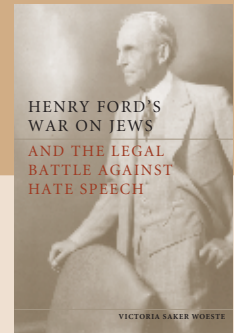


Henry Ford's War on Jews and the Legal Battle Against Hate Speech

By Victoria Saker Woeste, published by Stanford University Press (2012), cloth or e-book, 424 pages, \$55
<http://www.sup.org/book.cgi?id=20243>



Reviewed by Gary M. Maveal

This book examines Henry Ford's anti-Semitic publications in the *Dearborn Independent* newspaper in the 1920s and the libel suit against him by Aaron Sapiro in federal court in Detroit. Ford's offensive and eccentric rants against Jews have been well chronicled, but this social history critiques the legal system's failure to hold him accountable.

Woeste, a research professor at the American Bar Foundation, wrote her first book on the history of agricultural cooperatives in the U.S. Aaron Sapiro was an attorney and leading organizer in that movement.

The 1924 *Independent* articles accused Sapiro of exploiting the nation's farmers through the marketing associations, alleging that the co-ops were a front for a Jewish conspiracy to monopolize American agriculture. (These articles came after the *Independent's* series, *The International Jew*, in 1920–1921 had professed a Jewish plot to rule the world.)

The story of the libel action is prefaced by chapters on Sapiro, Ford, and noted civil rights attorney Louis Marshall, cofounder of the American Jewish Committee. Marshall was the author and a leading advocate of New York's group libel statute in 1913, the first of its kind in the U.S.

These character studies reveal the ironies in the high-profile lawsuit. For example, Woeste shows that both Ford and Sapiro had credentials as rural populists. She also details how Marshall, though an accomplished litigator, preferred the court of public opinion as the forum for working toward equal treatment for American Jews. While Marshall was unenthused about Sapiro's libel suit, he was instrumental in ending it.

The Telling Mistrial

Woeste recounts the March 1927 trial with details from the court's transcript, press accounts, and a wealth of archived correspondence.

Chief Judge Arthur Tuttle held pretrial sessions in the "Million Dollar Courtroom" that was later moved to the Theodore Levin U.S. Courthouse. (This book was launched last summer with a reception in the same courtroom.) But Judge Tuttle grew impatient with the defense's delaying tactics and said that "no poor man could successfully try a case" against Ford. The incident prompted Ford to swear by affidavit that the judge was biased against him because of his wealth (p 200). Judge Tuttle stepped aside and the case was tried by Judge Fred Raymond.

Sapiro was represented by William Henry Gallagher, one of the top trial lawyers in Detroit. (Gallagher was profiled in "Michigan Lawyers in History" in last month's *Michigan Bar Journal*.)

A major issue at trial was establishing Ford's personal role in publishing the stories against Sapiro, and Ford's *Independent* staffers proved helpful witnesses in the plaintiff's case. Moreover, Sapiro was an impressive witness in his prolonged testimony. His case was going so well, some think Ford engineered a one-car auto accident on Michigan Avenue in Dearborn to postpone having to testify.

Woeste also documents the presence of Ford investigators and publicists in the courthouse throughout the trial and their approach of a juror, which precipitated a mistrial. Retrial was rendered moot when the parties settled.

These chapters on the lawsuit and mistrial are absorbing reading, but I was disappointed with some lack of background on two hotly contested issues.

The trial was held before the 1938 revolution of the *Erie* doctrine and the Federal Rules of Civil Procedure—with ground rules opposite of those we follow today. Under the former doctrine of *Swift v Tyson*, federal judges determined the common law in diversity cases and were not bound by state court decisions. At the same time, the Conformity Act of 1872 prescribed that state rules of procedure would apply in federal trials.

Without the framing of these dynamics of federalism, explanations of the legal arguments and rulings at trial are somewhat undeveloped. It was difficult to discern the rationale for Judge Raymond forbidding Gallagher's cross-examination of Ford's editor as a witness for Sapiro (pp 221–222 and n 18). It appears the court clung to the common-law rule against leading questions on direct examination even though Michigan statute had long authorized calling an agent of an adverse party for such a "cross-examination." In addition, the court's view on the status and role of Michigan's common law of group libel in the federal action wasn't made clear (p 226 and n 28).

Ford's Apology

The book concludes by examining Ford's surprise apology and its unfulfilled promise.

Marshall worked with Ford's confidants to effectively preempt retrial of Sapiro's action with an apology to the Jewish people in July 1927. Marshall wrote the words by

which Ford recanted the “offensive charges” that had been made against Jews, yet the apology did not acknowledge that Ford had written or directed any of the publications. The retraction made headlines around the world.

Woeste documents Marshall’s role acting not on Sapiro’s behalf, but as a statesman for all American Jews. Marshall’s interests weren’t fully aligned with Sapiro’s because the apology addressed the group-libel claim that Sapiro would not have prevailed on. Nor was the apology tied to an agreement to end the litigation, though the suit settled soon thereafter with Ford’s payment of Sapiro’s attorney’s fees.

The book critiques the apology’s ineffectiveness in ending the distribution of anti-Semitic tracts. Although Ford discontinued publishing the *Dearborn Independent*, he proved unable to effectively withdraw his early *International Jew* pamphlets from circulation, and no judgment required that he do so.

Woeste’s work on this marquee Detroit trial shows how Ford’s money gave him the opportunity to engage in excessive discovery and exhaust Sapiro’s resources. While Sapiro fared better in settlement than many plaintiffs, the book forcefully argues that Ford’s endgame apology was a calculated public-relations maneuver that cost the defendant very little.

Thoroughly researched and footnoted, the book analyzes *Sapiro v Ford* and its aftermath in the larger social context of combating hate speech. This ambitious scope is paired with lively writing to produce an impressive history for Michigan readers. ■



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coming article in the Wayne Law Review traces the history of the Michigan Supreme Court’s unusual peremptory order rule.