

Hearing: “Combating the Rise in Hate Crimes”

Testimony Before the
SENATE COMMITTEE ON THE JUDICIARY

CHAIRMAN DICK DURBIN

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Chairman Durbin, Ranking Member Grassley, Honorable Members of the Judiciary Committee:

Thank you for inviting me to testify before you today, and thank you for focusing on the urgent problem of rising anti-Semitism, which poses a threat not only to Jews, but to all Americans.

My name is Elan Carr, and I served in the last administration as the U.S. Special Envoy to Monitor and Combat Anti-Semitism. In addition to my statutory role as America’s lead diplomat for fighting anti-Semitism overseas, the White House requested, and Secretary of State Mike Pompeo approved, that I work with the inter-agency in combating domestic anti-Semitism as well. During my time in office, I confronted Jew-hatred both at home and abroad, in its various forms and from its various sources, including the far right, the radical left, and militant Islam.

Prior to my federal appointment, I served for over a decade as a Deputy District Attorney for Los Angeles County, where I prosecuted violent felonies, among them hate crimes that carried specially-alleged hate crime sentencing enhancements. In 2003-04, I directly confronted the threat of militant Islam when I deployed to Iraq as a U.S. Army officer, during which time I helped to lead a joint anti-terrorism team and prosecuted terrorists who attacked Coalition troops.

At various times in my career, I focused intensively on confronting anti-Semitism on university campuses. As a former international president of Alpha Epsilon Pi (AEPi), I played a central role in developing programs and training courses on combating anti-Semitism that reached AEPi’s membership of 10,000 university students on 180 campuses across North America, Europe, and Israel.

I am currently a visiting fellow at the Heritage Foundation, a member of the Advisory Council of the Combat Antisemitism Movement (CAM), and a member of the National Security Advisory Council of the Secure Community Network (SCN).¹

¹ Titles and affiliations are for identification purposes only. The views expressed in this testimony are my own and do not necessarily reflect an institutional position of any of the organizations with which I am affiliated, including The Heritage Foundation or its board of trustees. Fellows of The Heritage Foundation testify as individuals discussing their own independent expertise. The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work. The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the United States. Its 2020 operating income came from the following sources:

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Senators, anti-Semitism is rising, not only overseas, but also right here at home. The most recent FBI statistics show that although Jews comprise only 2% of the American population, hate crimes against Jews amount to 60% of all religious-based hate crimes.² In its most recent *Audit of Antisemitic Incidents*, the Anti-Defamation League (ADL), recorded a 12% increase in acts of assault, vandalism, and harassment against Jews, marking the highest number of such incidents since the ADL began tracking this in 1979.³ And recent polling conducted by the Louis D. Brandeis Center for Human Rights Under Law found that a stunning 65% of university students active in Jewish organizations felt unsafe on campus because of physical or verbal attacks, and half felt the need to conceal their Jewish identity or support for Israel for the sake of their safety.⁴

These findings are truly alarming. Who could have imagined that less than 80 years after the end of the Holocaust, Jew-hatred could again be rising? Often called “the world’s oldest hatred,” anti-Semitism is a unique evil in terms of its ubiquity, longevity, insatiability, and destructive power. It was in recognition of the unique threat posed by anti-Semitism that Congress, with overwhelming bipartisan consensus, created an ambassadorship dedicated to combating this scourge. And that is also why your focus today on this topic is so important and so deeply appreciated.

Rather than dwell on the extent of the problem, allow me respectfully to propose seven tangible measures that if implemented would go a long way to reversing this terrible trend:

First, we should develop online tolerance programs for criminal defendants who show signs of radicalization, and we should train law enforcement personnel on employing such programs.

Many law enforcement officers, including prosecutors, do not have the tools to counter the process of radicalization in suspects motivated by ethnic, religious, or similar status-based hatred. This is especially so where the prosecution has limited coercive force because the crime is minor or the offender is a juvenile. When I prosecuted cases where hatred of the victim’s identity was a factor, or where the offender showed signs of radicalization even if the crime was unrelated, I would never close such a case before requiring the individual to undergo a tolerance program. This can be made a condition of probation or parole, or it can even be required of a suspect as a condition of foregoing a criminal filing.

