

## MVP: Gibson Dunn's Joshua S. Lipshutz

By Ben Kochman

*Law360 (November 25, 2019, 3:10 PM EST)* -- Gibson Dunn & Crutcher LLP's Joshua Lipshutz helped Facebook fend off a Washington, D.C., quadruple murder suspect's subpoena for social media records of a key prosecution witness, and represented the tech giant in a European privacy dispute that questions the limits of EU-U.S. data transfers, earning him a spot among Law360's 2019 Cybersecurity & Privacy MVPs.

### ***HIS BIGGEST RECENT ACCOMPLISHMENT:***

Facebook turned to Lipshutz and his team for an emergency appeal last October after a trial court ordered the company to comply with subpoenas served by Daron Wint, who was on trial for brutally killing three members of a family and their housekeeper in a headline-grabbing Washington, D.C., murder case.

The trial court had sided with Wint's attorneys' argument that his constitutional right to due process allowed him to subpoena Facebook for the social media records of several people, including one of the government's key witnesses. But Lipshutz — in a case fully briefed, argued, and decided in less than a month — countered to the D.C. Court of Appeals that a 1986 privacy law, the Stored Communications Act, bars service providers from disclosing user data in response to such requests.

The D.C. high court agreed, first in a brief order last October before later explaining in full in January why it had sided with Facebook's reasoning. Wint had alternative, more constitutionally sound means to seek such communications, even if that process would take longer than going through Facebook, the justices said.

"They can go to the person whose information it is and subpoena that person, but what they can't do is, unbeknownst to that user and without their consent, get that information from Facebook," Lipshutz told Law360 of the case.

The MVP logo features the letters 'MVP' in a bold, blue, serif font. A red circle is drawn around the 'V', with a red arrow pointing upwards from the top of the circle.

Joshua S. Lipshutz  
Gibson Dunn

Congress has prohibited service providers like Facebook from complying with such subpoenas because "it would effectively discourage the use of such technologies and put users' privacy in jeopardy," he added.

#### ***HIS BIGGEST CHALLENGE THIS YEAR:***

Lipshutz serves as lead U.S. counsel in Facebook's ongoing European defense of two tools that it and thousands of other companies rely on to legally move data from the EU to the U.S. — a set of terms and conditions known as "standard contractual clauses," and the regulatory framework known as the Privacy Shield.

In July, the EU Court of Justice heard oral arguments in the case, in which Austrian privacy activist Max Schrems and the Irish Data Protection Commissioner question whether Europeans' privacy rights are adequately protected from U.S. surveillance when data is transferred outside the 28-country bloc.

"We were representing Facebook, but essentially, the U.S. legal system was on trial," Lipshutz said.

Lipshutz helped compile evidence on how the U.S. legal system protects users' privacy, working with a wide variety of experts that Facebook called as witnesses, including constitutional scholars and experts on national security law.

"It was a chance for me to operate in a completely different legal environment," Lipshutz said of the case, in which a verdict is expected in early 2020. "And it was fascinating to see how the European perspective on privacy has really evolved in a different way than it has here in the U.S."

#### ***WHY HE'S A DATA PRIVACY ATTORNEY:***

Lipshutz also handles a raft of litigation unrelated to privacy issues, including for Uber, which he is helping defend against allegations of misclassifying drivers as independent contractors, and Chevron, which he defends in litigation aiming to hold oil and gas companies liable for climate change-related damage.

But the veteran attorney, who started out in the field as a constitutional and appellate lawyer, said he's drawn to his fast-growing privacy practice because evolving technologies have raised novel legal questions, including over people's privacy expectations and what it means today to suffer a privacy "harm."

"Privacy has always been about the expectations of people, and with the advent of new technologies, those expectations are less certain than they once were," Lipshutz told Law360.

#### ***WHAT MOTIVATES HIM:***

Lipshutz said he's primarily motivated by his "great clients," including Facebook, with whom he worked to negotiate a historic \$5 billion privacy settlement with the Federal Trade Commission in July. That deal resolved a slew of Facebook's privacy breaches, including the company's admission that it improperly allowed an app developer to share millions of users' personal data with the political consulting firm Cambridge Analytica.

FTC officials touted the deal as the agency's highest-ever fine secured in a privacy case. But the agreement also included several terms favorable to Facebook, including a clause granting the company a massive liability shield for its past behavior.

Lipshutz, who represents Facebook in ongoing private litigation and government enforcement actions that have emerged from the Cambridge Analytica episode, said he welcomes the challenge of working on such high-impact cases.

"Facebook is an incredible company to work with," he said. "You're always working on cutting-edge issues and important matters that affect a lot of people."

***HIS ADVICE FOR JUNIOR ATTORNEYS:***

Newer attorneys should continuously check in with themselves to make sure they are passionate about the cases they are involved with, Lipshutz said.

"I would say, first and foremost, follow your passion," he said. "If there's an area of law that you're interested in, follow that and keep doing it."

It's also essential to surround yourself with colleagues that you both enjoy being around and are challenged by, he added.

"You should always be asking yourself, 'Am I having a good time doing this?'" Lipshutz said. "And in my case, my answer is yes."

— *As told to Ben Kochman*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.*