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Antisemitism in the Academic Voice: Confronting Bigotry under the First Amendment

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Confronting Bigotry under the First Amendment

By Kenneth Lasson

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ANTISEMITISM IN THE ACADEMIC VOICE
Confronting Bigotry under the First Amendment

By Kenneth Lasson*

*Sticks and stones may break my bones,
But names will never hurt me.*
– Old Playground Saying¹

Many words hurt more than swords.
– English Proverb²

Universities like to perceive themselves as places of culture in a chaotic world. Indeed it is their nature to view the Ivory Tower as sacrosanct, to nurture the perception that they are protectors of reasoned discourse, peaceful havens where learned professors ponder higher thoughts and where students roam orderly quadrangles in quest of higher education and other pleasures.

The modern campus, of course, is not quite so wonderful.

* Professor of Law, University of Baltimore. Thanks to my research assistant, Sara Sussman, for her diligent work on this project.

1 . *Folk Phrases of Four Counties* (1894) by G.F. Northall; *see* <http://answers.yahoo.com/question/index?qid=20081210061518AAAn1Ss4>.

2 . *Proverbs and English Sayings*, available at <http://www.english-sayings.com/many-words-hurt-more-than-swords/4003>. *Cf.* Chaplinksy v. New Hampshire, 315 U. S. 568, 571 (1942) (“Free speech is not absolute at all times and under all circumstances.”). *See also* Mandell v. County of Suffolk and John Gallagher, 316 F.3d 368 (2003) and People v. Livio, 725 N.Y. S. 2d 785 (2000) (antisemitic epithets can cause injury)

Among the abuses of the academic enterprise that have been taking place in American universities over the past several decades, and continue to this day, are failures of intellectual rigor: the abandonment of reliance on facts, common sense, and logic in the pursuit of narrow political agendas – which all too often presented in the academic voice.

Instead of a community of scholars thirsting for knowledge in sylvan tranquility, what we frequently encounter (particularly in England and Europe, but in elite American universities as well) are hotbeds of radical turmoil. A disturbing number of them are loud and strident opposition to the Jewish State of Israel.

While the number of overt antisemitic incidents has declined markedly in the United States over the past few years, there has been a significant increase in anti-Zionist rhetoric and activity on campuses around the country. The two concepts are not always identical, but in today's world they are often confluent. Anti-Zionism, in its narrowest dimension an argument directed against the political realization of the State of Israel, has evolved into antisemitism, which in its latter-day context has provided those who dislike Jews a convenient cloak behind which to hide. Many such sentiments are expressed by individual professors.³

Words matter. They can cause damage. They have consequences. While the First Amendment broadly protects freedom of speech, even for libertarians, the Constitution has limits. Defamation is punishable, for example, as is speech that incites to violence.

3 . The most notorious recent example is the book *The Israel Lobby and U.S. Foreign Policy*, by John Mearsheimer and Stephen Walt. *See infra* note 148 and accompanying text. *See also* Rupert Cornwell: Out of America, available at <http://www.independent.co.uk/opinion/commentators/rupert-cornwell-out-of-america-464069.html>

But the problem with regulating hate speech is where to draw the line. While an academic institution should not allow itself to become a forum for bigotry, neither should its freedom of expression be limited. It is better to err on the side of liberty; an excess of tolerance is still preferable to censorship.⁴

Students today increasingly find themselves confronted by curricula manipulated by scholarly extremists. Principles of academic freedom and the universality of science should have prevented such noxious campaigns, but they have not.

The much ballyhooed quest for “balance” raises problems of its own. Must Holocaust studies be balanced by Holocaust denial? To what extent can evolution be balanced by “intelligent design”? Does the obligation toward balance cover every point taught in a course, or only major disputes? Who is to enforce the norm?

Antisemitism is not just name-calling, but something much more corrosive and damaging. Responses to hate speech or disruptive behavior must be firm, immediate, and consequential. To put it in non-academic terms, as much as those who spout antisemitic rhetoric are in our faces, we must be in theirs.

This article examines the relationship between antisemitic and anti-Zionist speech and conduct, how they both play out on contemporary university campuses – and suggests ways by which such rhetoric and conduct can be Constitutionally confronted.

4 . See Assaf Sagiv, *A Study in Hate*, AZURE (Spring 2010) at p. 14.

The Historical Backdrop

Antisemitism in the academy is not a new phenomenon. Much of it can be traced to Karl Marx, whose essay *On the Jewish Question* was an early reflection of modern leftist thought. “What is the profane basis of Judaism?” asked Marx. “Practical need, self-interest,” he answered. “What is the worldly cult of the Jew? Huckstering. What is his worldly god? Money. Very well: then in emancipating itself from huckstering and money, and thus from real and practical Judaism, our age would emancipate itself... the emancipation of the Jew is the emancipation of mankind from Judaism.”⁵

Marx was a classic anti-Semite, not unlike those who fabricated *The Protocols of the Elders of Zion*, who viewed civilization as having been captured and destroyed by Jewish values, practices and conspiracies . Let the world be rid of the Jews, was (and is) the message, and all will be well.⁶

Some historians offer a psychological explanation for Marx’s hatred of Jews. No matter what he did in his life, he could not shed being branded a Jew – although he did not consider himself one. In fact when he was born in 1818, his father, who had changed his name from Herschel Levi to Heinrich Marx, had already converted to Christianity and had his own six living children baptized.⁷

5 . Sally F.Zerker, *Anti-Zionist Jewish Leftists Are Part of a Line Stretching Back to Marx*, CANADIAN JEWISH NEWS, November 26, 2009. (quoting KARL MARX, ON THE JEWISH QUESTION (1844)). Ms. Zerker is a professor emeritus at York University in Canada.

6 . *Id.*

7 . Karl Marx was six years old when he was converted to Christianity. *Id.*

Marxism was not the only early antecedent to modern Jewish leftists hostile to Jews in general and Israel in particular. Jewish members of the Communist Party had good reason to draw a line between themselves and the Jewish community at large – even though they had to form their own branch of the party, which at the time was blatantly antisemitic.⁸

Academic antisemites in Germany may not have participated in pogroms, but their “scholarship” during the Third Reich served to legitimize anti-Jewish policies. Much about them is surveyed by Alan Steinweis in his book, *Studying the Jew: Scholarly Antisemitism in Nazi Germany*, which shows how willingly some scholars were to endorse the Nazis' world view prevailing at that time. Moreover, they continued their academic antisemitism after the war. Steinweis effectively illustrates what is at stake when scholarship is placed at the service of politics.⁹

Through it all, ample usage has been made of the Big Lie – a classic modern-day manifestation of the truth-twisting tactic made notorious by Nazi propagandists during World War II.¹⁰

8 . *Id.*

9 . Alan E. Steinweis, *Studying the Jew: Scholarly Antisemitism in Nazi Germany*. See also Mikael Tossavainen, Book Review, *Studying the Jew: Scholarly Antisemitism in Nazi Germany*, Canadian Journal of History 12/22/06.

10 . The Big Lie as a tool of propaganda was introduced by Adolf Hitler in his 1925 autobiography *Mein Kampf*. To be effective, he wrote, it “must be so colossal that no one would believe that someone could have the impudence to distort the truth so infamously.” He went on to suggest that “in the big lie there is always a certain force of credibility; because the broad masses of a nation are always more easily corrupted in the deeper strata of their emotional nature than consciously or voluntarily.” The Big Lie was utilized by Joseph Goebbels, Nazi Minister of

Israel has long stood accused of conducting a harsh military occupation of Arab lands inhabited by an indigenous, peace-seeking Arab population – despite overwhelming evidence that such charges have no basis in fact.

The misnamed “occupation” allegedly began after Israel's 1967 victory in the Six Day war, when Jews began to settle of the disputed Biblical areas known as Judea and Samaria. Initially, Arab reactions were positive: Jews would regularly visit Arab towns and villages, and employ and provide assistance to local townspeople; the Arab standard of living improved significantly as per-capita income increased and modern infrastructures – roads, water supplies, electricity, medical care, and telephone communications – were developed. Tourism flourished. Arabs and Jews worked and shopped together in Haifa, Ramallah, and Bethlehem. Road blocks were virtually unknown.¹¹

Following Egyptian President Anwar Sadat's groundbreaking visit to Jerusalem in 1977 and the Camp David Peace Accords, Israel withdrew from the Sinai Peninsula and has been at peace with Egypt ever since.

Propaganda, who understood that not only must the false claim be colossal, but it must also contain at least a kernel of truth, and must be repeated with great frequency. In the Middle East today the necessary kernel of truth is that in fact Israel does occupy Judea, Samaria, and Jerusalem – but in the same way it occupies Tel Aviv and Haifa. So too does the United States occupies Miami and Los Angeles with their minority Latino populations, as does Canada occupy Quebec, with its minority French population. *See* Zelig Fried, *Occupation – The Big Lie*, Arutz Sheva (Israel National News), December 27, 2007, available at <http://www.israelnationalnews.com/Articles/Article.aspx/7656>. *See also* Israel Frederick Krantz, *On Campus: Defending the University Means Winning the Ideological War*, ISRAFAX 266, August 23, 2009.

These pacific relationships were dramatically altered in 1993 with the signing of the Oslo Accords, which ceded administrative control of the West Bank to the Palestinian National Authority (formerly the PLO). Emboldened by the promise of an independent Palestinian state in Judea, Samaria, and Gaza, Arab leaders urged their constituents to demand the removal of all Jewish communities in their midst, which they now claimed as exclusively their own. In 1994, Israel granted the Palestinian Authority autonomous control of the major Arab cities and towns in these territories.¹²

For its part the PA agreed to end propaganda attacks that called for Israel's destruction – a promise it never fulfilled. Instead, a new rallying call was introduced: “End the Occupation.” The modern rebirth of Israel began in the Nineteenth Century, with the reclamation of largely vacant land by pioneering Zionist who soon became a Jewish majority. Few thought it odd that, although throughout their 2000-year exile there was a continuous Jewish presence in the Holy Land, they were now accused of occupying it. Few questioned the historical incongruity that, having been sovereign in Judea, Samaria, and the lands west of the Jordan River for a thousand years, they would be branded occupiers. Judea, after all, had been named after its Jewish residents.¹³

Moreover, Jerusalem had been known since the dawn of history as a Jewish city: it is

12 . *Id.* In 1995, Jordan signing a peace treaty with Egypt.

13 . It was not until the late 19th and early 20th century that the majority of Arabs living west of the Jordan River migrated to the area. During that period, the land was ruled by the Ottoman Empire, and subsequent to that, until the founding of the state of Israel, it was under the control of the British Empire. *Id.* Following Israel's War of Independence in 1948, Egypt occupied Gaza, Jordan the West Bank, and Syria the Golan Heights. None were there to help the Palestinians create their own homeland.

mentioned in the Old Testament no fewer than 600 times – but not once in the Koran.

Nowhere has the Big Lie been more popular than in the universities, where to this day scores of anti-Zionist professors seek to denigrate Israel at every opportunity. The “occupation” mantra has assumed such magnitude that it has spawned a host of related myths, particularly that Israel’s military has met Arab resistance with cruelty and insensitivity by setting up purposefully “humiliating” checkpoints to harass innocent Arabs. This too flies in the face of ample evidence to the contrary. No army besides Israel’s has had to deal with more suicide bombers, deadly ambushes, drive-by shootings, kidnappings, and rock throwing interspersed with rifle fire, on a daily basis and for so extended a period. The Israel Defense Forces are widely viewed by other democratic nations as models of humane behavior, thoroughly trained to respect the sanctity of life and to demonstrate an individual and collective morality which greatly exceeds that of other military regimes.¹⁴

In the best tradition of the Big Lie, propaganda is promulgated as fact. Thus have there been repeated assertions that Israel (a) is the primary stumbling block to achieving a “Two State Solution”; (b) a nuclear power that presents the greatest threat to peace and stability in the Middle East; (c) and Apartheid state deserving of international boycotts, divestment campaigns, and sanctions; (d) plans to “Judaize” Jerusalem by building thousands of new homes in the eastern part of the Holy City; (e) adopts policies that, besides endangering U.S. Troops in Afghanistan and Iraq,

14 . See <http://www.youtube.com/watch?v=zW5VaxxBhCw>; See also http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/IDF_ethics.html

are the root cause of worldwide antisemitism; and (f) is primarily responsible for a “humanitarian catastrophe” in Gaza, against whose citizens it committed war crimes.

Trumpeting these claims loudly and often enough has allowed them to take on the character of unassailable truths. Were they subjected to the same objective scrutiny that academic historians and political scientists traditionally require of their disciplines, many if not all of them would prove meritless.

***Antisemitism and Anti-Zionism
on Contemporary Campuses***

Statistics and Narratives

The evolution of antisemitism on American campuses has continued into the first decade of the Twenty-first Century. According to the Anti-Defamation League (ADL), since 2002 there have been close to 100 major antisemitic incidents per year occurring on American university campuses.¹⁵ The most overt acts have come in the form of harassment and intimidation. They range from minor physical contact (such as spitting) to more extreme violence involving lethal weapons.¹⁶

15 . These numbers represent only those incidents that have been reported and documented. It is likely that many such acts go unreported because of fear, intimidation, or embarrassment. The exact number of incidents per year are: 2002: 106, 2003: 68, 2004: 74, 2005: 98, 2006: 88, 2007: 94, 2008: 85. Email from Emily Friedman; ADL.

16 . Such a trend can be traced back at least fifteen years. In March of 1995, for example, at the University of Pennsylvania, two Jewish students were walking near campus when they heard derogatory epithets shouted at them by two other students. One of the harassers went into a nearby house and returned with a threatening shotgun. Police and university officials questioned the perpetrators and confiscated their weapons. Ultimately, the harassed students decided not to

A pattern of antisemitism has emerged at elite universities in California and the Ivy League. At the University of California (Irvine), for example, with a student population of about 24,000 – a thousand of whom are Jewish-- there have been numerous incidents of property destruction, physical threats, and actual violence.¹⁷ .

In 2002, an article appeared in a UCI student publication claiming that Jews are a genetically different and inferior race. Posters began appearing on campus depicting the Star of David (the traditional Jewish symbol) dripping with blood, and equating it with the swastika.¹⁸

In 2003, a Holocaust memorial on the campus was destroyed almost immediately after it was set up. Jewish students commemorating the Nazi horrors found a swastika carved into a table near where they had gathered.¹⁹

press charges One of the perpetrators was “voluntarily separated” from the university. *Schooled in Hate: Antisemitism on Campus* (1997), available at <http://www.adl.org/sih/SIH-print.asp> (hereinafter *Schooled in Hate*).

