Know Your Rights

A STUDENT'S GUIDE TO JEWISH ACTIVISM

AJC American Jewish Committee

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Introduction

College students typically engage in a lot of political activity, and you may wish to get involved by advocating for Jewish causes on your campus. Your engagement might include advocacy for Israel, raising awareness about antisemitism, or even opposing instances of antisemitism on your own campus. This guide aims to provide you with a clear, accessible overview of your rights—and the rights of others—as you engage in Jewish activism on campus

Knowing your rights is important not because legal solutions are always—or even usually—the best solutions. Often, other forms of engagement, argument and persuasion will serve you better. But awareness of your rights and the rights of others can help you decide when and how to pursue your goals. Knowledge of your rights can inform what advocacy strategies you use; help you distinguish between conduct that is illegal, inappropriate, or simply a reflection of legitimate disagreement; and provide a framework for arguments you might make to your peers, your professors, or your university administrators.

ANTISEMITISM TODAY

Today, American Jews are witnessing rising national rates of antisemitic activity, and Jewish students are confronting an increasingly toxic campus environment for discussion of Israel. For the most part, you can expect your university to handle episodes of overt, traditional antisemitism effectively. But more subtle forms of antisemitism, particularly relating to Israel, can present more complicated situations. While many of your peers and teachers will be generous, thoughtful, and fair-minded, some may be poorly informed, unsympathetic, or even hostile toward the Jewish state.

As you read, we recommend you keep in mind two important distinctions that run throughout this guide. First, remember that not all manifestations of antisemitism are illegal. Due to the protections of the First Amendment, you may encounter instances of antisemitic speech that don't cross the line into harassment or other forms of prohibited conduct. You will, therefore, often have to rely on tools other than legal action or a university's disciplinary intervention when confronting some instances of anti-Jewish prejudice. Of course, when you are confronted with violent or physically harmful antisemitic conduct, including instances of harassment, threats, or vandalism, it is reasonable to expect (and in some cases, demand) that your university or other authorities take action.

Second, while an unfortunately large part of the campus discussion of Israel is poorly informed, not all criticism of Israel or anti-Israel activity is antisemitic. Discussion and criticism of Israel and its policies is a legitimate part of civil discourse. Of course, that does not mean that you should ignore antisemitism when it comes cloaked in anti-Israel rhetoric. Nor does it mean that everything every well-meaning person says about Israel is wise, factually accurate, or insightful. But understanding diverse perspectives and debating divergent (and often incorrect) views is an important part of how we learn. A thoughtful, respectful debate about Israeli policies—alongside similar debates about other countries' policies—can be a sign of a vibrant and healthy university intellectual life.

HOW TO USE THIS GUIDE

This guide is designed to provide you with a broad overview of your rights and obligations to others when combating antisemitism or advocating for Israel on your college campus. It is not intended to provide you with legal advice on specific cases or occurrences on your college campus. This guide also contains examples that will give you an idea of how your rights may play out in life or in a courtroom. Keep in mind that these "spotlighted" cases are just examples taken from across the country. Laws may differ in different parts of the country, so the outcome of a similar case where you are could be quite different. If you think your rights may have been violated, or that you may have violated someone else's rights, you should promptly seek legal advice from an attorney.

ADDITIONAL RESOURCES

The following organizations have additional resources to assist you in protecting your rights on campus and advocating for Israel:

1. The local Hillel on your college campus.

2. American Jewish Committee (AJC). For more information visit **AJC.org**. If you think your rights have been violated, email Marc Stern at **sternm@ajc.org** or **campus@ajc.org**.

3. The Israel on Campus Coalition has many different resources for advocating for Israel on your campus, including providing strategic consulting. For more information, visit **IsraelCC.org**.

4. The Louis D. Brandeis Center for Human Rights Under Law provides resources and legal advice to combat antisemitism on college and university campuses. For more information, visit **brandeiscenter.com.**

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Jewish Campus Advocacy: Why and How

For many students, college is not just a place for academic inquiry and professional training. Students arrive on campus seeking the opportunity—often for the first time—to explore their own identities, choose and shape their own communities, encounter and debate differences, and build lasting friendships.

In many ways, the opportunities for Jewish students have never been greater. Many universities boast vibrant Hillel and Chabad houses, and host multiple Jewish studies professors and courses. The "quota system" that restricted the number of Jewish students at some of the country's top universities decades ago has fallen away. Most colleges affirm a strong commitment to cultural tolerance and ethnic pluralism.

And yet, the current climate on college campuses can sometimes be unfriendly, or downright hostile, to Jewish students, especially with respect to Jewish students' connection to Israel. Some students and faculty will have misguided or ill-informed views of Israel. They may see campus organizations and clubs as useful institutions for promoting condemnation of Israel; some may even say antisemitic things or invite antisemitic speakers. That is not as it should be, and AJC is committed to ensuring that you are able to bring your full self, including your Jewish and pro-Israel identity, to life on campus.

But challenges can often be opportunities. Attacks on parts of your Jewish identity often leads to strengthening that identity. Debates about Israel can spur you to understand history and current events more deeply. And involvement in campus advocacy can provide training and experience for political engagement and communal or professional leadership for the rest of your life.

While the rest of this guide provides an overview of your rights on campus, here we offer some practical advocacy suggestions. These suggestions are based on the experience of previous Jewish students and we believe will serve you well both in achieving your specific goals on campus, and in helping you develop as an advocate and leader.

STAY POSITIVE

Be positive and proactive rather than defensive or reactive. When you move first with positive programming, you set the tone and the agenda. Reacting forces you to operate within an agenda set by others.

BUILD BRIDGES

Reach out to organizations and individuals that you believe might be good partners. In doing so, highlight commonalities and shared concerns: for example, Jews and other minority groups share an interest in combating hatred of minorities and toxic stereotypes. Make sure your partners feel supported in their own goals and that they can count on you. When incidents occur that affect them and their community, reach out proactively to offer solidarity and support. Acknowledge potential disagreements; be candid—and encourage candor from others—about what issues you can cooperate on and what issues you disagree about.

