

**WRITTEN TESTIMONY OF KENNETH S. STERN**

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Before the

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY**

November 7, 2017

Hearing on Examining Anti-Semitism on College Campuses

Dear Chairman Goodlatte, Ranking Member Conyers, and honorable members of the Committee:

My name is Kenneth Stern. I am the executive director of the Justus & Karin Rosenberg Foundation, which works to increase understanding of hatred and antisemitism, and how to combat them, with a particular emphasis on college campuses.

I have also taught a full semester class on antisemitism at Bard College as a visiting assistant professor of human rights, where I am currently a fellow of its Center for Civic Engagement.

I am honored to have been invited to speak with you today.

Antisemitism has been around for thousands of years, and it is no surprise that it appears on our college campuses too, as do all other forms of hatreds and prejudices.

The questions before the Committee today are multi-faceted:

- 1) How do we understand antisemitism on campus?
- 2) How is it manifested?
- 3) What works to combat it?
- 4) What might, despite the best of intentions, make the problem worse?

I began working on issues of antisemitism in 1980s, when I was a young lawyer in Portland, Oregon involved with politically progressive cases.

While protesting the 1982 War in Lebanon, I was shocked to hear antisemitism from some of my progressive colleagues. They seemed not to care that they were vilifying Israel in terms reminiscent of how members of the white supremacist Posse Comitatus – who used to hand out antisemitic tracts around the Multnomah County Courthouse where I practiced – demonized Jews.

I began working as a volunteer with the Oregon Jewish community on issues of antisemitism, and in 1989 joined the national staff of the American Jewish Committee as its antisemitism expert, where I worked for the next 25 years. The campus was part of my portfolio.

One of my earliest projects – at the height of the hate speech code craze in the early 1990s – was to research effective ways colleges and universities should address bigotry. With the help of the late

Brooklyn College President Robert Hess, I convened a group of college presidents to advise my research, and wrote a monograph that was a blueprint for action. I then trained over 200 presidents around the country on this topic<sup>1</sup>. The key points were: do not violate academic freedom or free speech; speak out with your own voice strongly and promptly against bigotry; punish conduct where appropriate; review curriculum; train staff; survey how students perceive the climate on campus.

In 2002, when there were a series of attacks on Jewish students and/or Jewish-linked property on North American campuses, I organized – again with the help of a small group of college and university presidents – an ad with over 300 presidents, in the New York Times. It emphasized the obligation of a university president to make sure that “classrooms will be open to all students, and classroom discussions must be based on sound ideas [and] campus debates will be conducted without threats, taunts, or intimidation.”<sup>2</sup>

In 2007, when the British University and College Union (UCU) adopted a resolution advancing an academic boycott of Israel, I worked with Columbia University President Lee Bollinger, who denounced the UCU’s actions, and encouraged other college presidents to join him. Over 400 signed a New York Times ad that I coordinated. Bollinger’s statement essentially said if the UCU was intent on violating fundamental academic principles by dividing the academic world into two – Israelis, who should be shunned, and everyone else – then count Columbia and the other American universities as Israeli too.<sup>3</sup>

This ad, like the 2002 ad, did two things: 1) It followed the important advice given to me by my late friend, James O. Freedman, the former president of Dartmouth College – namely that any efforts to combat antisemitism on campus had to be consistent with, and ideally should promote – the values of academic freedom, and 2) the advice of Michael Brooks, now emeritus executive director of the University of Michigan Hillel, that “When you make it about Jews, you lose.” He meant that any efforts to combat antisemitism should not be cast as special protections for Jews, but rather a question of the responsibility of the university to cultivate an optimum learning environment for all its students, Jews included.

Let me illustrate these points for you.

You might remember, at the time of the 2007 UCU boycott vote, some in the Jewish community advocated a different approach, saying if the Brits were going to boycott the Israelis, we Americans should boycott British academics in return.

I dare say if anyone had tried to get a university president to support a counter academic boycott, not one would have agreed. An academic boycott is a blacklist, and you don’t argue that academic boycotts are anathema with a counter-boycott for many reasons, one of which is that universities must be places where ideas are evaluated on their merits, not on the nationality of the proponent, and secondly it concedes that academic boycotts are ok, and switches the debate to the question of who should be boycotted.

What I learned from these college presidents, and many colleagues and friends (most of whom are Jewish and many of whom teach Jewish or Israel studies), is that Jim Freedman was right: approaches to antisemitism that endorse and promote academic freedom are more likely to work,

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1. The monograph is here: <http://jkrfoundation.org/wp-content/uploads/2016/12/BigotryOnCampus.pdf>

2. The text of the ad is at Appendix A.

3. The text of the statement is at Appendix B.

in part because they underscore the academy's goal of increasing knowledge and promoting critical thinking. On the other hand, approaches that explain academic freedom away or harm it will not only fail, they make the problem worse, in part because they are perceived by stakeholders as direct assaults on the integrity and mission of the academy.

