

In recent years, university administrators have had to face a number of anti-Semitic and anti-Israeli disruptions on their campuses. The following best practices are intended to help administrators address campus anti-Semitism and discrimination on the basis of Israeli national origin.

## 1. Ensuring Civility

The best approach to hate and bias incidents is the cultivation of an environment of civility. Experience has shown that in such an atmosphere these incidents do not arise or are quickly rebuffed. One way to foster a constructive environment is for administrators to speak frequently, personally, and with specificity about the climate they seek. The best practice is to focus as much as possible on an institution's values, rather than merely responding on an ad hoc basis to crises.

## 2. Resolving Problems

Nevertheless, incidents will inevitably arise, and these should be addressed by presidential response. Here are ten qualities that highly effective university leaders have utilized in addressing campus anti-Semitism:

- **Responsibility:** taking personal initiative, rather than delegating;
- **Promptness:** responding immediately to the event;
- **Specificity:** addressing particular incidents rather than resorting to generalities;
- **Context:** explaining how these incidents resemble other ugly incidents which the administration has addressed with equal seriousness, rather than losing sight of the big picture;
- **Courage:** taking bold positions which foreseeably will provoke pushback from some elements within the community, rather than taking a politically safer route;
- **Prominence:** making a statement publicly and circulating it widely, rather than taking a quieter approach;

- **Balance:** acknowledging conflicting values, rather than taking an overly narrow focus;
- **Follow-up:** explaining the future and ongoing policies and practices which will prevent recurrences of this incident, rather than treating the statement as the end of the story;
- **Firmness:** specifying the sanctions which have been applied or will be applied, where appropriate, in response to violations of applicable university policies; and
- **Outreach:** reaching out separately to the affected group to explain how their broader concerns can be addressed, rather than merely focusing on the wrongdoers or the community as a whole.

These qualities constitute a composite sketch of the highly effective university leader. While some leaders have been stronger in some of these areas than others, a strong administrator should aspire to demonstrate all.

For instance, San Francisco State University President Corrigan has provided examples of how presidential leadership can articulate punishments for anti-Semitic hate and bias incidents, working with campus security, law enforcement, and public prosecutors (<http://www.sfsu.edu/~news/response/values.htm>).

For further examples of the kind of strong, specific statements which leaders issue in the face of campus anti-Semitism, see LDB's Best Practices/Communications (<http://brandeiscenter.com/index.php?/practices/communications>).

## 3. Preventing Discrimination

In the United States, Title VI of the Civil Rights Act of 1964 prohibits various forms of discrimination at federally funded programs and activities. The U.S. Department of Education's Office for Civil Rights (OCR) has affirmed that this provision prohibits certain forms of discrimination against Jewish students. Many universities prohibit discriminatory conduct to an even greater extent than is required under federal or state law. Unfortunately, these



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policies typically do not provide as much specificity with respect to the nature and scope of prohibited anti-Semitic conduct as they do, for example, with respect to sexual harassment. The most important thing for a university president to do in the case of discrimination or harassment is to speak out against it personally, promptly, and with great specificity.

## 4. Fighting Crime

Some recent anti-Semitic conduct has been criminal, as, for example, in the UC Berkeley incident in which then-student Jessica Felber was attacked with a shopping cart. The applicable criminal statutes and ordinances are typically bolstered by university policies. In many cases, property is vandalized or destroyed, conduct that is prohibited by university policies as well as being a crime.

## 5. Protecting Speech, Preventing Disruption

In some cases, as recently witnessed at UC Davis or in the Irvine 11 case, campus disruptions prevent students and guest speakers from exercising their freedom of speech. University policies should strongly affirm speech protections. Good university policies also bolster local ordinances on such matters as disorderly conduct, disturbance of the peace, disruption of university activities, possession of (actual or imitation) firearms, and unlawful assembly.

While campus hate and bias incidents typically involve substantial non-speech components, which should not be ignored or downplayed, speech issues arise with such frequency that they deserve careful consideration. Universities should of course protect the freedom of speech of all participants, and this will sometimes shape the alternatives available for responding to hate and bias incidents. Public institutions are significantly more constrained legally than private institutions, because, in particular, content-based regulation of political expression in public fora is generally prohibited. However, there do exist circumstances which will permit restraint, e.g., where the speech presents an imminent threat of violence or where the speaker engages in the use of so-called “fighting words,” although the parameters and vitality of this latter exception may be open to question.

In considering these rules, administrators should remember three key principles:

First, the correct response to hate or bias is never to do nothing. Even where constitutional considerations preclude content-based regulatory actions, a host of legally appropriate alternatives remain, such as the following:

- Non-regulatory responses, such as the kind of leadership statements discussed above;
- Regulating non-speech, including responses to the kinds of assault, battery, and vandalism, that have been recently alleged to occur on many campuses;
- Regulating the time, place or manner of offensive speech, including insuring effective security to prevent heckling at university lectures;
- Regulating non-speech aspects of actions with speech components, such as the defacement of Israeli flags or Jewish institutional property on campus;
- Regulating speech which falls under a specific exception (e.g., threats of imminent violence) as discussed above; and
- Providing enhanced discipline for conduct code infractions that are motivated by hate or bias.

(For further discussion of these alternatives, see William A. Kaplin and Barbara A. Lee, *The Law of Higher Education*.)

In short, there is no First Amendment defense that supports a university administrator looking the other way in the face of hate or bias incidents.

Second, university leaders should not invoke constitutional considerations in a selective or biased manner.



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Some administrators, for example, have been criticized for taking a rigid First Amendment stand against addressing campus anti-Semitism while appearing to take the freedom of speech less seriously in other contexts.

