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House of Representatives Committee on the Judiciary

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“Examining Anti-Semitism on College Campuses”
United States House of Representatives Committee on
the Judiciary
November 7, 2017

Testimony of Pamela S. Nadell

PREFACE

On a chilly fall morning, I passed through security into the Rayburn Building, found the House Judiciary Committee hearing room, and took a seat—where I never thought I would be—at the witness table.

How did I come to testify before the US House of Representatives Committee on the Judiciary? Three weeks before the committee convened the hearing, “Examining Anti-Semitism on College Campuses,” Kenneth Stern, executive director of the Justus and Karin Rosenberg Foundation, called. During World War II, Danzig-born Justus Rosenberg, known as Gussie, was a courier for Varian Fry’s Centre Américain de Secours, which had rescued 2,000 artists and intellectuals, among them Marc Chagall and Hannah Arendt, from Vichy France. After the war, Rosenberg came to America; became a professor of European history, literature, and culture; and, around 2014, established a foundation to fight antisemitism. Kenneth Stern, formerly of the American Jewish Committee, was its executive director.¹

Stern was looking for a scholar who shared the foundation’s concern about a bill then wending its way through Congress, the Anti-Semitism Awareness Act. The act proposed codifying the State Department’s 2010 fact sheet “Working Definition of Anti-Semitism” and its examples which were adapted from the European Monitoring Center on Racism and Xenophobia. At the AJC, Stern had been the lead author on the working definition for the European Monitoring Center. There it provided guidance for gathering data on antisemitic incidents.²

1. Sarah Wildman, “The Professor Has a Daring Past,” *New York Times*, April 29, 2016.

2. “Working Definition of Anti-Semitism,” United States Department of State, 2010, <https://2009-2017.state.gov/documents/organization/156684.pdf>. The European Monitoring Center is now called the European Union Agency for Fundamental Rights.

Turning the State Department's fact sheet into federal law would transform this rubric for compiling data into a statute used to investigate complaints under Title VI of the 1964 Civil Rights Act. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal funding, like those at colleges and universities.³

I knew little about the bill, but I know something about antisemitism. My regular Jewish history rotation at American University includes a survey where I introduce the tropes of medieval anti-Judaism and their consequences and a course on the Holocaust. For about a decade, I also taught the history of anti-Judaism and antisemitism to parochial Catholic school educators for the Anti-Defamation League's Bearing Witness summer institute on the Holocaust.

Stern walked me through the bill's legislative tangle. The previous December, the Senate, without a committee hearing and without any meaningful debate, had passed the Anti-Semitism Awareness Act just hours after it was introduced. The House was then poised to follow suit. A parallel resolution had been introduced and was about to bypass committee deliberation. Then the American Civil Liberties Union sounded the alarm: The bill posed a "serious threat" to the First Amendment's guarantee of free speech.⁴ The ACLU called for careful consideration of the bill. Now more than ten months later, that was about to get underway in the House.

Stern had spoken with colleagues I admire who shared the ACLU's and his concerns about the bill. But none was available to testify. My name had come up; I was conveniently located in Washington. Would I do it?

In the following days, I spoke with colleagues who urged me to step forward. A former student with long experience on the Hill told me not to waste my time. The bill would fly through the House. I consulted with the Association for Jewish Studies Executive Committee because I was then AJS President.

Meanwhile, I began thinking long and hard about the fact sheet and its addenda "Contemporary Examples of Anti-Semitism" and "What

3. Title VI, Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964). The courts extended anti-discrimination protections to Jews on the basis of their shared ancestry or ethnicity. See *Shaare Tefila Congregation et al. vs. Cobb et al.*, 481 U.S. 615 (1987). California and South Carolina also waded in: Pen America, press release, "Overbroad South Carolina 'Anti-Semitism' Bill Offends Free Speech, Makes Same Mistake as Federal Legislation," May 4, 2017, <https://pen.org/press-release/overbroad-south-carolina-anti-semitism-bill-offends-free-speech-makes-mistake-federal-legislation/>.

4. Karin Johnson and Michael W. Macleod-Ball, letter, "Oppose H.R. 6421/S. 10, The Anti-Semitism Awareness Act of 2016," December 5, 2016, <https://www.aclu.org/letter/oppose-br-6421s-10-anti-semitism-awareness-act-2016>.

is Anti-Semitism Relative to Israel?" Other than my preference for the spelling of antisemitism,⁵ I had no problem with the working definition:

Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

But I became increasingly uneasy about the examples and their implications for curbing free speech. They include comparing "contemporary Israeli policy to that of the Nazis" and "applying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation." Israelis may and do express such notions. But, if eighteen-year-old American college students voiced them, they could find themselves charged with a Title VI violation.⁶

I agreed to testify. Anyway, I figured that mostly staffers would show up. That was, reported friends with Congressional experience, standard operating procedure for most committee hearings.