KNOWLEDGE IS POWER

Learn about the history of Zionism, Israel, antisemitism, and BDS (the movement to boycott, divest from, and sanction Israel), as well as current events. Follow prominent Israeli journalists on social media, regularly read reporting from mainstream Israeli English-language media (e.g., the *Jerusalem Post* or *Times of Israel*), and consult the latest AJC resources and reports on antisemitism, BDS, and Israel advocacy.

DON'T JUST HEAR, LISTEN

Some advocates have a tendency to think: "How can I make a name for myself?" But in advocacy, like most things in life, it's important to remain humble and open-minded. The best way to learn is to receive, observe, and listen to people share their stories. And others are more likely to listen and learn from you if they see you as open-minded and thoughtful. As the old adage goes, "You have two ears and one mouth; use them in that proportion."

EMBRACE THE INTELLECTUAL DIVERSITY ON CAMPUS

You will be surrounded by curious people who care about learning. Venture outside your comfort zone, ask questions, and engage in dialogue. Effective advocacy depends on encountering people with different worldviews and from different walks of life—this diversity should act as inspiration, not fear.

DEVELOP RELATIONSHIPS WITH FACULTY

You will be surrounded by some of the country's top academic minds, and many professors see mentoring students as an important part of their roles. Stop by during office hours, stay after class, and ask professors to join you for coffee or a meal. Bear in mind, though, that however brilliant professors may be, students are not obligated to share their opinions.

IT'S A MARATHON, NOT A SPRINT

Entering college is often a big transition. Remember that you may not meet your best college friends during orientation and that you may not ace your first test. Success, in advocacy and other things, takes commitment, time, and inevitably some losses. You should know that you have the support you need to rebound and try another approach. In advocacy as elsewhere, "if at first you don't succeed, try, try again" is the name of the game.

What Rights and Obligations Do You Have on Campus?

As a student on a college campus, your rights include:

- the right to equal treatment
- the right to express your views and hear the views of others on campus
- the right to be free from discriminatory harassment
- the right to academic freedom
- the right to associate with other students
- the right to make recordings
- the right to physical security
- rights provided for by your university's policies or procedures

You also have an important obligation to respect the rights of other individuals, particularly in according them the same rights. Your rights and obligations as a student on a college campus come from a variety of sources, including:

Federal level: the United States Constitution and federal laws and regulations.

State and local level: the constitution and laws of the state and city where your college or university is located.

School level: your college's student handbook, mission statement, code of conduct, disciplinary procedures, or other defined policies, which are important to help you understand not only your rights, but also your obligations, as a student at your school.

Right to Equal Treatment

Today, overt and obvious discrimination against Jews by universities is rare. Universities no longer have official admission quotas that formally limit the number of Jewish students. Nor do universities generally permit formal discrimination in the classroom or campus life. But individual professors or university administrators may still disfavor Jewish students in more subtle ways. For example:

- A university might deny funding to a Jewish student group even though funding is available to other similar groups based on the belief that Jewish students will be more able to fundraise from outside resources.

- A professor might bar Jewish students from his/her/their seminar on the Middle East in the belief that Jewish students' ties to Israel will polarize classroom discussion.

- A university might offer accommodations to other ethnic or religious minorities, for instance by exempting Muslim students from exams on their holidays, while failing to do the same for Jewish students.

Under Title VI of the Civil Rights Act of 1964, any (public or private) university that receives federal funding must treat its students equally regardless of their sex, race, or national origin. Almost all colleges and universities do accept such funding. While Title VI does not list religion as a protected classification, the U.S. Department of Education's Office for Civil Rights has explained that Title VI protects students who are discriminated against or harassed based on their actual or perceived shared ancestry or ethnic identity as Jews. In other words, because for many Jews Judaism is not only (or even primarily) a religious identity

but also an ethnic or national identity, federal antidiscrimination law generally prohibits your university from treating you differently because you are Jewish. Additionally, many state and local laws explicitly prohibit discrimination on the basis of religion in educational settings as well.

DEFINING ANTISEMITISM

A recent and particularly useful tool for identifying and combating discriminatory treatment of Jews is the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism. IHRA is a coalition of 35 governments, including the United States, that promotes Holocaust education, research and remembrance. Its definition of antisemitism, which has been widely accepted by governments and Jewish communities around the world, identifies antisemitism as "a certain perception of Jews, which may be expressed as hatred toward Jews," and explains that "[r]hetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities." That definition was adopted by the State Department in 2016, and today all federal agencies are required to consult the IHRA definition when determining whether an incident reflects anti-Jewish discrimination.

As the IHRA definition suggests, antisemitism may be expressed overtly through actual or threatened violence against Jews, destruction or vandalism of Jewish property, and derogatory remarks about Jews. While instances of overt antisemitism are rare on college campuses, they do occur. And unfortunately, because antisemitism is on the rise across the country, you may want to get involved in fighting against antisemitism off-campus as well.

However, in addition to its more obvious and traditional forms, antisemitism can also manifest itself more subtly in particular forms of criticism of Israel. As the IHRA and federal government recognize, criticism of Israel can cross the line into expressions of antisemitism in numerous ways, sometimes subtle and sometimes quite overt. Common examples include statements that:

- demonize Israel, for example, by using symbols and images associated with classic antisemitism, such as caricatures, to characterize Israel or Israelis or by comparing Israel or Israelis to Nazi Germany;

- blame all Jewish persons for Israeli policies with which the speaker disagrees;

- complain about allegedly undue Jewish influence over the media, the financial system, or American foreign policy (for example: a congresswoman's tweet that congressional support for Israel was "all about the Benjamins [$100 bills], baby");

- condemn Israel's actions while ignoring or praising the terrorist acts that drew the Israeli response; or

- deny Israel's right to exist.

When trying to explain to others, including peers or university administrators, why a specific comment or action seems to reflect bias against Jews, the IHRA definition of antisemitism can be a useful, authoritative resource to which to point.

