

WRITTEN TESTIMONY OF KENNETH S. STERN

Director,
Bard Center for the Study of Hate

Before the

**UNITES STATES SENATE
JUDICIARY COMMITTEE**

A Threat to Justice Everywhere: Stemming the Tide of Hate Crimes in America

September 17, 2024

Dear Chairman Durbin, Ranking Member Graham, and the other honorable members of the Committee:

My name is Kenneth Stern. I am the director of the Bard Center for the Study of Hate¹, which works to increase the serious study of human hatred, and ways to combat it.² Before that I directed the Justus and Karin Rosenberg Foundation, a philanthropy focused on hate,³ and before that I was the director of the American Jewish Committee's division on antisemitism and extremism, where I worked for 25 years. While at AJC I was the lead drafter of the text of what is now known as the IHRA working definition of antisemitism.⁴

Before my narrative, which is detailed, I want to share this summary:

- *Antisemitism, at its most dangerous, has two elements: 1) A claim that Jews conspire to harm humanity, and 2) that that conspiracy explains what goes wrong in the world.*
- *Antisemitism is more than just about Jews, it's a threat to democracy, it's a miner's canary for the health of societies. But the flip side, frequently ignored, is also true – that*

¹ <https://bcsh.bard.edu/>

² Hate Studies is defined as "Inquiries into the human capacity to define, and then dehumanize or demonize, an 'other,' and the processes which inform and give expression to, or can curtail, control, or combat, that capacity."

³ The Justus and Karin Rosenberg Foundation was founded by the last surviving member of the Emergency Rescue Committee – an operation during World War II lead by American Varian Fry to rescue artists and intellectuals, among them Marc Chagall and Max Ernst, from Vichy France.

⁴ During my AJC tenure I was part of the defense effort of Dr. Deborah Lipstadt (today Ambassador Lipstadt, the Department of State's Special Envoy to Monitor and Combat Antisemitism) in her 2000 London defense of a libel charge brought by a Holocaust denier; I was an invited presenter at the 1997 White House Conference on Hate Crimes, and also an official member of the United States delegation to the Stockholm International Forum on Combating Intolerance in 2001; in 1995 I authored a report on the growing danger of the militia movement, released less than two weeks before the Oklahoma City bombing, with a covering memo warning that there might be some sort of attack on government on April 19, the anniversary of the siege of the Branch Davidian compound in Waco, Texas, a date of great importance to the militias.

hatred of non-Jews can be the engine for antisemitism, something that becomes invisible when we focus only on parsing what is said about Jews, let alone Israel.

- *The Tree of Life mass murder was clearly antisemitic, but was animated by a drumbeat of dehumanizing anti-immigrant rhetoric by political leaders. No one would say the killing of Mexican-Americans and Mexicans at the Wal-Mart in El Paso a few months later should be classified as an act of antisemitism. But the two shooters had virtually identical ideologies; they just chose different targets. We need to look at antisemitism with a wide lens, not reduce it to who says what, particularly about Israel.*
- *When people hate they crave simplicity and certainty, and binary good/bad thinking. This is a human characteristic rooted in how we divide the world into who is “us” and who is “them.” People who combat hate are also human and seek the seductive illusion of simple answers to complicated problems. Now the seductively simple, and illogical, tool is to employ IHRA.*
- *Legally endorsing a binary – whether as the UN did when it adopted the Zionism=racism resolution in 1975, or the current attempt to use IHRA to legislate its mirror image (that anti-Zionism is antisemitism) – harms democracy and Jews and others, and is inappropriate for legislation.*
- *One rule for fighting hate is to change the scenario and see if the same rules apply. Would Congress adopt a legislatively-endorsed definition of racism that included political examples? There is a correlation (as opposed to causation) between some expressions about Israel and antisemitism. One might argue that to take a temperature of racism, a definition might include opposition to affirmative action or opposition to Black Lives Matter or opposition to the removal of Confederate statues as data points. The official labeling of those who hold these views as “racist” would be wrong. Likewise, the tarring of people who have different views about Israel and Zionism.*
- *When the House passed the Antisemitism Awareness Act, some members voted against it, pointing to the IHRA example of Jews killing Jesus as an exemplar of antisemitism. Deicide is indeed an example of how antisemitism has been expressed, but the opponents noted that many Americans have deeply religious beliefs about the death of Jesus that would be classified by the government as antisemitic. Senator Marshall said that he would vote for the legislation in the Senate, but propose an amendment to strike that one example. It is hard to imagine a clearer admission that the legislation targets expression and belief.*
- *Using IHRA in this way also encourages the ubiquitous use of the terms “antisemite” and “antisemitism,” when they are words that should be sparingly used, so they don’t lose their sting. More often, and particularly about Israel, the problem is binary thinking, not antisemitism.*
- *There is a difficult internal Jewish communal debate about whether one has to be a Zionist to be within the Jewish “tent.” I am a Zionist. But I know many young Jews whose Judaism leads them to anti-Zionism. I disagree with them, but it is wrong to call them “unJews,” let alone antisemites. This debate, of who is inside or outside the tent, is an internal one for the Jewish community to resolve, if it can, but the IHRA proponents are essentially asking Congress to weigh in, raising Church-State implications.*

- *It would be helpful if instead of classifying expressions as hateful, Congress underscored the distinction that too many universities are missing. Views seen as hateful should indeed be countered, but not suppressed by law. No student, whether they are in a protected class or not, should be bullied, harassed, intimidated, targeted with true threats, or discriminated against. But students, in order to become critical thinkers, should not be protected from hearing things with which they disagree, whether it be conservative speakers or ones from the far left.*
- *There are many things that a campus can and should do about antisemitism, including training, students surveys, and improved and expanded teaching (and research about) antisemitism, hate, binary thinking, and how to have difficult discussions. There are also intriguing and promising ideas about using AI in this effort.*
- *Congress should support efforts that will actually help in the battle against antisemitism. Removing the IHRA definition from the Countering Antisemitism Act, and funding the action-oriented National Strategy would help. Likewise Congress should support new initiatives to counter hate and hate crime, including those designed to help victims, and also efforts to bring Americans – on and off campus – together despite difficult disagreements. I discuss a couple of these in my full testimony.*

When I started working at AJC in 1989, three issues were of particular concern. One was antisemitism on campus. One was hate crimes, and the need for better data and reporting. And one was the antisemitic impact of the United Nation’s 1975 General Assembly Resolution 3379 equating Zionism with racism.

In 1990, with the help of a group of college presidents and deans and faculty, I wrote a manual for handling “bigotry on campus,”⁵ and trained about 200 other college presidents on how to do it. The main takeaways were: 1) it won’t work to make separate and special rules for Jews. For the campus to tackle antisemitism well, the focus should be on what the campus must be: a place that cherishes academic freedom and protects expression of ideas, but rejects intimidation, bullying, harassment, true threats and discrimination. 2) Speech codes are not only constitutionally suspect, but bad policy; they provide the blinding illusion that hate is being countered, and give the university an excuse not to do things that could actually make a difference, including surveys, new curriculum, and training of staff.⁶

Regarding hate crimes, I was one of AJC’s lawyers on an amicus brief submitted with the NAACP Legal Defense and Education Fund to the U.S. Supreme Court in the landmark Wisconsin v. Mitchell case.⁷ I also was the lead drafter⁸ of what was then known as the EUMC Working

⁵ <https://kennethsstern.com/wp-content/uploads/2018/09/BigotryOnCampus.pdf>

⁶ Hate speech codes – like some of the focus these days on “trigger warnings,” “safe spaces” and “microaggressions” – tell students that there are things that must not be said, suggesting that group think is a value, and thus undercutting one of the reasons for a college education – creating critical thinkers, people able to examine and re-examine their views, in an environment where mistakes, even vile ones, are answered but not hunted for discipline or worse.