In my experience, people who care about campus antisemitism, and want to do something about it, sometimes advocate things that feel good – like the counter-boycott example – but actually do great harm. And most who advocate such positions are from outside the campus, and are essentially creating messes for those on campus – faculty, students and administrators – to clean up.

One campus with antisemitism is too many. I've seen such a campus. For example, years ago the head of the small Jewish student group at The Evergreen State College in Washington State wanted to meet with me because his pro-Israel flyers were being defaced or destroyed, and other students would intentionally bump into him in the halls and otherwise make his life miserable. I wanted to meet with him on campus, but he said to be seen with a Jewish organization official would only make matters worse. So I offered to meet him in a restaurant, but he said that was too dangerous too. We met in the local synagogue.

But that is not the norm, despite the fact that some outside groups allege that antisemitism on campus is an epidemic. Far from it. There are thousands of campuses in the United States, and in very few is antisemitism – or anti-Israel animus – an issue.

Consider two recent reports. Scholars at Stanford University interviewed Jewish students at five California campuses<sup>4</sup>. Few students saw antisemitism. They felt welcome and involved. However, there was some discomfort because they were being pulled to commit themselves to support groups that were stridently pro-Israel or stridently pro-Palestinian. The binary and dogma associated with the campus conflict over the Israeli/Palestinian conflict was having a troubling result – these Jewish students were less likely to participate in Jewish campus life.

The other report was from the Israel on Campus Coalition<sup>5</sup>. The ICC is a mainstream Jewish organization. In the 2016-2017 school year pro-Israel campus events – as in years past – significantly outnumbered anti-Israel events (at a rate of two to one). And despite 2017 being the 50th anniversary of the Occupation of the West Bank, there were only 20 campaigns for Boycott/Divestment/Sanctions against Israel. (Divestment resolutions have been proposed since 2002. Not one university has divested.)<sup>6</sup>

Let me spend a few minutes addressing another approach that, if employed, will do great damage to the academy, but also will harm Jewish students and faculty teaching Jewish and Israel studies: the proposed Antisemitism Awareness Act.

The background to the proposal of the Antisemitism Awareness Act is worth reviewing.

In 2010 the Department of Education sent a "Dear Colleague" letter, clarifying that Jews and Muslims and Sikhs as ethnic groups were afforded Title VI protection.

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4. <https://stanford.app.box.com/v/Safeandonthesidelinesreport>

5. <https://israelcc.org/wp-content/uploads/2017/09/2016-2017-Year-End-Report.pdf>

6. Other reports suggest a higher level of discomfort among Jewish college students. This Brandeis study of applicants to the Birthright program suggests some Jewish students are being harassed related to their support of Israel. See <https://www.brandeis.edu/cmjs/pdfs/birthright/AntisemitismCampus072715.pdf>

Based on that letter, when I was at AJC I filed a complaint with the Department of Education on behalf of students from the Vestal School District in upstate New York. These were Jewish high school students who were targeted for harassment because they were Jewish – they were called “cheapie,” chants of “Heil Hitler” and “Nazi” were offered in their presence, and many were kicked on a so-called “Kick a Jew Day.” The case was successfully resolved. It was clear to the Department of Education that these students were being harassed because they were Jewish; there was no need to consult a definition to make this determination. Indeed, I offered no evidence about what motivated the outrageous behavior of the students who bullied Jews. That Jews were harassed routinely, pervasively and severely because they were Jews was sufficient for the Department of Education to reach the right result.

However some Jewish groups and individuals, especially after they were armed with this new Title VI clarification, began filing complaints based, in part, on assertions that a hostile environment was created on particular college campuses because of anti-Israel expressions they believed transgressed the [Department of State Definition of Antisemitism](#).<sup>7</sup>

Let me provide some background to that definition, because it is based on one for which I was the lead drafter.<sup>8</sup>

In the early 2000’s, there was an uptick of antisemitic hate crimes against Jews in Western Europe. A group charged with analyzing these attacks – the European Monitoring Centre on Racism and Xenophobia (now subsumed in the European Union’s Fundamental Rights Agency) – had the task of collecting data from its sources in various countries, but most countries did not have a definition of antisemitism, and those that did had different ones.

How could data collectors know what to include and exclude, and how could comparisons be made across borders?

It proposed a clunky definition which focused on stereotypes about Jews, but seemed designed to exclude the situation where a Jew was being attacked because an actor was upset with Israelis or Israeli policy. This made no more sense than saying the lynching of a black man in the 1950s or 1960s was an act of racism if the perpetrator thought blacks were shiftless and lazy, but not if he was motivated by anger to a Martin Luther King speech or the passage of civil rights legislation.