CASE STUDY

On February 3, 2016, Rutgers Associate Professor Jasbir K. Puar delivered a lecture at Vassar College entitled "Inhumanist Politics: How Palestine Matters." During her lecture, Professor Puar stated that Israel: is "harvesting Palestinian organs for scientific research"; seeks "perfection of drone technology as a rationalization for the slaughter of Gazans"; and employs "maiming as a deliberate biopolitical tactic in the occupation of Palestine." Because these claims are false, reliant on images steeped in classic antisemitism (e.g., Jews as desirous of gentile blood and body parts), and are directed at demonizing Israel, they likely fit comfortably within the IHRA definition of antisemitism.

Students and alumni responded by writing letters and op-ed pieces, many of which pointed out the ways in which Puar's claims and rhetoric moved beyond mere criticism of Israel into identifiable antisemitism. The response drew national media attention, much of which recognized Puar's rhetoric for its antisemitism. For example, the *Wall Street Journal* published an editorial on February 17, 2016 entitled "Majoring in Antisemitism at Vassar."

IDENTIFYING DISCRIMINATORY TREATMENT

Determining when you are being treated differently on account of your Jewish identity is not always easy. Did an administrator deny your Hillel access to the student activities fair because s/he disapproves of Jewish students' connection to Israel, or simply because you turned in your registration forms past the deadline? Often, there are innocent explanations, or reasons wholly unrelated to discrimination, for school polices that feel unfair or unjust. Not every bad policy is discriminatory; universities also have plenty of seemingly irrational policies that affect Jews and non-Jews equally.

The key is neutrality. If a university offers a service or benefit to members of some ethnic groups, it is discriminatory to deny it to others. So if you suspect that a Jewish student is being disfavored, it is often useful to think in comparative terms. If your Hillel group was not allowed to rent a certain campus auditorium, were other similar student groups allowed to do so?

RESPONDING TO DISCRIMINATORY TREATMENT

Because incidents of unequal treatment are not always clear, if you're worried that you might have been mistreated on account of your Jewish identity, it is usually wise to consult with others. Staff at your school's Hillel, older students, alumni or supportive faculty may have prior experience with similar situations or particular professors or administrators, and may be able to offer additional insight and perspective. They may also have relationships with school officials or institutional knowledge that could help you resolve issues in a relatively straightforward, non-confrontational manner. For example, a school official who is reluctant to authorize a Jewish group to use a campus venue for a pro-Israel speaker because she fears controversy or disruption may be willing to reverse course if someone authoritative conveys the message that her refusal could be discriminatory.speaker out of fear of controversy may be willing to reverse course if someone she trusts explains that a refusal could be discriminatory.

CASE STUDY

Disparate Treatment of Jewish Candidates for Student Government

In 2015, a second-year economics major at UCLA applied to join the student government's Judicial Board. After her interview, members of the student council spent 40 minutes debating whether the applicant could be trusted to be unbiased in light of her affiliation with Jewish organizations, including her sorority and Hillel. The council initially voted to reject the applicant, but after a faculty advisor urged the council to reconsider, arguing that belonging to Jewish organizations did not create a conflict of interest, the council reversed course and accepted her for the position. After a public outcry, the student council members who had initially opposed the Jewish student apologized, and the university's chancellor issued a statement emphasizing that "to assume that every member of a group can't be impartial or is motivated by hatred is intellectually and morally unacceptable," and calling the incident a "teaching moment."

EQUAL TREATMENT DOES NOT REQUIRE A UNIVERSITY TO SPEAK TO "BOTH SIDES" OF EVERY ISSUE.

A university's obligation to *treat* its students equally, regardless of race or national origin, does not preclude a university from *speaking out* on any particular issue. For example, if a swastika is graffitied on the walls of the campus Hillel, university officials can speak out against antisemitism. There is no legal requirement that officials speak out simultaneously about every other form of bigotry, and certainly no requirement to express understanding for the beliefs or grievances of whoever painted the swastika. Similarly, if incidents of more subtle antisemitism occur on campus, university officials are free to speak out about those incidents—and there is no obligation to issue simultaneous condemnations of all other forms of bigotry or engage in a broader conversation about Israeli politics or policy.

Because a university has its own free speech rights, university officials can speak plainly to express the university's point of view. Thus, even if university officials cannot always punish antisemitic speech, they are free condemn antisemitism or other forms of bigotry plainly and unequivocally. There is no requirement that a university be "even-handed" in its own speech, especially toward antisemitic or prejudiced points of view.

Right to Express Your Views and Hear the Views of Others

The First Amendment to the United States Constitution and similar provisions in state constitutions and laws prohibit the government from restricting your right to express your beliefs, thoughts, ideas, and emotions, and to hear what other people have to say.

Accordingly, public institutions, including public universities, generally cannot prevent speech simply because the message causes discomfort, fear, or even anger among audience members. This is true even where the speech is objectively offensive and hateful.

To illustrate the scope of that protection, consider two recent examples:

- For almost two decades, a small group of demonstrators has gathered every week to "protest" near a synagogue in Ann Arbor, Michigan, holding up signs with antisemitic messages, including: "Resist Jewish Power" and "Jewish Power Corrupts." Despite the clearly offensive nature of the speech, a federal court explained, the First Amendment prohibits the police from intervening to stop the protests.

- A Christian evangelical group demonstrated at the annual Arab International Festival in Dearborn, Michigan with signs proclaiming that Mohammed was a false prophet, and that Muslims would be damned to hell if they failed to repent and abandon Islam. Despite the provocative nature of the demonstration and the furious reaction from festival attendees, a federal court emphasized that the police could not prohibit the protest. The court explained that public institutions must protect speakers from violent reactions, not an offended public from inflammatory speakers.

When you host an event, your audience does not have a right to drown out a speaker with heckling or to engage in disruptive activities, such as rushing the stage. Although some groups argue that such disruptions are themselves a protected form of speech, AJC strongly believes (and the law currently establishes) that such disruptions are not speech and not constitutionally protected. If an audience substantially disrupts the speech, a university should generally take action against the disruptive audience members, and you should urge it to do so. Many universities have policies that explicitly require school officials to prevent and punish such disruptions. Additionally, if your school generally prevents or punishes similar disruptions of other events, it may be legally obligated to treat disruptors at your event similarly under equality principles.