⁷ <https://kennethsstern.com/wp-content/uploads/2018/09/Wisconsin-V.-Mitchell.CV01.pdf>

⁸ <https://blogs.timesofisrael.com/we-disagree-about-the-working-definition-thats-ok-heres-whats-not/>

Definition of Antisemitism, and while its main purpose was to create a guide for data collection on the temperature of antisemitism in Europe,⁹ I hoped that the clear language about antisemitic crimes – drawn from the wisdom of the Wisconsin v. Mitchell – would help European officials understand that selecting someone to be a victim of a crime because of who they were (thus intent) was key, rather than parsing if the perpetrator actually hated the victim, thus avoiding debates about things such as whether someone who kidnaps a Jew for ransom is antisemitic because he believed that Jews are wealthy, an arguably positive stereotype.¹⁰

On the Zionism = Racism matter, I was honored to be the AJC staff person helping organize an event at the US Mission to the United Nations in November of 1990, hosted by Ambassador Thomas Pickering, and featuring Senator Daniel Patrick Moynihan. It was a beginning of the successful effort to repeal that pernicious resolution which led to outrages such as a Jewish student group not being allowed in a UK university because of the simple equation that as a Jew you were a Zionist and as a Zionist a racist, and there were rules against racist groups.¹¹

One of the lessons learned from that fight was that external politics can influence how we think about hate. UN General Assembly Resolution 3379 was passed in 1975 for political reasons having to do with the Cold War, and its demise was directly tied to the collapse of the Iron Curtain.

Another lesson was the danger of enshrining binary definitions of complex matters into simple legal equations. That's why I wrote to the Secretary General of the United Nations last year, noting the damage of 3379, and warning that adoption of the IHRA definition, which is being used to promote the mirror-image binary, that anti-Zionism is antisemitism, would also be disastrous. Antizionism is sometimes clearly antisemitic, it is sometimes clearly not antisemitic, and it is sometimes simply unclear.¹²

⁹ The reason the definition is primarily a list of examples is that its main purpose was to guide data collectors. I also advocated using it for US diplomatic purposes, so that when the leader of Iran, for example, talked about wiping Israel off the map, a text about antisemitism could be pointed to.

¹⁰ I continue to work on hate crimes as director of the Bard Center for the Study of Hate, and although it's too early to tell, I hope that work we're doing with the Boston University Questrom School of Business and the Eradicate Hate Global Summit comes to fruition. We're trying to create an AI-aided online [clearinghouse on hate](#) to help victims get the support they need – from information about how to report a hate crime to emotional and other resources. We've also co-published, with the Montana Human Rights Network and Western States Center, a [Community Guide for Opposing Hate](#), with detailed information for community groups, including various scenarios communities face, and how to oppose hate without sacrificing free speech. We published a landmark study on the [economic costs of hate crimes](#), written by economist Michael Martell. We also believe in the need for better hate crime reporting and data.

¹¹ See Dave Rich, *Zionists and Anti-Zionists: Political Protest and Student Activism in Britain 1968-1986*, PhD Thesis, Birkbeck College, University of London, 2015 (in particular chapter 5) and Dave Rich, *The Left's Jewish Problem: Jeremy Corbyn, Israel and Antisemitism*, London, Biteback Publishing, 2018 (in particular chapter 4).

¹² See <https://www.inss.org.il/publication/anti-zionism-antisemitism-and-the-fallacy-of-bright-lines/>

HATE STUDIES, AND ANTISEMITISM AS A FORM OF HATE

What we saw on campuses from the day of the brutal Hamas attack on Israel last October through the end of the spring 2024 semester was more intense, but not different in origin, from the dysfunctional dynamics I chronicled four years ago in my book *The Conflict over The Conflict: The Israel/Palestine Campus Debate*.¹³ We're seeing some of these dynamics playing out beyond the campus today too, and frankly on other issues.

The first chapter in my book is called "[Thinking about Thinking.](#)" It summarizes what the growing field of hate studies – and its component disciplines, including brain science and social psychology – tells us about what happens to human beings when we get into our “us” versus “them” buckets, especially when the matter at hand is one linked to identity and relates to questions of social justice or injustice, and even more so when the “them” is perceived as a threat. In these moments we crave simplicity and certainty, and are allergic to complexity. We default to tribal spaces and binary ways of thinking (good vs bad). As social psychologist Jonathan Haidt has written, when we see things in such moral terms, morality both “blinds” and “binds.” Symbols – things such as flags, slogans, or even ideas (like IHRA) – also become of outsized importance.

Those who hate – whether they hate people of different races, religion, countries, gender identities or politics – tend to see the world this way, frequently justifying the dehumanization or demonization of the “other” as noble self-defense. But because it's a human characteristic, people who believe they are fighting hate are not immune from the seduction of simplistic, certain, moralistic, symbol-seeking and binary thinking. IHRA adoption is such a symbol, a shortcut to say who is fighting antisemitism, and who isn't. It's an attractive and simple binary, and people are passionate about it. But in this craving for simplicity we inevitably ignore how antisemitism actually works in our world.

At its most dangerous antisemitism is two things – concepts that all the definitions (IHRA,¹⁴ The Jerusalem Declaration on Antisemitism [JDA]¹⁵ and Nexus¹⁶) have in common, although stated with different words: 1) a belief that Jews are conspiring to harm humanity and, 2) this conspiracy explains what goes wrong with the world.

I agree with those who say antisemitism is more than just about Jews, that it's a threat to democracy, that it's a miner's canary for the health of societies. But the flip side, frequently ignored, is also true – that hatred of non-Jews can be the engine for antisemitism, something that becomes invisible when we focus only on parsing what is said about Jews, let alone Israel.

¹³ <https://utorontopress.com/9781487507367/the-conflict-over-the-conflict/>

¹⁴ <https://holocaustremembrance.com/resources/working-definition-antisemitism>

¹⁵ <https://jerusalemdeclaration.org/>

¹⁶ <https://nexusproject.us/the-nexus-document/>. The Bard Center for the Study of Hate provides an academic home for Nexus, although BCSH does not endorse any definition of antisemitism.

Think about the murder of Jews at the Tree of Life synagogue in Pittsburgh in 2018. The shooter picked the synagogue supposedly because it had participated in a national HIAS program supporting immigrants. The backdrop to that shooting was the fevered frenzy that some politicians created over an “invasion” across our southern border.

The Tree of Life massacre was clearly an incident of antisemitism, regardless of definitions.

A few months later another shooter decided to go after these “invaders” directly at a Walmart in El Paso, murdering Mexicans and Mexican-Americans. No one would classify that hate crime as antisemitic. Yet the two shooters had almost identical ideologies; they just picked different targets on different days.¹⁷

Antisemitism, as I said, is best understood as conspiracy theory about Jews. When we think about antisemitism as a matter of expressions and focus on which side of a bright line (inculpate or exonerate) we put a sentiment on, we miss what actually drives people into the simple and self-satisfying world of antisemitic conspiratorial thinking.