17 . Susan B. Tuchman, Statement Submitted to the U.S. Commission on Civil Rights Briefing on Campus antisemitism, U.S. Commission on Civil Rights Briefing on Campus antisemitism, Briefing Report, July 2006, 13, 14.

- 18 . Kenneth L. Marcus, *The Resurgence of antisemitism on American College Campuses*, 26(3-4) CURRENT PSYCHOLOGY 206, 210 (2007), and *Anti-Zionism as Racism: Campus Anti-Semitism and the Civil Rights Act of 1964*, 2007 WILLIAM AND MARY BILL OF RIGHTS JOURNAL 837.

19 . U.S. COMM. ON CIVIL RIGHTS, BRIEFING REPORT ON CAMPUS ANTISEMITISM, 14 (2005).

In 2004, a confrontation between Jewish and Arab students became a campus *cause celebre*. The Jewish student, wearing a skullcap and a pin captioned “United We Stand” and framed by American and Israeli flags, was walking inside an academic building. He was soon surrounded and threatened by Arab students, one of whom shouted “Ee Bakh al Yahud!” (“Slaughter the Jews!”).²⁰

UCI of course does not stand alone as a focal point for such intimidation and harassment.²¹

In May 2002, at San Francisco State University, four hundred Jewish students held an Israeli-Palestinian “Sit-in for Peace in the Middle East” – an attempt to engage in a civilized dialogue with their counterparts. The Jewish students spoke of their support for Israel, and their hope that a peaceful settlement could be achieved. When the event concluded, about thirty of the Jewish students were surrounded by a group of pro-Palestinian students, who shouted “Hitler didn’t finish the job,” “F? the Jews,” and “Die racist pigs.” University and city police were quick to react, forming a barrier between the Jewish and pro-Palestinian students and eventually

20 . Soon thereafter, the Jewish student left the university to study somewhere else. At least one other student has also left UCI because of the hostile environment on campus. *Id.* For recent responses to the UCI incidents noted, *see also infra* notes 181-182 and accompanying text.

21 . In April of 2002, a Jewish student at Illinois State University was solicited to sign a petition in support of Palestinians; when he asked whether the petition addressed the issue of suicide bombings, an organizer of the group told him it addressed how to blow off the Jewish student’s head. antisemitism/Anti-Israel Events on Campus (May 14, 2002), available at http://www.adl.org/CAMPUS/campus_incidents.asp.

leading the Jewish students out of the plaza. A freelance reporter reporter wrote that she was “convinced that if the police had not been present there would have been violence.”²²

On the same campus, antisemitic activities are often the focus of pro-Palestinian rallies. In 2004, an anti-Israel rally staged by Arab and Muslim students featured posters with pictures of soup cans reading “Made in Israel” on the label: under the “contents,” the words “Palestinian Children Meat” was found, and a photo of a baby with its stomach sliced open and the words “according to Jewish Rites under American license” were pictured on the bottom of the can.²³

22 . Karen Alexander, *San Francisco Dispatch*, THE NEW REPUBLIC, June 24, 2002 at p.17. See also U.S. COMM. ON CIVIL RIGHTS, *supra* note 19, at 22.

23 . *Id.*

Psychological intimidation may be the most prevalent form of harassment, often experienced through acts of vandalism to public and private property. In February 2006, at the University of California, Berkeley, the word “kike” was painted on the front porch of a Jewish fraternity house.²⁴ Similar incidents were reported in October and December of the same year in other American universities.²⁵

A more extreme example of intimidation and violence occurred in 2008 near the Brown University campus in Providence, Rhode Island. In March of that year Yossi Knafo, an emissary from the Jewish Agency of Israel, was in his kitchen when firebombs were thrown at his building, burning the outside.²⁶ Although Knafo was unharmed, the incident had a profound effect on students on campus — the Hillel house was locked down, and a police officer had to be stationed outside. Students told administrators that they felt unsafe and vulnerable.²⁷

Anti-Zionism as Antisemitism

In recent years it has become increasingly difficult to separate statements criticizing Israel

24 . Antisemitic Incidents in U.S. Decline in 2006, Despite Year Marked By Violent Attacks (2006), available at <http://www.antisemitism.org.il/eng/adl>.

25 . At the University of Northern Colorado the words “F---ing Jews” was written on a Jewish student’s dormitory room door. At Ramapo College, in New Jersey, a Professor found swastikas and the words “Die, Jew Bitch” written on her white-board. At State University of New York, Albany, students found swastikas and “KKK” painted on the walls near a lecture center. *Id.*

26 . JAYAKRISHNA NANDINI. HILLEL STAFFER MOVING ON AFTER ATTACK. *The Brown Daily Herald* (April 9, 2008). available at <http://www.browndailyherald.com/2.12235/hillel-staffer-moving-on-after-attack-1.1670469>.

27 . *Id.*

from antisemitic ones. The former are often thinly-veiled versions of the latter.²⁸

Anti-Zionist incidents tend to increase in frequency with the changing intensity of perceptions about the State of Israel. During the intifada of the 1980s, there was a sharp rise in anti-Zionism reflecting the perceived evils perpetrated by the Israeli army against the Palestinian people. During the 1988-89 school year, for example, the University of Michigan's student newspaper continuously published anti-Israel rhetoric, including several editorials censuring a Jewish student group that was attempting to call attention to Arab terrorism.²⁹

Although the mood changed somewhat after the 1991 Gulf War and the subsequent election of the Labor government in 1992, and a similar period of relative tranquility following the assassination of Israeli Prime Minister Yitzhak Rabin in November of 1995, anti-Zionist rhetoric began to increase shortly thereafter. California State (Fresno) University's *Daily Collegian* carried a particularly anti-Jewish article: one student was quoted as saying that "When they [the Jews] disobeyed G-d, they broke the covenant; from that point on it's no longer their land."³⁰

With the start of the second intifada, during the early part of the 21st Century with Yasser Arafat's refusal to accept the Oslo Accords, anti-Zionist and antisemitic incidents began to increase. At the University of California (Irvine), a registered student group initiated annual weeklong events entitled "Anti-Zionist Week," "Zionist Awareness Week," and "Israel

28 . See Caroline Glick, *See No Evil*, JERUSALEM POST, July 29, 2010.

29 . *Schooled in Hate*, *supra* note 16.

30 . *Id.*

Awareness Week.” The message was always the same: the Jews control the U.S. Government and use the media to brainwash others; in turn, Jews need to be “rehabilitated” from the “psychosis” which exists in the Jewish community.³¹

Such strident propaganda leaves many Jewish students feeling alienated and marginalized, afraid to identify themselves as Jewish or as supporters of a Jewish state.³²

In 2002 a construction site for new dormitories at UC (Santa Barbara) was defaced with anti-Israel/antisemitic graffiti, including the phrases “Anti Zion/Nuke Israel,” “G-d Hates Jews,” and “Burn the Torah.” At the University of Colorado (Boulder), antisemitic messages, including the phrase “Your Tax Dollars are Paying to Kill Palestinian Children,” appeared on sidewalks throughout campus on the first day of the planned observance of Holocaust Awareness Week. The next day at UC (Berkeley), 79 pro-Palestinian protesters were arrested after storming into a classroom in an attempt to disrupt a Holocaust Remembrance Day commemoration. At San Francisco State University, following a pro-Israel rally, Jewish students, faculty, and campus

31 U.S. COMM. ON CIVIL RIGHTS, *supra* n. 19, at 15 (2005).

32 . In 2002, a female graduate student wrote a letter to the UCI Chancellor, explaining: Not only do I feel scared to walk around proudly as a Jewish person on the UC Irvine campus, I am terrified for anyone to find out. Today I felt threatened that if students knew that I am Jewish and that I support a Jewish state, I would be attacked physically. It is my right to walk around this campus and not fear other students and hear condemnation from them. It is my right for my government to protect me from harm from others. It is my right as a citizen who pays tuition and taxes to be protected from such harm . . . YOU may claim the first amendment. I claim the right to be safe and secure. You cannot use the first amendment as an argument against my safety. MY SAFETY SUPERCEDES FIRST AMENDMENT RIGHTS.

(Emphasis in original). Notably, the chancellor never responded. An administrator who did respond, suggested that the student visit the Counseling Center to help her “work on her feelings.” *Ibid.*

visitors were verbally assaulted and threatened. A group of pro-Palestinian counter-demonstrators hurled epithets at the crowd including, “Go back to Russia” and “Hitler did not finish the job.”

In 2008, of the 85 antisemitic incidents were reported on college and university campuses (compared to an annual average of 88 incidents each year since 2002),³³ many of them were of an anti-Zionist nature and, as before, many such demonstrations occurred in California. In September of that year, for example, a pro-Israel poster displayed at a bus stop at UC (Berkeley) was defaced with antisemitic graffiti, including swastikas, and a pro-Israel poster was defaced with antisemitic graffiti, including swastikas.³⁴ In May 2009, a large “Apartheid Wall” display was erected at UC Irvine showing inflammatory photographs and accusing Israel of deliberately killing Palestinian children.³⁵ At UC (Santa Cruz), a building was vandalized with antisemitic graffiti alleging that Jews were behind the 9/11 attacks.³⁶

Other campuses around the country experienced similar incidents in 2008, including Anna Maria College (swastikas and “white power” drawn on hallway walls); Baylor University (swastikas near dorm room of student who had recently converted to Judaism); Colorado

33 . Campus Incidents by Year, as compiled by the Anti-Defamation League: 2008: 85; 2007: 94; 2006: 88; 2005: 98; 2004: 74; 2003: 68; 2002: 106.

34 . Email from Emily Friedman, Assistant Director, Washington, DC, Anti-Defamation League (Nov. 16, 2009).

35 . Photos of Anne Frank were used to compare her fate at the hand of the Nazis with what is happening to Palestinians today. CREATING HATE AT UC IRVINE (May 13, 2009), available at http://www.standwithus.com/app/iNews/view_n.asp?ID=1033.

36 . *Id.*

University at Boulder (Jewish student subjected to antisemitic harassment by her roommate); Illinois State University (KKK fliers distributed on campus); Middlesex County (NJ) College (antisemitic graffiti); Rowan University (dormitory painted with swastikas and the phrase “Hitler is awesome”); Rutgers University (antisemitic graffiti in stairwell); Saint Xavier University (neo-Nazi group demonstrating outside building at which Holocaust survivor Elie Wiesel was presenting lecture); Seton Hall University (numerous antisemitic and racial slurs drawn on walls of men’s restroom); Temple University (two individuals physically assaulted and subjected to antisemitic taunts); the University of North Carolina: (Jewish student harassed by new roommate who claimed that Jews control world’s banking and entertainment industries); the University of North Dakota (student harassed by others with antisemitic slurs, then shot at with pellet gun); and the University of Oregon (Holocaust denier David Irving addressed students at an event sponsored by Pacifica Forum).³⁷

In January 2009, at San Francisco State University, reacting to an anti-Hamas, anti-terror petition, members of a group called the General Union of Palestinian Students (GUPS) assaulted students of the SFSU College Republicans who had set up the petition.³⁸ The GUPS accused the Republicans of “acts of incivility,” “intimidation,” and the creation of a “hostile environment” on campus – despite the fact that GUPS routinely sponsor radical speakers who demonize Jews,

37 . *Id.*

38 . The Republicans allowed students to throw a shoe at a Hamas flag, which was similar to their 2007 anti-terrorism rally, where they invited students to stomp on the flags of Hezbollah and Hamas. Richard L. Cravatts, Hate Speech at San Francisco State University, *American Thinker*, available at http://www.americanthinker.com/2009/02/hate_speech_at_san_francisco_s.html.

Zionists, Israel, Republicans, and America.”³⁹

Unfortunately, the above cases are merely illustrative of many other antisemitic incidents that have been reported on American campuses. Similar situations occur at universities around the world.

In April of 2010, two pro-Israel students at Carleton University in Ottawa were physically and verbally assaulted by ten men as they left a local bar.⁴⁰ The men accused the students in Arabic for being Zionists, hit one of them in the back of the head, calling him a “f—ing Jew,” and came at them with a machete.⁴¹ During “Israeli Apartheid Week” at Carleton, the campus safety department discovered and reported to the police antisemitic graffiti in a bathroom—“Kill a Jew slow + painfully,” “Nuke Israel,” and “White Power.”⁴²

A spokesman for the university responded to these incidents by stating that “certain kinds

39 . *Id.* The Supreme Court has repeatedly declared that burning, defacing, or desecrating flags is protected speech under the First Amendment. *See Texas v. Johnson*, 491 U.S. 397 (1989) and *U.S. v. Eichman*, 496 U.S. 310 (1990).

40 . Dave Rogers, *Machete Used in Antisemitic Attack in Gatineau, Carleton Students Say*, THE OTTAWA CITIZEN, Apr. 6 2010, available at <http://www.vancouversun.com/Machete+used+anti+Semitic+attack+Carleton+students/2766537/story.html>; Adam Daifallah, *The Bitter Campus Divide*, NATIONAL POST, Apr. 8, 2010, available at <http://network.nationalpost.com/NP/blogs/fullcomment/archive/2010/04/08/adam-daifallah-adding-a-machete-to-the-bitter-campus-divide.aspx>.

41 . *Id.*

42 . Matthew Pearson, *Hate Crimes Unit Probes Antisemitic Graffiti on Campus*, THE OTTAWA CITIZEN, Apr. 7, 2010, available at <http://www.ottawacitizen.com/news/Hate+crimes+unit+probes+anti+Semitic+graffiti+campus/2770759/story.html>.

of behavior are not acceptable,”⁴³ but pointedly refused to address the issue of antisemitism on campus, stating that its role is to provide a forum for debates and discussions regarding the Middle East.⁴⁴ Echoing that view, a member of the Faculty for Palestine group, which supports the student group that organizes “Israeli Apartheid Week” at Carleton, believes that the controversy is “healthy” and that there is “nothing wrong with heated debate.”⁴⁵

York University in Toronto has likewise been the scene of overt antisemitism in recent years. In April 2008, York’s Hillel brought then-Knesset member Natan Sharansky to campus for a speaking engagement. Members of the Palestinian Students Association and Students Against Israeli Apartheid@York (SAIA) shouted down Sharansky, yelling “Get off our campus, you genocidal racist,” and “[Y]ou are bringing a second Holocaust upon yourselves.”⁴⁶ In February 2009, police had to usher Jewish students to safety after 100 Palestinian sympathizers

43 . Rogers, *supra* note 40.

