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Before the

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COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Antisemitic Disruptions on Campus:

Ensuring Safe Learning Environments for All Students

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Chairman Cassidy, Ranking Member Sanders, Distinguished Members of this important committee,

I am a rabbi who for decades represented the largest denomination in American Jewish life in its public policy and social justice work. I am a lawyer who taught both Jewish Law and Church State constitutional law at Georgetown Law School for over 35 years. I had the immense honor to work closely with a number of you and many of your colleagues across party lines as the U.S. Ambassador for International Religious Freedom. I have chaired two federal commissions dealing with religious freedom and human trafficking, and have served on the boards of major civil rights organizations including decades on the national boards of the NAACP and Leadership Conference on Civil and Human Rights. One constant theme throughout all of those decades, in all of these honored roles, was fighting for equal rights for all, and fighting against discrimination of any group because of their immutable characteristics or a core identity. The foundational lesson I take from this half century of work is that hatred against any group cannot be stopped, cannot be thwarted, cannot be delegitimized, and cannot be changed into comity and understanding, unless we succeed in protection for all, and in countering hate against all.

It is clear to me that this is true of the effort to counter antisemitism. We cannot ensure that Jewish students are safe on campus until all students are safe. We cannot effectively bar discrimination against Jews, unless the mechanisms against discrimination are robust enough to bar discrimination against all protected groups. We cannot counter hate crimes against Jews unless we effectively address the spread of hate speech, hate crimes, dehumanization, demonization and discrimination against all those who are so victimized. Often called the world's oldest hate, we Jews have been victims of antisemitism in so many forms, the quintessential victims throughout human history of religious persecution. We have faced repeated efforts to destroy us, to ethnically cleanse us not only from our

historic homeland, but from many nations and communities in which we sought refuge. We have experienced centuries of pogroms, banishment, persecution, and second-class citizenry – simply because of the way we worshiped God, because of our vision of ethical monotheism, and because of our ties to a 3000-year-old historic homeland. And since the age of reason, we so often have been the canary in the coal mine of group hatred in the nations in which we have dwelled.

Today in America we see antisemitism reach its highest levels since the ADL and FBI began tracking statistics. Eighty three percent of Jewish students, according to the ADL, say they have witnessed antisemitism this past year. We are hearing hate speech against Jews and witnessing antisemitic actions against Jews in America and across the globe that we never dreamed of, and hoped after the Holocaust, we would hear or see again in our lifetimes.

Yet again, it is not just Jews who are affected. We have seen in our own country not just an explosive growth in antisemitism, but a terrible multiplying of hate groups and the spread of hate speech and hate acts. We see hate acts against Asians, Muslims, Sikhs, Christians, LGBTQ+, women, African Americans, and immigrants in escalating numbers. And in America, as well as throughout the world, we have witnessed the degradation of civil discourse, first in the dark corners of the internet and then more publicly, exacerbated by the anonymity of social media and the stamp of approval of such rhetoric by too many leaders in our nation, in nations across the globe.

And this hate speech has inspired hate crimes. And the damage such speech and crimes inflict on their victims – and on America – can be great and requires both a national and a communal response. Hate crimes are more than mere acts of violence. They are more than murders, beatings, arsons, and desecrations. Hate crimes are nothing less than attacks on the values that are the pillars of our republic and the guarantors of our freedom. They are a betrayal of the promise of America. They erode our national well-being. Those who commit these crimes do so fully intending to tear at the too-often frayed threads of diversity that bind us together and make us strong. They seek to divide and conquer us. They seek to tear us apart from within, pitting American against American, fomenting violence and civil discord.

Yet that, distinguished members of this committee, seems to be exactly what we are witnessing, on the one hand, in the explosive spread of antisemitism on campuses and, on the other, in the response to protests against Israel's policies without thoughtful regard to setting clear lines as to when exercise of free speech and the right to protest criticism steps over the line into antisemitism. And this has inflamed rather than constructively helped address the antisemitism that Jews face today.

In the end, whether nationally or globally, we must confront, delegitimize and combat antisemitism – embracing the paradox that antisemitism has distinctive characteristics and is capable of taking on a life of its own regardless of what happens in the rest of society. Yet simultaneously recognizing that unless we ensure freedom, equality and security for all peoples and all religions, and bring an end to hate speech and hate crimes against any vulnerable group -- America's Jews will never be safe.