Think back to Charlottesville. The rally was ostensibly about stopping the removal of a Confederate statue. Why the chant “Jews will not replace us?” If you’re a white supremacist and fear that those whom you define as inferior are poised to become a majority of the population this century, how do you understand why you are losing to people who you see as inferior? Someone must be putting their finger on the scales to make this happen. Antisemitism is the tried and untrue, go-to explanation for those seeking conspiratorial and simple explanations for what goes wrong in the world.¹⁸

And that’s one of my deepest concerns about the use of IHRA today as the answer for antisemitism. Beyond the legal and the free speech concerns, and the inevitable backfiring of creating free speech martyrs, using IHRA as the way to approach antisemitism actually restricts our ability to be effective in confronting antisemitism. We need a wider lens, not a narrow one. When I speak to synagogues and people ask me what my main concern about antisemitism is today, I tell them it’s leaders vilifying anyone among us as a dangerous “them,” encouraging people to feel self-righteous as they dehumanize or demonize this “other.” We see this tendency in our politics too – defining the other side as not only wrong, but evil. But at its most dangerous the vilification of people because of who they are, whether they be Muslim or immigrants or transgender, is not only bigoted toward those human beings, it’s also a potential conveyor belt to antisemitism.

¹⁷ The mass murderer who targeted Black people at the Topps store in Buffalo also had essentially the same ideology – see <https://www.nbcnews.com/think/opinion/buffalo-suspects-hateful-propaganda-connects-black-americans-jews-rcna29390>

¹⁸ Eric Ward has written thoughtfully about how antisemitism animates white supremacy: <https://politicalresearch.org/2017/06/29/skin-in-the-game-how-antisemitism-animates-white-nationalism>

THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE WORKING DEFINITION OF ANTISEMITISM (IHRA)

Like we've seen since October 7, back in the early 2000s, after the collapse of the peace process and the beginning of the Second Intifada, there was an uptick in hate crimes against Jews, particularly in Europe. The European Monitoring Centre on Racism and Xenophobia issued a report in 2004 on antisemitism, but noted it didn't have a common definition for data collectors in various European states to know what to include and exclude. It used a temporary template about stereotypes about Jews, which seemed, oddly, to exclude some attacks on Jews when the attacker was upset about Israel. The EUMC's leader, Beate Winkler, was invited to speak at the AJC's annual meeting in May 2004. A few weeks beforehand Israel assassinated a Hamas leader, and a Montreal Jewish Day school was firebombed in response. I took the opportunity to press Winkler about this publicly at the meeting – that the firebombing would strangely not be considered an act of antisemitism under their approach. She agreed to work with us to create a definition that would be crafted around examples, to guide data collectors. My then AJC colleague Rabbi Andrew Baker led the political negotiating. I was the lead drafter, working with others including Professor Yehuda Bauer, to create the language.¹⁹

The working definition had examples related to Israel because there was a correlation between such expressions and the level of antisemitism. But it was never intended to target or chill speech on a college campus.²⁰ Indeed, as I noted above, the idea of speech codes on campus was strongly rejected as part of the AJC project about how to deal with bigotry on campus. But that's the first abuse I saw of the definition.

In 2010 the Department of Education sent a “dear colleague” letter, making it clear that Jews and Sikhs and Muslims, as ethnicities, were entitled to protection from a pervasively hostile campus environment under Title VI of the Civil Rights Act of 1964. I supported that clarification, and was the complainant for Jewish high school students in upstate New York who had been victimized by antisemitic bullying, including with a “Kick a Jew Day.”²¹

In 2010 I spoke out at a conference, and again in 2011 in an opinion piece that I co-authored on the AAUP blog, about how the definition was being abused to target academic freedom and political speech, how it was being weaponized. Groups were filing Title VI cases that not only

¹⁹ The American Jewish Committee touted my role as lead drafter at the time. But many years later, as I continued to speak out against the application of the definition on campus, an effort was begun to say that I wasn't lead drafter. I'd have the same analysis about the dangers of applying IHRA in any event, but I debunked the revisionist efforts about my role here: <https://blogs.timesofisrael.com/we-disagree-about-the-working-definition-thats-ok-heres-whats-not/>. (Also the New Yorker has a vigorous fact-checking department, interviewed AJC staff, and described me accurately as the “lead drafter” of the definition – <https://www.newyorker.com/news/persons-of-interest/the-problem-with-defining-antisemitism>.)

²⁰ I am incorporating my 2017 testimony before the House Committee on the Judiciary by reference <https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf>.

²¹ <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02111270-a.pdf>. See also June 1, 2012 AJC press release “AJC Praises U.S. Education Department Decision on Anti-Semitic Bullying,” <https://ajcarchives.org/Portal/Default/en-US/RecordView/Index/6591>

pointed to acts, like spitting and such, which were appropriate for inclusion, but also pure speech about Israel – speech I might not agree with, but still pure speech.

As I testified in 2017:

These cases complained, among other things, about 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.²²

If you look back at the material used to support the Antisemitism Awareness Act (AAA) when it was passed by the Senate in 2016, proponents cited examples about how antisemitism was being treated differently than other forms of perceived campus bigotry. One case cited was the suspension of a Marquette professor for an alleged anti-gay blog post, the other the stopping of the showing of the film American Sniper, because it was alleged to be anti-Muslim.²³ Obviously, both instances were ones where free speech and/or academic freedom were violated. The AAA proponents effectively said violate those principles for us too, a message I found and still find deeply troubling. If one is going to have a principle about speech, it has to apply to speech one doesn’t like too. That doesn’t mean ignore the speech (which can be countered, exposed and/or organized against), but rather it means not to use laws or interventions like a heckler’s veto to chill or stop it.

Sadly, the working definition (as of 2016 called the IHRA definition) has been used for precisely this anti-speech purpose in Title VI complaints. And even when the Title VI cases lost, Kenneth Marcus of the Brandeis Center was honest in his 2013 appraisal. He argued that the cases, even when unsuccessful, were making it harder for those whom he called “Israel haters” to organize, and that the cases also put administrators on notice, fearing bad publicity from suits.²⁴

The agenda to suppress political speech is hard to miss. In the United Kingdom the definition was adopted and applied to universities. In 2017 an “Israel Apartheid Week” event was banned as violative of the definition. The US-based Simon Wiesenthal Center issued a statement that not only praised the cancellation, but said:

The University of Central Lancashire's decision, which is based on the recently adopted Working Definition of Antisemitism of the International Holocaust Remembrance Alliance's (IHRA), offers firm evidence that this internationally accepted definition can play a vital role in the fight against antisemitism. . . . We strongly urge other countries to

²² 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>

²³ <http://kennethsstern.com/wp-content/uploads/2024/07/Anti-Semitism-Act-Nov-2016-w-supporting-material.pdf>

²⁴ <https://www.ipost.com/opinion/op-ed-contributors/standing-up-for-jewish-students-325648>

follow the lead shown by the United Kingdom in adopting the IHRA definition and applying this valuable tool in the struggle against anti-Semitism.²⁵

And it has been used this way in our country too.

Proponents of AAA argue that you have to define antisemitism in order to tackle it.²⁶ This is nonsense. Organizations like ADL and AJC have worked since the early 1900s without an official definition of antisemitism. I don't recall seeing it cited when Kanye West talked about going "Def Con 3" against Jews, or at Charlottesville or other contexts. It's, however, energetically used to target speech regarding Israel. It has been deployed as a weapon to try and cancel events, both before and after the 2019 Trump Executive Order adopting the definition, including at the University of Massachusetts at Amherst,²⁷ Indiana University,²⁸ Barnard,²⁹ University of California at Berkeley,³⁰ and elsewhere.

