

How and Why Schulte Signed onto the Public Nuisance Suit Over the 1921 Tulsa Race Massacre

Schulte Roth & Zabel this week announced that the firm is joining the legal team in a lawsuit seeking to “remedy the ongoing nuisance” caused by the mob attack which leveled the Greenwood community in Tulsa, left hundreds of Black residents dead, and thousands homeless.

By Ross Todd
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The legal team pursuing public nuisance claims on behalf of survivors of the 1921 Tulsa Race Massacre got some Big Law backup this week.

Pro bono and litigation leaders at **Schulte Roth & Zabel** this week announced that the firm had joined the team of civil and human rights attorneys who **this fall sued** local governments, the Oklahoma National Guard and other officials seeking to “remedy the ongoing nuisance” caused by the mob attack which leveled much of the 40-square-block Greenwood community in Tulsa, left hundreds of Black residents dead, and thousands homeless.

The Litigation Daily on Wednesday reached out to **Sara Solfanelli**, Schulte’s special counsel for pro bono initiatives, **Michael Swartz**, the co-chair of the firm’s litigation group and chair of the pro bono committee, as well as **Damario Solomon-Simmons**, the lead counsel on the case and the managing partner of **Solomon-SimmonsLaw** in Tulsa, to discuss the litigation and Schulte’s role in it. “We need Big Law to step up at this time period so we can continue to have a more perfect union,” Solomon-Simmons told me yesterday. “We need it more than ever right now.”

The following has been edited for length and clarity.

Litigation Daily: How did Schulte Roth get brought into this litigation? Who approached whom?

Damario Solomon-Simmons: **Bryan Stevenson** of the **Equal Justice Initiative** is a mentor of mine. He’s been helping me with this litigation. We had a specific issue that we were talking about, and Schulte



After the 1921 Tulsa Race Riot, attorney B.C. Franklin (right) set up his law office in a tent. At left is I.H. Spears, Franklin’s law partner. (Photo: Tulsa Historical Society)..

had done some work with EJI, and he said, “I think these guys can help us with this.” He connected me with the firm, and then I sent them an email about that particular issue. The more we started talking, it just kind of ballooned into a full-fledged partnership where they joined our already existing legal team and brought the full weight of the firm and their expertise.

Michael Swartz: When we got connected to Damario, we got really excited about the work he’s doing, the case he’s bringing and saw an opportunity to hopefully help him out and make an impact on a really important case. As Damario said, this wasn’t how we started, but it sort of grew organically, and we’ve had a really terrific partnership, and we’re really looking forward to litigating this case through together.

What's the vision for how the firm will be involved in the litigation? What is the division of labor going to look like?

Damario Solomon-Simmons: It's a full team concept. Something I like to do in cases is build teams. We've actually been meeting for two months now. We're letting the world know now, but we've been meeting weekly, and I think we've really integrated SRZ into our existing team. We have several different projects that are going on within this litigation. It's a huge undertaking. Having Schulte involved just gives us the opportunity to explore everything we wanted to explore ever since I started 18 months ago because they have such a vast array of talent and expertise. The division of labor just really depends on what issue we're dealing with and who has the expertise.

Sara Solfanelli: When we take on a pro bono client, it's the same as with any other client of the firm. So while we might be asked to start a distinct, one-off project, we often will take our pro bono clients and provide holistic services. When it comes to litigation like this, we're all in. We'll tap into resources across the firm, across practice areas. Wherever the expertise and help is needed, we're fully there and the whole firm is very much excited and passionate about being part of this case.

Damario, you filed the complaint in September. My big question is how does one begin to litigate a case like this? We're talking about a terrible event that occurred nearly 100 years ago in a case where government and community entities are accused of inaction, as well as action, and failing to document, punish and seek justice following the actions of a riotous mob. Where do you even start to litigate a case like that?

Damario Solomon-Simmons: The thing that's really powerful about this case is that although the massacre of 1921 was almost 100 years ago, we are able to show a clear course of conduct and pattern that has occurred ever since that time period. So, the litigation is not just about the massacre, but the continuing harm. What gives me hope and belief that we will be successful is that we can prove and show a course of conduct that has an underlying policy: To dispossess the Black residents of Greenwood from the valuable land that they owned. That occurred over this entire ninety-nine-and-a-half-year period and we can prove that.

The public nuisance law is very powerful here in Oklahoma, and we have a strong, recent precedent that we're following behind where the state of Oklahoma sued several opioid companies and received a **\$573 million verdict** against Johnson & Johnson utilizing some of the same arguments that we're utilizing. That's why, in my mind, we'll be successful.