The EUMC’s leader, understanding this criticism, worked closely with the American Jewish Committee to create a better definition. My then-colleague Rabbi Andrew Baker did the political negotiating, and I drafted the definition, in consultation and collaboration with other experts on antisemitism, including Professor Yehuda Bauer, among others.

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7. <https://2009-2017.state.gov/documents/organization/156684.pdf>

8. I provided a comprehensive review of the development of the EUMC “Working Definition” at a 2010 conference reported here: [http://kantorcenter.tau.ac.il/sites/default/files/proceeding-all\\_3.pdf](http://kantorcenter.tau.ac.il/sites/default/files/proceeding-all_3.pdf). Interestingly, the Brandeis Center, in its FAQ about the definition, cites both this report (at footnote 2 of [http://brandeiscenter.com/wp-content/uploads/2017/10/guide\\_faqs\\_antisemitism.pdf](http://brandeiscenter.com/wp-content/uploads/2017/10/guide_faqs_antisemitism.pdf) as well as an article I wrote with Dr. Dina Porat, in which the proposed definition was explained (at footnote 3 – see <https://web.archive.org/web/20120112010835/https://www.tau.ac.il/anti-semitism/asw2003-4/porat.htm>). Additionally while this article from the sometimes hateful and always stridently anti-Israel “Electronic Intifada” website has some errors (I was not at the meeting with Winkler, as it states), it is largely correct about how the “working definition” was created. <https://electronicintifada.net/content/israel-lobby-uses-discredited-anti-semitism-definition-muzzle-debate/11716>

The definition was drafted to make it easier for data collectors to know what to put in their reports and what to reject. It focused their attention away from the question of whether the actor hated Jews, and focused them on whether the actor selected Jews to be victims. This distinction between motive and intent was key, and was drawn from the wisdom and text of the U.S. Supreme Court case of *Wisconsin v. Mitchell*<sup>9</sup>. You may recall the case of the young Jew who was kidnapped in France, held for ransom, tortured and ultimately killed, because his captors had a positive stereotype about Jews – they were rich. There was a debate in France whether this was an antisemitic act or not. Under the working definition, what the kidnappers thought about Jews wasn't important – that they picked a Jew to target because he was a Jew settled the question.

Because the definition was drafted with data collectors utmost in mind, it also gave examples of information to include regarding Israel. While criticism of Israel like that of any other country was not to be included, other examples suggested that antisemitism might be present, and would be useful for comparing antisemitism over time and across borders. Among these examples, holding all Jews responsible for the actions of Israel, comparing Israeli policy to that of the Nazis, or denying Jews the right to self determination (such as by claiming that the existence of Israel is a "racist endeavor.")<sup>10</sup>

I encouraged the Department of State's first Special Envoy for Antisemitism to promote the definition as an important tool. He used it effectively as the framework for a report on global antisemitism. And I advocated its use with his successor, Hannah Rosenthal, who trained state department officials on the definition, so that they could use it in their bilateral and multi-lateral work.

The definition was not drafted, and was never intended, as a tool to target or chill speech on a college campus. In fact, at a conference in 2010 about the impact of the definition, I highlighted this misuse, and the damage it could do.<sup>11</sup>

In 2011 Cary Nelson, then President of the American Association of University Professors and I (on behalf of the American Jewish Committee, writing at the request of its legal committee and with endorsement of other senior staff) co-authored an article about how the "Working Definition" was being abused in Title VI cases, because it was being employed in an attempt to restrict academic freedom and punish political speech.<sup>12</sup> These cases complained, among other things, about

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9. I was a secondary author of an amicus brief on that case: <http://jkrfoundation.org/wp-content/uploads/2017/10/Wisconsin-V.-Mitchell.CV01.pdf>.

That case held that "hate crimes" have a disparate impact on communities since particular groups are selected as victims, and thus sentences can be enhanced. Motive (such as a hatred for blacks) can be considered in determining whether there was an intent to select (in this hypothetical blacks) to be a victim.

But the motive need not be hatred. It would be a "hate crime" for black burglar in Harlem to target other blacks to burglarize because he thinks police will be less likely to respond than if he selects a victim in a wealthier, white neighborhood. A burglar in rural Montana can decide to target Jewish homes not because he hates Jews, but because he thinks that Jews are more likely to be rich. A gay person can target another gay person for a robbery on the street, because he thinks other gay people are less likely to fight back.

None of these motives are classically hateful. All are relevant to the specific intent to select a member of a particular protected group as a victim. Likewise, for Title VI purposes, if Jewish students suffer from a pervasively or severely hostile environment, an antisemitic motive is not required to make such a determination.