I submit to you the following:

This nation has given Jews more rights, more freedom, more opportunities than we have known in 2500 years of diaspora life. Three things relevant to our conversations today were indispensable in achieving that for American Jews:

First, the rule of law at the heart of our democracy and our constitutional system of government.

Second, the framers' commitment to the separation of church and state and to religious freedom that, combined, created for the first time in human history, a nation in which one's rights as a citizen would not depend on one's religious identity, beliefs or peaceful practices. It took the Supreme Court's robust interpretation of the religion clauses in the mid-20th century and the core civil rights protections forged by the Court and the Congress to fulfill that promise, but in the 20th century it changed everything for Jews.

The third was the public schools of America and the system of Higher Education, which has been one of the glories of America. When higher educational institutions finally dropped their Jewish quotas limiting Jewish students and faculty, it opened unprecedented floodgates of opportunity and achievement for American Jewry.

Painfully now, under the guise of fighting antisemitism, we are witnessing attacks on all of these foundational aspects that have contributed to making America so special. Several factors exacerbate this divisiveness.

First, so much of the current administration's focus is only on antisemitism from the left such as antisemitism related to pro-Palestinian protests particularly since the horrific attacks of Oct 7th and Israel's response. Yet most of the deadliest attacks against Jews in America's history from the lynching of Leo Franks to the Charlottesville "Jews will not replace us" rally to the Tree of Life tragic murders came from neo-Nazi or white supremacist groups. Some of the worst antisemitic rhetoric in American history came from center right figures like Father Coughlin, America Firster Charles Lindberg, and Henry Ford.

Part of this seems reflected in the Heritage Foundation's *Project Esther: A National Strategy to Combat Antisemitism*, which seems to have, like the rest of Project 2025, a significant impact on the shaping of the administration's actions. It focuses almost entirely on what it refers to as "an active cabal of Jew-haters, Israel-haters and America-haters in Washington all apparently aligned with the far left."

I acknowledge that, of course, there is antisemitism on campuses that comes from the left, but can we all agree that we need to address antisemitism from both the right and the left? And we won't effectively address antisemitism on campuses unless we address antisemitism more broadly throughout America, from the left and from the right.

Secondly, there are numerous constructive steps that can be taken by the Department of Education that have been successful in the past. They should be built on, not abandoned. The Department of Education's Office for Civil Rights has previously reached agreements

with universities to tackle antisemitic harassment and other expressions of antisemitism. These agreements involve commitments to update discrimination policies, provide better training, conduct assessments, and establish reporting mechanisms, outlining demonstrable limits on protests and consistently enforce those limits. They illustrate how civil rights frameworks can be applied without undermining free speech by enforcing reasonable restrictions (including time, place, manner restrictions) on expression, regardless of content. In contrast, we now see a financial sledgehammer approach that threatens to undermine higher education institutions that have not adequately addressed antisemitism.

Third, the decision to gut the Department of Education and its OCR office is truly counterproductive for effectively countering antisemitism on campuses. To dismantle the system which has allowed for Jewish students to report instances of antisemitism highlights the administration's misguided approach to addressing what we have witnessed on college campuses. There must be significantly greater resources provided to government agencies to allow them to investigate all forms of discrimination and hate crimes including antisemitism. It is far better that these cases be addressed by people with educational knowledge and experience, and not simply by law enforcement. The decision to fire hundreds of experienced employees from the Department of Education's Office of Civil Rights who know how universities function, what their needs are, and how to effect change – to fire the very employees who are tasked with investigating and enforcing civil rights law on campus – has decimated one of the few channels available for students to take action and report their experiences, especially in the context of unreceptive university leadership.

Truly addressing antisemitism, as the original version of the Countering Antisemitism Act sought to do (in contrast to the mostly symbolic Antisemitism Awareness Act), required significantly expanding funding to strengthen more responsive reporting mechanisms and to bring on significantly more investigatory staff to engage more expeditiously in investigations of every complaint about antisemitism they receive, as well as addressing similar discriminatory occurrences against other protected groups. This would allow for the resolution of such complaints constructively with universities –not by defunding critical institutions or suppressing speech.

I am confident that every one of you here, across political lines, shares my heartbreak that antisemitism has spread so rapidly over the past few years in the U.S., Europe, and across the globe. I am confident that every one of you here shares my heartbreak that antisemitism has spread so rapidly over the past 6 years in the U.S. And I am confident that there is no partisan divide when it comes to recognizing almost all forms of antisemitism: murders of Jews at worship, assaults, desecrations of synagogues and cemeteries, bullying, harassment, discrimination and ostracization of Jews from any area of public life. I am confident that you believe as well that every vulnerable and marginalized group is entitled to the exact same protections.

