

In Charlottesville Suit, Robbie Kaplan and Karen Dunn Don't Scare Easy

By Jenna Greene
July 11, 2018

Suing white supremacists is not for the faint of heart—but star litigators **Robbie Kaplan** and **Karen Dunn** are not backing down.

Representing 11 people who were injured in Charlottesville last August, they scored a big first-round win when a federal judge in Virginia on Monday refused to dismiss their suit against 24 of 25 defendants, including **Richard Spencer**, **Andrew Anglin**, the Ku Klux Klan, neo-Nazi groups and **James Fields**, the man who drove his car into counter-protestors.

“The First Amendment does not protect violence,” wrote **Senior U.S. District Judge Norman Moon** of the Western District of Virginia on Monday in a powerful **62-page decision**.

“I think about how proud my grandma would be if she knew I was doing this,” said Dunn (above, right), a partner at **Boies Schiller Flexner** and former federal prosecutor in Virginia (and one of *The American Lawyer's Litigators of the Year* in 2017).

“Karen is the only lawyer I’ve ever met who is tougher than I am,” said Kaplan (above, left), who left **Paul, Weiss, Rifkind, Wharton & Garrison** last year to found what’s now known as **Kaplan Hecker & Fink**. “There’s no one I’d rather walk into court with.”



Kaplan, who represented **Edie Windsor** in the landmark SCOTUS case on gay marriage, is no stranger to hot-button cases. But this suit, which alleges the defendants formed a conspiracy to commit racial violence, is something else.

The vitriol directed at her personally has been “incredibly scary,” Kaplan said.

That she’s a New Yorker, a woman, a lesbian, hardly seems to register. “What the far right cares about the most is the fact that I’m Jewish,” Kaplan said, describing the anti-Semitism as virulent. “There was nothing in *Windsor* that even approached” such personal attacks.

Still, neither she nor Dunn are particularly surprised at the hate speech. “It’s what this case is about,” Dunn said.

The plaintiffs want monetary damages for their physical and emotional injuries, as well as a ban on similar violent and threatening gatherings in the future.

The litigation is being funded by the non-profit **Integrity First for America**, but the litigators are working at a reduced rate.

Also on the team is **Cooley's Alan Levine**. "I was sitting next to him in synagogue," Kaplan said, and realized "He's the best person I know to depose Nazis." (An unusual compliment, to be sure.)

Kaplan and Dunn, however, had never actually met before the case, though they knew of each other by reputation. "Since then, it's become very clear that we work extremely well together as a team. It's very serendipitous," Dunn said.

Kaplan conceived of the case after being deeply moved by images of the Charlottesville violence. Wanting to take action, she recalled an **old suit** by former Paul Weiss colleagues **Maria Vullo** and **Martin London** on behalf of **Planned Parenthood**. They sued anti-abortion activists who posted photos and home addresses of doctors who performed abortions, with red "X"s over the ones who had been injured or killed.

The successful theory in that case was that the anti-abortion activists were inciting violence. In Charlottesville, Kaplan and Dunn are trying something similar—alleging a conspiracy to commit violence.

So far, the judge is buying it.

Moon, who is 82 and was appointed by **President Bill Clinton**, starts his opinion with an examination of a law that had been all but relegated to the dustbin: an 1871 statute known as the Ku Klux Klan Act "directed at the organized terrorism in the Reconstruction South."

It's suddenly relevant again.

Going defendant by defendant, Moon concluded that the plaintiffs "have adequately pled specific factual allegations" that each defendant except one "was part of a conspiracy to engage in racially motivated violence at the 'Unite the Right' events."

Notably, Moon ruled that when Fields ran over protestors with his car, killing one, it was "consistent with the conspiracy's avowed goal" and reasonably foreseeable. "Accordingly, plaintiffs have plausibly alleged that these co-conspirator defendants may be held liable for the overt act Fields took in furtherance of the conspiracy," he held.

He also rejected their First Amendment defense.

"[S]ome of the Defendants' behavior certainly was protected by the First Amendment," the judge wrote. But free speech doesn't shield violence. "Plaintiffs plausibly allege that the defendants formed just such a conspiracy to commit violence, and so the First Amendment does not protect defendants."

Kaplan and Dunn said they expect the case to go to trial. "There is not any settlement to be had," Dunn said.

"We don't expect to fully recover damages from these defendants," Kaplan added. "But our clients want justice."

BSF | BOIES
SCHILLER
FLEXNER