10. While the "working definition" is no longer on the website of the EUMC or that of its successor agency, it can be found here: <http://www.antisem.eu/projects/eumc-working-definition-of-antisemitism/>

11. [http://kantorcenter.tau.ac.il/sites/default/files/proceeding-all\\_3.pdf](http://kantorcenter.tau.ac.il/sites/default/files/proceeding-all_3.pdf)

12. The AJC eventually withdrew its support for this statement. See <http://forward.com/news/141386/line-between-anti-israel-and-anti-semitic-protests/> and [https://www.insidehighered.com/news/2011/08/17/jewish\\_group\\_disavows\\_statement\\_with\\_aaup\\_on\\_difference\\_between\\_anti\\_israel\\_and\\_anti\\_semitic\\_statements](https://www.insidehighered.com/news/2011/08/17/jewish_group_disavows_statement_with_aaup_on_difference_between_anti_israel_and_anti_semitic_statements)

educational programs about the occupation of the West Bank, films that promoted the Boycott/Divestment and Sanctions movement against Israel, classroom materials challenged as one-sided and anti-Israel, and a program entitled "Arabs and the Holocaust," which asserted that Israel's creation was a "tragedy" for Palestinian Arabs.<sup>13</sup>

When all these cases lost, their proponents – rather than rethink the wisdom of their attempts to wed the definition to Title VI cases – did two things instead. First, they argued that even if the cases lost, they had what seemed to them a positive benefit – they chilled pro-Palestinian expression.<sup>14</sup> Second, they wanted to have universities – particularly the University of California system – adopt a version of the definition.<sup>15</sup>

When the University of California did not adopt the definition, these groups and individuals decided to ask Congress and various state legislatures to adopt the definition.<sup>16</sup>

## PANDORA'S BOX

When they were promoting the definition in South Carolina (the legislation did not pass), three things of note happened in the debate.

First, the proponents were clear that their intention was to curtail speech.<sup>17</sup>

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13. For an illustration of the central place complaints about political speech and academic programs deemed "unbalanced" played in these early cases, see June 25, 2009 letter of Tammi Rossman-Benjamin to U.S. Department of Education at <http://www.citywatchla.com/images/stories/misc/cw9-100benjamin-complaint.pdf>

14. <http://www.jpost.com/Opinion/Op-Ed-Contributors/Standing-up-for-Jewish-students-325648>

15. The State Department's version is a slightly shorter, slightly broader version of the EUMC working definition. See <https://2009-2017.state.gov/documents/organization/156684.pdf>

I wrote against these efforts, and what the university should do instead here: <http://jewishjournal.com/opinion/175207/> and <http://jkrfoundation.org/opinion-how-uc-can-respond-to-bigoted-speech-without-censorship> and <http://jkrfoundation.org/wp-content/uploads/2016/03/Napolitano-letter-032116b21032016-1.pdf>

16. I have written about such efforts here: <http://jkrfoundation.org/wp-content/uploads/2016/12/Stern-Letter-links-corrected.pdf> and <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html?r=1> and [http://www.richmond.com/opinion/your-opinion/letters-to-the-editor/article\\_1ac5b56e-8d3a-5688-9932-c2a03fb-ce5c5.html](http://www.richmond.com/opinion/your-opinion/letters-to-the-editor/article_1ac5b56e-8d3a-5688-9932-c2a03fb-ce5c5.html) and <http://jkrfoundation.org/wp-content/uploads/2017/04/sc-testimony-pdf-final-042517.pdf> and [http://www.postandcourier.com/s-c-anti-semitism-bill-isn-t-needed/article\\_f17d607e-29e5-11e7-b4a7-a35035f3dc38.html](http://www.postandcourier.com/s-c-anti-semitism-bill-isn-t-needed/article_f17d607e-29e5-11e7-b4a7-a35035f3dc38.html) and <https://academeblog.org/2017/05/05/how-legislative-efforts-to-define-antisemitism-threaten-academic-freedom/>. See also <http://jewishjournal.com/news/israel/186613/>.

Others have opposed these legislative efforts too, most notably Erwin Chemerinsky (now dean of the Berkeley Law) <https://www.wsj.com/articles/a-bill-to-police-campus-speech-1481846338>, Steve Lubet of the Northwestern School of Law <http://www.thefacultylounge.org/2016/12/there-is-little-doubt-that-many-university-campuses-would-benefit-from-increased-awareness-of-antisemitism-recent-years-have.html>, and PEN America <https://pen.org/press-release/overbroad-south-carolina-anti-semitism-bill-offends-free-speech-makes-mistake-federal-legislation/>

17. A legislator tweeted an article by a local rabbi, and Kenneth Marcus of the Brandeis Center retweeted the message, writing "this is very important." The rabbi wrote: "Genocide begins with words. It starts, almost imperceptibly, with careful characterization of a people as less than the rest of us. I remind everyone I meet that Adolf Hitler, as far as I know, never murdered anyone. All he did was speak. And through his carefully crafted words, he caused mass murder, unfathomable brutality and millions of deaths across the globe...Is it really necessary to debate whether to decry anti-Semitism? I thought it would seem self-evident that inciting hatred has no place in America."