It is because of our concerns for and about Israel, which is both a political state that should be judged and held to the same standard as every other democracy (one of the requirements I would note of the IHRA definition's examples), and an expression of

national identity to a group with a distinctive religious identity – that we see sharp differences in how to balance legitimate criticism of Israel with the protections afforded to every religious group.

The administration's actions such as the detention and planned deportation of Muhammed Khalil gravely damage fundamental due process rights that help make anti-terrorism laws effective and viable, not weaker. I may be deeply opposed to Muhammed Khalil's views and actions. You may find them anathematic. The administration may well be genuinely appalled. But advocating positions, even positions you might find reprehensible, is not a crime.

And the administration is rounding up people with no evidence of crimes or even of violating the standard of damage to foreign policy and national security they have cited. In doing so they attack the very values and legal protections that have protected Jewish communities throughout American history. Antisemitism - the hatred of Jews as Jews - thrives in authoritarian environments where civil liberties are curtailed, not in spaces of robust, protected democratic discourse. Jews have been safest in pluralistic democracies and most at risk when those democracies have been weakened or abandoned as with Nazi Germany. We must balance protecting every Americans' right to live free from discrimination and harassment with the bedrock principles of free speech. Unfortunately, we continue to see an overemphasis on punitive measures rather than on educational and community building approaches that can prevent antisemitic incidents from occurring in the first place.

Far too much time is spent on how to punish someone who expresses antisemitic ideas or engages in antisemitic acts. We need more time spent on preventing these instances from occurring in the first place, and creating constructive responses that will bring greater understanding and solidarity against such incidents when they take place.

In past hearings there has been much debate about how to draw the line between criticism of Israel and Israel's policies – even harsh criticism, unfair criticism, and offensive criticism - and when such criticism crosses the line into antisemitism. And I want to explore how the debate over IHRA and other definitions intersects with this line drawing. But before I do, we should recognize that practically speaking, a number of universities and others have revised policy guidance to accommodate the impact of incidents we are seeing in which protests against Israeli government policy or actions has targeted Jews because of their identity.

And a broad swath of the Jewish community and other important leaders are rallying behind some clear recommendations of what can be done on college campuses to effectively address antisemitism that will minimize division and offer common ground between those holding different positions on American politics in general and on Israel and Israel's policies.

Let me start with recommendations:

Several years ago, a broad range of major Jewish organizations -- American Jewish Congress, Anti-Defamation League, Hebrew Immigrant Aid Society, National Council of Jewish Women, Rabbinical Assembly, and World Jewish Congress together representing the vast majority of affiliated American Jews -- all supported the IHRA definition as an effective educational, training and monitoring tool -- as I should say I did when I served as the U.S. Ambassador for International Religious Freedom and urged it as the standard for nations across the globe, who had little experience in confronting growing antisemitism to follow. These organizations came up with six core recommendations of how Congress, the administration, and other entities could effectively respond to the crisis of antisemitism. The sixth recommendation was to affirm IHRA as it was intended -- not as a legal standard but a valuable tool in the education and training of government officials, law enforcement, and institutional civic leaders on how to identify antisemitism. All opposed it as a formal legal standard. Indeed, the organizations, when adopting the definition made it absolutely clear this should not be codified as a legal standard. The battles over its adoption have proven to be a major distraction from all the other steps that must be taken if we are to be effective -- exactly the concern that led all these organizations to send this letter to Congress and the administration.

The statement lays out additional urgent priorities including:

- Improved reporting (in which the IHRA definition plays a particularly important role), making it more comprehensive and consistent at the local, state and federal levels;
- Stronger government/private sector partnerships aimed at enhancing Jewish communal security -- for our vulnerable religious, civic, and communal institutions;
- Expanded support for strong Holocaust education and anti-bias education (this has to start in pre-university education, but it includes such efforts on the university campuses);
- Urging social media platforms to curb antisemitism, Holocaust denial, and harassment (which today has much weaker constraints than when we wrote that letter); and
- Continued, vigorous efforts in identifying antisemitism (again, in which the IHRA definition can play a constructive role) and enforcing existing education, anti-discrimination, and hate crimes laws.

The full letter with numerous recommendations on behalf of these major diverse Jewish organizations is attached in the appendix.

