

Brandeis Center Urges UC Regents to Adopt Anti-Semitism Definition

Washington, D.C.: This afternoon, the Louis D. Brandeis Center urged the University of California (UC) Board of Regents to adopt the U.S. State Department's definition of anti-Semitism. LDB issued its letter to the Regents in response to increasing incidents of campus anti-Semitism across the country and specifically at the University of California.

LDB President Kenneth L. Marcus commented, "University administrators need a uniform definition of anti-Semitism in order to make clear what the boundaries are between hateful actions and legitimate behavior. This is not only to educate the community about when criticism of Israel crosses the line into hate or bias incidents. It is also about fostering vibrant debate by clarifying the kinds of behavior that are entirely legitimate. Academic institutions thrive on vigorous intellectual and political exchanges, and these must be preserved and fostered. At the same time, it is important for everyone involved to understand that some seemingly innocent activities serve as a guise for ugly prejudice."

Earlier this year, LDB issued a joint study with Trinity College which found that "a majority (54%) of Jewish college students sampled on 55 campuses reported experiencing or witnessing anti-Semitism during the 2013-2014 academic year." Although this study did not address the University of California, LDB reminded the Regents that it has recently reported a number of anti-Semitic incidents at the University of California to the appropriate administrators.

In its letter to the Regents, LDB highlighted incidents at UCLA, Santa Barbara, Davis, Berkeley, and Irvine. LDB informed the Regents that it has been "pleased to face a cooperative attitude during our meetings with numerous UC administrators" and expressed its belief that, "by and large, they share our concerns." At the same time, LDB urged that more must be done.

"If there is any higher education system that should take a leadership role in addressing hate and bias," Marcus wrote, "it is UC. The most effective step that you could take at this juncture would be to adopt the U.S. State Department's landmark definition of anti-Semitism including its examples of anti-Semitism relative to Israel."

LDB told the Regents that it "strongly support[s] the recommendation of President Janet Napolitano that UC adopt the U.S. State Department definition of anti-Semitism." LDB observed that this definition "provides a concise, useful, set of examples that help to distinguish between those forms of conduct with respect to Israel that constitute anti-Semitism and those that do not."

Like its European predecessor, the State Department definition is modeled on the so-called "3D test." Under this widely established model, acts, words, symbols, or images that Demonize Israel, Delegitimize Israel, or subject Israel to Double standards may generally be identified as anti-Semitic.

LDB also cautioned that the State Department's definition, like any standard, must be used judiciously. "In assessing any incident," LDB emphasized, "it is important to consider context, as the State Department acknowledges. Moreover, in applying the State Department's definition, it is important to recognize that some incidents may meet the definition of anti-Semitism (or of racism or sexism) and yet also be constitutionally protected forms of free speech."

LDB emphasized that some incidents, although hateful, must nevertheless be tolerated under the U.S. Constitution. "To say that an incident is hateful or biased is not necessarily to conclude that it must (or may) therefore be banned," LDB explained. "In some cases, under the First Amendment to the U.S. Constitution, public institutions must permit speakers to engage in expressive conduct that is deeply hurtful and even bigoted. Even in such cases however it is important to recognize this speech for what it is. The correct response to hate and bias is never to let them pass in silence."

LDB's Letter to the Regents of the University of California

July 1, 2015

University of California Board of Regents

Office of the Secretary and Chief of Staff to the Regents

1111 Franklin St., 12th floor

Oakland, CA 94607

Dear Honorable Members of the University of California Board of Regents:

We write to express our concern about the rising incidence of anti-Semitic behavior at the University of California, and to urge you to address this resurgent problem by adopting a meaningful, widely-established definition of anti-Semitism. As demonstrated earlier this year in a report jointly issued by Trinity College and the Louis D. Brandeis Center for Human Rights Under Law, a majority (54%) of Jewish college students sampled on 55 campuses reported experiencing or witnessing anti-Semitism during the 2013-2014 academic year. Although this report did not encompass the UC system, we have found significant problems at UC as well.

If there is any higher education system that should take a leadership role in addressing hate and bias, it is UC. The most effective step that you could take at this juncture would be to adopt the U.S. State Department's landmark definition of anti-Semitism including its examples of anti-Semitism relative to Israel. Good definitions not only educate people about how quickly discourse can slip, even unwittingly, into dark corners but also and equally importantly foster legitimate intellectual and political exchanges by increasing awareness about where lines are drawn. This surely serves the academic interest in robust debate that is so central to the UC's mission. In this way, proper definitions can serve both to educate a community and also to protect vigorous discussion of competing positions.