As Ernst Benjamin of the American Association of University Professors and I wrote in the AAUP blog Academe: "The Holocaust was certainly driven by hateful ideas about Jews and others. But perhaps the rabbi should have considered that it was also made possible by the silencing of dissent, and official pronouncements of what thoughts were disapproved. We are not drawing a parallel between this bill and Nazism. Some well-intentioned people, including the rabbi, are concerned – as we are – of the level of hate and antisemitism in the world today, and unfortunately on some campuses too. But this legislation, like the proposed Anti-Semitism Awareness Act in Congress, is a hate speech code which, if enacted, will do much damage to the university and to the Jewish students proponents seek to protect." <https://academeblog.org/2017/05/05/how-legislative-efforts-to-define-antisemitism-threaten-academic-freedom/>

Second, some Jewish studies professors expressed alarm that the legislation would make it difficult to teach effectively.<sup>18</sup>

Third, a Jewish communal official saw this legislation as opening the door for other groups to want their legislatively-enshrined definitions too.

As a local newspaper reported:

Cheryl Glantz Nail, community relations director for the Columbia Jewish Federation [said] "Anti-Semitism is on the rise, [Jewish students] need to be protected as do other students...If this is passed, this could also be the gateway to other laws being put in place for other minority students."<sup>19</sup>

Let's imagine what that might look like.

Imagine African American groups asking for a specific definition of racism for consideration under Title VI. Would it include opposition to affirmative action? Opposition to removing statues of Confederate leaders? Opposition to the agenda of Black Lives Matters? Saying something favorable about the scholarship of "Bell Curve" author Charles Murray?

Imagine a definition designed for Palestinians. If "Denying the Jewish people their right to self-determination, and denying Israel the right to exist" is antisemitism, then shouldn't "Denying the Palestinian people their right to self-determination, and denying Palestine the right to exist" be anti-Palestinianism? Would they then ask administrators to police and possibly punish campus events by pro-Israel groups who oppose the two state solution, or claim the Palestinian people are a myth?

How about a definition for Hispanic students? Would calling for a border wall and stepped up deportations be included? Or a definition to "protect" Muslim students. Would support for a travel ban be a listed item? Or let's consider definitions to protect Armenian students and Turkish students. The former might include being supportive of the Turkish government, or denying the Armenian genocide, as items to consider. The latter would certainly say that if one says there was an Armenian genocide, that is an example of being anti-Turk. One can but imagine the debates between communities, let alone between differing groups inside a particular community, about what a definition should include and exclude. Add to that the fact that indicia of bigotry change over time. Congress need not put itself in the middle of such contentious, difficult and ongoing debates.

## **ASKING CONGRESS TO DECIDE A QUESTION IT HAS NO BUSINESS ENTERTAINING**

There is an internal debate in the Jewish community as to who is included under its umbrella, and who is not.

Satmar Jews, who have a religious objection to Zionism, are generally considered part of the Jewish family. But Jews (including many on campus) who might have other theological or ideological objections to Zionism, or are perceived that way, are considered traitors, antisemites, self-hating, even "kapos."<sup>20</sup>

18. [http://www.postandcourier.com/opinion/commentary/anti-semitism-bill-suppress-open-discussion-on-israel/article\\_7c313266-2f97-11e7-8fee-c7aec6cb3efe.html](http://www.postandcourier.com/opinion/commentary/anti-semitism-bill-suppress-open-discussion-on-israel/article_7c313266-2f97-11e7-8fee-c7aec6cb3efe.html)

19. <http://www.dailygamecock.com/article/2017/04/anti-semitism-bill-on-agenda>

20. For example a Columbia University professor who teaches about Israel, but who wishes to remain anonymous,

I am a Zionist, and I don't know how this internal Jewish debate about who is in and who is out of the "family" should be decided.

I just know that Congress should not be deciding this issue, and effectively declaring that anti-Zionism is antisemitism decides the question for the campus.

### **APPLICATION OF DEFINITION MIGHT LEAD TO FINDING OF INTENT TO TARGET JEWS WHEN THAT IS NOT THE CASE, AND DISCOURAGE SUCH A FINDING WHEN IT IS THE CASE**

According to data sent to me at my request by the Israel on Campus Coalition, between February 9, 2010 and May 11, 2017 there have been 40 instances when pro-Israel speakers have been disrupted on campus, although in all but seven instances the events were completed.

In the last few months we have seen students exercising a "heckler's veto" over speakers considered too conservative or racist, among them political commentator Ann Coulter at Berkeley and political scientist Charles Murray at Middlebury.

Support for Israel is seen on some campuses as a conservative or racist political point of view.

It is possible – even likely – that pro-Israel events are not being targeted because they are associated with Jews (indeed, some who are doing the targeting are likely Jews themselves), but because of a political position.