Just a few weeks ago, in early August, the Chancellor of the Board of Governors of the State University System of Florida sent an email requiring review of courses for "Antisemitism or Anti-Israel bias." The universities were instructed to "conduct a keyword search on course descriptions and course syllabi. Any course that contains the following keywords: Israel, Israeli, Palestine, Palestinian, Middle East, Zionism, Zionist, Judaism, Jewish, or Jews will be flagged for review."³¹ The IHRA definition was adopted by law in Florida this past June.³² As the Foundation for Individual Rights and Expression (FIRE)'s Lead Counsel Tyler Coward said, "Singling out certain key words and phrases for targeted review will certainly chill speech on these important issues, and, if institutions take action against professors for including certain materials, that violates long-standing academic freedom guarantees."³³

²⁵ <https://www.wiesenthal.com/about/news/wiesenthal-center-other.html>

²⁶ They also argue that antisemitism changes over time. The core of antisemitism doesn't change much; the manifestations might. This is actually an argument AGAINST codifying a definition into law; it can soon be out of date, exculpate new examples that might otherwise apply, and invite continued debate over what should be included or removed.

²⁷ <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5cf186b590a5d40001fdccb7/1559332557153/Complaint+against+UMass+Amherst.pdf> and https://twitter.com/Rick_Sobey/status/1124024039079579650

²⁸ <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5c17d4e3c2241bba3e8c794f/1545065700188/Email+from+IIPAC.png>

²⁹ <https://www.columbiaspectator.com/news/2024/02/07/jewish-students-and-faculty-hold-israelism-screening-event-following-initial-cancellation/> Allegedly the professor was initially told not to show the film Israelism (profiling a Jewish co-founder of IfNotNow) because the film was mentioned in a Title VI complaint against Harvard.

<https://www.kasowitz.com/media/unxcnvp0/harvard-complaint.pdf>.

³⁰ <https://jewishjournal.com/news/united-states/241882/pro-israel-students-file-complaint-department-education-sjp-vigil-berkeley/>

³¹ <https://www.chronicle.com/article/floridas-public-universities-are-told-to-review-courses-for-antisemitism-or-anti-israeli-bias?emci=76aeb39f-b755-ef11-991a-6045bddbfc4b&emdi=2ae91e13-c755-ef11-991a-6045bddbfc4b&ceid=1659071>

³² <https://floridapolitics.com/archives/681211-gov-desantis-oks-adding-definition-of-antisemitism-to-florida-law/>

³³ <https://www.tallahassee.com/story/news/politics/2024/08/07/florida-orders-review-for-antisemitism-anti-israeli-bias-at-colleges/74701697007/>

Around 2020 I became alarmed when I saw IHRA being used to suppress speech beyond the campus too. In the late days of the Trump administration, Secretary of State Pompeo floated the idea of using the definition to declare groups like Amnesty International and Human Rights Watch antisemitic, thus threatening their funding.³⁴ More recently an EU Handbook for the use of the definition appeared on the IHRA website as a resource.³⁵ The intent again was crystal clear. Beyond affecting the campus,³⁶ the goal is that IHRA will be used to “support control and supervision mechanisms and to ensure that funding does not go to entities and projects that promote antisemitism.”³⁷ Likewise a recent letter House Ways and Means Committee Chair Jason Smith (and colleagues) wrote to the director of the Internal Revenue Service asked, inter alia, “Does the IRS have a definition of antisemitism in place within the agency that it considers when evaluating the claimed exempt purpose of a tax-exempt organization?”³⁸ And in New Jersey, legislation was introduced to adopt IHRA – including of course the examples – and to use it as a filter for funding DEI programs as well.³⁹

I agree with the proponents of these efforts that I too don’t like some of the speech they are targeting. But it is speech, matters of opinion, and I’m much more concerned about the antidemocratic use of law to chill or suppress disliked speech, as opposed to using speech to answer speech. As Justice Louis Brandeis (the first Jewish justice and a Zionist) wisely wrote almost 100 years ago, “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”⁴⁰

I think back to the McCarthy period. People opposed communism for understandable reasons. But look at the harm of loyalty oaths, threats to funding and livelihood and political organizing, that resulted from the use of law to suppress unfavored speech.⁴¹ Again, there’s a fundamental

³⁴ <https://www.timesofisrael.com/pompeo-plan-to-declare-rights-groups-anti-semitic-over-israel-stance-shelved/>

³⁵ <https://holocaustremembrance.com/news/eu-handbook-ihra-definition-antisemitism>

³⁶ <https://holocaustremembrance.com/news/eu-handbook-ihra-definition-antisemitism> p. 27

³⁷: <https://holocaustremembrance.com/news/eu-handbook-ihra-definition-antisemitism> p. 30

³⁸ <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/4-24-2024-Werfel-CCP-Singham-Letter.pdf>

³⁹ https://pub.njleg.state.nj.us/Bills/2024/S3000/2937_S1.PDF.

⁴⁰ https://www.thefire.org/supreme-court/whitney-v-california?gad_source=1&gclid=CjwKCAjwp4m0BhBAEiwAsdc4aCmOay6NOpAwAzkHRUm_n8gNkfzMN0GQvifnNdYNAsV6tfmY80fnRhoC2f8QAvD_BwE. And there is evidence that counterspeech can be effective: <https://dangerousspeech.org/counterspeech-a-literature-review/>

⁴¹ How different is the key word search ordered for courses in Florida from this questioning of Paul Sweezy in Sweezy vs. New Hampshire (<https://supreme.justia.com/cases/federal/us/354/234/>):

"What was the subject of your lecture?"

"Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?"

"Did you advocate Marxism at that time?"

difference between targeting conspiracies to commit violence, espionage, or other crimes, on the one hand, and mere belief, teaching and association, on the other.

Yes, we're in a difficult moment (and of course these difficult moments are the ones where free speech notions are both more challenging and more important to apply). I'm aware of the binary of some pro-Palestinian organizing that says you HAVE to have a pro-Palestinian position, or you should be vilified. In this "us" vs "them" morally righteous world, they may insist that an organization like a museum, which may have nothing to do with this conflict, take a pro-Palestinian position. In San Francisco, such dogmatism helped force the director of a museum to leave.⁴² There have been threats against (and vandalism of the homes of) some directors of the Brooklyn Museum.⁴³ Dogmatic insistence on a pro-Palestinian line has also seemingly undercut the important work of Pen America.⁴⁴ I'm reasonably certain that many of the proponents of the view that there is only one morally justifiable way to look at the conflict (that being pro-Palestinian) are sincere in their beliefs. But I also find their demand that everyone else agree with them, or be excluded, a form of McCarthyism too, defining people with different points of view as not only being wrong, but essentially evil and justifiably outside the social contract.

But when I speak to people in the art world in Germany, including Jews, they see suppression – McCarthyism – coming in the other direction. And this is what worries me about the push to enshrine IHRA in law, either as the centerpiece of legislation, such as AAA, or as a component of other legislation, like the Combating Antisemitism Act.

"Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?"

"Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?"

As Justice Felix Frankfurter (who was also Jewish and a Zionist) wrote in his concurring opinion:

Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities.

For society's good – if understanding be an essential need of society – inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's wellbeing, except for reasons that are exigent and obviously compelling.

⁴² <https://www.jta.org/2024/03/07/culture/jewish-head-of-major-san-francisco-arts-center-resigns-over-anti-israel-artist-protests>

⁴³ <https://forward.com/forward-newsletters/antisemitism-notebook/624541/brooklyn-museum-antisemitic-vandalism-israel-gaza/>

⁴⁴ <https://www.nytimes.com/2024/05/15/arts/pen-free-expression-gaza.html> In full disclosure, I am a member of PEN America.