In Los Angeles County, we are fortunate to have in our midst the Museum of Tolerance of the Simon Wiesenthal Center,⁵ a wonderful institution to which I myself have sent suspects, defendants, and juveniles, and which has made a significant and sometimes life-changing impact on those who experienced it. However, most counties or federal districts do not have convenient

The top five corporate givers provided The Heritage Foundation with 1% of its 2020 income. The Heritage Foundation’s financial records are audited annually by the national accounting firm of RSM US, LLP.

² <https://ucr.fbi.gov/hate-crime/2019/topic-pages/incidents-and-offenses>

³ <https://www.adl.org/what-we-do/anti-semitism/antisemitism-in-the-us>

⁴ <https://brandeiscenter.com/1st-poll-of-openly-jewish-college-students-reveals-65-felt-unsafe-50-hid-jewish-identity/>

⁵ <https://www.museumoftolerance.com/>

physical access to an institution like the Museum of Tolerance. The federal government can make a critical difference here by developing, and assisting states to develop, online tolerance programs of equivalent efficacy.

Consider that many jurisdictions require drivers to undergo traffic school in order to clear infractions from their record. Public safety demands that we institute a tolerance school as well, so that we never neglect opportunities for the criminal justice system to interrupt the process of radicalization in a person who is descending on a path of hatred and ruin.

Second, we should enforce Title VI of the Civil Rights Act in cases of anti-Semitic discrimination and harassment on campuses.

Because Jews are an ethno-national group as well as a religion, the Title VI prohibition against discrimination on the basis of race, color, or national origin applies to Jews. President Obama's Department of Education guidance made clear that Title VI prohibits anti-Semitic discrimination and harassment,⁶ and President Trump issued an Executive Order that further clarifies the application of Title VI to protect Jewish university students.⁷ Yet, despite this bipartisan consensus, the Office for Civil Rights (OCR) of the Department of Education has been slow to adjudicate Title VI complaints involving alleged anti-Semitism. Just last month, 39 Members of the House of Representatives, led by Representatives Ted Lieu and Ted Deutch, in a letter to Assistant Secretary of Education for Civil Rights Catherine Lhamon, stated that "significant delay" in OCR's processing of Title VI complaints involving anti-Semitism "are delaying justice and potentially allowing discrimination to persist on campuses across the country."⁸ This should be rectified at once.

Sadly, campuses have become hotbeds of hostility toward Jews and Jewish identity, especially when related to Zionism and the State of Israel. When that hostility gives rise to harassment and discrimination, we must apply the law to protect Jewish students.

Third, we should adopt the standard definition of anti-Semitism set forth by the International Holocaust Remembrance Alliance (IHRA).⁹

Defining anti-Semitism is a critical first step in combating it, and the IHRA definition is the global standard for doing so. It has been adopted across the world by 35 countries, over 250 provinces and cities, and over 350 educational institutions and other organizations. The Obama, Trump, and Biden Administrations have each used it,¹⁰ and some 20 U.S. states have endorsed it.

The IHRA definition is not a tool of censorship, but of education. Its greatest utility lies in its inclusion of 11 examples of contemporary manifestations of anti-Semitism, which allow us to

⁶ https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg5.html

⁷ <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-anti-semitism/>

⁸ https://lieu.house.gov/sites/lieu.house.gov/files/%5BFINAL%5D_Lieu_Letter_to_DOE_regarding_Title_VI_Complaint_Processing_%5B2.4.2022%5D.pdf

⁹ <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

¹⁰ <https://www.state.gov/defining-antisemitism/>

understand the different forms that anti-Semitism can take. Once adopted, the IHRA definition should be used in training programs, especially for law enforcement personnel and university administrators. An example from each of these two categories will illustrate how the IHRA definition can be helpful in correcting our course:

One example concerns the hostage crisis at Congregation Beth Israel in Colleyville, Texas. The FBI had originally stated that the terrorist's motives did not specifically relate to the Jewish community. After widespread criticism, the FBI reversed itself and called the attack an anti-Semitic hate crime. Some experts noted that the FBI's error is symptomatic of an insufficient understanding by law enforcement leaders of how anti-Semitism is often manifested.¹¹ Incorporating the IHRA definition into law enforcement training on anti-Semitism will likely reduce such unfortunate errors.