I strongly believe that university leadership needs to make clear that everyone on campus must have the ability to say what they think about any subject (and be prepared to defend their ideas), and that to cultivate such an environment, no one should be harassed, for any reason.

But in the narrow question of whether students may be targeted because they are part of a Jewish ethnicity, or because they support Israel, adoption of the Department of State antisemitism definition into law would skew this inquiry, suggesting that anti-Zionist actions are motivated by antisemitism, not political disagreement.

Further, we have seen instances where students seen by others as "progressive," even J-Street students who are Zionist and against BDS, have been harassed and threatened, by other Jews.<sup>21</sup> Last May, at the University of California – Irvine, former Israeli Defense Forces soldiers visited the campus and a Jewish student told me he was "repeatedly told as a Jewish student that I am not a real Jew, that I don't deserve to be Jewish given my support for Palestinian rights, and that I should take off my kippah."

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received an email on September 7, 2016, referring to him as a "KAPO piece of s\*\*t." Likewise a Jewish Barnard student informed me, and another student confirmed, that "during a Simchat Torah celebration hosted by Barnard/Columbia Hillel this year, students began singing Hatikvah. Several students stepped outside of the circle (not wanting to participate in singing the Israeli national anthem) and another student yelled "F\*\*k you kapos!" The Jewish Virtual Library defines "Kapo" as concentration camp "trustees [who] carried out the will of the Nazi camp commandants and guards, and were often as brutal as their SS counterparts. Some of these Kapos were Jewish, and even they inflicted harsh treatment on their fellow prisoners." <http://www.jewishvirtuallibrary.org/kapos>

21. <http://www.jpost.com/Opinion/Jewish-community-must-make-clear-Hateful-extremism-will-not-be-tolerated-457402>



Also last year, at the University of California – Santa Barbara, a Jewish student, who supported a divestment resolution, was called a “token Jew,” and said he was “harassed . . . multiple times throughout the year for not wearing a kippah [because I wore a kippah during the hearing] and called . . . a fake Jew for not wearing one. . . . [A]t the hearing [an official with a campus Jewish organization] explicitly said that Jews in favor of divestment could not call themselves Jews doing what we were doing.”

Whether this vitriol is directed at these students because they are Jewish (and seen as traitors) or because of political differences is a question to be determined by the facts, not by a definition which suggests anti-Zionist Jews should have less protection than Zionist Jews. In effect, adoption of the definition would be akin to creating a presumption that if there is evidence of anti-Zionist motive, this is an example of antisemitism, but not the other way around.

Furthermore, there are other factors well beyond the Israeli-Palestinian debate which can create a difficult environment for Jews on campus

As Southern Poverty Law Center co-founder Joe Levin recently noted at the Fourth International Conference of Hate Studies, the antisemitic and racist alt-right movement has been targeting campuses, spreading hate and seeking recruits.<sup>22</sup>

Additionally, on some campuses there is a debate whether Jews are white or not, with the suggestion that as (predominantly) white people, Jews are not sufficiently oppressed for antisemitism to be a real concern. Jews are not unique in that they sometimes experiencing prejudice on campus, but they are likely unique in that they are double victims, knowing that others who should be allies and intuitively understand the sting of prejudice sometimes instead discount or dismiss it.

This, to me, is a much larger issue regarding Jews on campus, and is not one to be addressed by legislation, but by other means which I'll outline now.

## **THE DAMAGE THAT THE DEFINITION WOULD DO**

The campus today is increasingly hostile to the notion that for an education to be valuable, students must have their thinking shaken. The move to “trigger warnings,” “safe spaces” and focus on “micro-aggressions,” is, in my view, undermining what a campus should be. Students need not be protected from disturbing ideas, quite the opposite; they should welcome the opportunity to learn how to wrestle with ideas that make them uncomfortable.

The proponents of the Antisemitism Awareness Act, instead of working to use the educational environment to break down the simplistic, binary, approach both supporters and opponents of Israel employ, say protect pro-Israel students from hearing unpleasant things too. One of the documents proponents circulated last year said that “Jewish students do not receive the same protections that other demographic groups receive,” and noted that a screening of the movie “American Sniper” was stopped when students at the University of Michigan thought it was anti-Muslim, and that a Marquette professor was suspended because of a blog post considered anti-gay. Rather than see these instances as a violation of academic freedom or free speech, to be deplored, they said the Antisemitism Awareness Act would similarly “help” Jews.

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22. Excerpt from Joe Levin address is at Appendix C.

I am less concerned about how the very few cases alleging a hostile environment regarding anti-Zionism would unfold (although I am, of course) than the day to day practical damage the adoption of the definition would leave in its wake across the academic world.