Almost all of our recommendations were fully realized in the last Administration's National Strategy on Countering Antisemitism. Bipartisan embrace is merited for this national strategy with its very specific steps to be taken (and with later detailed reports from every single agency of the executive branch of what actually was implemented). Never before in 2500 years of Jewish Diaspora life had there been a whole of government, a whole of society response to protect the Jews of that nation. Never. That it too became a partisan weapon is truly a *shanda* as the Yiddish phrase goes -- a shameful scandal.

I would add to these a number of other recommendations especially aimed at university settings. One goal I have, as I hear from rabbis, parents and students, on some campuses, of how fearful Jewish students are of being harassed and discriminated against, is to ensure that Jewish students feel safe on campus. But feeling safe from threats, harassment, or discrimination does not inoculate students from hearing speech (whether in protests or elsewhere) that they may find deeply offensive. Towards those ends:

- Universities must promote clear standards as to what is protected speech and what steps over the line of what the university's rules permit. These standards should both bar verbal harassment, specific threats, intimidation, and incitement for violent action, even while affirming academic freedom and freedom of speech for individuals and groups and eschewing punishment as a response to the expression of political content – even deeply offensive political speech – that is devoid of the factors I listed.
- So, too, for how protests are allowed and what limits are imposed when the protests interfere with others' access to their educational classes or activities or involve the kind of speech barred above.
- Standards must be publicly transparent and consistently enforced.
- Safe spaces for difficult conversations must be created in both academic settings and programmatic settings on campus.
- As Prof. David Myers of UCLA recently explained, universities should support academically rigorous courses teaching about the Middle East. This may include courses that focus on different aspects in ways that evoke criticism and concern. But if it meets academic standards, it should be allowed. Obviously presenting courses in which different perspectives are shared not only provides a richer educational experience, but allows the university to model a sense of commitment to academic freedom, free speech, and respectful debates over differences, expressing a spirit of unity and cooperation.
- So, too, universities should support courses on campus that examine the history of Zionism and Palestinian nationalism not in total isolation, but rather as contiguous and overlapping phenomena.
- An advancement of educational initiatives that promote understanding of antisemitism's historical manifestations and contemporary forms across the political spectrum.
- There should be content moderation on online platforms both as to what is posted, and under what circumstances there would be consequences for posting content that violates university policy.

A general point on responding to violations of university speech and protest codes: University responses do not necessarily need to be legal punishments such as expulsion or arrest. Indeed, calling the police should be a last resort, not a first resort of universities, particularly where overt violence is not involved. When someone steps over the line of antisemitic speech out of ignorance, education may be the proper response. When it is a first offense as opposed to consistent speech or activity, counseling or mediation may be a constructive approach that brings campuses together rather than divides them. When that fails, then disciplinary steps or legal consequences should follow.

However, even when hateful, divisive speech is protected, universities should make a decision when to speak out critically of such occurrences and when it should act in solidarity with those vulnerable and marginalized individuals and groups which were targeted.

Understanding the Purpose of Definitions

We know antisemitism today can arise from numerous sources: Primarily, three at this moment in history: the radical populist right in varied countries across the globe. These groups, including the white Christian nationalist right, are the source of much of the violent hate in America including antisemitic violence. Secondly, are Islamist groups, often related to Israel, sometimes not. And finally, left-oriented criticism usually connected with Israel, felt in some progressive political and advocacy circles, on some college campuses, and in a number of European countries – all greatly intensified after Oct 7th. All remain serious threats.

Those from the left and from Muslim, Arab, and Palestinian sources are in good measure focused on the relation of Jews with Israel, the Israeli-Palestinian conflict, and the intense reactions, as I noted earlier, to the brutal massacre of Oct 7th, the resulting hostage crisis, and the devastation that has been inflicted against the people of Gaza by a combination of Israel's military onslaught and Hamas' use of its civilian population as human shields for its military infrastructure.

There is an intense discussion today among those engaged in fighting antisemitism as to what is the proper definition of antisemitism. Right now, three variants are receiving a lot of attention, analysis, and debate, albeit there are other such efforts proposed by academics, organizations, and experts of all kinds. Listen to the three major ones, and please listen for what they all have in common in the protection of Jews, as Jews. They are virtually interchangeable.

There is the well accepted definition of the International Holocaust Remembrance Alliance definition:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.” [Just to explain, the reference to non-Jewish individuals refers to those who were targeted with antisemitism by perpetrators who erroneously thought the non-Jews were Jews.