44 . Pearson, *supra* note 42.

45 . *Id.* Adam Daifallah, a Canadian journalist of Palestinian decent, in reaction to the incidents at Carleton University, noted that the Israel-Palestine debate used to be confined to student organizations that existed solely to support one side (e.g. Hillel), but now, **student governments** have become involved. This illustrates how the issue has taken over student life at many universities across North America. Daifallah agrees with Arab-Israeli journalist Khaled Abu Toameh that one can be both pro-Israel and pro-Palestine at the same time—“to be truly pro-Palestinian is to oppose the murderous kleptocrats running the Palestinian Authority and to oppose the use of violent intimidation in the campus debate.” Unfortunately, says Daifallah, most Palestinian activists do not share this view, especially the younger, more radical, generation. Daifallah, *supra* note 40.

46 . *Id.*

barricaded the Jewish students in the campus' Hillel offices.⁴⁷

(The question has been asked why in Canada, where multiculturalism is valued and criticism of protected minorities has been criminalized as hate speech, are radical students allowed to get away with targeting one group (Jewish students) with speech and actions that are specifically forbidden against any others.”⁴⁸ The same question can certainly be asked about what regularly occurs on American campuses, where university officials declare their firm commitment to the constitutional principle of freedom of speech, yet appear to enable certain groups to defame Israel and Jews under the pretense that they are fostering intellectual debate and constructive political discourse. Can this fairly be called “scholarship” – or is it merely antisemitism in the academic voice?)

Although anti-Israel activity may not necessarily constitute antisemitism, when individuals or groups accuse Israel of committing war crimes by responding forcefully to terrorist bombardments of its citizens – as happened most recently in the incursion into Gaza known as Operation Cast Lead – the sentiment becomes clear. As Abraham Foxman, national director of the Anti-Defamation League, puts it: “Sixty years after the Holocaust, we are watching one layer after another of the constraints against antisemitism, which arose as a result of the murder of six million, being peeled away. The world is losing its shame about antisemitism. As a result,

47 . Dr. Richard L. Cravatts, *Is Assaulting Jewish Students on Canadian Campuses Now Legitimate Criticism of Israel?*, Scholars for Peace in the Middle East, Feb. 10, 2010, available at <http://spme.net/cgi-bin/articles.cgi?ID=6480>.

48 . *Id.*

antisemitism is becoming more acceptable in wider circles.”⁴⁹

Antisemitism in the Classroom

All too often antisemitism in the academy goes beyond the student body and emanates from faculty. From behind their lecterns or under the cover of published scholarship, statements that in other venues would be considered unacceptable bigotry are viewed in the Ivory Tower as part of honest debate in a respectable “marketplace of ideas.”⁵⁰

Some such professors have turned their political agendas into a source of lucrative lecture fees.⁵¹ Leonard Jeffries, former head of the Black Studies Department at the City College of New York (CCNY), began teaching in 1972, but did not come to national attention until several decades later, when it was reported he was telling his students that the “rich Jews who financed the development of Europe also financed the slave trade.”⁵² More notoriety ensued in 1991 following a speech Jeffries gave at the Empire State Black Arts and Cultural Festival in Albany, where he reiterated his claim that wealthy Jews enabled the slave trade, adding that they also control the film industry which paints blacks in a brutally negative stereotype.⁵³ He also attacked

49 . Remarks by Abraham H. Foxman, ADL National Director, Indianapolis, November 23, 2009, available at http://www.adl.org/main_Anti_Semitism_Domestic/Indiana_Achievement_Address.htm

50 . *See Schooled in Hate*, *supra* note 16.

51 . *Antisemitism Among Black Student Groups*, Jewish Virtual Library, available at http://www.jewishvirtuallibrary.org/jsource/antisemitism/Black_student_groups.html.

52 . The comment was reported in the *New York Times*. *Id.*

53 . *Id.*

Diane Ravitch, then the Assistant U.S. Secretary of Education and a white Jewish member of the task force upon which he also sat to combat racism in the public school curriculum – calling her as a “sophisticated Texas Jew,” “a debonair racist,” and “Miss Daisy.”⁵⁴ In October 1995, Jeffries was a featured speaker at the Black Holocaust Nationhood Conference held in Washington D.C.. a group that is commonly recognized as both anti-white and antisemitic. Jeffries still teaches at CCNY as a tenured professor, and still speaks at colleges and universities.⁵⁵

54 . “OUR SACRED MISSION”, Speech at the Empire State Black Arts and Cultural Festival in Albany, New York, July 20, 1991, available at <http://www.archive.org/details/OurSacredMission>.

55 . Jeffries’ newfound notoriety was uncomfortable for City College, which reduced his term as head of the African-American Studies from three years to one and sought to remove him from the department. Jeffries sued the school, and a federal jury found that his First Amendment rights had been violated, and he was restored as chairman and awarded \$400,000 in damages. On appeal the federal appeals court upheld the verdict, but removed the damages. However, one month later, the U.S. Supreme Court ruled in another case, *Waters v. Churchill*, that a government agency may punish an employee for speech if the agency shows “reasonable predictions of disruption.” 114 S.Ct. 1878, 511 U.S. 661 (1994). Using this new decision, the New York State Attorney General, G. Oliver Koppell, appealed Jeffries case to the Supreme Court. In November of 1994, the high court ordered the court of appeals to reconsider its findings, which it did in April of 1995, when it reversed its earlier decision, upholding the dismissal. *See also* Jeffries v. Harleston, 52 F.3d 9 (2nd Cir. 1995) and Richard Bernstein, “Judge Reinstates Jeffries as Head of Black Studies for City College,” NEW YORK TIMES, May 12, 1993 at A1, available at <http://www.nytimes.com/1993/08/05/nyregion/judge-reinstates-jeffries-as-head-of-black-studies-for-city-college.html>.

Before he retired in 2007, Anthony Martin was a tenured professor in the African Studies Department of Wellesley College. He came to national prominence in 1993, when it became known that he required students to purchase the Nation of Islam book, *The Secret Relationship Between Blacks and Jews*, for one of his courses. An anonymously written conspiracy theory, the book described an overwhelming Jewish domination of the Atlantic slave trade – contradicting the weight of historical evidence, which indicates that Jews played a very minor role.⁵⁶

56 . See ADL Report, *Eminent Scholars on “The Secret Relationship,”* available at http://www.adl.org/main_Nation_of_Islam/jew_hatred_as_history.htm?Multi_page_sections=sHeading_2

In response to the controversy that ensued, Martin gave two speeches to the Wellesley College Academic Council in March of 1993, where he again asserted Jewish control over the Atlantic slave trade and made numerous new accusations: that Jews controlled the civil rights movement to the detriment of African-Americans; that Jewish-owned publishing companies conspired with Jewish academics to control African-American scholarship and culture; and that Jews were presently engaged in a racist offensive against black progress.⁵⁷

In a self-published book (*The Jewish Onslaught: Dispatches From the Wellesley Battlefield*), Martin describes a conspiracy against him by the school, three Jewish students who attended his class, and the ADL. The president of Wellesley College, Diane Chapman Walsh, wrote to alumni and parents to denounce Martin's book for its application of racial and religious stereotypes. More than half of the faculty signed a similar statement of repudiation.⁵⁸

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Perhaps it is a perverse but inevitable irony that Israel itself has its share of anti-Zionist academics. Antisemitism in the academy surprisingly comes also from Jewish scholars and intellectuals, sending an equally strong message to Jewish students, especially those on historically Jewish campuses.

57 . The first speech was called "An Answer to My Jewish Critics." The second speech was titled "Broadside No. 1." *Id.*

58 . Although the college did not officially censure Martin and his tenure remained unaffected, in the summer of 1994 he was denied a merit raise because of his writings, and the history department dropped his courses from its catalogue. *Id.*

In recent years, the late Hebrew University professor Yeshayahu Leibowitz called his country a “Judeo-Nazi state.”⁵⁹ Moshe Zimmerman, director of the Minerva Center for German history at Hebrew echoed that sentiment, claiming that an “entire sector in the Jewish public” can be equated to “German Nazis,” and that Hitler did not intend to kill the Jews, but to “raise the question of the Jews.”⁶⁰ Yitzhak Laor, an Israeli poet, author, and journalist, wrote a play entitled “Ephraim Returns to the Army,” which drew parallels between the Israeli occupation of the West Bank and the Nazi occupation of Europe.⁶¹

One of the most outspoken critics of Israel has been Ilan Pappé, formerly a senior lecturer in political science at the University of Haifa (1984–2007), and chair of the Emil Touma Institute for Palestinian and Israeli Studies in Haifa (2000–2008). Before he left Israel in 2008, he had been formally censured by the Knesset, Israel's parliament.⁶²

Outside the Classroom

59 . Seth J. Frantzman, *Terra Incognita: Israel's Democracy Wars*, THE JERUSALEM POST, May 4, 2010, available at <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=174680>.

60 . *Id.*

61 . *Id.*

62 . Called Israel's most contentious “new historian,” Pappé, left his job as senior lecturer in political science at the University of Haifa after he endorsed the international academic boycott of Israeli institutions, provoking the university president to call for his resignation. See Tamar Traubman, “Haifa University President Calls on Dissident Academic to Resign,” HA'ARETZ, April 6, 2005.

Khalid Abdul Muhammad is the spokesman for Louis Farrakahn's Nation of Islam. In November of 1993 he delivered a lengthy speech at Kean College in New Jersey.⁶³ For three and a half hours, Muhammad gave a speech demonizing whites and Jews, declaring that they are “sucking our blood on a daily and consistent basis,” that Jews are to blame for the Holocaust because they took over Germany’s financial infrastructure. “Who are the slumlords of the Black community? The so-called Jews. . . . Who is it sucking our blood in the Black community? A white imposter Arab and a white imposter Jew.”⁶⁴

At the same event, Muhammad also sought to justify the Holocaust:

[E]verybody always talk about Hitler exterminating 6 million Jews. . . . But don't nobody ever asked what did they do to Hitler? What did they do to them folks? They went in there, in Germany, the way they do everywhere they go, and they supplanted, they usurped, they turned around and a German, in his own country, would almost have to go to a Jew to get money. They had undermined the very fabric of the society.⁶⁵

Muhammad proceeded to instruct all whites to leave South Africa with 24 hours, or risk being killed.⁶⁶

63 . Muhammad was brought to campus by a black student organization; he was paid by student activity funds. *See generally* Khalid Abdul Muhammad, Jewish Virtual Library, available at <http://www.jewishvirtuallibrary.org/jsource/anti-semitism/Khalid.html>.

64 . *Id.*

65 . *Id.*

66 . *Id.*

Kean College's response was weak and belated. Eleven days after the speech its president, Elsa Gomez, issued a statement that did not mention Muhammad by name, nor address antisemitism. Instead, she reiterated the school's firm support of free speech and freedom of dissent.⁶⁷

Muhammad went on to give similar talks at Howard University, where he called Jews “no-good, dirty, low-down bastards” and declared that he was not impressed by the “pile of shoes” at the U.S. Holocaust Memorial Museum, and at San Francisco State University, where he denied the Holocaust, and claimed that Jews control the U.S. Government.⁶⁸

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67 . Vern E. Smith, Sarah Van Boven, *The Itinerant Incendiary*, NEWSWEEK, (September 14, 1998), available at <http://www.newsweek.com/id/113381>.

68 . ADL ALERTS NATION’S ACADEMIC LEADERSHIP ABOUT VIRUS OF BIGOTRY BEING SPREAD BY KAHLID ABDUL MUHAMMAD, July 1, 1997, available at http://www.adl.org/PresRele/ASUS_12/3005_12.asp.

On occasion there is more antipathy toward Israel on American campuses than within the Palestinian territories themselves. This appeared to be the case in March 2009, when an Arab-Israeli journalist named Khaled Abu Toameh toured the United States in an effort to promote peaceful dialogue about the Middle East conflict. He was often confronted by hostile audiences, who told him that Israel has no right to exist, that its “apartheid system” is worse than the one which existed in South Africa, and that Operation Cast Lead was launched not in response to four years of incessant rocket fire launched at Israeli communities like Sderot – but because Hamas was beginning to show signs that it was interested in making peace. Toameh was further informed that all the reports of financial corruption in the Palestinian Authority was “Zionist propaganda,” and that Yasser Arafat had done wonderful things for his people, including the establishment of schools, hospitals and universities.⁶⁹

Toameh concluded that what is happening on the U.S. campuses is less about supporting the Palestinians as much as it is about promoting hatred for the Jewish state — that it is not about ending the “occupation” but about ending the existence of Israel.⁷⁰

69 . Khaled Abu Toameh, *On Campus: The Pro-Palestinians' Real Agenda*, Hudson Institute/New York, March 25, 2009, available at <http://www.hudsonny.org/2009/03/on-campus-the-pro-palestinians-real-agenda.php>.

70 . Toameh said that he regarded his hecklers as “hard-line activists/thugs” who would intimidate anyone who dared say something with which they disagreed.

If these folks really cared about the Palestinians, they would be campaigning for good government and for the promotion of values of democracy and freedom in the West Bank and Gaza Strip. Their hatred for Israel and what it stands for has blinded them to a point where they no longer care about the real interests of the Palestinians, namely the need to end the anarchy and lawlessness, and to dismantle all the armed gangs that are responsible for the death of hundreds of innocent Palestinians over the past few years. The majority of these activists openly admit that

A large part of the anti-Israel lobbying taking place on American campuses is funded by an Iranian front organization, the Alavi Foundation, which makes ample use of pro-Iranian anti-Zionist professors. For example, hundreds of thousands of dollars have been donated to the Middle East and Persian Studies programs at Columbia University and Rutgers, for courses taught by academics who openly express sympathy for the terrorist groups Hezbollah and Hamas. The Alavi Foundation donated \$100,000 to Columbia University in 2007 after that institution agreed to host Iranian President Mahmoud Ahmadinejad, who frequently denies the Holocaust and questions Israel's legitimacy as a state.⁷¹

The Center for Intelligence and Security Studies at Britain's Brunel University reported that up to 48 British universities have been infiltrated by Muslim fundamentalists, all heavily financed by major Muslim groups, at a cost of more than one quarter billion Sterling.⁷²

A recent report by the Reut Institute, a Tel Aviv-based national security and socioeconomic policy think-tank, describes a new battlefield which it calls "Hubs of Deligitmization," in which Israel finds the legitimacy of its existence attacked by a wide array of

they have never visited Israel or the Palestinian territories. They don't know -and don't want to know - that Jews and Arabs here are still doing business together and studying together and meeting with each other on a daily basis because they are destined to live together in this part of the world. They don't want to hear that despite all the problems life continues and that ordinary Arab and Jewish parents who wake up in the morning just want to send their children to school and go to work before returning home safely and happily. *Id.*

71 . Some \$650 million of the Alavi Foundation was seized by United States federal law enforcement. Malkah Fleisher, *US Colleges Teach Anti-Israel, Pro-Iran Courses Thanks to Alavi*, ISRAEL NATIONAL NEWS, November 24, 2009, available at www.IsraelNationalNews.com/News/News.aspx/134601 (quoting news reports by the *New York Post* and *New York Times*).