The proponents of the legislation have made a business model of seeking out speech they believe transgresses the Department of State Definition. They will hunt for such instances and then press administrators to either suppress or condemn such statements, threatening Title VI cases if they don't act, with the added weight of a Congressionally-endorsed, campus-focused definition behind them.

We want administrators and other campus officials to conduct surveys on campus climate, and to add full-semester classes on antisemitism, about which there are only a few offered across the United States. We want them to find new ways to use education to break down the binary mindset around the Israeli/Palestinian conflict by innovative classes that let students wrestle with the inherent complexities and competing narratives. We want additional programs and classes to help students understand what happens to the process of thinking when people have an identity wrapped up in a perceived issue of social justice, and with this knowledge, how to have difficult conversations about issues like the Israeli/Palestinian conflict. We want the university to focus on how to cultivate an environment in which all students – Jews included – feel comfortable saying what they think, even if their ideas are not fully formed and they might end up being wrong. We want universities to promote what the late Brooklyn College President Bob Hess called “the myth of the institution,” meaning that students on a campus should care more about how they treat each other than the equities of a political battle thousands of miles away.

But such more important, and labor-intensive, initiatives won't be pursued. When an administrator is effectively told he or she will be evaluated on how well they police and react to anti-Israel political speech, they will likely only focus on that. The law will be like a black hole, sucking out the ability to do things that actually will help improve the campus for Jewish students.

Think about the impact of the legislation on academics.

Professors, who should be finding new ways to teach about antisemitism and the complexities of the Israel/Palestine conflict, will instead, wisely, shy away.

Some outside groups have filed online dossiers of professors they assert are anti-Israel, frequently based on such things as signing political statements against Israel. Through a shadowy website called Canary Mission, they are trying to impact the employment of faculty and students whom they target. As I noted, classroom texts and academic papers have been complained about in Title VI litigation.

Armed with a congressional determination that effectively says campus anti-Zionism is antisemitism, these professors will correctly see themselves at risk when they ask their students to read and digest materials deemed anti-Zionist, whether the writings of leading 20th century Jewish thinkers who were skeptical of Zionism, such as Hannah Arendt and Martin Buber, or of contemporary Palestinians.

Professors do not get combat pay. It will be safer and wiser for them to teach about Jews in the shtetl than Jews in modern Israel, and Zionism as a concept from the late 19th century, rather than how it plays out today.

Passage of this act will only add to the destructive binary conflict on some campuses about Israel. Pro-Israel Jewish students correctly complain that pro-Palestinian students won't engage with them, because doing so would "normalize" the conflict. Progressive Jewish students complain that Hillel won't let them do programming with many pro-Palestinian groups, because that would be violating Hillel's guidelines. Passage of this legislation might make some pro-Israel students feel better, that Congress agrees with them, but it will give ammunition to anti-Israel students saying that Congress has enshrined a definition that can only help to chill, if not suppress, their political speech.

And they will be right. The EUMC's "working definition" was recently adopted in the United Kingdom,<sup>23</sup> and applied to campus. An "Israel Apartheid Week" event was cancelled as violating the definition.<sup>24</sup> A Holocaust survivor was required to change the title of a campus talk, and the university mandated it be recorded, after an Israeli diplomat complained that the title violated the definition.<sup>25</sup> Perhaps most egregious, an off-campus group citing the definition called on a university to conduct an inquiry of a professor (who received her PhD from Columbia) for antisemitism, based on an article she had written years before.<sup>26</sup> The university then conducted the inquiry.<sup>27</sup> And while it ultimately found no basis to discipline the professor, the exercise itself was chilling and McCarthy-like.

My fear is, if we similarly enshrine this definition into law, outside groups will try and suppress – rather than answer – political speech they don't like. The academy, Jewish students, and faculty teaching about Jewish issues, will all suffer.

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23. <https://www.theguardian.com/society/2016/dec/12/antisemitism-definition-government-combat-hate-crime-jews-israel>

24. <http://www.timesofisrael.com/citing-anti-semitism-uk-university-nixes-israel-apartheid-week/>

25. <https://www.theguardian.com/education/2017/sep/29/manchester-university-censors-title-holocaust-survivor-speech-criticising-israel>

26. <https://antisemitism.uk/caa-exposes-lecturer-as-author-of-sickening-holocaust-article-but-university-of-bristol-defends-academic-freedom/> (This article's link is not working, but that the definition was used as a basis for the inquiry is clear: see the group's prior article, before it wrote to the university: <https://antisemitism.uk/university-of-bristol-lecturer-reportedly-authors-antisemitic-article/>)

27. <http://www.telegraph.co.uk/education/2017/02/20/bristol-university-investigates-claims-anti-semitism-lecturer/>

## APPENDIX A

### TEXT OF 2002 COLLEGE PRESIDENT AD PUBLISHED IN THE NEW YORK TIMES

"In the current period of worldwide political turmoil that threatens to damage one of our country's greatest treasures – colleges and universities – we commit ourselves to academic integrity in two ways. We will maintain academic standards in the classroom and we will sustain an intimidation-free campus. These two concepts are at the core of our profession.