This definition, which calls itself a “non-legally binding definition” is, of course, widely accepted cumulatively by hundreds of nations, localities, corporations, and some universities, although the rate of universities adopting IHRA has fallen significantly with only a handful in the last two years.

Second, is the Nexus definition, a project first of a USC taskforce, which has now moved to Bard College. I should acknowledge it is an enterprise with which I am associated. Its

authors and promulgators have emphasized that it is not intended to be an alternative to IHRA, but a complement or supplement. The definitions are not all that different, but they would argue that their examples are more up to date and useful in clarifying where to draw lines between criticism of Israel that is not antisemitic and that which is. The NEXUS materials are included in the appendix.

The definition reads:

Antisemitism consists of anti-Jewish beliefs, attitudes, actions or systemic conditions. It includes negative beliefs and feelings about Jews, hostile behavior directed against Jews (because they are Jews), and conditions that discriminate against Jews and significantly impede their ability to participate as equals in political, religious, cultural, economic, or social life.

Third, is the Jerusalem Declaration on Antisemitism definition, which is even shorter:

Antisemitism is discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish).

Add to that the concise descriptions of antisemitism that parallel these definitions such as the SPLC's description of antisemitism, T'ruah's in its "Guide to Combating Antisemitism" (T'ruah is a national rabbinic social justice group), and even the U.S. National Strategy itself, which does not offer examples, but which reads:

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 Jewish power and control.

It is not the definitions that are the major differences; they are virtually interchangeable. It is in the line drawn as manifested in their examples of how the definitions themselves ought to be applied to real-life situations.

Why is a debate over definitions important: on the one hand, an answer is "how do you fight antisemitism, how do you take legal action against antisemitism, if we can't identify what it is?" Wouldn't it be extremely helpful in our battle against antisemitism, if everyone had a common understanding of what antisemitism is?

That was one of the goals when I was at the State Department and we decided – and I strongly supported -- to endorse IHRA as the international standard we would push globally. To countries with little or no understanding of antisemitism, and others with inconsistent standards, it was indeed helpful to have them adopt a definition to recognize antisemitism when it arose in their nations. I would point out that none of the countries adopted it as a legal standard, but rather used it as intended – as an educational, training, and monitoring tool.

It is hard to think of any country in which IHRA was used as the standard underlying legal action, and when the UK tried to force universities to accept and use it, it evoked a divisive firestorm. We must remember that at the time it was drafted, IHRA was the only definition, forged for the European context, particularly in the context of the Second Intifada and the intense controversies surrounding antisemitism, Jews, and Israel that erupted at the 2001 World Conference Against Racism held in Durban. IHRA guidance was helpful in thinking through these new expressions of antisemitism.

On the other hand, critics argue, it was crafted 20 years ago and the world has changed, leaving its examples outdated, and vague enough with IHRA's caveat that their application had to be applied in context, without much guidance on what that meant. Further, critics argue, they are outdated or seen differently today as to whether they actually are "good examples" or "flawed examples" of antisemitism. (This is precisely why neither IHRA nor any other definitions ought to be codified as law, rather than as an educational, training, and monitoring tool they were all intended to be.)

Among the most criticized of the IHRA examples are:

- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.

I'll touch on the other two later, but just for a moment, let's focus on the double standard example.

The problem is the ambiguity of the phrase "double standard". If what that is saying is that if you would treat Israel by different standards than you would another country if you were addressing the same problems in that other country, then I agree that crosses the line. But the wording "expected or demanded" has led to an alarming misuse of the definition, leading to accusations that people or organizations that criticize Israel alone or Israel more than other nations that do much worse things, are antisemitic. But clearly, there are many reasons an individual or group would focus or address only a single country or a single conflict. Many Jews may be Zionists focusing on Israel in ways we don't focus on other nations, condemning Hamas but not Boko Haram, which kills many more people through terrorist attacks than Hamas. So too American Palestinians have a right to focus on the suffering of the Palestinians in Gaza even if they do not comment on the humanitarian crisis in Sudan with far more people displaced and facing starvation than in Gaza. Or someone may feel we give billions to Israel that we don't give to other countries, and thus we are implicated in Israel's actions if we feel they are immoral and feel compelled to speak out in a way we don't regarding other nations. Or a Christian or Muslim may feel the Holy Land is precious to billions of people across the globe – again, justifying focusing on Israel more than other countries.