Public universities also cannot censor your message or cancel an event out of concerns that there might be disruption. Any public university that did so would effectively be providing government assistance to shutting down speech, implementing what courts have condemned as a "heckler's veto." Instead, your school must allow the speech to continue unless violence is imminent and cannot otherwise be prevented.

While private universities do not have the same constitutional obligation as public universities to respect free speech, many schools have strong free speech policies that mirror the demands of the First Amendment. Additionally, an array of federal antidiscrimination statutes and local laws also effectively prohibit even private universities from censoring particular groups—including Jewish students—from engaging in advocacy.

CASE STUDY

People of the State of California v. Sayeed

The University of California at Irvine invited Michael Oren, the Israeli ambassador to the United States, deliver a speech on campus. The Muslim Student Union ("MSU") planned a coordinated effort to disrupt the ambassador's speech. Beginning about 37 seconds into Ambassador Oren's remarks, volunteers interrupted repeatedly according to a prearranged plan. Individual MSU volunteers would stand up and shout prewritten anti-Israel statements, and each statement was followed by loud cheering and clapping by planted audience members.

After each disruption, volunteers were removed and detained by the police. By the time the entire group had left the ballroom, however, the ambassador had only 12 minutes remaining. The intent and effect of the disruptions was not simply to express disagreement, but to prevent Oren from speaking or being heard.

The students who helped organize the disruption were prosecuted and convicted by a jury for conspiring to violate a California criminal law prohibiting the disruption of a public meeting or assembly. In their appeal, the disruptors argued they had a First Amendment right to disrupt Ambassador Oren's speech. The appeals courts rejected the argument and upheld the students' convictions, noting that the right of free speech "does not embrace a right to snuff out the free speech of others."

The first amendment protects many forms of expression, including:

- **Oral and written speech**
- **"Symbolic speech"** such as performing street theatre;
- **Expressive conduct**, such as wearing a t-shirt with a message, marching, holding a banner at a protest, and displaying or even mutilating the U.S. flag.

Although symbolic speech and expressive conduct are generally protected by the First Amendment, physically harmful or damaging conduct is not permitted simply because it expresses a message. For example, you cannot punch someone in the face—or even tear up someone else's sign—as a means of expressing yourself. If you do so, your school would be free to punish you, not because of your views, but because of your conduct. For similar reasons, while the appropriate response to ignorant, and even prejudiced, speech is usually more speech, you do not need to accept acts of violence or vandalism simply because they are motivated by political disagreements. You have a right to physical safety, and you should expect your university to take forceful action if you are assaulted or threatened at a protest, or if university, Hillel, or personal property is damaged in acts of anti-Israel vandalism.

The first amendment does not protect:

- **Incitement or "Fighting Words":** speech that is intended, and likely, to provoke or incite others to commit immediate violent acts.
- **True Threats:** speech that a reasonable person would perceive to be communicating a serious intent to cause physical harm (usually to an identified individual or group).

- **Obscenity:** speech that appeals to, depicts or describes sexual conduct in an obviously offensive manner, and lacks serious literary, artistic, political, or scientific value.

- **Defamation:** speech that communicates false information about another person that harms the person's reputation.

- **Harassment:** unwelcome speech or conduct directed at a specific person that is objectively unreasonable and sufficiently severe or pervasive to create an intimidating or hostile environment.

COMBATING OFFENSIVE SPEECH WITH MORE SPEECH

Because First Amendment protections are so robust, even hateful speech will sometimes be constitutionally protected. Unless a speaker crosses the line into intimidation, incitement, or harassment (see pages 23-24), there may not be a legal remedy to bigoted speech. And because public universities are bound by the First Amendment, they are barred from taking disciplinary action against students who say hateful things. This means that you will sometimes have to tolerate deeply hurtful, offensive speech. But you—and your university—are always free to respond to hateful speech with speech of your own. If you encounter antisemitic speech on campus, it is fair to request—and expect—that your university administration will speak out clearly to condemn antisemitism and voice its support for Jewish students. And of course, if a speaker does cross the line into intimidation, incitement, or harassment, you should expect (and if necessary demand) that your school take action to protect you.

CASE STUDY

CMU Valentine's Day Event

In 2017, several individual members of the Central Michigan University College Republicans distributed Valentine's Day cards containing a picture of Adolf Hitler alongside the message, "my love 4 u burns like 6,000 [sic] Jews." The full student group swiftly apologized and condemned what it termed "a very inappropriate" prank. The university's president, George Ross, quickly issued a statement of his own, acknowledging that the card's language was "protected by the First Amendment," but condemning it as "unacceptable" and "not consistent with our values and standards." Ross's statement also called on all "students, faculty and staff to be beacons of peace, respect, inclusivity and civility — to be role models of integrity, dignity and leadership."

PERMISSIBLE RESTRICTIONS ON PROTECTED FORMS OF EXPRESSION

Although the protections of the First Amendment are quite broad, your school has some leeway to regulate even protected speech. The First Amendment allows reasonable restrictions on the time, place, and manner of your speech in order to avoid disruptions and protect the rights of speakers and those who want to listen. The key to these restrictions, however, is that they must not be aimed at disadvantaging particular messages, and they must ultimately promote rather than eliminate speech. In other words, restrictions that regulate the "time, place, and manner" of speech are acceptable, but only if they are content-neutral and allow ample alternative avenues for communication.

Neutral Applications Of Policies

Your school must apply its policies neutrally. This obligation means that your school must give you equal access to the opportunities and benefits that it provides and treat students engaged in similar speech similarly. For example, your school generally cannot restrict your speech based on your support for Israel. At the same time, your school generally will not restrict student speech that reflects antisemitic tropes or that condemns Israel unfairly.

Place Restrictions

These regulate *where* you may express yourself. For example, your school may prohibit you from holding a protest in the library or in a location that blocks entry to or exit from buildings. The venue you choose to express yourself will therefore impact the limitations your school may place on your speech.

- Restrictions on speech are most permissible in places that have traditionally been closed to free public expression, such as offices or classrooms during classes.