72 . *Id.*

organizations and individuals – many of them academic – in London, Toronto, Brussels, Madrid and Berkeley. The new front focuses its attack on Israel's political legitimacy, painting it as a pariah state, and mobilizing its Arab minority to engage in the struggle.⁷³

Reut's report distinguishes between “soft critics” of Israel and “hard-core delegitimizers,” the latter consisting of anti-Zionists, anti-Semites, and radical Islamists, whose goal is to blur any distinction between intellectually honest criticism of Israeli policy and the Jewish State's basic legitimacy.⁷⁴

The report suggests that Israel's traditional enemies have increasingly been joined in battle by widespread networks of anti-Zionist groups, including hostile human-rights organizations and homegrown radical Islamists who, in the process of demonizing Israel, employ cultural, academic, legal, and financial weapons against it. The groups support an “all-or-nothing” dynamic, in which boycotts are presented as the only option.⁷⁵

Academic Boycotts of Israel

The idea of an academic boycott against Israel was born in Great Britain, whose largest faculty association has voted several times in the past five years to encourage a boycott of Israeli universities and professors over what it views as Israel's “apartheid” policies toward Palestinians

73 . Amir Mizroch, *Study Surveys 'Hubs of Delegitimization' Where Israel Is Under Heaviest Attack*, JERUSALEM POST, Dec. 25, 2009.

74 . *Id.*

75 . *Id.*

– advocating that union members refuse to cooperate with Israeli academics who do not “disassociate themselves from such policies.”⁷⁶

These boycotts likewise have antecedents in Nazi Germany. During Hitler’s rise to power some of his staunchest supporters were university professors – many of whom were drawn into the higher echelons of the Nazi party and participated in its more gruesome excesses. Mussolini too had a large following of intellectuals, and not all of them Italian. So did Stalin, as well as such post-war dictators as Castro, Nasser, and Mao tze-tung.⁷⁷

The current campaign against Israeli scholars began a little more than eight years ago in England. Its specific goals were to inhibit Israeli scholars from obtaining grants; to persuade other academic institutions to sever relations with Israeli universities and faculty; to convince academics not to visit Israel while simultaneously not inviting Israelis to international conferences; to prevent the publication of articles from Israeli scholars and to refuse to review their work; to deny recommendations to students who wish to study in Israel; to promote divestment of Israeli securities or those of American suppliers of weapons to Israel by university foundations; and to expel Jewish organizations from campus.⁷⁸

76 . “Israel Apartheid Weeks” have been celebrated worldwide every year since. *See* <http://apartheidweek.org/en/history>; On occasion politicians state their opposition to Independent pro-Israel activists do not form the sole source of opposition to the “Israeli Apartheid Week” movement. On February 25, 2010, Members of Provincial Parliament (MPPs) of varying political ideologies in Ontario collectively and unanimously condemned “Israeli Apartheid Week.” *See also infra* notes 173-174 and accompanying text.

77 . *See, e.g.,* A. JAMES GREGOR, *MUSSOLINI’S INTELLECTUALS* (Princeton University Press, 2004).

78 . Douglas Davis, *Fears Voiced that Academic Boycott of Israel Could Endanger Lives*,

Well over 700 academics ultimately signed the boycott petition – most of them British, but a considerable number of scholars hailed from a host of other European countries as well.⁷⁹

THE JERUSALEM POST, December 15, 2002.

79 . Turpen, Bill L., *Reflections on the Academic Boycott Against Israel*, WASHINGTON REPORT ON MIDDLE EAST AFFAIRS, March 1, 2003 at 58.

In 2009, following Israel's military campaign into Gaza to stop Hamas rocket fire that had barraged the country for six years, a group of American professors joined the call for an academic boycott. The group recommended divestment initiatives modeled on those used against apartheid South Africa. "As educators of conscience, we have been unable to stand by and watch in silence Israel's indiscriminate assault on the Gaza Strip and its educational institutions," declared the U.S. Campaign for the Academic & Cultural Boycott of Israel. According to David Lloyd, a professor of English at the University of Southern California, the initiative was "impelled by Israel's latest brutal assault on Gaza and by our determination to say enough is enough." The statement was a response to what it called the "censorship and silencing of the Palestine question in U.S. universities, as well as U.S. society at large," he added. "The response has been remarkable given the extraordinary hold that lobbying organizations like AIPAC exert over U.S. politics and over the U.S. media, and in particular given the campaign of intimidation that has been leveled at academics who dare to criticize Israel's policies."⁸⁰

Can it be true that anti-Zionist professors tremble in fear when they criticize Israel. "Not likely," says Alan Dershowitz of Harvard, "if you have any sense of what's going on on college campuses today where Israel-bashing is rampant among hard left faculty and students." At Columbia University, a group of professors sought to rebuke Columbia's President, Lee C.

80 . Raphael Ahren, "For first time, U.S. professors call for academic and cultural boycott of Israel," HA'ARETZ, January 29, 2009.

Bollinger for expressing his personal views about the Iranian dictator, Mahmoud Ahmadinejad. They also want to muzzle students and alumni who have legitimate complaints about the Middle East Studies Department, which broadly reflects the political views of radical Islam.⁸¹

The formula is clear: if you're against Israel, you should have complete freedom to speak your mind; if you're not, you should be stifled. Even at Harvard and Columbia, the First Amendment means “free speech for me, but not for thee!”⁸²

It is all rather reminiscent the anti-Zionist historian Arnold Toynbee’s comment that the displacement of the Arabs was an atrocity greater than any committed by the Nazis.⁸³

To be sure, there have been swift condemnations of the academic and scientific boycotts against Israel – most notably by the former president of Harvard, Lawrence Summers; by Judith Rodin, president of the University of Pennsylvania; and by Lee Bollinger, president of Columbia University. All of them pointed out that many countries involved in the current Middle East disputes have been aggressors, and calls for divestment against them have been notably absent.⁸⁴

81 . See Alan Dershowitz , “Free Speech for Me, But Not for Thee!,” HUFFINGTON POST, November 27, 2007.

82 . *Id.*

83 . See Eric Hoffer, LOS ANGELES TIMES, May 26, 1968, available at <http://www.aish.com/jw/me/48892687.html>.

84 . Lawrence H. Summers, “Address at Morning Prayers,” [http:// www.ajc.org](http://www.ajc.org), 17 September 2002. 22. See also Edward Alexander, *Pushing Divestment on American Campuses*, JERUSALEM POST, May 12, 2004 at p. 13. In November of 2002, seventy U.S. medical professors, of whom twelve were from Harvard, held an international conference in Jerusalem to

protest the divestment campaign and other anti-Israel activities on American campuses. Judy Siegel-Itzkovich, *70 Medical Professors Coming to Protest Divestment*, THE JERUSALEM POST, November 18, 2002.

But no presidential statements have been able to quash anti-Israel faculties, protected as they are by academic freedom and tenure. On some campuses the driving force behind the academic boycotts are Arabist professors who seek to prosecute the war against Israel as a way of diverting attention away from corrupt regimes. In the academic world, the radical agenda is supported by faculties in mid-eastern and Islamic studies. antisemitic statements emanate from prominent academics.

Columbia University has had its share of problems in this regard. There have been numerous reports of intimidation and hostility by faculty members in the Department of Middle East and Asian Languages and Cultures — at least part of whose funding comes from the United Arab Emirates. In one incident, Prof. Joseph Massad demanded of an Israeli student, “How many Palestinians have you killed?”⁸⁵ He told a class that “the Palestinian is the new Jew, and the Jew is the new Nazi.”⁸⁶ According to another account, he repeated twenty-four times in one half-hour period that “Israel is a racist Jewish apartheid oppressive state,” and he allegedly yelled at a Jewish student, “I will not have anybody here deny Israeli atrocities.”⁸⁷ More than one-third of Columbia’s Middle East Department signed a petition for the university to divest its holdings

85 . Editorial, *The Bollinger Committee*, NEW YORK SUN, Dec. 10, 2004 at 14.

86 . Eric J. Greenberg, *Jewish Students Accuse Columbia University of Bias*, FORWARD, Oct. 29. 2004.

87 . Uriel Heilman, *Columbia to Review antisemitism Charges*, JERUSALEM POST, Dec. 8, 2004.

in companies doing business with Israel. The chairman of the department, Hamid Dabashi, openly talks about Israel's "brutal massacres" of innocent Palestinians.⁸⁸

In 2005, the academic boycotts were pressed anew in Great Britain and elsewhere. Despite the fact that Great Britain's Chief Rabbi, Jonathan Sacks, had been told privately (in 2002) by Prime Minister Tony Blair that the British government would not tolerate a boycott of Israel, the university establishment there and here has plodded on in that direction.⁸⁹

Meanwhile, a "silent boycott" is already well in place. In 2006, for example, Bar-Ilan University made public a letter in which a British professor refused to write for an Israeli academic journal because of what he called the "brutal and illegal expansionism and the slow-motion ethnic cleansing" of the Israeli government.⁹⁰

Could it be possible that the true motivation behind the boycott campaigns against Israel is anti-Zionism, which as many point out is a razor-thin line away from antisemitism?

Israel as an "Apartheid State"

As noted earlier, "Israel Apartheid Weeks" have been celebrated every year since 2006, and in growing numbers.⁹¹ The aim of such events, according to their organizers, is "to

88 . See Notebook, *A Not So Academic Debate*, NEW REPUBLIC, Jan. 24, 2005 at 8.

89 . Francis Elliott and Catherine Milner, *Blair Vows to End Dons' Boycott of Israeli Scholars*, THE DAILY TELEGRAPH, November 17, 2002.

90 . See Phyllis Chesler, *Ivory Tower Fascists*, NATIONAL REVIEW, May 30, 2006, available at <http://www.phyllis-chesler.com/176/ivory-tower-fascists>.

91 . See *supra* note 76 and accompanying text.

contribute to this chorus of international opposition to Israeli apartheid . . . [and] an end to the occupation and colonization of all Arab lands—including the Golan Heights, the Occupied West Bank with East Jerusalem and the Gaza Strip— and dismantling the Wall, and the protection of Palestinian refugees’ right to return to their homes and properties.”⁹²

Academics worldwide are quick to join such demonstrations, which often end up demonizing what they call the “Jewish apartheid” state likening Israel to segregated South Africa during the latter part of the Twentieth Century. The truth is that Israel is a democratic state, its 20% Arab minority enjoys all the political, economic, and religious rights and freedoms of citizenship – including electing members of their choice to the Knesset. In stark contradistinction to apartheid South Africa, Israeli Arabs and Palestinians have standing before Israel's Supreme Court. (In contrast, no Jew may own property in Jordan, and neither Christian nor Jew can visit Islam's holiest sites in Saudi Arabia.)⁹³

Even those who regularly criticize Israel, like Michael Inatjeff (the intellectual leader of Canada's Liberal Party), are uneasy with such events. “The activities planned for this week will single out Jewish and Israeli students. They will be made to feel ostracized and even physically threatened in the very place where freedom should be paramount – on a university campus.”⁹⁴

92 . *Id.*

93 . *See* “2010 Top Ten Anti-Israel Lies,” Simon Wiesenthal Center, available at www.wiesenthal.com/toptenlies.

94 . Israel Resource Review, May 2, 2010, available at

As Reverend Martin Luther King said shortly before he was assassinated, “When people criticize Zionists, they mean Jews. You are talking anti-Semitism.”⁹⁵

What would Rev. King have said about the comparisons made between modern Israel and the apartheid South Africa of the late twentieth century? The fundamental differences between the two are clear and factual, and should go without saying, but many distortions of Israeli-Arab realities are promulgated by the Palestinians and perpetuated in the media. Although academic boycotts were virtually unknown before the days of apartheid in South Africa – where they were used largely at the behest of that country’s own scholars as a pressure tactic against the minority white government – there was never an attempt to cut off all south African academics from international discourse with their peers.

In the process of the campaign to compare Israel with apartheid South Africa, short shrift is given to certain incontrovertible facts:

- Israel's Declaration of Independence (1948) declared that the state “will ensure equality of social and political rights to all its inhabitants irrespective of religion, race or sex.”⁹⁶
- Israeli Arabs attend and lecture in every Israeli university. Moreover, an overwhelming majority of Israeli Arabs consistently state that they’d prefer to remain in Israel rather than join a future Palestinian state.

<http://www.israelbehindthenews.com/bin/content.cgi?ID=3972&q=1>.

⁹⁵ . Seymour Martin Lipset, “The Socialism of Fools: The Left, the Jews and Israel,” *ENCOUNTER*, December 1969, at p. 24. *See also* http://christianactionforIsrael.org/antiholo/ml_king.html.

⁹⁶ . The Declaration of the Establishment of the State of Israel, May 14, 1948.

