

Testimony of Stacy Burdett

Before the

House of Representatives

Committee on the Judiciary

Hearing on

Free Speech on College Campuses

November 8, 2023

Washington, DC

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Thank you, Chairman Jordan, for inviting me. And thank you, Ranking Member Nadler, for being a true voice of conscience against antisemitism and for the civil rights of Jews and all Americans. While some fight antisemitism by dividing people against each other, you have been clear that Jewish rights are human rights and that fighting antisemitism and all bigotry is an American civic value.

This is not the first time I've had the privilege of appearing before a Congressional committee to speak about the growth of antisemitism in the world. But it is the first time we are talking about it while the threat and the shock is weighing so heavily, so directly impacting American Jews. I hold in my heart those of us whose children are processing these events and experiencing them on college campuses. If I could, I would change this name card to just read, *Mom*.

I come to this conversation not only as a mother, not as a lawyer or an academic, but as a practitioner. I've developed policies and practical strategies to prevent and counter antisemitism and put those strategies into practice in corporate settings, higher education and in advocacy coalitions. I will share some learnings from that work, what new tools the government has at its disposal and propose some recommendations for what universities, individuals, and Congress can do.

Unlike many workplaces, schools or even town squares, a university campus is perhaps the most diverse community a person will probably ever encounter in their lives. For the rest of their lives, college students will sort themselves into the "right" neighborhoods, the right school districts, the right book club, the right house of worship – filled with people they agree with.

On college campuses, diverse groups of students and faculty are literally living on top of each other and have to build a community where they can learn and live together. In fact, one could argue, that is at the very heart of a university's mission. These students are faced with the reality that living in a free society isn't only about what we get to say, it's also about what we have to hear, even when it's difficult - as long as it doesn't threaten or violate the rights of someone else.

Campuses have a lot of rules that are meant to guarantee that students can be safe and free of harassment. But they don't guarantee that they won't have to hear things that are upsetting. And that's not necessarily a bad thing. I have no doubt that hearing something that upset you is part of why each of you ran for office to serve your constituents and your country.

Managing that experience for these young adults is hard. Just because speech may be legal doesn't mean it can't be harmful. Universities have a serious duty of care to use all the tools they have to mitigate those harms and to keep students safe from harassment, intimidation and bigotry.

In a turbulent world filled with bigotry and division and terror, universities must teach students how to manage conflicting ideas and to navigate the discomfort that comes with opening our minds to different narratives and perspectives. It's not just the price of living in a free society. It is the *special sauce* that makes for a good education. That's how universities can turn out future leaders who will be able to engage in the kind of give and take that enables people to invent things, to shape new ideas that can solve problems – to tackle the big challenges we are leaving behind for them to address.

That's exactly why, unlike governments or political parties or organizations, Universities are ideally not meant to take policy positions. Their mission is to educate and to manage a rich marketplace of ideas. Institutions like the University of Chicago adopted what are known as the Kalven Principles<sup>1</sup>, under which they choose not to take policy stances in order to be able to stay faithful to the core mission: “the discovery, improvement, and dissemination of knowledge.”

Just because Universities don't have policy positions doesn't mean they don't have values that must shape the learning environment. Just because they create space for free expression doesn't mean they shouldn't use rules to set parameters around when expression crosses a line into threats or harassment.

I've seen universities mobilize their tools in recent weeks. Campus public safety officers are in close touch with law enforcement, consulting with them about the threat landscape, how to keep protests safe and orderly. Some are enforcing or tightening rules around protests or taking actions that are unusual like closing parts of campus and requiring a school ID to prevent outsiders from disrupting student gatherings.

And they have responded to antisemitic incidents. The President of University of Pennsylvania just went public about an incident in which they're working with the FBI to open a hate crime investigation. On most campuses, students are receiving a steady flow of information about services like escorts they can request, reminders encouraging them to contact campus authorities or report threats or antisemitic or bias incidents.

We may see these actions as routine, but all young people, especially in the midst of trauma and distress, need encouragement to understand the impact on their wellbeing and to seek support services.

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<sup>1</sup> In February of 1967, the president of the University of Chicago convened a faculty committee to produce a recommendation on how the institution should approach “political and social action.” The group of seven professors produced the Report on the University's Role in Political and Social Action (the “Kalven Report”). The report's central conclusion was that neutrality is necessary to maintain a university's fidelity to its core mission: “the discovery, improvement, and dissemination of knowledge.”

And I've seen professors, deans, and even university presidents checking in with students, expanding their office hours to speak with students and conducting listening sessions to ensure that they hear student concerns and can support them.

Universities have already stepped up in critical ways. The creation of antisemitism task forces and others on doxing are the kinds of actions advocates have been calling for years. These task forces should do a system wide assessment of how they can renew both their commitment, their policies and their tools. This includes not just enforcement of violations of campus codes but proactive solidarity building work. They also have the opportunity to explore their academic offerings, ways to encourage Jewish studies scholarship and to make sure diverse perspectives are really taught. Some higher ed institutions have set up employee resource groups for Jewish administrative staff and faculty. Those are great vehicles to elevate Jewish voices, concerns and experiences in the culture of workplaces. We speak so much about our rage and disappointment. But this horrible moment is also bringing to the fore the best that communities like universities can offer.