On the other hand, the standards for Israel to be measured by international law must be the same as those that would apply to others when they are evaluated. So those entities

like the UN Human Rights Council in Geneva or Human Rights Watch, or Amnesty International, who are charged to assess human rights abuses everywhere should treat every country and all similar abuses equally. The fact that the UN Human Rights Council often has a majority of their resolutions in a given year condemning Israel, while there are horrible oppressions across the globe that get scant attention in comparison is clearly an example of a double standard that does cross the line into antisemitism. The examples used by those propagating other definitions do a better job in making such distinctions. But the imprecision of the double standard provision of IHRA has been used by diverse parties to affirm almost all of these variant positions.

The three biggest objections to the adoption of IHRA, is first, it was never intended as a legal standard to determine antisemitism, but rather a tool for training and education as a “non-legally binding” standard. But in states, localities, corporations, and universities, it is often presented as being the standard that will have the force of law and enforcement. Some of the groups that oppose its codification turn a blind eye to efforts to adopt it when it is used as the legal standard.

Since all of IHRA’s examples address speech, it has been accused of being used to stifle freedom of speech and freedom to protest, and to interfere with academic freedom.

Universities are caught in a dilemma. On the one hand, they are committed to “free speech” and “academic freedom” for all, including faculty. On the other hand, they have an obligation to “protect students” and provide them “a safe environment.” What those terms mean and how to balance them when they collide is the vexing challenge every university faces and adopting IHRA is, on the face of it, neither a particular help nor detriment – albeit outside forces may launch complaints citing IHRA in ways that do significantly threaten the free speech side of that balancing act.

Further, critics say: we don’t hear debates on “definitions” of racism, misogyny, anti-Asian hate, or LGBTQ+ hate. One reason universities fear adopting IHRA is that soon other constituencies will be pushing for definitions of the racism targeting them, bringing with it all the intense divisive battles over those definitions, their examples, and their implementation that have raged over IHRA. Like it or not, the issue of definitions and IHRA is emotionally charged, thoroughly unresolved, and divisive within a number of stakeholder communities, and even within the Jewish community. How does it bring a university together, how does adopting such a contentious position then help bring the university community together to oppose antisemitism.

Finally, imagine everyone adopted it, what really would the difference be? Consider: Very few of the most controversial manifestations of antisemitism in America, Kanye West, Tree of Life, desecration of synagogues, attacks on Jews on the streets for wearing yarmulkes, or an attack on Jews at a restaurant for being supporters of Israel – how often do we ever hear IHRA mentioned by anyone as being needed to identify that these were antisemitic acts, or when has it ever been needed in the prosecution, prevention, and communal responses to such occurrences?

Hate, even hate aimed at a protected class, is, of course, not a crime. Harassment, stalking, overt threats, vandalism, assaults, or discrimination against a protected class including Jews under many laws, incitement to imminent violence - may well be crimes. Of course, neither IHRA nor any definition is relevant to establishing whether such a crime has been committed. And there are very few, if any, cases where prosecutors or judges in considering antisemitism in the sentencing phase have ever felt they needed to evaluate whether the hate met the standards of the IHRA definition to determine it was a hate crime.

This is a diversion from the real work that needs to be done.

Antisemitism on the Left: Drawing Lines on BDS, Anti-Zionism, and Apartheid

Let me then turn to the challenges of antisemitism from the left. Antisemitism from the left also has a long history. Marx and other influential early communists were intensely pejorative about Jews and/or Judaism. And just consider the treatment of Jews in communist countries, most particularly in the efforts of cultural genocide against Jews in the USSR, as reflected in the response of the international campaign for the freedom of Soviet Jewry and the use of laws like Jackson-Vanik to address some manifestations of Soviet repression that disproportionately affected Jews.

Today, efforts to prevent Jews, Jews who support Israel, or Jews who identify as Zionist from participating in progressive or broader social justice coalitions, or efforts to create litmus tests of disavowing Israel in order to participate in a range of activities, have been seen beyond college campuses. From the environmental group Sunrise's DC chapter efforts to prevent Jewish supporters of Israel from participating in a protest for DC statehood; to the attacks against Jews during an earlier Israel-Gaza conflict by pro-Palestinian supporters at restaurants in New York City and Los Angeles, on the streets in several cities. So too the controversy over the alarming British Labor Party's antisemitism, which lost significant support and ended Jeremy Corbyn's leadership role. Incidents of harassment of Jews on campuses during so-called anti-Israel apartheid protests and at pro-Israel programs have all intensified after Oct 7th and Israel's military response in Gaza.

