do we have to obtain information from the United States government, which has several ongoing criminal investigations in the Department of Justice, the FBI, the United States Congress and other agencies, and then add on top of that the international aspect of this: looking into what the Russians were doing and what other people were doing, the hacking element of it. It is really an enormous undertaking.

Q: Is there a timeline for when the government might respond to your subpoenas?

Black: All I can say about it is it's ongoing, and certainly it is an avenue we're aggressively pursuing.

Q: Will the dossier's author, Christopher Steele, testify?

Black: Judge Ungaro has issued an order to a British court to allow taking his deposition, so that is in the works. But as far as I know, nothing has proceeded so far in London regarding that.

As you can imagine, that's a highly contentious issue, and Mr. Steele — I don't know how to quite categorize this, but Mr. Steele has his own situation, let me put it that way. So he's entirely independent.

We would like to get his information, but it's not going to be easy. In fact, we may have more chance of getting it from the United States Congress than we do from Mr. Steele himself, but that remains to be seen.

Q: Now that you've taken on the case, will you be shifting BuzzFeed's defense at all from what's outlined in the August status report? According to BuzzFeed's summary of its defense in that report, publication of the dossier was "privileged pursuant to both state law and the First Amendment, as both a fair report of official activity and a neutral report of allegations concerning the President-Elect of the United States and the President of Russia."

Black: Clearly, we are going to take an active part in molding the strategy of the case going forward, but more than that, we really can't disclose.

Q: Will your discovery efforts be focused more on trying to show what's in the dossier is true, or on the defense that the publication of the dossier was privileged?

Lopez: It's all of the above at this point in the case. Yes, we will attempt to show the truth of the allegations in the dossier, recognizing that may be a difficult task. But aside from that, we feel the reporting privilege is the primary issue.

Black: Every day since the publication has added reasons why this was the right thing to do. Almost every day, there are new disclosures and new information publicized as a result of BuzzFeed bravely publicizing this dossier.

But Jared's right that we're certainly not going to be able to get into every detail of it, and I'm not sure that we'd want to, particularly with the more salacious claims.

Q: At this point, do you believe the plaintiff is funding the litigation himself, or is there reason to think a third party is funding the lawsuit as in the defamation case against Gawker?

Black: That is certainly an issue we will be investigating and attempting to determine. In the Gawker-Hulk Hogan case, none of that was disclosed until after the verdict, and I think that hindered Gawker in its defense.

Q: Is there anything else you'd like to add?

Black: On a personal note, cases like this are the reason why I became a lawyer.

We're representing a cutting-edge internet media company. This is the dawn of a new era of media, and some very large, powerful forces are trying to destroy it.

I think it's important to defend them, and I think that if the First Amendment means anything, people have to have the right to publicize information that critically affects our democracy.