Once the door is opened to using a tool like IHRA via law to suppress speech, partisans stretch and bend and use it in any way they can to achieve their political goals, knowing even if they don't win a particular case, the threat is enough to chill speech through law. Germany is an object lesson. Yes, Germany has different free speech standards than the United States. But as some proponents advocate here, the definition has been used to cancel programs and threaten funding, shaking the arts world in much the same way it has been shaken here, but instead of Pro-Palestinian advocates insisting on a political line, it is the state insisting on a pro-Israel line.⁴⁵

This mirror image suppression is further evidence that what we're talking about with IHRA is quashing and chilling political speech through law. It reminds me of laws about expressions relating to the Armenian genocide. If you're in Turkey, you are in trouble if you say there was a genocide, and in Armenia you're in trouble if you question it.

Do we really want to go down the road where Congress essentially says you have to have a particular view about Zionism?

One of the lessons I learned from decades working on issues of hatred is that it's a useful exercise to change a scenario and see if the same rules apply. Imagine we created a definition of racism, primarily for use in taking the temperature of racism over time and place. One could argue that opposition to affirmative action, or opposition to Black Lives Matter, or opposition to the removal of Confederate statues might be a good data point to consider. But would you consider codifying those examples into law as defining characteristics of racism, endorsed by the US government, knowing that people would take that tool and hunt speech to declare it racist, even though these are political examples about which reasonable people, despite deep feelings, may disagree?

If you wouldn't do this about race, you shouldn't do it about antisemitism.

To further underscore this point, consider this thought experiment by noted legal scholar Eugene Volokh: a new administration adopts a parallel definition of anti-Palestinian bigotry, and among the examples:

Denying the Palestinian people their right to self-determination, e.g., by claiming that any Palestinian state would lead to terrorist attacks on Israel.

Applying double standards by requiring of Palestinians a behavior not expected or demanded of any other group that is waging an insurrection against an oppressive government.

⁴⁵ <https://www.nytimes.com/2024/04/06/arts/design/berlin-israel-gaza-art-scene.html>

Drawing comparisons of contemporary Palestinian policy and attitudes towards Jews to those of the Nazis.⁴⁶

He then writes:

Say that you are a professor who rejected a student's application to a graduate program. The student claims that the rejection stemmed from his or his parents' having been born in Gaza. . . . You argue that, no, you rejected him because you thought his past scholarly work wasn't strong enough. He responds that, "Denying the Palestinian people their right to self-determination" is an example that "the Department of Education shall take into consideration ... as part of the Department's assessment ... " You had publicly argued against a separate Palestinian state. Therefore, your speech is evidence that you were biased against him based on his national origin.

I think such an argument would be quite wrong, and dangerous to academic freedom. If the argument were accepted, it would sharply chill advocacy of various views on the Israeli-Palestinian conflict, and the government has no business doing that. And of course the same is true of HR6090. . . .

Even in the absence of HR6090, if a professor publicly says "All Jews are scum and I hate working with them" or "all Palestinians are scum and I hate working with them," that could be evidence that a particular action by a professor with respect to a student was deliberate discrimination based on ethnicity. The same would be true if a student is being accused of punching a classmate or vandalizing the classmate's property based on the classmate's being Jewish or Palestinian.⁴⁷

ANTISEMITISM – POLITICS ON THE LEFT AND RIGHT

Another problem is that people, on both the right and the left, tend to downplay antisemitism when it comes from their side of the argument about Israel, and rush to condemn even ambiguous statements from people on the other side of the debate. We shouldn't let politics filter our concerns about antisemitism. Yet we've seen people who have promoted antisemitism in their political campaigns, like Hungary's leader Victor Orban, be praised (including by Israeli Prime Minister Benjamin Netanyahu), and their antisemitism overlooked, because they are perceived to be friends of Israel; and we've seen antisemitic tropes from some on the left excused by people on the left too.

⁴⁶ In my 2017 testimony I warned of a "Pandora's box" opening, including definitions of anti-Palestinian racism (see p. 9). This "equal and opposite reaction" has been recently noted, and lamented:

<https://jewishjournal.com/commentary/opinion/373575/the-causative-relationship-between-ihra-and-anti-palestinian-racism/>

⁴⁷ <https://reason.com/volokh/2024/05/03/antisemitism-awareness-act-of-2023-which-just-passed-the-house-could-suppress-first-amendment-protected-criticism-of-israel/>

Antisemitism should be called out regardless of the view on Israel, or the politics involved. And it should only be a term used in the clearest cases. The incentive to use IHRA as the key antisemitism tool leads to overusing that word. “Antisemitism,” let alone “antisemite,” should be an accusation that stings. When so much becomes “antisemitic,” the word loses its meaning. In my years at AJC I jealously guarded it, employing it only in the clearest cases, such as against neo-Nazi and former KKK leader David Duke and Nation of Islam leader Louis Farrakan.

Another example of how the term has become politicized is the December 5 House hearing into campus antisemitism. Clearly antisemitism on campus is an appropriate issue for Congress to consider. And there were valid reasons to criticize how some campuses responded after October 7.

But I was deeply troubled by the exchange between Representative Elise Stefanik and the three college presidents. Certainly the presidents were tone deaf to the moment, and the need to underscore that calls for the genocide against anyone were to be deplored and condemned. But that wasn’t what they were asked.

Stefanik asked about the chant “From the River to the Sea,” insisting it was a call for genocide against Jews, and isn’t the call for genocide against the various universities codes of conduct?

First, this was a bait and switch. I find the chant “from the river to the sea” to be discomforting, especially since I know how groups like Hamas mean it – precisely as Stefanik alleged. But does this mean that 18 year-olds, who may not know even which river and which sea,⁴⁸ mean it this way? There was a later survey that showed 66 percent of Jewish college students heard it this way, but only 14 percent of Muslim students meant it this way.⁴⁹

To complicate things further, the Likud party platform in 1977 said “between the Sea and the Jordan there will only be Israeli sovereignty.”⁵⁰ I suspect if a Palestinian had been part of that House hearing, they would have pointed out that while one can choose to discuss a chant, their focus would be on the fact of Jewish control over the land between the river and the sea.

Representative Stefanik’s assertion that calls for genocide – pure calls, as opposed to threats, bullying, harassment, intimidation; in other words just expression of an ugly opinion – should get you in trouble with the disciplinary process of a college, made me think back to the antisemite David Duke. When he was an elected state representative in Louisiana and running for statewide office, I prepared a backgrounder about him for AJC. I wrote this about his university days:

⁴⁸ <https://www.youtube.com/shorts/iEQB1GdwWkg>

⁴⁹ https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/CPOST_Understanding_Campus_Fears_-_Report.pdf?mtime=1709832445

⁵⁰ <https://www.jewishvirtuallibrary.org/original-party-platform-of-the-likud-party>

After enrolling at Louisiana State University (LSU) in 1968, Duke was well known as a Nazi on campus. . . . In the fall of 1969, he advocated, on a local radio show, that blacks should be returned to Africa and Jews exterminated. According to the LSU newspaper, *Reveille*, Duke handed out Nazi papers on campus, and said, “I am a National Socialist. You can call me a Nazi if you want.” . . . On July 23, 1970, Duke paraded around the Tulane campus in a Nazi uniform with a swastika armband to protest a speech by William Kunstler.⁵¹

Duke was vilified for his views. I’m not aware of any evidence that he was disciplined, nor should he have been. I suspect he may well have wanted to be disciplined, as this would have allowed him to claim the status of martyr, and changed the subject to his right to speech as opposed to the content of his hate.⁵²

To answer Stephanik’s question, advocating for genocide against anyone of course should be robustly condemned; but the mere expression of such ideas (whether intended as such or heard as such) should be countered, not a matter for discipline. If we start defining what opinions – as opposed to instances of actual harassment and intimidation – are appropriate for discipline, not only is the First Amendment violated, we’ll open the door for other opinions to be circumscribed too, undermining the academic enterprise and sacrificing academic freedom in the process.