- Restrictions on speech are least permissible in places with long traditions of being open to free public expression, such as public streets, sidewalks, and parks.

- Speech may also be restricted to certain types of speakers or subjects in places that have been opened to expression for a designated purpose. For example, the use of student center meeting rooms may be restricted to registered student groups.

Time Restrictions

These regulate when you may express yourself. For example, your school may prohibit you from holding a protest in the middle of a class.

Manner Restrictions

These regulate how you may express yourself. For example, your school may require that you limit the sound generated by loudspeakers or that you confine speech to an informational table. Your school may also require that you obtain a permit, but must issue such permits without regard to the content and viewpoint of the speech and must make permits available within a reasonable time.

CASE STUDY

The "Unite the Right" Rally

In 2017, white nationalist leader Jason Kessler applied for a permit for a rally of far-right activists in Charlottesville's Emancipation Park, near the University of Virginia campus. The city initially granted the application, but revoked the permit just a week before the scheduled rally. The city cited generic "safety concerns" about the number of people that might attend. The city also did not revoke the permits of counter-protestors who were planning on opposing Kessler's group.

Kessler sued, and a federal district court ordered the city to reinstate his permit. The court explained that the city's last-minute reversal, and the fact that the city revoked Kessler's permit but not those of counter-protesters, indicated that the revocation was not a true viewpoint-neutral, "time, place, or manner" restriction for the sake of crowd control. Rather, the court concluded that the city was trying to suppress Kessler's message. Notably, the city did not argue that—and the court did not consider whether—Kessler's rally was likely to incite imminent violence.

On August 11 and 12, 2017, hundreds of white nationalists arrived in Charlottesville and marched through the University of Virginia campus carrying torches and guns and chanting "Jews will not replace us." The rally descended into violence as white nationalist demonstrators attacked and brawled with counter-protestors. One white nationalist plowed his car into a crowd, killing a counter-protestor and injuring several more. Some of the victims subsequently sued Kessler and other rally organizers, arguing that their speech crossed the line into incitement and conspiracy to commit violence. A jury awarded the victims $25 million, and the court upheld the verdict.

The tragic sequence of events illustrates two principles: first, some speech does cross the line into incitement, and such speech should be regulated and punished. And second, when regulating speech, governments must be even-handed and neutral, and should not treat some protestors more favorably than others.

EXAMPLES OF PROPER RESTRICTIONS

Restrictions that prevent:

- obstruction of vehicular or pedestrian traffic
- interference with the normal functions of the school or the rights of others to effectively use school facilities and property, such as excessive noise levels or blocking doorways.

Access To Facilities And Funding

Your school may restrict access to facilities, funding, and other benefits to curriculum-related groups or registered student groups. However, public colleges may not restrict access to facilities, funding, or other benefits based on a viewpoint expressed by the student group. So, for example, if your school permits a registered student group that advocates for boycotts, divestment and sanctions against Israeli (BDS) to use its facilities for a meeting, but refuses to allow a registered student group that is pro-Israel or anti-BDS to use those same facilities for a meeting, your school may have violated the First Amendment.

Members Of The Campus Community Vs. "Outsiders"

Your school may apply different standards to requests for use of its facilities based on the requestor's affiliation with the school. This means that your school may allow student groups to use its facilities for meetings, but deny requests for access by external vendors, activists, and interest groups, as long as it does so in a content-neutral way.

Right to be Free from Discriminatory Harassment

Neither groups nor individuals may advocate their perspectives and viewpoints on your college campus in a manner that is considered discriminatory harassment under state and federal law, including Title VI.

Passionate, even vitriolic, argument is not harassment in most circumstances. To rise to the level of prohibited harassment under Title VI, conduct must be so severe, persistent, pervasive, or objectively offensive that it interferes with or limits your ability to participate in or benefit from college and university programs or opportunities. The prohibited harassment cannot be premised on the mere expression of views, words, symbols, or thoughts with which some may disagree or find inflammatory. But if a group of students or faculty members is continuously, aggressively, and relentlessly targeting other students on the basis of their race, ethnicity, or sex, they may cross the line from speech to discriminatory harassment.

There is no easy, clear line between hateful speech that you must tolerate and prohibited harassment. Different courts may reach different conclusions about the same situation. And your school (especially if it is a private institution) may have policies that define and prohibit as harassment some speech that other courts might permit. If you are respectful and civil, even if you are passionate, you are unlikely to come close to the line. But if you believe that there have been incidents of discriminatory harassment at your school, or if you believe that you are being unfairly accused of harassment for having engaged in legitimate political advocacy, contact your Hillel or AJC, both of which will have the resources to assist you in responding to the incidents and reporting to the appropriate school officials.

If your school permits harassment to continue even after administrators are made aware of the problem, the school itself could be investigated—and potentially found liable—for tolerating the discriminatory harassment. The legal standard for actually finding a school liable—"deliberate indifference" toward the harassing conduct—is difficult to prove. But many schools do not even want to be credibly accused of having permitted such harassment. In any event, you will want to bring discriminatory harassment and mistreatment to university administrators' attention fairly early on. Doing so will hopefully spur your school to act, and if not, it will ensure that you have preserved potential legal claims.

CASE STUDY

University of Illinois at Urbana-Champaign Complaint

In October 2020, several Jewish students at the University of Illinois at Urbana-Champaign filed a complaint with the Department of Education's Office for Civil Rights alleging that the university had permitted a discriminatory, hostile environment for Jewish students. The complaint pointed to a series of antisemitic incidents over the course of several years, including: a car with a swastika parked near the campus Hillel, the vandalism of a menorah at the campus Chabad, a sign in the center of campus declaring the Holocaust to be a hoax, rocks thrown through the window of a Jewish fraternity, and apparent student government discrimination against students involved in pro-Israel activities. The complaint alleged that, collectively, these incidents amounted to a severe and pervasive discriminatory environment. The complaint also alleged that the university administration failed to respond meaningfully to these incidents.

Several weeks after the complaint was filed, the Department of Education announced it would investigate the complaint. In response, the university issued a joint statement with several Jewish organizations deploring acts of antisemitism and committing to investing resources and expanding efforts to combat antisemitism.