A second example concerns Diversity, Equity, and Inclusion (DEI) officers on university campuses. A recent study by the Heritage Foundation surveyed nearly 800 campus DEI officers and found that their social media posts reflect pervasive hostility to Israel.¹² The University of Maryland is a case in point: Its DEI officer in charge of the University's anti-Semitism task force libelously tweeted that Israel is engaged in "ongoing genocide and ethnic cleansing of Palestine."¹³ Incorporation of the IHRA definition into the course of training of campus DEI personnel may lead to a feeling of greater inclusivity for Jewish students.

Fourth, the Department of Homeland Security should improve, expand, and streamline its Non-profit Security Grant Program (NSGP).

This program allows community institutions at high risk of being targeted to receive grants for physical security enhancements, such as secure doors and video surveillance cameras. However, the application program has at times been flawed. Pending legislation, H.R. 6825, seeks to improve this program by increasing its funding, establishing a program office to ensure consistency among applicants across the country, and better assessing threats that face certain communities. It is of critical importance that potentially-targeted community institutions are able to make comprehensive investments — from doors and cameras to panic buttons and armed guards — to secure their safety. An expansion and improvement of NSGP is an essential step in achieving this.

Fifth, we should devote resources to countering the torrents of hate on the Internet and social media, without violating free speech protections.

For all the good they bring, the Internet and social media have also been the chief vectors of anti-Semitism and so many other societal ills. A European study found that online radicalization is efficient, effective, and powerful, and what begins online can lead to terrible real-world consequences. To address this challenge within the framework of the First Amendment,

¹¹ <https://nypost.com/2022/01/17/jewish-leaders-call-fbi-comments-on-texas-hostages-insulting/>

¹² <https://www.heritage.org/education/report/inclusion-delusion-the-antisemitism-diversity-equity-and-inclusion-staff>

¹³ <https://freebeacon.com/campus/university-of-marylands-anti-semitism-task-force-chief-has-history-of-anti-israel-statements/>

Secretary Pompeo and I convened the first-ever U.S.-government sponsored conference focused on combating online hate.¹⁴ A number of solutions were presented, among them using artificial intelligence to analyze social media posts in real time to predict when and where violence is likely to occur; creating partnerships between civil society and internet advertisers so that advertising dollars are voluntarily channeled away from hateful content; creating networks of Internet users who can collaborate to challenge hateful posts most likely to gain traction; and using social media platforms to educate users on the IHRA definition of anti-Semitism.

We should continue to encourage this work through follow-on conferences, working groups, and grants, because there can be no solution to rising anti-Semitism that does not focus on the primary vehicles through which hatred is currently being propagated.

Sixth, we should combat anti-Semitism proactively through philo-Semitism.

No battle can ever be won only by playing defense. Going on the offense against anti-Semitism requires that we drive a narrative that inculcates an understanding and appreciation of the remarkable story of the Jewish people and the values of Judaism that played a central role in the founding, heritage, and continuing mission of the United States. Since 1980, every President of the United States, with Congressional authorization, has declared a period of time for doing exactly this. It began as Jewish Heritage Week, and then became Jewish American Heritage Month, which is every May. We should encourage states and school districts to work with relevant organizations so that Jewish American Heritage Month becomes the impactful occasion it was intended to be.

Seventh and finally, we should formalize the Special Envoy's domestic mandate.

We cannot expect to be successful in combating domestic anti-Semitism unless we place someone in charge of the task. The last White House considered this question and determined that it is most efficient and effective for the Special Envoy to be charged with the domestic role, rather than another government official, because of the global character of anti-Semitism; the borderless nature of the Internet and social media; the Special Envoy's expertise, rank, and enhanced staffing; and the need for coordinated messaging and policy. Given that the task must involve inter-agency coordination, authorizing a role for the Special Envoy within the White House Domestic Policy Council would be a very effective move in the fight against anti-Semitism. This was never formalized during the last Administration, but Congress now has the opportunity to do so.

These seven measures do not exhaust the list of what may be done, but they represent attainable actions that will likely produce far-reaching results. If we focus on achievable steps such as these, I am confident that we will roll back this scourge and build the better and more just world that our children and grandchildren so richly deserve.

Thank you again for your time.

¹⁴ <https://www.state.gov/wp-content/uploads/2020/10/Ancient-Hatred-Modern-Medium-Program.pdf>