- Israeli Arabs currently serve in the Knesset (currently eleven in all, including two in the dominant Likud party), and can serve in the army if they wish. An Arab justice (Salim Joubran) holds a seat on Israel's Supreme Court. Israel even opens diplomatic positions ~~are open~~ to Israeli Arabs, who have held posts in the United States, South America, Finland, and elsewhere.⁹⁷

Needless to say, no such exercises in democracy occurred in apartheid South Africa. Yet, Israel is singled out, while there is no call for a boycott against academics in China, Russia, Sudan, Congo, Zimbabwe, and North Korea – all of which oppress academics far more than Israel ever has? Why no boycotts of Muslim countries, where academic freedom either doesn't exist or is under constant attack, such as Syria, Egypt, Iran, and Saudi Arabia? Is the answer that the boycotters' true goal is the elimination of Israel, which they condemn as a “colonial apartheid state, more insidious than South Africa”?⁹⁸

No one has proposed that Chinese scholars be boycotted over what their government does to the Tibetans, or Russian scholars for their actions against Chechnya, or Indonesians for their treatment of civilians in East Timor. Indeed a number of other countries today – including China, Russia, Turkey, Iraq, Spain, even France – control disputed land and rule over people who seek independence. Those pushing for academic boycotts against Israel might be asked why,

97 . Honest Reporting, *Distorting Israeli Arab Reality*, May 18, 2005 available at http://www.honestreporting.com/SSI/main/send2friend.asp?site=www.honestreporting.com&title=Distorting%20Israeli%20Arab%20Reality&url=Distorting_Israeli_Arab_Reality.asp

98 . British Professors Ban Israeli Universities, *israelinsider*, April 25, 2005, available at <http://web.israelinsider.com/Articles/AntiSemi/5375.htm>.

since 1948, the U.N. has passed many hundreds of resolutions censuring Israel—but not a single one condemning known terrorist organizations or states.⁹⁹

Other countries, in fact, have treated Arabs more harshly: Jordan killed more Palestinians in one single month (an estimated four thousand, in September of 1970) than Israel ever has; Kuwait expelled 300,000 Palestinians during the Persian Gulf War.¹⁰⁰

Today in Mauritania, some 90,000 slaves serve the ruling class. In Sudan, Arab northerners raid southern villages, killing the men and taking the women and children to be auctioned off and sold into slavery. These are verifiable facts, yet there was no academic outcry against slavery in 2007.

Nor have there been any academic protestations of note against blatant apartheid in Saudi Arabia – our erstwhile ally, which severely limits the rights of women, Christians, Jews, and Hindus. On the other hand, diversity on campus remains an illusory concept. In practice, intellectual contention is often drowned out in a sea of false emotion; members of designated victim groups respond to a serious argument with “pain” and “shock” and accusations of “hate,”

⁹⁹ , One glaring example is U.N. General Assembly Resolution 3379, urging the elimination of Zionism, declaring it “a form of racism and racial discrimination.” United Nations General Assembly Resolution A/RES/3379, Nov. 10, 1975.

¹⁰⁰ . On the other hand, no Arab country has contributed to the Palestinians’ humanitarian needs nearly as much as have their primary benefactors, the United States and Israel. *Thirty Trucks Loaded with Food Enter the Gaza Strip*, Infopod, GLOBAL NEWS WIRE, March 12, 2003. In addition, three truckloads of medicine and medical supplies entered the West Bank. Eighteen permits for the purpose of improving medical service in Israel and the Palestinian territories were issued.

and university administrators make a show of pretending to care – the very kind of emotional frenzy that is inimical to the spirit of rational inquiry universities are supposed to encourage.¹⁰¹

In April 2010, Brandeis University (the only Jewish-sponsored, nonsectarian university in America) announced that it had invited Israeli Ambassador Michael Oren to deliver the forthcoming commencement address. Critics called him an “inappropriate choice for keynote speaker,” arguing that Oren's presence would transform the commencement ceremonies into a “politically polarizing event.” A student group demanded that Oren be disinvited, claiming that his presence would suggest Brandeis is affiliating itself with “a rogue state apologist, a defender of—among other things—the war crimes and human rights abuses of the war on Gaza.”¹⁰²

Few if any academics defended Oren primarily on First Amendment grounds – i.e., that repressing pro-Israel advocates is wrong if only because doing so is an assault on freedom of speech – although some students did take that position.¹⁰³

Divestment Campaigns

101 . James Taranto, *The Diversity Sham*, WALL STREET JOURNAL, November 18, 2009.

102 . Sociology professor Gordon Fellman contended that “[h]is role obligates him to defend Israeli policies. Josh Nathan-Kazis, Oren, *Speaking at Brandeis Creates a Commencement Controversy*, THE JEWISH DAILY FORWARD, May 7, 2010, available at <http://www.forward.com/articles/127613/>.

103 . A blogger using the name “Rabbi Tony Jutner” claimed that a student referendum would soon formally call on Brandeis to bar all faculty from collaborating with Israeli scholars, and that Brandeis will “play a key role in the US-Iranian rapprochement by inviting high-ranking officials of the Iranian Revolutionary Guard to campus.” The Rabbi also contends that the majority of Brandeis students find the concept of a Jewish state offensive. *Id.*

A newer incarnation of the anti-Israel boycott is the university divestment campaign – similar to the one directed at the apartheid regime in South Africa during the late twentieth century – demanding that universities divest from companies that do business with Israel.

Here again the Big Lie comes into play.

Each of the various arguments put forth to justify divestment – that Israel is responsible for the “humanitarian catastrophe” in Gaza, that it is “Judaizing” the Holy City of Jerusalem, that its policies endanger U.S. Troops in Afghanistan and Iraq – are but preludes to others – that the only hope for peace in the Middle East is a single, bi-national state, and that Israel itself is the root-cause of worldwide antisemitism. All are easily refuted by reference to history and facts on the ground.¹⁰⁴

A UC (Berkeley) group calling itself “Students for Justice in Palestine” was the first to launch an organized divestment campaign. Since then, many campuses have followed suit. At least two major universities – California and Michigan – have hosted divestment conferences. The faculties at Harvard and the Massachusetts Institute of Technology launched an ongoing divestment campaign in the spring of 2002.¹⁰⁵

In early 2010, the student government at UCI (Berkeley) passed several anti-Israel resolutions. The first, in February, voiced opposition to academic sanctions against students who

104 . See *infra* note 112 and accompanying text.

105 . See Report of the Third North American Conference of the Palestine Solidarity Movement, Rutgers University - New Brunswick, New Jersey (October 10-12, 2003), available at <http://www.divestmentconference.com>. See also Richard Lacayo, *A Campus War over Israel*, TIME MAGAZINE, Oct. 7, 2002 at 63.

disrupted Israeli Ambassador Michael Oren's speech on its campus.¹⁰⁶ The second, in March, would have required the school to divest from corporations deemed supportive of the Israeli military, the West Bank separation barrier, and settlement building – namely General Electric and United Technologies, “because of their military support of the occupation of the Palestinian territories.”¹⁰⁷

That same month, at the Oxford (England) Student Union, Israeli Deputy Foreign Minister Danny Ayalon's speech was interrupted by group of demonstrators carrying Palestinian flags, and chanting “war criminal” and “Slaughter the Jews!”¹⁰⁸

Although some university presidents, faculty, and students have spoken out strongly against such divestment campaigns, it is clear that criticism of Israeli policies in mainstream

106 . Josh Nathan-Kazis, *At Berkeley, Divestment Vote Divides Students, Draws Veto*, THE JEWISH DAILY FORWARD, Mar. 25, 2010, available at <http://www.forward.com/articles/126902/>. Angered by the resolution, some Jewish students made speeches before the student legislative council, each concluding with the question: “When will this student government stand up for me?” *Id.*

107 . The resolution was passed 16-4. The president of the student government vetoed the latter resolution, arguing that the comparison of the Israel/Palestine conflict with that of South African apartheid in the 1980s “is highly contested.” The veto was narrowly upheld in late April 2010. Similar legislation was introduced at U.C. San Diego. *See* <http://www.jweekly.com/article/full/57943/divestiture-saga-rolls-on-in-berkeley-and-now-san-diego/>. For recent responses to the Oren incident, *see infra* notes 181-182 and accompanying text.

108 . Jonny Paul, “At Oxford, Student Shouts 'Kill the Jews' at Ayalon,” available at <http://www.jpost.com/International/Article.aspx?id=168275>. This was hardly the first time that a pro-Israel speaker was hounded off a campus podium. Before he became president of Harvard, Laurence Summers was prevented from making a speech to the University of California Board of Regents. Israel's former Prime Minister Ehud Barak was prevented from speaking at Concordia University in Canada by a hard-left anti-Israel crowd of violent censors. *See* Dershowitz, *supra* note 81. .

academia – which one observer has called a “bacchanal of invective” – has become much more acceptable.¹⁰⁹ Moreover, faculty members who support divestment and academic/scientific boycotts often chafe under the criticism that they are antisemitic.¹¹⁰

109 . Sagiv, *supra* note 4.

110 . A Harvard professor, for example, told a reporter that he didn’t consider himself antisemitic at all, but that he was definitely hostile to “the aggressive eye-for-an-eye, tooth-for-a-tooth policies of the current Israeli leadership.” Patrick Healy, *Summers Hits 'Antisemitic' Actions*, BOSTON GLOBE, Sept. 20, 2002, at A1 (quoting Peter Ashton, a research professor of forestry).

Jewish professors who condemn Israel, although relatively few in number, are an especially troubling breed. Some draw “politically correct” inferences from the Holocaust – and concluding that, whatever happens in world events, Jews should always conduct themselves as humane, progressive, and peace-loving – in other words, beyond reproach.¹¹¹

When viewed this way, however, they become acceptable only as victims.

Countering Other Canards

Thus it is all the more important to confront those who would single out Israel for condemnation, and to illustrate how they are betrayed by both their rhetoric and actions. The Big Lies must be countered by a recitation of the facts, to wit:

From the Inquisition to the pogroms to the Holocaust, history has shown that antisemitism existed long before creation of the State of Israel.¹¹²

The building of Jewish homes in East Jerusalem does not mean a takeover of the city. Jerusalem is a holy place to three major faiths; its diverse population includes a Jewish majority and Muslim and Christian minorities. When Israel took over in 1967, full freedom of religion was granted to everyone – for the first time in modern history.¹¹³

111 . Rebecca Spence, *Controversial Professor Loses Battle For Tenure*, THE JEWISH DAILY FORWARD, June 15, 2007, available at <http://www.forward.com/articles/10947/>. Finkelstein’s 2005 book, BEYOND CHUTZPAH: ON THE MISUSE OF ANTISEMITISM AND THE ABUSE OF HISTORY, purports to pick apart Professor Alan Dershowitz’s pro-Israel book, THE CASE FOR ISRAEL (2003). *Id.*

112 . See “2010 Top Ten Anti-Israel Lies,” Wiesenthal Center, *supra* note 93.

113 . Muslim and Christian religious organizations control their own holy sites. Wiesenthal

The claim that Israel endangers American troops in Iraq or Afghanistan is a contemporary version of the blood libel promulgated by the Protocols of the Elders of Zion and reiterated by renowned antisemitic figures like Henry Ford and Father Charles Coughlin.¹¹⁴

So is the claim that Israel is responsible for the “humanitarian crisis” in Gaza. On this issue facts are harder to come by, but there are certainly two sides to be heard. According to Palestinian supporters, Gaza is an impoverished and overcrowded coastal strip of scrub desert, its people the desperate victims of decades of war and suffering under an Israeli economic blockade that began after Hamas took over in 2005. The United Nations and various international aid agencies assert that the blockade has led to worsening poverty, rising unemployment and deteriorating public services that threaten basic health care, water treatment, and sanitation.¹¹⁵

Israel dismisses those claims, saying it allows the import of humanitarian goods but reserves the right to ban products that can have a military use. To Israel, the Palestinian-controlled area of sand dunes and refugee camps squeezed between southern Israel and the sea is a terror state funded by the Iranians. The fact that Gaza may be economically crippled is

Center, *supra* note 93.

114 . Holocaust Encyclopedia, Holocaust Memorial Museum, available at <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005516>. Successive U.S. Administrations have recognized Israel as a major strategic asset. Wiesenthal Center, *supra* note 93.

115 . UN officials have called the blockade “a collective punishment” that amounts to a war crime. Amnesty International says it harms the most vulnerable, such as children, who make up more than half Gaza's population, the elderly, the sick, and impoverished refugees. *See* Peter Goodspeed, “Policy Under Siege,” National Post · Friday, Jun. 4, 2010 at p.

regarded as the self-inflicted by-product of a corrupt regime that constantly attacks Israel with rockets and refuses to recognize its right to exist.¹¹⁶

According to a report issued in 2010 by Israel's Ministry of Foreign Affairs, well over a million tons of humanitarian supplies entered Gaza from Israel over the last 18 months – “equalling nearly a ton of aid for every man, woman and child in Gaza.” In 2009 alone, more than 738,000 tons of food and supplies entered Gaza, the report says. Indeed, photographs in Palestinian newspapers show local markets dilled with fruit, vegetables, cheese, spices, bread, and meat. This humanitarian conduit is used by internationally recognized organizations including the United Nations and the Red Cross.¹¹⁷

Yet in June of 2010, when Israel prevented a flotilla of ships ostensibly carrying humanitarian supplies from breaking the Mediterranean blockade it had set up, it was roundly condemned by the international community.¹¹⁸ Academics added vociferously to the chorus of condemnation. “The martyrs of the ships are heroes,” wrote Mark LeVine, professor of history at the University of California (Irvine). “They are warriors every bit as deserving of our tears and support as the soldiers of American wars past and present.”¹¹⁹

116 . *Id.*

117 . *Id.*

118 . *See, e.g.*, Tobias Buck, “Israel Condemned After Flotilla Attack,” FINANCIAL TIMES, June 1, 2010.

119 . *See* Brendan Goldman, “Middle East Studies Profs Usurp New Roles to Censure Israel Over Gaza Flotilla,” THE AMERICAN THINKER, July 20, 2010 , available at http://www.americanthinker.com/2010/06/middle_east_studies_profs_usur.html

Ignoring overwhelming video and documentary evidence that terrorist activists had initiated the hostilities, various other professors of Middle East Studies lined up to denounce the Jewish State. “Those ships were just bringing aid to impoverished Palestinians,” said New York University Professor Zachary Lockman.¹²⁰

Amid the cacophony of recriminations against Israel following the flotilla incident, the silence from the academic community was once again deafening. While their colleagues in the humanitarian community loudly bemoaned the dire situation of the Palestinians, few bothered to point out that – as the Palestinian leadership sops up Western aid dollars – Palestinian markets are full and bustling.¹²¹

There are of course other canards-camouflaged-as-fact that somehow emerge as objective

120 . Prof. Lockman added that “It’s not [the Palestinians’] fault they are under Hamas rule.” Could he have forgotten that Hamas was democratically chosen by the Palestians to lead them in January 2006? *Id.*

121 . Perhaps the professors could be excused because of a paucity of research opportunities: it was rarely reported that – despite alleged shortages in building materials and crippling poverty – new malls and upscale restaurants in Gaza were doing a booming business in the summer of 2010. *See* Tom Gross, “A nice new shopping mall opened today in Gaza: Will the media report on it?,” Mideast Dispatch Archives, available at <http://www.tomgrossmedia.com/mideastdispatches/archives/001127.html>.