Let me address the question of when criticism of Israel steps over the line into antisemitism, and how we respond to antisemitism when it is merged with criticism of Israel's policies – most notably the explosion of antisemitism following October 7th.

I do so with one important caveat: We must remember that students can be subject to intimidation or harassment regardless of the content of the speech targeting them.

I would suspect that there is unanimity among the committees' members that Israel striking back at Hamas after the brutal attacks of Oct 7th – the 1200 murders, the 3,000 injured, the sexual violence, the hostage taking – Israel's right to respond militarily against Hamas is almost the classic definition of a "just war." But just war requires not only a "just cause" but requires prosecuting it through "just means" – in most religious traditions and under international law. And there are profound differences among you on this committee,

among American society writ large, among American Jewry, and on every campus in America, as to whether Israel's strategy, tactics, and actions of fighting this war are to be viewed as meeting the criteria of just means. And we have no consensus on when criticism of Israel's policies crosses the line into antisemitism. All this makes this moment in history even more painful, more challenging, more complicated, and more alarming.

So where should lines be drawn as to when criticism of Israel is judged on its merits as being right or wrong, fair or unfair, wise or wrong-headed. Constructive or counter-productive – and when does it cross over the line to become antisemitic?

Three issues are among the most widely debated on this point. Is advocating for BDS (boycott, divestment and sanctions) against Israel always antisemitic? Is using the term “apartheid” as related to Israel always antisemitic? Is anti-Zionism or condemning Zionism and/or Zionists as racist or declaring oneself to be an anti-Zionist inherently constitute antisemitism?

There are some Jewish leaders who say anyone who says they are an anti-Zionist is inherently an antisemite. First, people often use the term Zionist differently. If you use it to say that Zionism is the national identity of Jewish people in its historic homeland, and you deny the right of the Jewish people to hold such an identity, that crosses the line for many of us, into antisemitism. But should debates over if and how that right can be actualized, in which many argue that right must be balanced against Palestinian nationalism rights inherently antisemitic? I think not. And if someone uses the term as a substitute for Israeli policies and says, “I am an anti-Zionist because of Zionism's justification for the occupation and the oppression of the Palestinian people,” is that antisemitic?

And the use of the term Zionism altogether? Underlying a lot of sensible line drawing will be the assertion that criticism steps over the line when it a. Delegitimizes Jewish national identity i.e. denying the inherent legitimacy of the Jewish people's right to its 3,000 year old national identity in their historic homeland, or b. uses terms like “Zionism” or “Zionist” (or “Israeli” for that matter) as a substitute for “Jews” and then evokes the myths, stereotypes and caricatures that have been at the heart of classic antisemitism. So if someone says Zionists or Israelis are engaged in a global conspiracy to control the finances of the world or that they created the COVID virus to make money -- they are using Zionist or Israeli as a synonym for Jews, and it is a form of antisemitism.

What about apartheid? If someone says: “Israel (or for that matter Zionism) is like Apartheid South Africa (or like Nazi Germany), i.e., it is an inherently evil undertaking that has no right to exist”, in that form, I believe such assertions cross the line into antisemitism. But if someone warns, as former Prime Ministers of Israel have done, if Israel maintains the occupation until the non-Jewish populations are larger than the Jewish population and still deny them the right to determine their destiny, then it will become an apartheid state. Is that antisemitic? Or if someone says a specific policy of Israel in the West Bank is an apartheid policy (two separate sets of laws on the West Bank – one for Jews and one for non-Jews), is that antisemitic? What if they say it is like the Nazi policies of 1933-34. Or when Amnesty International or Human Rights Watch both

concluded that Israel's treatment of Palestinians violates the International Convention Against Apartheid, but make clear they are NOT comparing Israel to Apartheid South Africa. For those of us who think that assessment is wrong – or if you think it right – is that antisemitic? My organization, the Union of Reform Judaism, criticized both and explained why. Further, we warned that this would embolden antisemites and be used to spread antisemitic language and acts, but we did not conclude that the organizations or the reports were, on the face of it, antisemitic. And what of Ben Pogrund, a famous anti-apartheid activist in South Africa, who made aliyah and spent decades knowledgeably rebutting accusations of apartheid against Israel, showing the significant difference between the two legal and social systems, and treatment of the “other”? But he now says that this extreme right-wing government, in its policies and in turning a blind eye to growing settler violence, has reached a point where the comparison of the West Bank has some validity and is debatable – is he now an antisemite?