"Our classrooms will be open to all students, and classroom discussions must be based on sound ideas. Our campus debates will be conducted without threats, taunts, or intimidation. We will take appropriate steps to insure these standards. In doing so, we uphold the best of American democratic principles.

"We are concerned that recent examples of classroom and on-campus debate have crossed the line into intimidation and hatred, neither of which have any place on university campuses.

"In the past few months, students who are Jewish or supporters of Israel's right to exist – Zionists – have received death threats and threats of violence. Property connected to Jewish organizations has been defaced or destroyed. Posters and websites displaying libelous information or images have been widely circulated, creating an atmosphere of intimidation.

"These practices and others, directed against any person, group or cause, will not be tolerated on campuses. All instances will be investigated and acted upon so that the campus will remain devoted to ideas based on rational consideration.

"We call on the American public and all members of the academic community to join us."

The ad is no longer on the AJC website, but can be found here: <http://spme.org/campus-news-climate/college-presidents-decry-intimidation-on-campus/639/>

## APPENDIX B

### TEXT OF PRESIDENT BOLLINGER'S 2007 STATEMENT, ENDORSED BY OTHER PRESIDENTS AND PUBLISHED AS AN AD IN THE NEW YORK TIMES

"As a citizen, I am profoundly disturbed by the recent vote by Britain's new University and College Union to advance a boycott against Israeli academic institutions. As a university professor and president, I find this idea utterly antithetical to the fundamental values of the academy, where we will not hold intellectual exchange hostage to the political disagreements of the moment. In seeking to quarantine Israeli universities and scholars this vote threatens every university committed to fostering scholarly and cultural exchanges that lead to enlightenment, empathy, and a much-needed international marketplace of ideas.

"At Columbia I am proud to say that we embrace Israeli scholars and universities that the UCU is now all too eager to isolate – as we embrace scholars from many countries regardless of divergent views on their governments' policies. Therefore, if the British UCU is intent on pursuing its deeply

misguided policy, then it should add Columbia to its boycott list, for we do not intend to draw distinctions between our mission and that of the universities you are seeking to punish. Boycott us, then, for we gladly stand together with our many colleagues in British, American and Israeli universities against such intellectually shoddy and politically biased attempts to hijack the central mission of higher education.”

Ad no longer on AJC website, but statement available here: <http://www.columbia.edu/cu/news/07/06/boycott.html>

## APPENDIX C

### EXCERPT OF JOE LEVIN KEYNOTE SPEECH AT FOURTH INTERNATIONAL CONFERENCE ON HATE STUDIES

Quoted with the permission of Joe Levin (speech on October 20, 2017 at Gonzaga University’s Institute for Hate Studies in Spokane, Washington), after his remarks more generally about white nationalists, the alt-right movement, and their targeting of minorities and Jews:

“Let’s talk about college campuses and the rise of the alt-right there. I think it’s very illustrative of the larger society. The sheer volume of campuses that have been hit with white nationalist fliers and speakers, points to a very concerted effort on the part of the radical right to view young people as recruiting targets.

“At the University of Massachusetts Boston, for instance, fliers for Identity Evropa — an organization founded last year by Nathan Damigo — were posted across campus. Damigo is quoted as saying, ‘What corporation doesn’t go to colleges to recruit? These are the people who will go on to manage the institutions of our country, and we want them in our networks.’ What’s more, according to Jared Taylor of American Renaissance, another white nationalist group openly focusing efforts on college campuses, it’s good time to recruit. ‘There’s a rising sense of frustration and outright anger with this characterization of all whites as privileged, oppressive, and essentially evil; so I think there is a greater willingness among young whites to strike back at this oppressive orthodoxy.’

“Richard Spencer, the white supremacist I mentioned earlier, believes college students are perfect recruits for white nationalist groups. Spencer believes that, ‘People in college are at this point in their lives where they are actually open to alternative perspectives, for better or for worse. I do think you need to get them while they’re young.’ In December, he gave a speech on the campus at Texas A&M University, where he stated, “America belongs to white men.’

“Many of the white supremacy fliers don’t contain overtly offensive language — one Identity Evropa poster simply features a photo of a classical statue and the phrase ‘Protect Your Heritage.’

“In discussing Identity Evropa, Damigo reportedly said, ‘we’ve discovered that there are many people who already have read our website, who already generally agree with us, but haven’t taken that next step to get involved or meet with other people. We’re already in the process of purchasing tables and banner stands and brochures, so that next semester, we can start getting on campuses and [putting] more of a face to this.’

“So, whether it’s a college campus or a local bar, the recruiting targets of the white supremacy movement are there, and they are subject to persuasion.”