According to a report issued by Israel’s Ministry of Foreign Affairs, well over a million tons of humanitarian supplies entered Gaza from Israel over the last 18 months – “equaling nearly a ton of aid for every man, woman and child in Gaza.” In 2009 alone, more than 738,000 tons of food and supplies entered Gaza, the report says. Indeed, photographs in Palestinian newspapers show local markets filled with fruit, vegetables, cheese, spices, bread, and meat. This humanitarian conduit is used by internationally recognized organizations including the United Nations and the Red Cross. *See* Kenneth Lasson, “What Else Is New?” BALTIMORE JEWISH TIMES, June 25, 2010. *See also* Peter Goodspeed, National Post · Friday, Jun. 4, 2010.

Reports – such as that Israel traffics in human body parts, or poisons Arab children, or massacres civilians or, for that matter, whose very existence endangers American troops in Iraq or Afghanistan.

Holocaust Denial in the Academy

Holocaust denial as a form of antisemitism has received much media notoriety in the United States, especially at it targets university students.¹²² Campus newspapers (articles, op-eds, and advertising), videotapes, DVD's, and the Internet inflame the “debate” over whether the Holocaust happened. Under the guise of academic scholarship, and often in an attempt to gain personal notoriety, some self-styled intellectuals are able to disseminate their message of hatred of the Jews, presenting their work as legitimate inquiry and exposition.

They have found fertile ground among student editors eager to demonstrate their commitment to free speech and the airing of controversial ideas. Such inexpensive methodology allows deniers to reach the minds of impressionable young students, often with little knowledge of the Holocaust, who are in the process of forming their own perceptions of world history.¹²³

Holocaust deniers claim to be legitimate historical revisionists, seeking to uncover the truth behind what they term as the largest hoax of the Twentieth Century. They need not

122 . See Kenneth Lasson, *Holocaust Denial and the First Amendment: The Quest for Truth in a Free Society*, 6 *GEORGE MASON LAW REVIEW* 35 (1997).

123 . *Id.*

convince students that the Holocaust is a myth: they score propaganda points merely by convincing them that the Holocaust is debatable.

Holocaust revisionism first emerged as an organized movement in 1979 when Willis Carto's Liberty Lobby, the nation's largest antisemitic organization, established the California-based Institute for Historical Review. Together with its publishing arm, Noontide Press, the IHR has put out a number of books on white racialism, including Francis Parker Yockey's *Imperium* and David Hoggan's *The Myth of the Six Million*, two of the first books to deny the Holocaust.¹²⁴ For the most part the authors are would-be scholars with limited credentials in history, writers without academic certification, and other antisemites engaged in Holocaust denial.¹²⁵

The Institute for Historical Review has been able to make its biggest impact on college campuses under its "Media Projects Director," Bradley Smith, who leads what he bills as the Committee for Open Debate on the Holocaust. In 1991, Smith bought a full-page advertisement in *The Daily Northwestern*, the student publication of Northwestern University. The ad had the appearance of a newspaper article, appearing under the headline, "The Holocaust Story: How Much is False? The Case for Open Debate." In it, Smith argued that the "Holocaust lobby" prevents scholars from thoroughly examining the "orthodox Holocaust story." He alleged a lack of proof that Jews were gassed at Auschwitz, and that the photographs of the piles of corpses at Bergen-Belsen were a result of disease and starvation and not the result of the Nazi plan to

124 . WILLIS A. CARTO: FABRICATING HISTORY. Anti-Defamation League. 2009 , available at <http://www.adl.org/Holocaust/cartto.asp>.

125 . See *Schooled in Hate*, *supra* note 16.

murder Jews. Smith's arguments were made in the academic voice—he used no blatantly antisemitic terms, but a seemingly thoughtful, rational discourse intended to provoke serious academic consideration.¹²⁶

Smith's "article" in *The Daily Northwestern* sparked a flurry of op-ed pieces, letters to the editor, and on-campus lectures and forums – which in turn created even wider media coverage in the Chicago area. Emboldened, Smith subsequently submitted his ad/essays to other university newspapers around the country, beginning with the University of Michigan. Within a year, his handiwork had appeared in more than a third of the 60 student newspapers to which it had been submitted.¹²⁷

During the 1993-94 school year Smith launched another campaign, this one challenging the authenticity of the newly opened U.S. Holocaust Memorial Museum. He also attacked the scholarship of Professor Deborah Lipstadt in her book *Denying the Holocaust: The Growing Assault on Truth and Memory*. Smith charged that Lipstadt and those like her work to suppress revisionist research, and called for an end to their "fascist behavior."¹²⁸

By the end of that academic year, Smith's ad had been published in thirty-two more campus newspapers. Among them was *The Justice*, the student publication of predominantly Jewish Brandeis University. The ad, which cost \$130, created a propaganda bonanza: it was

126 . Id. See also Kenneth Lasson, *Defending Truth: Legal and Psychological Aspects of Holocaust Denial*, CURRENT PSYCHOLOGY (November 2007).

127 . *Schooled in Hate*, supra note 16.

128 . Id.

featured in major media outlets including the *New York Times*, the *Washington Post*, and *Time* magazine.¹²⁹

Towards the end of the spring semester in 1995, Smith launched yet another campaign, using the same advertisement he'd sent out the year before. The submission was timed to appear on or around Holocaust Remembrance Day (“Yom Hashoah”). Although only seventeen school newspapers printed the advertisement, given the timing an effective response was almost impossible to achieve.¹³⁰

Bradley Smith and the IHR have been equally active over the last decade. In September 2009, the *Harvard Crimson* published an IHR essay that raised questions about General Dwight Eisenhower’s account of World War II and the existence of Nazi gas chambers.¹³¹

Iranian President Mahmoud Ahmadinejad’s recent declarations that “Israel must be wiped off the map” and that the Holocaust was a “fabricated legend” are but more candid statements of what academics the world over have been saying for years.¹³²

129 . Brandeis never cashed the check for the ad, donating it instead to the U.S. Holocaust Memorial Museum – which itself declined to cash it. *Id.*

130 . *Id.*

131 . The ad was quickly criticized, and the student editor issued an apology.-BUXBAUM, EVAN. HARVARD CRIMSON SAYS HOLOCAUST DENIAL AD PUBLISHED BY ACCIDENT. CNN.com (September 10, 2009) <http://edition.cnn.com/2009/US/09/09/massachusetts.harvard.Holocaust/index.html>.

132 . *See, e.g.*, “Ahmadinejad Says Holocaust A Lie, Israel Has No Future,” Reuters, September 18, 2009, available at <http://www.reuters.com/assets/print?aid=USTRE58H17S20090918>.

Ahmadinejad's statements have been widely quoted. *See, e.g.*, Tamer El-Ghobashy and Bill

Former DePaul University professor Norman Finkelstein, for example, has argued that Israel “inappropriately invokes the Holocaust as a moral defense for mistreating Palestinians.”¹³³ Thus another Big Lie is promulgated and allowed to fester without being challenged. Academics could, but largely don't, refer their students to the evidence: that Israel existed as a thriving country three thousand years before the Holocaust. Its kings and prophets walked the streets of Jerusalem (which as noted earlier is mentioned in the Hebrew Scriptures 600 times). Throughout its 2,000-year exile there was a continuous Jewish presence in the Holy Land. The modern rebirth of the Israel began in the 1800's, with reclamation of the largely vacant land by pioneering Zionists, blossoming into a Jewish majority long before the coming of the Nazis.¹³⁴

Loud American Voices

Hutchinson, *Grinning Madman Ahmadinejad Squirms At Columbia*, NEW YORK DAILY NEWS, September 25, 2007, available at http://www.nydailynews.com/news/2007/09/25/2007-09-25_grinning_madman_ahmadinejad_squirms_at_c.html. *See also*

133 . *See* Norman Finkelstein, *THE HOLOCAUST INDUSTRY: REFLECTIONS ON THE EXPLOITATION OF JEWISH SUFFERING* (2000). In June 2010, Finkelstein was deported from Israel and banned from returning for ten years, after accusing Israel of using the genocidal Nazi campaign against Jews to justify its actions against the Palestinians. The Association for Civil Rights in Israel said the deportation of Finkelstein was an assault on free speech. “The decision to prevent someone from voicing their opinions by arresting and deporting them is typical of a totalitarian regime,” said the association's lawyer, Oded Peleg. “A democratic state, where freedom of expression is the highest principle, does not shut out criticism or ideas just because they are uncomfortable for its authorities to hear. It confronts those ideas in public debate.” Toni O’Loughlin, “US Academic Deported and Banned for Criticizing Israel,” *THE GUARDIAN*, JUNE 6, 2010.

134 . Wiesenthal Center, *supra* note 93.

Academic leaders of anti-Zionist and antisemitic campaigns are not always relatively obscure naysayers like Finkelstein.

Famed MIT professor Noam Chomsky has strongly criticized the United States' support of the Israeli government and Israel's treatment of the Palestinians – arguing that “supporters of Israel' are in reality supporters of its moral degeneration and probable ultimate destruction,” and that “Israel's very clear choice of expansion over security may well lead to that consequence.” Chomsky disagreed with the founding of Israel as a Jewish state (“I don't think a Jewish or Christian or Islamic state is a proper concept. I would object to the United States as a Christian state”).¹³⁵

In May of 2006, Chomsky began an eight-day visit to Lebanon, where met with leaders of the terrorist organization Hezbollah. Chomsky received a hero's welcome. During his trip he endorsed and repeated much of Hezbollah's rhetoric on Lebanese television, including on its own Al Manar TV,¹³⁶ and expressed support for the arming of Hezbollah (in direct contradiction to UN Security Council Resolution 1559).¹³⁷

135 . Deborah Solomon, “Questions for Noam Chomsky: The Professorial Provocateur,” *THE NEW YORK TIMES MAGAZINE*, November 2, 2003, available at <http://www.nytimes.com/2003/11/02/magazine/way-we-live-now-11-02-03-questions-for-noam-chomsky-professorial-provocateur.html>.

136 . See Tzvi Fleisher, *The Far Left and Radical Islamic International Alliance*, *THE AUSTRALIAN*, June 8, 2006, at 11.

137 . The Resolution declares the Security Council's support of free, fair Lebanese presidential elections and calls for the withdrawal of foreign troops from Lebanon.

Chomsky embraced Hezbollah leader Sheik Hassan Nasrallah, who refers to Jews as the “grandsons of apes and pigs.”¹³⁸ and whose ideology is rooted in the group's fundamentalist and antisemitic interpretation of Islam, which has been described as the “direct ideological heir of the Nazis.”¹³⁹ Chomsky declared that “Hezbollah's insistence on keeping its arms is justified. “I think [Nasrallah] has a reasoned . . .and . . . persuasive argument that they [the arms] should be in the hands of Hezbollah as a deterrent to potential aggression.”¹⁴⁰

Chomsky's statements and actions typify what has been called “the unholy alliance between Islamic extremists and secular radicals in the West.”¹⁴¹ Indeed, he describes the United States as “one of the leading terrorist states,” and claims that the attacks of September 11th, 2001 pale in comparison to the terror that he suggests America perpetrated during the 1973 Allende coup in Chile.¹⁴²

138 . Zachary Hughes, *Noam Chomsky's Support for Hezbollah*, C.A.M.E.R.A., July 20, 2006, available at: http://www.camera.org/index.asp?x_context=7&x_issue=11&x_article=1151.

139 . See Jeffrey Goldberg, *In the Party of God: Are Terrorists in Lebanon Preparing for a Larger War?*, NEW YORKER, October 14, 2002 at 180.

140 . *Chomsky, Militants Meet*, THE FORWARD, May 19, 2006, at 7. Shortly after Chomsky left Lebanon, Hezbollah used its arms to launch an unprovoked attack on Israel. The attack seriously destabilized the already tense relationship among Israel, and Lebanon, and Syria. See *Noam Chomsky's Support for Hezbollah*, C.A.M.E.R.A., June 20, 2006, available at http://www.camera.org/index.asp?x_context=7&x_issue=11&x_article=1151.

141 . David Horowitz and Jacob Laksin, *Noam Chomsky's Love Affair With Nazis*, FrontPageMagazine.com, May 15, 2006, available at: <http://97.74.65.51/readArticle.aspx?ARTID=4437>.

142 . Alan Taylor, *Noam Chomsky . . . Still Furious At 76*, THE SUNDAY HERALD, March 20, 2005 at 4.

These statements are nothing new for Chomsky, who has spent decades promoting virulent anti-American and anti-Israeli propaganda. Although they are sometimes dismissed by his supporters as simple “eccentricity,” in fact they represent something far more damaging.¹⁴³ Chomsky has used his influence granted him as a prominent linguist to support militant organizations and murderous dictatorships, including not only Hezbollah and Hamas, but also the Khmer Rouge in Cambodia and Slobodan Milosevic in Serbia.¹⁴⁴ His advocacy for these groups serves to minimize the atrocities they have committed. While whitewashing them he implicates those he perpetually paints as the guilty parties – the United States and Israel.¹⁴⁵

Although one might conclude that Chomsky’s selective use of history and frequent use of the Big Lie to advance the agenda of terrorist groups like Hezbollah and Hamas is intellectually shameful and incendiary,¹⁴⁶ it is of course necessary to recognize that he is entitled

143 . Hughes, *supra* note 138.

144 . *Id.*

145 . On May 16, 2010, Israeli authorities detained Chomsky and refused to allow his entry into the West Bank, where he was scheduled to lecture at the Institute for Palestinian Studies in Ramallah on the West Bank. Amira Hass, “After Denied Entry to West Bank, Chomsky Likens Israel to ‘Stalinist Regime,’” HAARETZ, May 17, 2010. Reporting on the story, the *New York Times’* Jerusalem correspondent noted that Chomsky “has objected to Israel’s foundation as a Jewish state, but he has supported a two-state solution and has not condemned Israel’s existence.” Ethan Bronner, “Israel Roiled After Chomsky Barred From West Bank,” NEW YORK TIMES, May 17, 2010. May 16, 2010, 11:01 pm. *See also* Robert Mackey, *An Al Jazeera interview with Noam Chomsky*, NEW YORK TIMES, May 16, 2010, and Ed Pilkington, “Noam Chomsky Barred by Israelis from Lecturing in Palestinian West Bank,” MANCHESTER GUARDIAN, May 16, 2010, available at guardian.co.uk/world/2010/may/16/israel-noam-chomsky-palestinian-west-bank.