Right to Academic Freedom

Professors have the right to advocate controversial ideas within the educational contexts of teaching, learning, and research both inside and outside the classroom. Students too, are generally assumed to have similar rights consistent with the requirements of their classes and programs of study.

COURSE CONTENT AND CLASSROOM TEACHING METHODS

In general, professors have the right to choose the content of their courses and to use the teaching methods they believe will be effective. As a student, you do not have the right to insist that a class be viewpoint-neutral. In fact, your professor may even ask you to write papers expressing particular viewpoints with which you disagree as long as there is a legitimate pedagogical purpose. But if a professor is teaching outside the scope of the course (for instance, if your math professor is repeatedly lecturing about the Arab-Israeli conflict during math class), you may appeal to your school administration. Keep in mind, however, that professors are generally given significant leeway by the administration and their colleagues. It is exceedingly difficult to prove that a professor's teaching is outside of her academic discretion. Although it may feel unfair, often the best approach to difficult or biased faculty is to avoid their classes where possible.

GRADING RETRIBUTION

You have the right to respectfully disagree with viewpoints expressed in your classes and to reserve judgment about matters of opinion. In general, professors should evaluate you solely on an academic basis and not on the basis of your personal opinions or conduct that is separate from the course curriculum. If you are concerned that your professor has unfairly lowered or will unfairly lower your grade because

you challenge antisemitic speech or express support for Israel, you should keep a written record of your concerns and any correspondence with the professor. You may also want to speak with your school administration or an advisor about your concerns and learn what options within the school may be available. Again, it is important to keep in mind that professors are generally given significant latitude to assign grades and assess students, and even where there is arguable abuse of that discretion, your options may be limited unless there is clear evidence of misconduct.

CASE STUDY

University of Michigan Student Recommendation Incident

In 2018, the University of Michigan disciplined John Cheney-Lippold, a cultural studies professor, for refusing to provide letters of recommendation to a student seeking to study in Israel. Cheney-Lippold initially agreed to write a letter in support of a Jewish student's application to a study-abroad program. However, after discovering that the program would be at Tel Aviv University, Cheney-Lippold withdrew his offer, citing the "academic boycott against Israel in support of Palestinians living in Palestine."

The university reprimanded Cheney-Lippold, informing him that his "conduct has fallen far short of the University's and College's expectations for how . . . faculty interact with and treat students," warning that his "behavior in this circumstance was inappropriate and will not be tolerated," and insisting that "a student's merit should be your primary guide for determining how and whether to provide a letter of recommendation," and that he was "not to use student requests for recommendations as a platform to discuss your personal political beliefs."

While professors and instructors have broad discretion over the content and manner of their teaching, they cannot use their power over student grades and recommendations to advance or penalize student viewpoints unrelated to academic work. However, unless a professor openly admits that they are making decisions for non-academic reasons, it is exceedingly difficult to obtain meaningful redress.

The Right to Associate With Others

Your right to express a particular viewpoint includes the right to associate with others who share that view. This means that you have the right to join with other students to form a Jewish or pro-Israel student group that expresses and advocates for your views. As with "time, place, and manner" restrictions, a public university can attach reasonable, viewpoint-neutral conditions for a group's use of school resources, such as requiring registered student groups to be open to all students. However, public universities generally may not prohibit groups from expressing themselves as they wish. And even when attaching conditions to the use of school resources, the university may not directly favor one point of view over another.

MANDATORY STUDENT ACTIVITY FEES

Your school may require students to pay mandatory student activity fees that are distributed to registered student groups. Groups with views that some students may find offensive are entitled to receive funding as long as they follow the school's reasonable, viewpoint-neutral policies applicable to all registered student groups. You do not have the right to opt-out of paying mandatory student activity fees because you object to certain groups that receive funding.

"ALL-COMERS" POLICIES

Your school cannot force student groups to open up membership to all students, but it may condition access to school facilities, funding, and other benefits provided to registered student groups on the group adopting an "all-comers" policy or agreeing to open membership eligibility and leadership roles to all students regardless of their status or views. Such policies must, however, be applied evenly and uniformly,

regardless of a group's views. For example, your school cannot insist that a campus Christian group accept non-believing students if it does not also require that campus feminist groups accept pro-life students.

CASE STUDY

Christian Legal Society Chapter of the University of California, Hastings College of tthe Law v. Martinez

The Christian Legal Society challenged a policy at Hastings College of the Law requiring registered student groups to accept all students as members regardless of their status or beliefs. The Christian Legal Society claimed that this policy impaired its First Amendment rights by requiring it to accept members who do not share its core beliefs about religion and sexual orientation.

The Supreme Court ruled that the school's all-comers policy was a reasonable, viewpoint-neutral condition on access to school resources. The Court explained that the policy did not actually prohibit the group from expressing itself, because even unrecognized student groups were permitted to meet and communicate their views on campus, and that the policy was viewpoint-neutral because it did not directly favor either religious or secular beliefs.

Rights Provided for in Your University's Policies and Procedures

Beyond the rights that are guaranteed by law, many universities have their own handbook or policy documents that provide students with additional rights. For example, many universities promise not only to *permit* student groups to host events and speakers of their choice, but also to *protect* those speakers and events from disruptions by others. Although university policies differ widely, additional examples of rights provided for by many universities include:

- The right to bring staff or faculty advisors (and sometimes, even lawyers) with you to serious disciplinary proceedings.
- The right to appeal unfair disciplinary (and in extraordinary circumstances, unfair grading) decisions.
- The right to religious or cultural accommodations relating to class attendance, exam dates, or meal plans.

If you think you are being treated unfairly, your university's student handbook or policy documents may offer guidance about how best to get the issue resolved. Faculty mentors or staff at your local Hillel may be helpful guides in interpreting these policies and figuring out how and whether they apply to your situation.

Right to Make Video and Audio Recordings

The First Amendment generally gives you the right to make a video recording of anything that is in plain view when you are in a public place. It does not, however, always give you the right to make an audio recording of what people say, especially in private settings. Many states have laws prohibiting the recording of private conversations—including conversations in public spaces—without the consent of all parties to the conversation. Many public and private universities also have policies that regulate video and audio recording on campus. Similar to other protected speech, your right to make a video recording in public places is subject to reasonable time, place, and manner restrictions.