CHURCH STATE AND RELIGIOUS FREEDOM CONCERNS

When the Antisemitism Awareness Act passed the House of Representatives, disagreement came from members seen as aligned with pro-Palestinian views as well as some pro-Israel democrats, like Congressman Jerrold Nadler, who were worried about the constitutional and policy implications of enshrining this definition into law. But also opposed was Representative Marjorie Taylor Greene, on religious freedom grounds.⁵³

Proponents and opponents of using the definition agree that the examples are the core of and the reason for the definition. One of the “examples of the ways in which antisemitism manifests itself with regard to the State of Israel taking into account the overall context could include:” lists

.... Using the symbols and images associated with classic antisemitism (e.g. claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.⁵⁴

⁵¹ <https://kennethsstern.com/wp-content/uploads/2018/12/david-duke.pdf>

⁵² Former ACLU president Nadine Strossen and I made a similar argument about the banning of Students for Justice in Palestine post October 7 – see <https://sapirjournal.org/war-in-israel/2023/11/sjp-still-deserves-freedom-of-speech/>

⁵³ <https://www.timesofisrael.com/taylor-greene-antisemitism-bill-rejects-gospel-that-jews-handed-jesus-to-executioners/>

⁵⁴ <https://holocaustremembrance.com/resources/working-definition-antisemitism>

Greene posted on X (formerly Twitter)

Antisemitism is wrong, but I will not be voting for the Antisemitism Awareness Act of 2023 (H.R. 6090) today that could convict Christians of antisemitism for believing the Gospel that says Jesus was handed over to Herod to be crucified by the Jews. . . Read the bill text and contemporary examples of antisemitism like #9.⁵⁵

The bill, of course, would not convict Christians of anything, but would enshrine the idea that those who believe the Gospel are in effect declared by Congress to be antisemitic.

Senator Roger Marshall, who also had concerns about this aspect of the definition, indicated that he'd support the legislation but would offer an amendment to strike this one reference.⁵⁶

I can't imagine a clearer admission that the legislation is about speech that one doesn't like.

The legislation doesn't only impact religious beliefs of some Christians, but also those of some Jews. Congress is being asked in effect to weigh in on one side of a religious debate inside the Jewish community.

When President Trump signed the Executive Order saying IHRA should be used in Title VI cases, special advisor Jared Kushner wrote an op-ed in the New York Times, noting that the "definition makes clear what our administration has stated publicly and on the record: Anti-Zionism is anti-Semitism."⁵⁷

As I noted above, not all antizionism is antisemitism, but this isn't only a matter of political disagreement, it's also a religious one, about whether Zionism is an essential part of Jewish identity.

Before modern Israel was born in 1948, there was a significant debate inside the Jewish community about Zionism, with many Jews opposed. Of course, we're now three-quarters of a century into the existence of the state, and many of the reasons why some Jews were anti-Zionist have become, if not moot, literally of another age.

But Satmar Jews are anti-Zionist,⁵⁸ believing there should be no Jewish state until the Messiah comes. Most Jews would see the Satmars as having a theological reason, as opposed to an antisemitic one, for being anti-Zionist. They are "inside the tent."

⁵⁵ <https://www.timesofisrael.com/taylor-greene-antisemitism-bill-rejects-gospel-that-jews-handed-jesus-to-executioners/>

⁵⁶ https://www.yahoo.com/news/ks-sen-roger-marshall-says-213130164.html?fr=sycsrp_catchall

⁵⁷ <https://www.nytimes.com/2019/12/11/opinion/jared-kushner-trump-anti-semitism.html>

⁵⁸ <https://www.timesofisrael.com/head-of-satmar-hasidic-sect-castigates-followers-for-admiring-israel-idf/>

But what about Jews, many of them younger, whose religious beliefs also lead them to anti-Zionism? Many of the Jews involved in groups like Students for Justice in Palestine, IfNotNow and Jewish Voice for Peace are not, as some have referred to them, “unJews.”⁵⁹

I’ve spoken to many such Jews. They are frequently children or grandchildren of people who were active (as laypeople or staff) in mainstream Jewish organizations. Many had strong Jewish educations, some going to Jewish day school. And a story I heard, repeatedly over the last years, goes something like this: *I get to college, and I hear there’s something called The Occupation. I was never told about this growing up; all I learned was the need to love Israel. I feel betrayed. I feel lied to. And the existence of a state that prioritizes Jews over non-Jews can’t be reconciled with what Judaism teaches me about how to repair the world, and how to treat the stranger.*

There’s a huge debate inside the Jewish community to define what it means to be a Jew today. For most Jews, including me, a connection to Israel and to Zionism is an important aspect of our identity. But there’s an increasing number of Jews whose Judaism leads them to anti-Zionism.⁶⁰

Just as it would be inappropriate, as Senator Marshall’s concern reflects, to label deeply held Christian religious beliefs Congressionally-defined antisemitism, so too would it be to declare deeply held Jewish religious ones antisemitic.⁶¹

THE CHALLENGE OF FOCUSING ONLY ON ANTISEMITISM

Over the decades I have called out instances, here and abroad, when condemnations of antisemitism become homogenized, by efforts to hide it behind a generalized racism, or to insist on coupling it with condemnations of anti-Muslim hatred, when that form of bigotry wasn’t relevant to the immediate incident.

But post-October 7, I’m concerned about the focus on antisemitism on campus alone, when we’re also seeing the rise in anti-Muslim, anti-Arab and anti-Palestinian hatred there too.

I don’t believe in hierarchies of hate, but I do believe one should look at multiple hates that are impacting an institution, and the fact that the House has had multiple hearings on antisemitism,

⁵⁹ <https://www.columbiaspectator.com/opinion/2024/04/16/on-the-un-jews-of-columbia/>

⁶⁰ Anti-Zionist Jewish students have also been targets of bullying and harassment – see for example p. 16 of the recently released Columbia Task Force on Antisemitism Report #2 - <https://president.columbia.edu/sites/default/files/content/Announcements/Report-2-Task-Force-on-Antisemitism.pdf>

⁶¹ As mentioned above, the use of the definition in Germany has been problematic in the art world, but also for some Jews there, who are being labeled antisemitic. <https://www.dw.com/en/when-germany-targets-jewish-artists-as-antisemitic/a-70180570>. One person quoted in this story said “Once again, Germany defines who is a Jew, right? . . . The irony that the German state would actually classify who is a Jew, what’s a legitimate Jewish position, and how Jews should react is just beneath contempt.”

but not one on (or even including) anti-Muslim, anti-Arab and anti-Palestinian hatred, only makes the problem of dysfunctional campuses (and increased antisemitism) worse.⁶²

Post October 7 we've seen doxing trucks on some campuses; the banning of some groups, like SJP at Brandeis, not for acts but for disapproved speech⁶³; and the postponement or cancellation of events.⁶⁴ And where some Jews have been called supporters of genocide, some Muslims and Palestinians have been called terrorists.

When I speak to students, some who are identifiably Jewish because they wear religious items such as a kippah or a Jewish star are worried for their physical safety. But when I speak to Muslim and Palestinian students, especially women wearing an hijab, they share the same fear.

Many universities after October 7 set up task forces on antisemitism and on Islamophobia.⁶⁵ If you read the reports, such as those from the two Stanford task forces,⁶⁶ you'll see that in many ways they are mirror images of each other, speaking of perceptions of double standards and disregard. They both document students being afraid to say what they think, or even revealing their identity, for fear of a grade or a job.