146 . *See* Mark Lewis, *Nonfiction Chronicle*, NEW YORK TIMES, November 20, 2005 at 24 (commenting on critique of Chomsky by Prof. Alan Dershowitz).

to his say. (As he himself has pointed out, “If we don't believe in freedom of expression for people we despise, we don't believe in it at all.”)¹⁴⁷

It is equally necessary, however, to challenge him forcefully on the facts.

*

The Israel Lobby is a book that has been especially damaging to both Israel and the concept of honest scholarship. It was written by Professors Stephen Walt and John Mearsheimer (the former from Harvard, the latter from the University of Chicago) – two respected scholars. In today's world, unfortunately, that characterization does not do them justice.

The book presents a wholly conspiratorial view of history in which the so-called “Israel lobby” has a “stranglehold” on American foreign policy, the American media, think tanks, and academia. Three of its major weaknesses were identified and analyzed by Harvard Law Professor Alan Dershowitz: quotations are wrenched out of context, important facts are misstated or omitted, and embarrassingly poor logic is displayed. In sum Prof. Dershowitz asks why these professors would have chosen to publish a paper that does not meet their usual scholarly standards, especially given the risk – which should have been obvious to the authors – that their

147 . Noam Chomsky. BrainyQuote.com, Xplore Inc, 2010, available at <http://www.brainyquote.com/quotes/quotes/n/noamchomsk108350.html>, accessed June 29, 2010.

Alan Dershowitz, among other true civil libertarians, has long defended the free speech rights of those whose views he despises – such as Professor James D. Watson, whose theories of racial inferiority resulted in the cancellation of his speech at Rockefeller University; the right of Nazis to march in Skokie, Illinois; the right of Tom Paulin, who advocated the murder of Israelis, to state his views. He also opposed Harvard's attempt to prevent students from flying the Palestinian flag to commemorate the death of mass-murderer Yasser Arafat. See “A Conversation with Alan Dershowitz,” Wiley, available at <http://www.wiley.com/WileyCDA/Section/id-130083.html>.

imprimatur as prominent academics would be trumpeted on extremist websites.¹⁴⁸

Among the assertions made by The Israel Lobby is that the United States has a terrorism problem in good part because it is so closely allied with Israel. “There is no question, for example, that many Al Qaeda leaders, including Bin Laden, are motivated by Israel’s presence in Jerusalem and the plight of the Palestinians.”¹⁴⁹

In fact, the historical evidence strongly suggests that Bin Laden was primarily motivated by the presence of American troops in Saudi Arabia, which had asked the United States to defend the Arabian peninsula against Iraqi aggression prior to the first Gulf War. Thus it was America’s ties to and defense of an Arab state (from which fifteen of the nineteen 9/11 hijackers originated) – and not the Jewish state – that most clearly precipitated September 11. Prior to that event Israel was barely on Bin Laden’s radar. Nor does Israel’s supposed domination of American public life explain terrorist massacres in Bali, Madrid, London, and elsewhere. Europe, after all, is praised for being more immune to the lobby’s manipulation tactics.¹⁵⁰

Mearsheimer and Walt claim that “contrary to popular belief, the Zionists had larger,

148 . Alan Dershowitz, *Debunking the Newest—and Oldest—Jewish Conspiracy: A Reply to the Mearsheimer-Walt “Working Paper,”* Harvard Law School, April 2006, 5. See also Nicholas Rostow, *Wall of Reason: Alan Dershowitz v. the International Court of Justice*, 71 ALB. L. REV. 953, 953ff (2008); Alex Safian, *Study Decrying Israel Lobby Marred by Numerous Errors*, C.A.M.E.R.A., March 20, 2006, available at http://www.camera.org/index.asp?x_context=7&x_issue=35&x_article=1099. See also Eli Lake, *David Duke Claims To Be Vindicated By A Harvard Dean*, NEW YORK SUN, March 20, 2006 at 1.

149 . “Study Decrying 'Israel Lobby' Marred by Numerous Errors,” C.A.M.E.R.A., March 20, 2006, available at http://www.camera.org/index.asp?x_context=7&x_issue=35&x_article=1099.

150 . Safian, *supra* note 148.

better-equipped, and better-led forces during the 1947-49 War of Independence.”¹⁵¹ Here the authors purport to persuade their readers that, despite the Arab world’s several attempts to eliminate the Jewish state and exterminate its inhabitants, Israel has never been in serious danger. To the contrary, however, the invading Arab armies – trained professional military forces — possessed armor and a steep manpower advantage, whereas Israel “had few heavy weapons and no artillery, armored vehicles, or planes.”¹⁵² Accounts of the number of soldiers and armament in the 1948 war vary considerably. One estimate shows the Arab armies with ten times more aircraft than the Israelis, and one could easily observe this enormous disparity.^{153\}

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151 . *Id.*

152 . Dershowitz, *supra* note 148, at 30.

153 . *Id.*

Anti-Zionists often claim that Jews have no historical right to the land of Israel. To do so one must deny Jewish history, which is precisely what University of Michigan Prof. Juan Cole does – most recently in an article published by the *Salon* online magazine in which Cole asserted that Jerusalem was neither built by “the likely then non-existent ‘Jewish people’” in 1000 BCE nor even inhabited at that point in history. Rather, “Jerusalem appears to have been abandoned between 1000 BCE and 900 BCE, the traditional dates for the united kingdom under David and Solomon.”¹⁵⁴

Yet as anyone who has actually been in Jerusalem can attest, it is all but impossible to be physically present in the oldest areas of the city and not encounter relics dating from between 1000 and 900 BCE. In revising history, Cole's motivation is like that of the openly genocidal antisemitic Muslim world, as well as that of many liberals who claim to oppose bigotry. As one astute observer pointed out, “For these people, pretending away their prejudice is the key to their continued claim to enlightenment.”¹⁵⁵

154 . Juan Cole, *Ten Reasons Why East Jerusalem Does Not Belong to Israel*,” SALON, available at http://www.salon.com/news/opinion/feature/2010/03/23/jerusalem_israel.

155 . Caroline Glick, *See No Evil*, JERUSALEM POST, July 29, 2010. .

Such attitudes are not limited to the Ivory Tower. Former President Jimmy Carter is not an academic, but his bestselling book, *Palestine: Peace Not Apartheid*, is likewise replete with twisted history. Mirroring the views of many anti-Israel professors, a considerable number of the facts upon which his book's premise rests are demonstrably false.¹⁵⁶

While honest academicians should have been quick to criticize the inaccuracies of Carter's book, this time it was the media that was in the forefront of taking the former President to task.. The *Providence Journal* called the book “a scathingly anti-Israel polemic,” which “absurdly [charges] that Israel engages in ‘worse instances of apartness, or apartheid, than we witnessed even in South Africa.” It questions how a former president can stoop to such journalistic lows, without any sense of balance. “Carter blames minuscule Israel, bordered by enemies who desire its annihilation, for the failure of peace with the Palestinians, while skimming over the latter’s terrorist attacks and their refusal to recognize even Israel’s right to exist.”¹⁵⁷

The *Atlanta Journal Constitution* listed a number of former Carter loyalists who, because of the book, felt the need publicly to distance themselves from their erstwhile mentor. When such people feel “so betrayed by the assertions in his latest book that they divorce themselves

156 . See http://zionism-israel.com/israel_news/2007/02/everything-you-wanted-to-know-about.html. Mearsheimer and Walt seem to adopt Carter's views. See Richard Baehr and Ed Lasky, Stephen Walt’s War With Israel, AmericanThinker.com, http://www.americanthinker.com/2006/03/stephen_walts_war_with_israel.html

157 . Editorial, *Carter Versus Israel*, PROVIDENCE JOURNAL, Jan. 2, 2007, http://www.projo.com/opinion/editorials/content/ED_jimmy2_01-02-07_0H3K9AB.204ccd9.html.

form his legacy work, the rest of us should surely take notice.”¹⁵⁸

Former American diplomat Dennis Ross pointed out essential flaws in Carter's book in a *New York Times* article: “Mr. Carter’s presentation badly misrepresents the Middle East proposals advanced by president Bill Clinton in 2000, and in so doing undermines, in a small but important way, efforts to bring peace to the region. The reader is left to conclude that the Clinton proposals must have been so ambiguous and unfair that Yasser Arafat, the Palestinian leader, was justified in rejecting them. But that is simply untrue.”¹⁵⁹

The *Times*’ own Middle East correspondent, Ethan Bronner, was equally critical, calling Carter’s work –

158 . Editorial, *Carter Aside, Israel Deserves Total Support*, ATLANTA JOURNAL CONSTITUTION, Jan. 14, 2007, at C6.

159 . Dennis Ross, *Don't Play With Maps*, NEW YORK TIMES, Jan. 9, 2007.

a strange little book about the Arab-Israeli conflict from a major public figure. It is premised on the notion that Americans too often get only one side of the story, one uncritically sympathetic to Israel, so someone with authority and knowledge needs to offer a fuller picture. Fine idea. The problem is that in this book Jimmy Carter does not do so. Instead, he simply offers a narrative that is largely unsympathetic to Israel. Israeli bad faith fills the pages. Hollow statements by Israel's enemies are presented without comment. Broader regional developments go largely unexamined. In other words, whether or not Carter is right that most Americans have a distorted view of the conflict, his contribution is to offer a distortion of his own.¹⁶⁰

160 . Ethan Bronner, *Jews, Arabs and Jimmy Carter*, NEW YORK TIMES, Jan. 7, 2007.

A reviewer for the *Washington Post* said that Carter “blames Israel almost entirely for perpetuating the hundred-year war between Arab and Jew,” and “manufactures sins to hang around the necks of Jews when no sins have actually been committed.”¹⁶¹

Remedies

161 . See Jeffrey Goldberg, *What Would Jimmy Do?*, WASHINGTON POST, December 10, 2006.

Although freedom of speech is guaranteed by the First Amendment, and should protect both the individual as well as the idea of academic freedom on university campuses, constitutional remedies are nevertheless available to address the problems of antisemitism. Principal among them is the right (if not the obligation) to recognize antisemitism when it occurs, to present the facts clearly and accurately, and vociferously to condemn it.

Failure to speak out, on the other hand, sends a message that such hatred is tolerable and acceptable. Indeed, the American Association of University Professors (AAUP) specifically endorses the condemnation of hateful and bigoted speech and conduct by college and university faculty and administrators.¹⁶²

Moreover, although words themselves can have injurious effects, anti-Israel and antisemitic activists consistently go beyond mere rhetoric and use violence to coerce adherence to their point of view. The First Amendment does not protect either words or actions that are directed toward incitement of immediate lawlessness – and certainly neither words nor actions that are intended to place Jews and other pro-Israel students in fear of immediate bodily harm.¹⁶³

It has long been established, of course, that there can be Constitutional limits on speech: defamation, fighting words, conspiracies, misleading advertisements, threats or exhortations

162 . Tuchman, *supra* note 17, at 18. The AAUP is an organization, founded in 1915, comprised of faculty librarians and academic professionals at two- and four- year accredited public and private colleges and universities. Its mission is “developing the standards and procedures that maintain quality in education and academic freedom in this country’s colleges and universities.” *Id.* at 19.

163 . See *Brandenburg v. Ohio*, 395 U.S. 444 (1969), *Chaplinsky v. New Hampshire* 315 U.S. 568 (1942).

that create a risk of imminent violence. Comparing the harms to the speaker and the victim of hate speech suggests that limiting the latter may be cost effective.¹⁶⁴

In recent years, there has been increasing debate over the question of whether it is permissible for the government to curb “hate speech,” understood to mean that which demeans or expresses hostility or contempt towards target groups based on their race, religion, ethnic background, sexual orientation, or other identifying characteristics. ... The Supreme Court has never specifically adjudicated the constitutionality of a campus hate speech code. Several lower courts have struck down such codes as unconstitutional restrictions on freedom of speech.¹⁶⁵

Every western democracy except the United States regulates hate speech. Many particularly prohibit and punish Holocaust denial.¹⁶⁶ A popular academic exercise often admiringly analyzes other countries' legislation limiting hate speech.¹⁶⁷ But comparing the American approach to others is inherently problematic. Our system has served us well.

164 . See Richard Delgado and Jean Stefancic, *Four Observations about Hate Speech*, 44 WAKE FOREST L. REV. 353 (2009).

165 . Thomas A. Schweitzer, *Hate Speech on Campus and the First Amendment: Can They Be Reconciled?*, 27 CONN. L. REV. 493 (1995).

166 . See Kenneth Lasson, *Holocaust Denial and the First Amendment: The Quest for Truth in a Free Society*, 6 GEO. MASON L. REV. 35 (1997).

167 . To a number of scholars German hate-speech regulation is particularly attractive. Given the fundamental differences between the two approaches to free speech, however, and consequently to hate-speech regulation, we should not be so quick to adopt the latter. Claudia E. Haupt, *Regulating Hate Speech - Damned If You Do and Damned If You Don't: Lessons Learned from Comparing the German and U.s. Approaches*, 23 B.U. INT'L L.J. 299 (2005).

Universities must also ensure that they have systems and programs in place continually to monitor the climate on their campuses. In the course of promoting the values of respect, tolerance, diversity, and inclusiveness, they must also allow and encourage vigorous debate and academic freedom.

One way to handle hecklers seeking to disrupt speakers at university forums is as follows:

When controversial speakers appear on campus, in advance of the event, clearly announce to and notify students that they will have an opportunity to question or challenge or make comments – but that interruptions will not be tolerated. Moreover, students who engage in disruptive speech or behavior will be firmly sanctioned, either with suspensions or expulsions. If such a policy were firmly enforced, it would go far to deter both bully pulpits and hostile audiences.

Other remedies that have been propose range from simply lodging a complaint with the authorities to imposing boycotts of alumni funding programs. The problem with the former is that it is difficult to draw a line between censoring intimidation and restricting free speech or academic freedom. Moreover, one does not wish to feed a “culture of complaint.”¹⁶⁸ Boycotts, on the other hand, cut both ways, and can cause more harm than good.¹⁶⁹

Direct confrontation thus remains the best remedy.

