Foreword: 2022 Law vs. Antisemitism Symposium

Diane Kemker
Southern University Law Center, dianeklein66@gmail.com

Follow this and additional works at: https://www.repository.law.indiana.edu/ijlse

Part of the Law Commons

Publication Citation
Foreword: 2022 Law vs. Antisemitism Symposium

Diane Kemker*

In the spring of 2021, law professors Robert Katz and Diane Kemker found themselves in a conversation they had had before about antisemitism in the United States and legal efforts to address it. As college classmates and old friends with differing politics on Jewish issues, this was familiar ground. But something was different this time.

For both of us, part of our Jewish identity is expressed both through our long-standing professional and scholarly activities and by our commitments to advancing civil rights. For example, in 2015, Katz gave testimony before the House Judiciary Committee of the Indiana General Assembly about the impact of the pending Religious Freedom Restoration Act on civil rights and antidiscrimination.\(^1\) From 2015 to 2018, he successfully litigated a case protecting the medical rights of incarcerated persons in Indiana.\(^2\) Kemker began her teaching career at one Historically Black Colleges and Universities (HBCU) law school (Thurgood Marshall School of Law at Texas Southern University), currently teaches at another (Southern University Law Center), and spent most of the intervening years at a Hispanic-Serving Institution (HSI) law school in California. In addition to teaching and publishing in antidiscrimination law (race, gender, sexual orientation/gender

---

* Visiting Professor of Law (remote), Southern University Law Center. On behalf of herself and her colleague and Conference co-convenor Professor Robert Katz, Indiana University (IU) McKinney School of Law, the author wishes to extend her heartfelt thanks to the administration and staff of IU McKinney, without their support the event would not have been possible. We also wish to thank our donors and sponsors, the Indiana State Bar Association, the Indianapolis Bar Association, and the IUPUI Jewish Faculty and Staff Council. Additional support was provided by Cohen & Malad, LLP, Hoover Hull Turner LLP, Ice Miller LLP, the Indianapolis Jewish Community Relations Council, Katz Korin Cunningham PC, Kosene & Kosene Development Co., Mitchell Dick McNelis LLC, and the Academic Engagement Network (AEN). Breakfast and lunch were provided by Bagel Fair and Shapiro’s Delicatessen.


identity),\(^3\) Kemker also organized one of the first transgender studies conferences held at any law school in the United States in 2012.\(^4\)

But despite these antidiscrimination law bona fides, until 2021, neither of us had considered turning our scholarly attention to the legal experience and situation of a group to which we both belong: American Jews.

That spring, we began to talk about offering a course in this topic along the same lines as the antidiscrimination law, feminist jurisprudence, and religion and the law seminars we had attended as law students and taught as faculty. We looked for a casebook we might use and found none. There were individual chapters or sections of casebooks on Constitutional law, immigration law, or religion and the law, with material about Jews or antisemitism. There were books of Jewish history and Jewish studies that included some legal material. But despite the profusion of casebooks focusing on various minorities in the United States, not one was exclusively -- or even substantially -- devoted to Jews or antisemitism and law. Nor is there practical training offered in this area, although all U.S. law schools include clinical legal education in their offerings.\(^5\) Despite the social justice orientation of many law school clinics\(^6\) (for example, clinics serving immigrants, refugees, and

---


asylum-seekers;\textsuperscript{7} housing law clinics;\textsuperscript{8} and death penalty clinics\textsuperscript{9}), and despite statistics indicating dangerous increases in antisemitic incidents in the United States,\textsuperscript{10} no law school offers a clinic addressing antisemitism.\textsuperscript{11} With a mounting sense of excitement, we realized we had identified a startling gap in the legal curriculum: the systematic theoretical study of antisemitism and the law. Thus was born The Law vs. Antisemitism Project.