This mirrors what I have heard on campuses. Some pro-Israel Jewish students feel there's a double standard – for instance they say they follow campus rules about public events, whereas they allege many times pro-Palestinian groups don't (such as setting up encampments or in some instances booking spaces). Pro-Palestinian students tell me they fear joining political groups for fear of doxing or losing job prospects, as some have.⁶⁷ They also tell me they see a mismatch between the pressure asserted on universities from pro-Israel donors and pro-Palestinian ones.⁶⁸

⁶² BCSH will be publishing a book tentatively entitled *Simply Human: How to Understand and Combat Hate: A Guide for NGOs and Everyone Else*, written by hate studies experts. A philosophy professor ponders whether NGOs in this space should entertain some sort of Hippocratic Oath – first do no harm. Any Congressional action should also be able to articulate reasons why the proposed action will do no harm, for sometimes what feels good does damage.

⁶³ <https://sapirjournal.org/war-in-israel/2023/11/sjp-still-deserves-freedom-of-speech/>

⁶⁴ <https://www.columbiaspectator.com/opinion/2024/02/02/banned-then-backtracked/> and <https://www.statepress.com/article/2023/11/asu-cancels-rashida-tlaib-event>.

⁶⁵ It is important to note that not all Palestinians are Muslims, and it may be more accurate to think of the animus as anti-Arab and anti-Palestinian, which of course is linked to Islamophobia just as anti-Zionism is, in various ways, sometimes linked to antisemitism.

⁶⁶ https://news.stanford.edu/data/assets/pdf_file/0033/156588/ASAIB-final-report.pdf and https://news.stanford.edu/data/assets/pdf_file/0031/156586/MAP-final-report-2024.pdf

⁶⁷ <https://www.reuters.com/legal/litigation/pro-palestine-lawyer-sues-law-firm-foley-over-rescinded-job-offer-2024-05-30/>

⁶⁸ See, for example, <https://www.nytimes.com/2023/10/26/us/university-of-pennsylvania-donors-israel-hamas.html>

There is no doubt that there has been bullying, even violence, over Israel on campus.⁶⁹ But if we're concerned about how the campus should be handling this difficult situation, the Congressional focus only on Jewish students, and not on Arab, Muslim and Palestinian students, underscores a perceived double standard that is only exacerbating the situation. And this situation is complicated even further when the remedy Congress is considering is not focusing on helping campuses ensure that no one is being bullied and how to use the unique attributes of the campus to understand and counteract the human capacity for hate, but rather on what speech – and speech specifically about Israel used by some pro-Palestinian advocates – is going to be stamped as hateful by the U.S. government.⁷⁰

WHAT TO DO INSTEAD

Instead of passing the AAA, here's what I suggest Congress can do, first regarding the campus, then antisemitism generally.

Congress can help underscore the distinction that has been obscured since October 7, and also before. Universities and colleges have an obligation to do their utmost to make sure students and faculty and staff aren't bullied, harassed, intimidated, threatened, or discriminated against. This should be an obligation that goes beyond Title VI as a matter of good policy; even if a student isn't a member of a protected group, no one should be bullied or harassed or threatened.⁷¹ Bullying or harassing another member of the campus community absolutely should be against the code of conduct, and a proper matter for discipline.

But the challenge is in part that some, both within the campus and outside, encourage students to believe they have to a right to intellectual safety – to avoid hearing things that disturb them. And this comes both from the left and the right. Some on the left encourage the idea of “trigger warnings” and “safe spaces” and what has turned into a hunt for “microaggressions.” Each of these ideas has some merit – you don't, after all, want to gratuitously or maliciously hurt others with words. But each of these concepts has become a filter, a binary, to simplify complicated things and in some cases to declare one's moral virtue and another's immorality. On a college, these mechanisms of creating intellectual “safe spaces” invite group think, exactly NOT the way to turn out critical thinkers who are capable of reevaluating their opinions.

⁶⁹ See, for example <https://www.cbsnews.com/newyork/news/yale-protests-jewish-student-assaulted-pro-palestinian-rally/>. But also see <https://www.cnn.com/2024/05/16/us/ucla-student-protests-counterprotesters-invs/index.html>.

⁷⁰ I suspect that the angst of many Arab, Muslim and Palestinians on campus is exacerbated by the off-campus political environment. They recall the national discussion about a ban on Muslims and the floating of the idea that Muslims in our country should be forced to register. It is difficult to imagine the higher level of concerns Jews would have about contemporary antisemitism if there had been recent calls by politicians for a ban on Jews, let alone the suggestion that Jews should be forced to register.

⁷¹ The Department of Education has underscored the protections for students in protected classes, including through this video released for the new school year: <https://www.youtube.com/watch?v=8lAGTzE3kMM>. The Leadership Conference on Civil and Human Rights [has called for increased funding for OCR](#).

But on the right there's also a push to limit what can be said or taught. Legislation in some states restrict what can be taught about race or gender. I also don't like some of what is being taught, but it concerns me more when politicians decide – frequently with the argument that people are going to be offended by what they hear – that certain broad topics are beyond the pale.

I agree with conservatives who complain that on some campuses conservative speakers are not welcome, and that this is a free speech issue (violating the opportunity for the audience to hear these views). But the same principle must apply for speakers conservatives don't like, such as those who express their view that Palestine should be free from the river to the sea. And that's the challenge of relying on IHRA, in either the AAA or the CAA version. IHRA codification is designed to restrict speech.

On a campus, any “remedy” should be one that ideally is aligned with the purpose of the academy, to increase knowledge. Remedies that ideally promote, or at least don't sacrifice academic freedom, are the ones likely to be most effective (and get support from faculty).⁷²

So rather than codifying IHRA as the official definition of antisemitism, do the following:

- 1) Increase the capacity of higher educational institutions to ensure that students, whether they are in a protected class or not, are not bullied, harassed, intimidated, or threatened.
- 2) Help higher education institutions stress to students that, rather than being shielded from ideas, they should expect to be deeply disturbed by opinions, and that the university will help students think through why that otherwise friendly student has views you detest – in other words, stress the importance of intellectual curiosity and emotional empathy.
- 3) Encourage units and classes on free speech and academic freedom.
- 4) Encourage the establishment of more hate studies programs (and classes and research) that will help students understand the human capacity to see “us” and “them,” with the idea that having an intellectual understanding of what happens to their own thinking and emotions in these moments will make them less likely to go down these dogmatic self-righteous rabbit holes.⁷³

⁷² The wiser approaches to campus protests and encampments have been ones that are grounded in this notion. See for example PEN's analysis of protests -- https://pen.org/in-preparing-for-protests-are-campuses-going-too-far/?utm_source=Communications&utm_campaign=f2f85c1953-EMAIL_PENNews_2024_09_04&utm_medium=email&utm_term=0_e98639ab83-%5BLIST_EMAIL_ID%5D&mc_cid=f2f85c1953&mc_eid=5e1eb669b1 as well as Wesleyan president Michael Roth's recent New York Times column: <https://www.nytimes.com/2024/09/02/opinion/college-president-campus-political.html>. See also https://greglukianoff.substack.com/p/five-quick-takeaways-from-fires-2025?r=2gh8e&fbclid=IwY2xjawFMhIdleHRuA2FlbQlxMQABHeX2S4i43Px3obVMHb9mvgli1zcmM5q0Z3q2jVltfk0ecZW7KnVdKlbTkQ_aem_-PKQhZsTNDChWnU4K2Eckw&triedRedirect=true.