At the Louis D. Brandeis Center, we have received numerous reports of anti-Semitic incidents at UC campuses and in several cases have worked with UC administrators to address them. While, we have been pleased to face a cooperative attitude during our meetings with numerous UC administrators and we believe that, by and large, they share our concerns, the situation for Jewish students at the UC campuses darkens. In some cases, we believe that firmer actions would have been undertaken if the

hate and bias incidents had been directed at other groups. At UCLA, for example, students on the Undergraduate Students Association Council questioned a Jewish student's ability to be impartial on the University's Judicial Board due to her "strong Jewish identity." This episode brought to the surface what was really in play-- the underlying anti-Semitism that has taken root at the UC campuses. It is frequently in the covert guise of anti-Israelism that in truth has its foundations in anti-Semitism. At the University of California, Davis, Jewish students have experienced hostile behavior, including intimidation, bullying and verbal harassment during an occupation of a university administrative building by anti-Israel protestors. At UC Santa Barbara, a student wearing a Star of David necklace was spat on. At UC Irvine and Berkeley, many troubling incidents have been reported over the last several years.

The most important single thing that you can do to advance the fight against campus anti-Semitism is to educate the university community about the nature of contemporary anti-Semitism. This is something that we at the Louis D. Brandeis Center know quite a bit about, since our primary mandate is to combat anti-Semitism in American higher education.

During my tenure as Staff Director at the U.S. Commission on Civil Rights, the Commission held a watershed briefing on Campus Anti-Semitism. After the briefing, the Commission announced that anti-Semitism in American higher education had become a "serious problem" on many campuses requiring further attention. Significantly, the Commission then adopted the EUMC Working Definition of Anti-Semitism as a tool to help university administrator to identify the lines between hateful and non-hateful incidents. Later, the U.S. Department of State adopted its own definition of anti-Semitism based closely on this instructive model.

We strongly support the recommendation of President Janet Napolitano that UC adopt the U.S. State Department definition of anti-Semitism. As President Napolitano recognizes, it is critical to understand anti-Semitism in order to address it properly. But it is particularly important in the case of contemporary anti-Semitism, because so much uncertainty surrounds the relationship between Jew-hatred and animosity towards the State of Israel. Virtually all reputable authorities agree that some, but not all, of the hate directed against Israel crosses the line into anti-Semitism.

The U.S. Department of State provides a concise, useful, set of examples that help to distinguish between those forms of conduct with respect to Israel that constitute anti-Semitism and those that do not. Following the former EUMC Working Definition of Anti-Semitism, the State Department elucidated a version of the so-called "3D test." Under this widely established model, acts, words, symbols, or images that Demonize Israel, Delegitimize Israel, or subject Israel to Double standards may generally be identified as anti-Semitic. The Ottawa Protocols on Combatting Anti-Semitism call on parliaments and governments to adopt the EUMC Working Definition "and anchor its enforcement in existing law."

Similarly, the California State Assembly Resolution No. 35, Relative to Anti-Semitism, called upon California's public higher education institutions to "increase their efforts to swiftly and unequivocally condemn acts of Anti-Semitism on their campuses and utilize existing resources, such as the [EUMC] working definition of anti-Semitism." Likewise, the 2012 report issued by the UC Jewish Student Campus Climate fact-finding team recommends that UC adopt an official definition of Anti-Semitism and "provide model protocol for campuses to identify contemporary incidents of anti-Semitism."

As with any standard, the State Department (and EUMC) definition of anti-Semitism should be used judiciously. In assessing any incident, it is important to consider context, as the State Department

acknowledges. Moreover, in applying the State Department's definition, it is important to recognize that some incidents may meet the definition of anti-Semitism (or of racism or sexism) and yet also be constitutionally protected forms of free speech. To say that an incident is hateful or biased is not necessarily to conclude that it must (or may) therefore be banned. In some cases, under the First Amendment to the U.S. Constitution, public institutions must permit speakers to engage in expressive conduct that is deeply hurtful and even bigoted. Even in such cases however it is important to recognize this speech for what it is. The correct response to hate and bias is never to let them pass in silence. As the Civil Rights Commission has admonished in this context, "Silence is an ally of hate."

In regards to anti-Semitism on campus, the Civil Rights Commission recommends that University leadership set a moral example by "denouncing anti-Semitic and other hate speech." University leaders always have many tools at their disposal to ensure that the campus environment remains safe, inclusive, and respectful, even as it respects the civil liberties of everyone involved. The Louis D. Brandeis Center has provided numerous examples of how this can be done on our web site (www.brandeiscenter.com) and especially in our LDB Best Practices Guide for Combating Campus Anti-Semitism and Anti-Israelism (attached).

We hope that you will avail yourselves of this important opportunity to exercise leadership within the university community by establishing best practices for defining and responding to anti-Semitic incidents on college campuses. We are available to answer any questions that you might have or to serve as a resource to you in your deliberations.

Sincerely,

Kenneth L. Marcus

President and General Counsel

The Louis D. Brandeis Center for Human Rights Under Law

Attachment