To ensure you are complying with all laws and policies, consult someone knowledgeable about the laws in the state where your university is located and your school's policies before making any video or audio recordings of lectures or presentations by professors or outside speakers at your school.

Also, keep in mind that even when you are permitted to make a video or audio recording without the consent of all parties, you may not be able to publicly distribute the recording you made because the presentation or speech you recorded may be intellectual property that is protected under copyright laws.

In order to avoid violating state law, university policy, or copyright law, the best course of action usually is to obtain consent before making a video or audio recording of any lecture or presentation by a professor or outside speaker. If there is some reason that you wish to make a recording without obtaining the consent of the speaker, you should first consult a lawyer.

Right to Physical Security

You have the right to be free from uninvited physical contact that is harmful or offensive. Relatedly, you have the right to be free from true threats of physical harm. Similarly, you have an obligation to avoid making such threats, even when you are provoked. State laws and school policies generally prohibit such threats and the First Amendment (see page 17) does not protect them.

A statement is considered a "true threat" when a reasonable person would foresee that the statement would be interpreted as a serious expression of intent to cause physical harm.

Generally, a statement made as part of a political speech is likely to be considered a rhetorical device and is protected speech. By contrast, a statement that conveys an actual plan to carry out violence against a specific individual is likely to be considered an expression of intent to cause physical harm

CASE STUDY

NAACP v. Claiborne Hardware Company

In a speech encouraging a boycott of all white-owned businesses in Claiborne County, Charles Evers stated to several hundred people, “If we catch any of you going into any of them racist stores, we’re gonna break your damn neck.” The Supreme Court held that Evers’s speech, even though it advocated the use of force, was constitutionally protected by the First Amendment. Crucial to the Court’s decision seems to have been the fact that this speech was not followed by acts of violence and there was no other evidence of Evers authorizing, ratifying, or directing acts of violence.

Practical Tips: Building Relationships and Alliances on Campus Before Controversy

Throughout your life, relationships you develop with friends and mentors will hopefully be a source of happiness and meaning. But in school as elsewhere, those relationship may also often be practically helpful in preempting conflicts and navigating obstacles. If you build friendships with those with whom you might disagree politically, those disagreements are less likely to turn toxic. And if you build relationships with campus and university leaders, and develop a reputation for honesty, responsibility and reasonableness before there is controversy, you are more likely to be taken seriously—and have advocates and allies—if controversies do arise.

STUDENT LEADERS

Student leaders, particularly of other campus ethnic, religious, or political groups, may be a helpful resource in avoiding or managing conflict. Especially in smaller campus communities, it may be possible to seek out and build relationships with students and student groups with whom you might have sharp differences. Having open communication or even genuine friendships with those with whom you are arguing can keep arguments substantive and help lower the temperature in debates.

As many students come to college in part to build relationships across ethnic and religious differences, leaders of campus religious or ethnic groups will often be particularly open and interested in meeting with Jewish student leaders. While you may eventually want to discuss Israel, it may be easier to begin by talking about shared cultural or religious interests or concerns.

Leaders of student government and campus political groups are often open to meeting with other students interested in politics or issue advocacy, and particularly with leaders of other student groups (like Hillel). If you are considering advocating that your student government adopt a position on an issue, it is usually worth having informal preliminary conversations with student leaders. And if you are seeking action by the university administration, other student leaders, and particularly student government leaders, can help you navigate the process and serve as advocates.

PROFESSORS

Most of your professors will have office hours that they have set aside for students. Visit your professors during those times to discuss your course materials or seek their advice on your academic career. Professors whom you know well will be more likely to offer advice, and potentially advocate on your behalf, if controversies related to Israel or other Jewish issues emerge.

You may also want to contact the Academic Engagement Network ("AEN") to ask about professors on your campus who have identified themselves as pro-Israel. These professors have already indicated their interest in mentoring students and combating the BDS movement in academia.

DEANS AND ADMINISTRATIVE PERSONNEL

While the deans or other administrative personnel at your school may not have official office hours, you can always ask to make an appointment to speak with them. At some colleges or universities, deans and other administrative personnel conduct town hall meetings or speak at events on campus. Attend these events and approach them afterwards to speak to them about what they discussed or ask them to grab a cup of coffee at another time. Especially in the era of Zoom, faculty and deans are often more accessible than ever.

MEDIA

Reporters and editors of your campus newspaper or alumni newsletters also play an important role in setting the terms and tone of campus discourse. Approach networking with these individuals as you would other peers on campus—ask them to grab a meal together or invite them to attend an event of mutual interest together.

ALUMNI, DONORS AND TRUSTEES

Other resources include university donors, alumni, and trustees. These individuals will generally care about your school. You also share certain common ground with these individuals and can connect with them through similar experiences you may have had at your school. Maybe you are a member of a student group they founded, lived in the same dorm as they did as students, or were taught by the same professor. Most alumni or career services offices on university and college campuses maintain a list of alumni who are willing to speak with students about their experiences or serve as mentors. Your student groups may even have alumni lists of former members of the group who are interested in speaking with current students. Reach out to these individuals, perhaps suggesting a call or a cup of coffee.

Avoiding Criminal Trouble when Exercising Your Rights

When advocating on campus, you should do your best to avoid violating any laws or university policies. And if you act reasonably and respectfully of others, it is highly unlikely that you will find yourself on the wrong side of law enforcement. If, however, you ever find yourself engaged with law enforcement or campus security, there are several basic practices you should be sure to follow:

- Comply promptly with all requests made by law enforcement officers and campus security (for example, to leave a certain location) even if you believe that you have done nothing wrong. Do not argue or resist a law enforcement officer during the interaction. You will always be better served addressing any violations of your rights after the controversy is over. Your failure to comply with a law enforcement officer's requests could get you arrested or worse.

- You generally do not have to answer an officer's questions about your conduct or advocacy. Especially if you think others may perceive you as having done something wrong, politely decline to answer and ask if you are free to go. If the answer is yes, then walk away calmly.