⁷³ Two of my Bard colleagues, recognizing that students were flinging around words like “antisemitism,” “settler colonialism” and “genocide” as rhetorical weapons, designed a class to take a deep dive into what these words

- 5) Encourage classes on how to discuss divisive topics,⁷⁴ and encourage more debate groups (so that students have to argue positions with which they fundamentally disagree). There are also some interesting projects using AI in this effort, ones that depersonalize, interrupt ad hominem attacks, and encourage students to focus on concrete examples to prove their point.⁷⁵

Additionally, it worries me that on some campuses the Israel/Palestine debate has divided faculty to the point that some are blocking colleagues on social media and otherwise not communicating. Faculty ought to be modeling how to have difficult discussions, and should prioritize supporting students rather than their own politics. Projects that bring faculty together to study text, and messages from administrators that job one is helping students, might be important ideas to underscore.

Beyond the campus, if Congress passes the Countering Antisemitism Act, it must first strip out any mention of IHRA (either directly or indirectly). The legislation would help implement the U.S. National Strategy to Counter Antisemitism⁷⁶ with needed staffing and resources. As I wrote to the UN Secretary General,

The White House underscored that fighting antisemitism required actual hard work, not a hate speech code. . . .

Despite the insistence on IHRA as a veritable Swiss Army Knife for tackling antisemitism, it was mentioned just once in the strategy. It wasn't even the only definition mentioned.

This part of the White House strategy plan is telling:

Antisemitism is a stereotypical and negative perception of Jews, which may be expressed as hatred of Jews. It is prejudice, bias, hostility, discrimination, or violence against Jews for being Jews or Jewish institutions or property for being Jewish or perceived as Jewish. Antisemitism can manifest as a form of racial, religious, national origin, and/or ethnic discrimination, bias, or hatred; or, a combination thereof. However, antisemitism is not simply a form of prejudice or hate. It is also a pernicious conspiracy theory that often features myths about

mean, and why people understood them differently. <https://www.bard.edu/news/inside-higher-ed-bard-israeli-palestinian-conflict-in-the-classroom-2024-01-08>.

⁷⁴ See, for example, <https://bcsh.bard.edu/files/2019/07/THE-CHALLENGE-OF-DISCUSSING-ISSUES-WRAPPED-IN-IDENTITY-MORALITY-AND-OR-JUSTICE-070519.pdf>

⁷⁵ https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/07/16/bridging-campus-divide-dangerous-ideas-ai?utm_source=Inside+Higher+Ed&utm_campaign=174772aa77-DNU_2021_COPY_02&utm_medium=email&utm_term=0_1fcbc04421-174772aa77-226859421&mc_cid=174772aa77&mc_eid=3f73e10b67

See this demonstration: <https://www.swaybeta.ai/demo>.

⁷⁶ <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>

Jewish power and control. There are several definitions of antisemitism, which serve as valuable tools to raise awareness and increase understanding of antisemitism. The most prominent is the non-legally binding “working definition” of antisemitism adopted in 2016 by the 31-member states of the International Holocaust Remembrance Alliance (IHRA), which the United States has embraced. In addition, the Administration welcomes and appreciates the Nexus Document and notes other such efforts.

The focus of this national strategy is on actions [emphasis in original] to counter antisemitism. The White House described antisemitism in words different from IHRA, didn’t mention the examples which are the heart of IHRA, interestingly used the past tense “has embraced,” when it could have said, explicitly, that it was using it to define the strategy going forward, and mentioned not only the NEXUS definition but “other such efforts,” with the active verbs “welcomes and appreciates.”

So I encourage you to focus, as the National Strategy does, on actual work of a whole of government and whole of society approach, one that doesn’t get derailed by IHRA. Regardless of what people think about Israel/Palestine they should agree on opposing antisemitism. But as we’ve seen, the issue of IHRA is a great divider.

When a section of the ABA was considering adopting IHRA, I spoke to them and said this:

So the question I ask you is which is more important – to build consensus about the need to address antisemitism with a statement that people can support regardless of their views on the Israel/Palestine conflict or the complicated matter of where Israel fits in Jewish identity, or a statement that endorses IHRA, thus picking a side in a contentious political battle, and inevitably undercutting what you are trying to achieve?

Funding the National Strategy – which is focused on actions rather than the definitional wars – would help in the fight. It should be pro-Israel proponents, rather than Congress, that argue for their position on Israel and Zionism.

Finally, there’s one more thing that Congress can do.

When I testified before the House Homeland Security Committee in 2022, I had a suggestion from Hate Studies that I want to repeat. Not only does it rest on scholarship, it also is an approach that focuses on hate as interrelated – and if it proves viable, it’s something all groups that are victimized by hate, together, might support.

There’s an old study in social psychology study called the Robbers Cave experiment,⁷⁷ a study that involved sending two groups of boys from very similar backgrounds to a

⁷⁷ Sherif, M. (1954). *Experimental study of positive and negative intergroup attitudes between experimentally produced groups: robbers cave study*. Norman, OK: University of Oklahoma.

summer camp in Oklahoma. Each group didn't know the other existed, but once each bonded separately as a unit, and then were given evidence of the other group's existence in a competitive environment, they not only had animosity toward each other, but acted on it. At the end, they however, had to cooperate to fix the camp's drinking water supply. That superordinate goal – or perhaps the creation of a larger group identity – helped reduce the hate.

That suggestion – an additional layer of connected identity – is one I observed from colleagues during my years at AJC involved with intergroup relations. The groups that seemed to have the most staying power – say a project bringing together Blacks and Jews – were the ones that had an additional layer of identity (Black and Jewish lawyers or accountants, for example).

Years ago I was inspired by Colin Powell and others who suggested the potential societal and personal benefits of a program of national service for young people. I've long wondered, what if we had a national program that would offer to take teenagers from different backgrounds, say as they were finishing high school, and sent them on a common public service mission? How about a Latinx person from Texas and a Jewish person from New York and a Black person from Los Angeles, and sent them, together, to work for an organization that builds homes for American Indian people in South Dakota, for example? There are lots of ways to mix and match such groups, but the idea of bringing people together from different groups that they might not have met before, have them interact with each other and form a new group identity, have them together help someone else, and create new and negotiated collective memories drawn from their own communal memories might, and I stress might, make them less likely to be drawn into the "us" vs "them" thinking that threatens our democracy, and thus reduce the potential for antisemitic and other types of hate crimes. A pilot project and, if later evaluation documents a reduction of hate over time results, there might be consideration of building such a national service program. It might even pay for itself, if it reduces the cost of hate.⁷⁸

In conclusion, I hope Congress focuses on how we can improve the campus for all students, and combat antisemitism throughout our country not by defining disfavored ideas about Israel, but rather by concrete actions that bring Americans together across divides. IHRA is about choosing a side in a binary political debate, when we should be rebelling against the orthodoxy of binaries. Rather than seek refuge from thinking behind the comfort of simple formulas, we should be working harder to understand the complexities of hate, and further identify the methods that can help people reject it.

I was 15 when the Rev. Martin Luther King, Jr. was assassinated. What impressed me most was that he wasn't talking about special rules or definitions or rights for Black people, he was talking

⁷⁸<https://bcsh.bard.edu/files/2023/01/Written-Testimony-House-Homeland-Security-100322.pdf>. Regarding the cost of hate crimes see https://bcsh.bard.edu/files/2023/03/BCSH-Economic-Cost-of-Hate_3-13-23_Online-.pdf.

about what America should be, and what it owed to every American. I assign his “Letter from a Birmingham Jail”⁷⁹ when I teach. I hope, among other things, that students note this line: “the goal of America is freedom.” Essential to our freedom is the right to free speech. King fought for that right, including from jail. Yes, we should, we must, oppose antisemitism and all forms of hate. But we must not sacrifice free speech, especially by a Congressionally-endorsed definition of what political speech is defined as hateful. Once we open that Pandora’s box, tomorrow it might be your political speech that is targeted through law.

⁷⁹ https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html