And what of BDS? The international BDS movement has said things that are widely perceived to be calling for ending Israel's existence. That to me crosses a line into antisemitism. But are the rabbis deeply opposed to the occupation who boycott wine produced in the territories antisemitic? Is Ben and Jerry's, which withdrew its business from the territories antisemitic? Protestant denominations that would boycott companies that sell Israel equipment used to maintain the occupation of the West Bank? Antisemites? Or any who say they won't buy products produced by settlements on the West Bank? Antisemites? Or even those who say they will boycott Israel entirely to pressure it to end the occupation – are such policies inherently antisemitic?

There is certainly nothing inherently racist or antisemitic or evil about boycotts, divestments, and sanctions per se. Jews and our allies have used them widely over the years within America and across the globe, and continue so today to pressure countries whose actions, words, or policies may be anathema to us such as Iran and Russia. Why do people who are pro-Palestinian not have the right to engage in economic pressure on Israel to change its policies? I may believe their justification is wrong-headed, I may believe this action is utterly counterproductive for what they are trying to accomplish, but is it on the face of it “antisemitic”?

Sec. Pompeo, you will remember, solicited an internal memo, threatening to declare Amnesty International, Human Rights Watch, and OXFAM as supporting BDS and therefore antisemitic under the IHRA definition (which, by the way, IHRA examples do not mention), with the presumption of cutting them off from partnering with the State Department. But if we want to keep the anti-antisemitism tent as large as possible, we should be cautious about writing out of it millions who, while not challenging Israel's right to exist, might engage in some of those hypotheticals above towards the goal of seeking a non-violent way to protest Israeli policies - even when they would condemn and seek to counter vigorously the vast majority of antisemitic acts in America.

Two final aspects of what an effective response to antisemitism in America requires on which you can make the most significant difference.

You cannot worry about anti-Semitism in America without worrying about educational standards in America. Studies show that racist, antisemitic attitudes correlate with levels of education. The higher the level of education, the lower the likelihood a person will hold racist and anti-Semitic views. We are focused on higher education and we know it is not an inoculation to prejudice, particularly the politicized forms of antisemitism that debates over Israel engender. But among the 340 million Americans it holds: the higher the levels of education, the less likely to hold any kind of prejudicial attitudes based on race or other immutable characteristics as well as religious identity.

So if we want in the long run to prevail in the goal of this hearing we must preserve and strengthen the public school system of America – with 83% of our students, as well as a sizable proportion of Jewish students attending. If the public school system of America doesn't make it, then neither will America nor the Jewish community. Addressing the rescue of public education in America must remain a priority of our community, particularly at a time when teachers and principals are feeling under serious attack.

Secondly, what has been so extraordinary is how the religious and civic communities of America have arisen to come together after racist, antisemitic, Islamophobia tragedies have occurred: Muslims cleaning up desecrated Jewish cemeteries in St. Louis and Philadelphia; the president of a McClellan Texas synagogue and the pastor of a near-by church handing sets of keys to the imam of a mosque that had been burnt to the ground for as long as they needed it; cleaning up graffiti together and repairing vandalism; the entire community around Tree of Life and Mother Emmanuel and so many other places standing in solidarity with those so tragically victimized. Working in broad-based interfaith and intergroup coalitions is a hallmark of America -- often working together to delegitimize hate acts and hate speech. Indeed, it is encouraging to note that we live at a moment when there is more interfaith engagement, comity and cooperation in America and globally than we have ever seen in human history. And when people come together across political, religious, cultural lines to build together a better America for all, they are modeling the very kind of America we hope to create. And, we look to all our political, religious, cultural and civic leaders to help in achieving this.

As Rabbi Stacy Friedman observed: It is our compassion and our common humanity that define us. It is the way people have united as allies and partners in standing up against such hatred that defines us. It is the support so many have shown one another after each attack that ultimately defines us. It is the love and the tears we have shed for one another at our vigils. That is what defines us.

May that indeed be the goal, the outcome, the blessing of your deliberations on this issue as you move forward to address antisemitism and hate in our universities and everywhere in our nation.

APPENDIX:

[A Campus Guide To Identifying Antisemitism In A Time Of Perplexity](#), The Nexus Project, September 2024

[Guide to Identifying Antisemitism in Debates About Israel](#), The Nexus Project, 2022

[The URJ and CCAR Join Other National Jewish Organizations in Sending Recommendations to Administration and Congress on Urgent Steps to Take to Combat Antisemitism](#), Union of Reform Judaism, January 2021