Inspired by the history of Critical Race Theory, we decided to begin by convening a conference. Over the next several months, we set out to identify and bring together law professors, scholars in other fields, practicing lawyers, and activists whose work in some way intersected with the law and antisemitism. We recognized that understanding and combating antisemitism, through law or otherwise, is not the sole province of any single academic discipline, and the conference as we conceived it was intentionally and necessarily interdisciplinary.

We distributed our initial Call for Papers at the beginning of June 2021 with a mixture of hope and genuine uncertainty about whether we would receive an adequate response to justify holding a conference at all. We need not have worried.

Our eminent keynote speakers made an early commitment to presenting at the plenary sessions that anchored the conference: former Chief Justice of Indiana Randall Shepard,\textsuperscript{12} and professors Derek Penslar,\textsuperscript{13} Lila Corwin Berman, and James Loeffler.\textsuperscript{14} All of them also generously permitted us to use their names to


\textsuperscript{13} Derek Penslar, Who's Afraid of Defining Antisemitism?, 6 Antisemitism Studies 133 (2022) muse.jhu.edu/article/852572.

attract both presenters and attendees. Ultimately, the Conference consisted of those plenary sessions along with eighteen concurrent sessions over two days, with a total of nearly sixty presenters, from six countries (and five time zones!), nineteen U.S. states, and eleven U.S. law schools. It was a true “hybrid” conference, with in-person sessions for local participants and presenters (with CLE credit available), and concurrent sessions including remote presenters and hundreds of total attendees.\textsuperscript{15} In fact, it was so successful that we immediately began planning the second annual Law vs. Antisemitism Conference, which will take place at Lewis & Clark Law School in Portland, Oregon, March 26-27, 2023, with co-convenor and site chair Professor David Schraub.\textsuperscript{16}


The panel on “Using Law Against Antisemitic Speech” was unique in including documentary film and presentations by a litigant and an expert witness in two contemporary high-profile cases. Carol King and Gaylen Ross presented preliminary footage from “Sapiro: The Jew Who Sued Henry Ford,” and Victoria Woeste presented “The Henry Ford Libel Trial, the International Jew, the Protocols, and ‘fake news’.” David Fraser (University of Nottingham, UK) presented “People v. Edmonson (N.Y. 1938): Criminal Libel as a Strategy of Jewish Legal Self-Defense Against Antisemitic Nazi Speech.” Tanya Gersh, the plaintiff in a federal case against Andrew Anglin (publisher of the Daily Stormer), and Peter Simi (Chapman University), a sociology professor who appeared as an expert witness in Sines v. Kessler, the case arising from the 2017 “Unite the Right” rally in Charlottesville, Virginia, shared their experiences.

Other panels addressed other aspects of antisemitism in the U.S. historical context. “Jews in American Courts in the Late 19th/Early 20th Century” included


\textsuperscript{16} LEWIS AND CLARK L. SCH. L. CALENDAR, https://law.lclark.edu/calendars/events/month/date/20230301 (last visited Nov. 1, 2022). The 3rd and 4th annual Conferences have been tentatively scheduled for Florida International University School of Law (2024) and Sheffield Hallam University (2025).


Contemporary law and antisemitism in the U.K. was addressed by a panel on “Protecting Jews Under UK Civil Rights Law,” with presenters Lesley Klaff (Sheffield Hallam (U.K.)), “The Legal Construction of Jewish Identity as a ‘Protected Characteristic’ in Section 26 Equality Act 2010 (U.K.)” (included in this volume) and Clément Labi (University of Luxembourg), “Are Jews Protected as an ‘Ethnic,’ A ‘Religious’ or an ‘Ethnoreligious’ Group in the Eyes of UK Civil Rights Law?”


Jews Can Be ‘Unknown’ in Their Jewishness? Expectations and Experiences of Antisemitism.”

The breadth, depth, and richness of the offerings at the Inaugural Law vs. Antisemitism Conference augurs well for the future of this new subdiscipline. We hope it will not be too many years before “Law and Antisemitism” courses take their place beside the many other “Law and...” courses in the curriculum, with casebooks and clinics soon to follow. As for the conference, we can happily say, Next year in Portland!