- If you are placed under arrest, or if an officer says that you are not under arrest but you are not free to go, you should politely decline to answer questions except for basic identifying information (such as your name) and ask for a lawyer.

Litigation: When All Else Fails. . .

When your rights are violated, litigation will generally be one of several options for addressing that violation. Nine out of ten times, it is better to pursue options other than litigation to resolve the situation because the costs (economic and other) of filing a lawsuit often outweigh the benefits. But keeping the threat of litigation on the table can often be a useful tool or incentive. And in some cases, litigation is the only solution. You should not be afraid of pursuing litigation to protect your rights, and you should rarely (if ever) take it completely off the table. But you should also be aware of, and consider, some of the negatives of pursuing that course of action.

PROS OF PURSUING LITIGATION

Some potential benefits of bringing a lawsuit are:

- it may help foster change on your campus or protect your rights as a student;
- it will set a precedent that will govern the rights of students on other college campuses;
- it may increase publicity for your cause.

Before filing a lawsuit, however, keep in mind that many of these benefits can be achieved using methods other than litigation.

COSTS OF PURSUING LITIGATION

Econominc Costs

Litigation can be quite expensive, both monetarily and timewise. If you decide to pursue litigation, you will need to hire a lawyer, pay the court fees for filing the action, pay for travel, and much more. There is also a

huge investment of time required in helping your lawyer understand the facts that led you to either bring the lawsuit or to be sued. You might also have to appear to testify either in court or at a deposition, where the other side's attorney gets to ask you questions about the incident at issue. Your testimony in court or at the deposition could last anywhere from a few hours to several days and will require hours of preparation time with your lawyer. If you have the right case, an organization, such as AJC, may be willing to pay the costs of the lawsuit to the extent permitted under the law.

Unintended Outcome

Bringing a lawsuit may not always result in your desired outcome. In fact, there is even the potential that your lawsuit will establish a harmful precedent that remains part of American law, potentially forever. In addition, bringing a lawsuit may suggest that Israel cannot win in the battle of ideas.

Duration

If your lawsuit is not settled shortly after being filed, the litigation could last years—possibly after you have graduated. Thus, even a good outcome in the litigation may be irrelevant for you personally.

Counter Lawsuits And Anti-Slapp Statutes

Initiating a lawsuit may cause the party you sue to assert his or her own claims against you putting you on the defensive. Additionally, many states have enacted what are known as anti-SLAPP statutes, which stands for "Strategic Lawsuits Against Public Participation." These statutes are intended to prevent individuals from bringing weak civil lawsuits to stop others from expressing their viewpoints by imposing substantial fines and penalties on individuals who bring such actions. If your state has implemented an anti-SLAPP statute, the party you sue could try to get the lawsuit thrown out on that ground.

CASE STUDY

Davis v. Cox

Members of a Washington State food co-op filed a lawsuit seeking to prevent the co-op's board from continuing a boycott of Israeli products and divesting from Israeli companies. The co-op's board of directors was successful in getting the lawsuit dismissed under the state's anti-SLAPP statute and won an award of over $200,000. On appeal, the Supreme Court of Washington partially reversed the lower court's order. It held that while the anti-SLAPP laws were enacted to prevent frivolous lawsuits that typically attempt to quash First Amendment rights, the use of the statute here essentially cut off the co-op member's right to bring a lawsuit.

While the co-op members eventually overcame the anti-SLAPP finding in their case, a similar lack of success following multiple appeals could result in a huge legal bill and an anti-SLAPP penalty to pay.

Appendix

UNDERSTANDING ANTISEMITISM

Contemporary Examples of Antisemitism Identified by the IHRA:

- Calling for, aiding, or justifying the killing or harming of Jews (often in the name of a radical ideology or an extremist view of religion).

- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective—especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions.

- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, the state of Israel, or even for acts committed by non-Jews.

- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.

- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interest of their own nations.

- Consult AJC's "Translate Hate" glossary to learn more about how antisemitic tropes, words, and symbols hide in plain sight, from the internet to pop culture: **ajc.org/translatehateglossary.**

White Nationalist Antisemitism

Although overt far-right antisemitism is rare on college campuses, the FBI has noted an alarming nationwide rise in incidents of right-wing and particularly white nationalist antisemitism. Although many Americans see most Jews as "white," white supremacists often consider Jews to be the primary enemy of a threatened nation of white Americans. According to a common white nationalist conspiracy theory, Jews are the central actors and planners in vast left-wing plot to "replace" white Americans with immigrants from other countries and thereby reduce the political and social status of white Americans. While you are unlikely to encounter right-wing antisemitism on campus, aspects of that worldview—that Jews exercise inordinate power and influence for their own benefit and against the wider community's interests—might be shared by antisemites across the political spectrum.

Antisemitism Relative To Israel

Antisemitism may also manifest itself with regard to the State of Israel. Criticism of Israel has to be considered in the overall context, and generally criticism that is similar to that leveled against another country is not antisemitic.

EXAMPLES OF ANTISEMITIC BEHAVIOR RELATIVE TO ISRAEL AS IDENTIFIED BY THE IHRA:

Demonizing Israel

- Characterizing Israel or Israelis using symbols and images associated with classic antisemitism.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Blaming Israel for all inter-religious or political tensions.

Holding Israel To A Double Standard

- Requiring Israel to behave in a manner not expected or demanded of any other democratic nation..
- Focusing on Israel only for peace or human rights investigations by multilateral organizations.

Delegitimizing Israel

- Denying only the Jewish people their right to self-determination, and denying Israel the right to exist.

The U.S. Commission on Civil Rights has found that anti-Israeli and anti-Zionist propaganda that is disseminated on many campuses include references to the medieval antisemitic blood libel of Jews slaughtering children for ritual purposes and stereotypes of Jews as greedy, aggressive, overly powerful, or conspiratorial.

NOTES

AJC American Jewish Committee

AJC's mission is to enhance the well-being of the Jewish people and Israel, and to advance human rights and democratic values in the United States and around the world.

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