For example, administrators have drawn charges of unfairness by prohibiting so-called “affirmative action bake sales” while permitting anti-Israel demonstrations that are replete with anti-Jewish stereotypes and defamations. Speech concerns must be invoked even-handedly.

### 6. Responding to Speech with More Speech

Responding to speech with counter-speech is not always a sufficient response, as for example in the case of sexual harassment or other forms of non-protected activity. In many cases, however, it is necessary for university leaders to exercise moral leadership by expressing their views of difficult subjects. Effective university leaders do this well. Some university leaders have been exemplary. For example, University of Pennsylvania President Amy Gutman recently provided an excellent example of how a university leader can unambiguously repudiate biased conferences that are conducted on her campus ([http://brandeiscenter.com/index.php/?practices/practices\\_full/university\\_of\\_pennsylvania](http://brandeiscenter.com/index.php/?practices/practices_full/university_of_pennsylvania)). Similarly, Harvard University President Drew Gilpin Faust has provided a fine example of how university leaders can unequivocally denounce objectionable campus activities like academic boycotts of Israeli scholars ([http://brandeiscenter.com/index.php/?practices/practices\\_full/harvard\\_university1](http://brandeiscenter.com/index.php/?practices/practices_full/harvard_university1)).

### 7. Understanding and Defining Anti-Semitism and Anti-Israelism

The hardest challenge facing university administrators is to distinguish between offensive incidents of anti-Semitism and mere political criticism of the State of Israel. Under the First Amendment, public universities cannot regulate or punish every anti-Semitic incident, since some are constitutionally protected. On the other hand, both public and private university leadership have a moral obligation to address anti-Semitic incidents promptly and effectively. Also, it is important for university leaders to acknowledge that some forms of anti-Israel expression are anti-Semitic in practice, even if they are not intended to be.

Former Harvard University President Lawrence Summers famously explained this ([http://brandeiscenter.com/index.php/?practices/practices\\_full/Harvard\\_University](http://brandeiscenter.com/index.php/?practices/practices_full/Harvard_University)).

Moreover, some anti-Israel incidents may constitute national origin discrimination against students of Israeli national origin even if they are not anti-Semitic.

The long-term goal of university leaders should be to define, in their formal policies and procedures, anti-Semitism (and other forms of bias) with the same degree of specificity that they use to define sexual harassment.

While no American university currently does this adequately, effective administrators can at least take some first steps.

Universities should look to widely accepted and highly specific models that distinguish fully and appropriately between anti-Semitism and legitimate criticisms of Israel. The two best examples are the U.S. Department of State’s official definition of anti-Semitism <http://www.brandeiscenter.com/images/uploads/resource/antisemitism.pdf> and the “International Working Definition,” also known as the “EUMC Working Definition of Anti-Semitism,” (<http://fra.europa.eu/fraWebsite/material/pub/AS/AS-WorkingDefinition-draft.pdf>), which has been adopted by the U.S. Commission on Civil Rights. The Ottawa Protocol of the international Inter-parliamentary Coalition to Combat Antisemitism has recommended that universities and colleges adopt the EUMC Working Definition (<http://www.antisem.org/archive/ottawa-protocol-on-combating-antisemitism/>), but the State Department definition remains an acceptable alternative in the United States. At a minimum, administrators should follow the Ottawa Protocol’s recommendation that universities “define antisemitism clearly, provide specific examples, and enforce conduct codes firmly, while ensuring compliance with freedom of speech and the principle of academic freedom.” Moreover, administrators should consider accepting the Ottawa Protocol’s additional recommendation that universities “use the EUMC Working Definition of Antisemitism as a basis for education, training and orientation.” There is no reason why administrators cannot follow international bodies in adopting a well-established definition as a basis for education and training.



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### 8. Conclusion

University leaders have substantial policy tools available for addressing campus anti-Semitism. Although administrators have not always responded in an exemplary fashion to incidents of anti-Semitism and anti-Israelism, some have provided examples of important best practices. Each institution should carefully examine and where appropriate implement them. To the extent that freedom of expression is implicated, administrators must adhere to federal law and their institutions' own internal rules. When administrators take action against hate and bias incidents, they must act within constitutional and legal parameters, which are significantly more restrictive of public universities than private institutions. In all cases, however, administrators should follow three general administrative principles:

- First, the correct response to hate or bias is never to do nothing.
- Second, university leaders should not invoke constitutional considerations in a selective or biased manner.
- Third, even where regulatory response is legally valid, it may not be sufficient, nor is it always the most prudent path.

In general, administrators will succeed if they consistently follow the ten best practices discussed above together with these three basic principles. Finally, administrators can make considerable progress by incorporating the State Department and Civil Rights Commission's EUMC Working Definition of Anti-Semitism as a basis for education, training and orientation, consistent with the requirements of the First Amendment and the doctrine of academic freedom.

#### About Kenneth L. Marcus

Kenneth L. Marcus ([http://brandeiscenter.com/index.php?/about/fullbio/kenneth\\_l\\_marcus](http://brandeiscenter.com/index.php?/about/fullbio/kenneth_l_marcus)) is President of the Louis D. Brandeis Center for Human Rights Under Law and author of the award-winning *Jewish Identity and Civil Rights in America* (New York: Cambridge University Press: 2010). ([http://brandeiscenter.com/index.php?/publications/research\\_books](http://brandeiscenter.com/index.php?/publications/research_books)) Marcus founded LDB to combat the resurgence of anti-Semitism on American college campuses.

#### About the Brandeis Center

The Brandeis Center, or LDB, is an independent, unaffiliated, nonprofit corporation established to advance the civil and human rights of the Jewish people and promote justice for all (<http://www.brandeiscenter.com>). LDB conducts research, education, and advocacy to combat the resurgence of anti-Semitism on college and university campuses.

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