Michael Swartz: From our perspective, the Tulsa massacre is a huge event in American history that's just been absent from the history books and American consciousness. To be able to be part of trying to seek justice in connection with those horrible events, it's really frankly an honor to be able to do that. We're really passionate about sustaining the case and bringing resources to the case that Damario has done such an excellent job of developing.

I'm sure you get forms of this question a lot: What makes litigation an effective vehicle for addressing the massacre and its aftermath?

Damario Solomon-Simmons: It's an effective vehicle because it's the vehicle that we have to utilize. That's the job of the courts to provide recourse and remedies for harms. Unfortunately the people in Tulsa have not had that opportunity in front of the courts. That's why it's the appropriate place.

Also, we know that the perpetrators of the harm will not do what's right, even though they will admit that the harm occurred. If this were just a run-of-the-mill car accident where red car hits blue car, you go to the courts, you assess fault and you figure out what it will take to remedy the situation.

In addition to that, I think what's powerful about this case is that it shows that despite the very best efforts of the city and others to eradicate Black people from Tulsa, Black leadership, the community is still here, the community is still fighting and the community is still trying to vindicate the losses that occurred in 1921 and that continue to occur to this very day. For national organizations like EJI and Human Rights Watch and national law firms like Schulte getting on board with us, seeing this wrong and understanding that if we really are serious in this country about racial equity that Tulsa has to be rectified. It is the largest known massacre in the history of this country. It is the only time in the history of this country where bombs were dropped on U.S. citizens by other U.S. citizens. If that cannot be rectified then what can.

Michael Swartz: I obviously 100% agree. The other aspect of “why litigation” is that the very institutions that perpetrated the massacre and continue to perpetuate what we describe in our case as a “public nuisance” are now appropriating it for their own use.

Part of this really is the Black citizens and the descendants of the massacre getting their voice and owning their history. The city and other related institutions have misappropriated and taken over this story and used it to market Tulsa in some ways. This is about the Black community owning and controlling their history. Damario, you could probably amplify what I said better than I did.

Damario Solomon-Simmons: No, I think you did a fantastic job. To hear you just articulate it like that really makes me happy, because that is exactly what it is: The City of Tulsa, the county, the chamber [of commerce]: They have created a brand around with Black Wall Street and the massacre that they say with their own words. They have a hashtag that says #TulsaTriumphs. That’s like their slogan. The irony of that is Tulsa was not destroyed. Greenwood was destroyed. Their hashtag is saying exactly what happened. Tulsa has triumphed over Greenwood. It has finally dispossessed all the valuable land, kicked all the Black people out, and now they’re using Greenwood for their self-benefit.

What are going to be your chief challenges in litigating this case?

Damario Solomon-Simmons: Overcoming their arguments over laches and statutes of limitations and dealing with the governmental entities under the Oklahoma Tort Claims Act. Those are major defenses. That’s what they cite in their motion to dismiss. But we feel very strongly that we should prevail on those issues because the nuisance law and the case law are very clear that we step into the shoes of the government when we bring a public nuisance claim. We should not be subject to any of those defenses or limitations. We should be able to move forward with our case. Then it’s an issue of causation. I know we have a ton of evidence and documents and we’re going to get a lot more that will help prove up our case.

Michael Swartz: And the public nuisance theory that we’re pursuing is the same theory that the state of

Oklahoma and the city of Tulsa have pursued in the opioid litigation. The core theory that we’re pursuing is well established by the Oklahoma and Tulsa governments themselves.

I note that a number of your plaintiffs are descendants of attorneys who were directly affected by the massacre. I’m curious what your thoughts are about the role lawyers played in that community in the past and the roles that you’re currently playing in trying to rectify some of the harms caused?

Damario Solomon-Simmons: I really appreciate that question. The lawyers are one of the things that made Greenwood special. It had a very large professional class of African Americans. One of the plaintiffs is a descendant of A.J. Smitherman, who was also a very successful newspaperman. When he was practicing law he actually created something called the Guardians Guild. It was a consortium of African-American lawyers who were protecting Native Americans and Americans of African descent who were having their land allotments taken. Oklahoma had these terrible guardianship laws where anyone could just apply to be a guardian over someone else and then take their property.

I think it’s interesting that we’re sort of channeling that spirit of A.J. Smitherman. And then even after the massacre you had B.C. Franklin and other attorneys who were actually practicing law in a tent. (Editor’s note: The photo above is of Franklin and his colleagues from that time.) They were fighting a new ordinance that made it even more difficult for the survivors to rebuild. They eventually won that case in 1923 at the Oklahoma Supreme Court which was a great victory but it also showed how difficult it was to rebuild.

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