## **New Government Tools**

Even before this surge in antisemitic incidents following the Hamas attacks, there were new tools and building blocks that have been put into place across federal agencies.

These are the eight federal agencies that pledged—for the first time in writing—that Title VI of the Civil Rights Act of 1964 prohibits antisemitic discrimination in federally funded programs and activities. The Departments of Agriculture, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Labor, Treasury, and Transportation will also ensure that agency staff understand and are ready to respond. They will make clear that antisemitic discrimination is a violation. They committed to enforce protections within the federally funded programs they administer.

This could cover antisemitic harassment or discrimination on any transit systems funded by the Department of Transportation (DOT); or in any housing funded by the Department of Housing and Urban Development (HUD); or in services delivered as part of a U.S. Department of Agriculture (USDA)-funded food programs.

The Department of Justice (DOJ) helps drive and support this. And especially with the horrific attacks we have seen among orthodox communities, where there's no choice but to walk to and from synagogue on Sabbath and where men wear religious garb as part of their expression of their Jewish identity - it is vital that information about these rights are now being provided in both Hebrew and Yiddish language.

As recently as yesterday, the Department of Education Office of Civil Rights sent a Dear Colleague highlighting the “an alarming rise in disturbing antisemitic incidents and threats to Jewish, Israeli, Muslim, Arab, and Palestinian students on college campuses and in P-12 schools” and reminded schools of their obligations under federal law to ensure nondiscriminatory environments in which all students can learn without discrimination.

The Department has taken other steps including:

- It revised its complaint form to specifically make clear that harassment because a person is Jewish, Muslim, Arab, Hindu, Sikh or of other shared ancestry or ethnic characteristics is prohibited by Title VI.
- The Department has begun a listening tour to visit colleges and universities in addition to k-12 schools to hear about what students are experiencing.
- The Department launched [a broad education campaign](#) focused on antisemitism to provide resources and technical assistance, collect data, spotlight champions, and build partnerships to raise awareness and combat antisemitism. None of this will be a quick fix. But the Department started putting the National Strategy into practice in multiple ways almost as soon as the ink was dry.

### **Practical Action Steps:**

1. **Stand behind the U.S. National Strategy to Counter Antisemitism.** Its launch in May 2023 was the most ambitious, far reaching action in U.S. history. Also historic is the coming together, both from within and outside of the Jewish community, a kind of civic unity and resolve to tackle antisemitism through concrete, coordinated action to stop the spread and the normalization of antisemitism.

This whole of society, whole of government approach and the recommendations focus on Jewish safety and on bringing Americans together to stand against antisemitism and hate. It reflects input from over 1,000 Jewish community stakeholders, faith and civil rights leaders, State and local officials, and more—also it serves as a blueprint for tackling other forms of bigotry, hate, and bias that fuel toxic divisions in America.

2. **When students call, make an investigator is there to answer.** We should hold agencies like the Department of Education to account for the commitments they've made. But we have to give our government a fighting chance to be able to investigate an unprecedented volume of complaints by adding investigative capacity. By the time a student files a complaint to the Department of Education a lot of systems in our society have failed them, including their peers, their support networks, their school. At the end of all that, our federal complaints system needs to be able to respond in a timely way. In FY 2022 the Department of Education received 18,804 complaints, 12% more than the staggering total of 16,720 received in FY 2016. And we have good reason to expect that number to go up. Between 2016 and 2022, as complaints rose by 12%, the number of investigative staff went down by 18%. The problems are growing and they are complex. Our government needs to be able to protect the rights, safety and wellbeing of the students like those we have heard from today and Congress should resource the Department's Office for Civil Rights (at least fully fund the FY 2024 Budget request of \$177.6 million).

3. **Prioritize Prevention.** Legal recourse and security at Jewish institutions is vital. But our government cannot protect the Jewish community in the most fulsome way until it recognizes the need for prevention. The law is a blunt instrument. We cannot legislate, regulate, tabulate, or prosecute antisemitism and bigotry out of existence. But preventing an attack before it happens, investing in programs that build allyship are essential to build a community that is resilient against hate. DOJ efforts like its United Against Hate Campaign and its Community Relations Service can help improve the climate on campuses.

## Moving Forward Stronger

As this committee came together to demonstrate Jewish shouldn't have to fight antisemitism alone. Universities are already stepping up with serious community building measures, solidarity campaigns and direct support. There is a long way to go.

Antisemitism has been alive in this country for generations. And with the rise of unbridled hate like we've seen on the streets of Charlottesville, Pittsburgh, Poway and at Cornell just last week, it's not the work of a day to put this poison back into the bottle.

Please, look at this national strategy, and the [key actions](#) it recommends. The clock is ticking for Jewish students and the question isn't whether but how quickly can Congress move to implement it.

Even in times as dark as these, I am filled with hope. I have never seen so much concern, so much new understanding of how and why Jews need support. Institutions are taking action toward real transformation. I believe they will identify and close gaps in they think about and address antisemitism. So many people are checking in with friends and colleagues, asking what they can do and many are questioning whether their organization or movement or community is standing in the right moral place in this moment. A lot of Americans will be better allies to Jews and to each other when we emerge from this crisis. Our workplaces, campuses and communities will be stronger, more inclusive and more just if we use this moment well.