168 . For example, students at Columbia University filed a complaint against Professor Joseph Massad for intimidating students with anti-Zionist diatribes. *See* Sagiv, *supra* note 4 at p. 14.

169 . *Id.*

Academics should denounce antisemitism with the same rational resolve as people like Pilar Rahola, a Spanish politician, journalist and activist and member of the far left.

I am not Jewish. Ideologically I am left and by profession a journalist. Why am I not anti-Israeli like my colleagues? Because as a non-Jew I have the historical responsibility to fight against Jewish hatred and currently against the hatred for their historic homeland, Israel . To fight against anti-Semitism is not the duty of the Jews, it is the duty of the non-Jews. As a journalist it is my duty to search for the truth beyond prejudice, lies and manipulations. The truth about Israel is not told. As a person from the left who loves progress, I am obligated to defend liberty, culture, civic education for children, coexistence and the laws that the Tablets of the Covenant made into universal principles. Principles that Islamic fundamentalism systematically destroys. That is to say that as a non-Jew, journalist and lefty, I have a triple moral duty with Israel , because if Israel is destroyed, liberty, modernity and culture will be destroyed too.¹⁷⁰

To be sure, there are a few hopeful signs on the horizon.

One is Scholars for Peace in the Middle East. Governed and directed by academics, SPME envisions “a world in which Israel exists as a sovereign Jewish state within secure borders and her neighbors achieve their legitimate peaceful aspirations.” However, as its mission statement observes –

academic discourse is increasingly influenced by ideological distortions, politically biased scholarship, and agenda-driven speakers who demonize Israel and Zionism as bearing full responsibility for the Middle-East conflict. Such indoctrination violates academic traditions of scholarly integrity and degrades the academic enterprise. It poisons debate about the Middle East, inflames hatred of Israel, spreads anti-Semitism, incites anti-Israeli militancy, and serves to excuse or tolerate terrorist attacks and genocidal threats against Israel. Anti-Israel slanders exacerbate conflict and undermine prospects for peace.¹⁷¹

170 . Pilar Rahola, “A Leftist Speaks Out,” FORT LAUDERDALE SUN-SENTINEL, March 24, 2010 at p. 50.

171 . Mission Statement, Scholars for Peace in the Middle East, available at <http://spme.net/>.

Some student groups, such as the Union of Jewish Students, have also become increasingly active.¹⁷²

On occasion politicians have been unusually forthright in stating their opposition to events like “Israeli Apartheid Weeks” on campus. In February of 2010, for example, Members of Provincial Parliament (MPPs) of varying political ideologies in Ontario collectively and unanimously condemned “Israeli Apartheid Week, which one MP contended was “about as close to hate speech as one can get without getting arrested, and I’m not certain it doesn’t actually cross over that line,”¹⁷³ specifically noting that the name itself is offensive to the millions of black South Africans who experienced oppression under a racist white regime until the early 1990s. Addressing Canada’s worldwide notoriety as a pro-Israel country, Peter Shurman further argued, “[if] you’re going to label Israel as apartheid, then you are also calling Canada apartheid and you are attacking Canadian values.” The parliamentarians encourage constructive, respectful debate about the Middle East, but the use of inflammatory words—like

172 . The UJS today enjoys relatively better funding and organization than it did in the past, but if it and other student groups are to take an effective stand against antisemitism on campus they will need considerably more support and resources from those with positions of power and influence. Jan Shure, *We Could Have Dealt with Campus Hate Long Ago*, *The Jewish Chronicle Online*, Feb. 12, 2009, available at <http://www.thejc.com/comment/comment/we-could-have-dealt-campus-hate-long-ago>.

173 . Remarks by Peter Shurman. Dan Verbin, *Ontario Legislature Denounces Israel Apartheid Week*, *ShalomLife*, Feb. 26, 2010, available at http://www.shalomlife.com/eng/6838/Ontario_Legislature_Denounces_Israel_Apartheid_Week/. See also Robert Benzie, *MPPs Decry Linking Israel to “Apartheid,”* *Thestar.com*, Feb. 26, 2010, available at <http://www.thestar.com/news/ontario/article/771761--mpps-decry-linking-israel-to-apartheid>.

“apartheid”—do not provide any benefit to the discourse. The minister of training, colleges and universities, John Milloy, believes that “campuses are places for debate and discussion—they often get into areas that can offend people . . . the goal has to be . . . to make sure that there’s not hatred on campus—nothing that would make a student feel threatened.” Actions like that of the Ontario Legislature illustrate the potential for change, and a small, yet noteworthy, step toward widespread condemnation of hateful, antisemitic speech in the academic voice.¹⁷⁴

There are some legislative remedies available as well. Title VI, 42 U.S.C. §2000d et seq., of the federal Civil Rights Act of 1964 requires recipients of federal funding to ensure that their programs are free from harassment, intimidation, and discrimination on the basis of race, color, and national origin. In order to receive federal funding from the U.S. Department of Education, colleges and universities must comply with Title VI, and the Office for Civil Rights (OCR) in the Department of Education is charged with the responsibility of ensuring that colleges and universities are in compliance. Historically, OCR’s interpretation of Title VI did not protect against antisemitism on the ground that the law did not cover religious discrimination. This policy was changed in 2004 when the OCR confirmed that Jewish students are protected under Title VI. This decision was made based on the idea that being “Jewish” is not simply a religious characteristic; it is also a racial and ethnic characteristic, describing a people who share not only a religion, but also a common ancestry, history, heritage, and culture. The decision to incorporate Jews under Title VI is in line with the U.S.

174 . *Id.*

Supreme Court's decision in *Shaare Tefila Congregation v. Cobb*, where the civil-rights protections under the Civil Rights Act of 1866 were extended.¹⁷⁵

But legislative remedies have to be initiated by individuals and groups, and actively pursued.

In October of 2004, the Zionist Organization of America (ZOA) filed a complaint with OCR under Title VI on behalf of Jewish students at the University of California, Irvine (UCI), arguing that the university had long been aware of a hostile and intimidating environment for Jewish students, but that UCI did not take adequate steps to protect them. Despite an abundance of data provided by ZOA, OCR found "insufficient evidence to support the complainant's allegation that the University failed to respond promptly and effectively to complaints by Jewish students that they were harassed and subjected to a hostile environment."¹⁷⁶

In March of 2010, a number of Jewish-American associations joined in a letter to Arne Duncan, Secretary of the U.S. Department of Education, addressing the very issue of Title VI and its application to Jewish students. In their letter, the associations explain how the OCR has

175

. 481 U.S. 615 (1987).

176 . The ZOA has indicated it will continue to fight for the students at UCI and across American campuses through an appeal of the OCR decision, Title VI is usually used to fight discriminatory practices during admission, and not for a student's protection against racial discrimination or bias. Its use in this manner could depend largely on ZOA's appeal of the UCI decision. Morton Klein, *ZOA Condemns Office For Civil Rights' Decision Not To Protect Jewish Students From Antisemitic Harassment*, Zionist Organization of America, Dec. 19, 2007, available at http://www.zoa.org/sitedocuments/pressrelease_view.asp?pressreleaseID=264.

retreated from its 2004 position, and urged Secretary Duncan to ensure that the OCR once again interprets Title VI to protect Jewish students from antisemitic harassment. They point out that the Hon. Russlyn Ali, Assistant Secretary of Education for Civil Rights wrote, in a July 2009 letter to California congressman Ben Sherman, that Title VI does not cover antisemitic harassment, intimidation, and discrimination. OCR has effectively concluded that it will discontinue its enforcement of Title VI in cases where a Jewish student asserts racial or ethnic discrimination based on his or her status as a Jewish individual. This sends a government message to campus perpetrators, the associations contended, that they can continue their antisemitic behavior because colleges and universities no longer have a legal obligation to report hateful conduct, and campus administrations are therefore free to simply not respond to antisemitism on their campuses, even when their Jewish students feel threatened and intimidated.¹⁷⁷

In July of 2010, the Congressional Taskforce Against Anti-Semitism sent a letter to Secretary of Education Arne Duncan expressing concern that various complaints about antisemitic incidents at UC Irvine had never been properly addressed by the Office of Civil Rights. It noted the rising number of such incidents on college campuses, which it called “significant and disturbing” – especially in view of the fact that racism is generally decreasing in the U.S. In addition, the letter suggested that even more such incidents go unreported

177 . Letter to Education Secretary, re: Antisemitic Intimidation on Campus, Anti-Defamation League, available at http://www.adl.org/Civil_Rights/letter_associationjlj_2010.asp.

because of discriminatory harassment and intimidation.¹⁷⁸

“College campuses in the United States are meant to be positive, safe and open forums for intellectual expression, conducive to learning,” wrote Congressman Ron Klein, a Florida Democrat and member of the Taskforce. “We believe that enforcing Title VI to protect Jewish students who, in rare but highly significant situations, face harassment, intimidation or discrimination based on their ancestral or ethnic characteristics – including when it is manifested as anti-Israel or anti-Zionist sentiment that crosses the line into anti-Semitism – would help ensure that we’re preserving the integrity of our higher education system by affording the same protection to all ethnic and racial groups on our college campuses.”¹⁷⁹

Another letter about antisemitism on UC campuses, written by twelve pro-Israel groups, was sent to UC President Mark Yudof. The letter was supported by some 700 UC students who signed an online position asserting that the university’s response to recent anti-Semitic

178 . The complaint had argued that OCR did not exercise jurisdiction following its 2007 investigation of the ZOA’s 2004 complaint with OCR alleging that UCI failed to promptly and adequately respond to Jewish students’ complaints that they experienced severe and persistent anti-Semitic intimidation and harassment on campus. It said that UCI should be subject to investigation/penalties under Title VI of the Civil Rights act of 1964; that the incidents were based on the students’ ancestry or ethnic characteristics, rather than their religious identity, and thus fell within the scope of OCR’s jurisdiction under Title VI; and that OCR’s ruling was “inconsistent with its own policy statements for enforcing Title VI as expressed in recent years.”]

179 . The Taskforce sought clarification of OCR’s investigation and enforcement authority to remedy instances of harassment/discrimination/intimidation against Jewish students, requesting that it hear from OCR before the start of the new school year. The letter was signed by 36 members of Congress. *See* <http://www.zoa.org/media/user/images/Congressional-Taskforce-Against%20Anti-Semitism-Letter-to-Secretary-Duncan.pdf>.

incidents on campus has caused many students to feel as if they are in an “environment of harassment and intimidation.” Yudof, who is Jewish, responded, urging that the groups support UC’s newly-formed Advisory Council on Campus Climate, Culture, and Inclusion. The panel had been created in response to numerous racial incidents on campus, including spray-painting swastikas on the UC Davis campus.¹⁸⁰

The Council held its first meeting this summer. The students who wrote the letter argued that UC’s response to the anti-Semitic acts has been too weak. Yudof said he will “do everything in [his] power to protect Jewish and all other students from threats or actions of intolerance,” but he also criticized the letter as “a dishearteningly ill-informed rush to judgment against our ongoing responses to troubling incidents that have taken place on some of our campuses.” He added that “the Jewish groups may have based their concerns on an unreliable sampling of student opinion and that most Jewish UC students’ ‘perspectives are more mixed than you suggest.’”¹⁸¹

Meanwhile, in response to the incident in which Israeli Ambassador Michael Oren was hounded off the rostrum at UC Irvine by anti-Israel demonstrators, administrators embarked on a 4-month long investigation, and announced in June its unprecedented recommendation to suspend the Muslim Student Union, a registered campus organization, for its involvement in disrupting the ambassador's speech. Eleven students were arrested and may face criminal

180 . See http://www.huffingtonpost.com/2010/07/07/uc-president-mark-yudof-c_n_637311.html.

181 . *UC President in Unusual Public Dispute with Several American Jewish Groups*, LA Times Blog, July 6, 2010.

charges as well as university disciplinary action. The decision came after several months of intense pressure by a number of off-campus Zionist organizations. In February, the Zionist Organization of America (ZOA) called upon Jewish donors to withhold donations from UC Irvine and urged Jewish students not to enroll there.” The MSU is appealing the decision.¹⁸²

Conclusion

In sum, there are a variety of ways to confront and condemn antisemitism in the academic voice and remain in harmony with First Amendment values.

One recommendation is to exercise a bit of self-restraint. Instead of crying “Nazi” every time the Israeli Defense Force does something with which an academic disagrees, or urging a boycott of Israeli academics, or signing petitions encouraging soldiers to desert their units or calling on European powers to immediately intervene to “save” the Palestinians from a “genocide,” one could hold his tongue.¹⁸³

182 . Omar Kurdi, *UC Irvine’s Message: Criticize Israel, Get Suspended*, LA Times.com, June 22, 2010, available at <http://www.latimes.com/news/opinion/opinionla/la-oe-0622-kurdi-uci-muslim-20100622,0,1942963.story>.

183 . [W]hen children don’t behave correctly, it is the parents’ responsibility to correct this, not scream hysterically that the children are “little Nazis” and leave the house.... The Israeli academy is like a parent to the citizenry of the state, but the behavior of some of its members has come to resemble that of spoiled children. Frantzman, *supra* note 59.

Another is to assist Israel's defenders in driving a wedge between the Jewish State's soft- and hard-core critics – between, for example, human-rights groups like Oxfam that take issue with Israeli policy and radical Islamists who deny the State's very legitimacy.¹⁸⁴

It is the obligation of all academics either to recognize or refute claims that have no basis in fact or logic—and not to ignore them.

Not only can offensive speech and conduct be constitutionally confronted and condemned, but responsible administrators, faculty, and students have a moral imperative to do so.

Not only are the principles of academic freedom and the universality of science at stake but, ultimately, so are democratic values in a free society.

Not only should scholars shoulder their responsibility to be informed and aware, but they should also recognize their obligation to respond when they see logic and common sense gone awry and objective fact and documented history either ignored or denied.

Academics everywhere should likewise not allow history and logic to be rendered meaningless by twisted rhetoric – whether it emanates from the candid rant of the president of Iran, or a former president of the United States who receives substantial sums of money from Arab governments, or a somewhat more subtle but equally antisemitic university professor speaking in the academic voice.

184 . See Mizroch, *supra* note 73 and accompanying text.