So, on that fall morning, I headed off to the Hill. I had already submitted my written remarks. They follow this preface. There I focused on the ostensible subject of the day, antisemitism on the campus. I highlighted the long history of American antisemitism. I pointed to how American Jews had benefitted from the First Amendment freedoms of worship, speech, press, and peaceable assembly. I also acknowledged that these rights allowed others to voice their contempt for Jews and Judaism.

In my remarks I drew on language from the Anti-Semitism Awareness Act that would provide relief for "a hostile environment so severe, pervasive, or persistent so as to interfere with or limit some students' ability to participate in or benefit from the services, activities, or opportunities offered by schools." The fundamental question seemed to me to be campus climate. Was it so hostile as to impinge on Jewish college students' learning and thriving as to require this legislation? I cited scholarly studies that support my observations that campuses remain largely, if not overwhelmingly, comfortable for the currently estimated 290,000 Jewish undergraduates.⁷

5. International Holocaust Remembrance Alliance, "Memo on Spelling of Antisemitism," https://www.holocaustremembrance.com/sites/default/files/memo-on-spelling-of-antisemitism_final-1.pdf. See also, Deborah E. Lipstadt, *Antisemitism: Here and Now* (New York: Schocken, 2019), 22–25.

6. "Working Definition of Anti-Semitism." See also Smadar Sheffi, "A Quest for New Memory: Contemporary Israeli Artists Representing the Holocaust and Its Commemoration," unpublished paper, 2015.

7. Leonard Saxe, et al., "How Many Jewish Undergraduates?", *EJewish Philanthropy*, May 22, 2018, <https://ejewishphilanthropy.com/how-many-jewish-undergraduates/>.

I still stand by what I wrote then. I deplore that antisemitism surfaces on campuses just as it does elsewhere and know that Jewish students, faculty, and staff may be adversely affected when it does. But my conceptual baseline was the proposed legislation. Do American college campuses display “a hostile environment so severe, pervasive, or persistent” as to interfere with Jewish students’ success? Based on the evidence I brought forward and my experiences in the academy, the answer then and now remains no.

As the room began to fill, I took my seat between Rabbi Andrew Baker of the American Jewish Committee, who had co-authored the working definition with Kenneth Stern, and Rabbi Abraham Cooper of the Simon Wiesenthal Center. They were joined in supporting the bill by the Anti-Defamation League, Christians United for Israel, and Paul Clement, the 43RD US Solicitor General, who was there to convince Congress that the act did not violate the First Amendment. The Jewish community and its allies faced off against the Rosenberg Foundation; the writers’ champion of free expression, Pen America; Wake Forest University Professor Barry Trachtenberg, whose book *The United States and the Nazi Holocaust: Race, Refuge, and Remembrance* was then in press; and me.

Quickly it became clear that this was no inconsequential examination, but rather a full hearing of the House Committee on the Judiciary. We witnesses were each given five minutes to summarize our written remarks. Then, for the next two hours, a majority of the forty members of the committee floated in and out, sometimes posing questions, more often reading statements for the record which frequently bore little relation to our written or oral testimonies.

Although Congressional witnesses are not to address one another, some gleefully broke protocol by going on the attack. My favorite barb came from Abraham Cooper of the Wiesenthal Center. After currying favor with Ranking Member John Conyers (D-Michigan) by reminding him about their time together in the Civil Rights movement—this was before Conyers, after accusations of sexual harassment, stepped down as the committee’s ranking Democrat—he dissed Professor Trachtenberg and me. Cooper suggested that inviting us to testify was “like inviting people from the Flat Earth Society to a hearing about NASA.”⁸

8. For the full testimony, see, “House Judiciary Committee Holds Hearing on Issues of Antisemitism on College Campuses,” November 7, 2017, <https://www.youtube.com/watch?v=vv08M3wWG1k>. Cooper’s comment was quoted in Ron Kampeas, “Jew vs. Jew as Congress Weighs a New Definition for Anti-Semitism,” *jweekly.com*, November 7, 2017, <https://live-jweekly.alleydev.com/2017/11/08/jew-vs-jew-congress-weighs-new-definition-anti-semitism/>.

Nevertheless, I sensed early on that Committee Chairman Bob Goodlatte (R-Virginia) understood just what was at stake. During his five minutes of questioning, Goodlatte turned to AJC's Baker, who had conceded in his written testimony that the definition of antisemitism had changed over time. Goodlatte asked: Shouldn't that fact "counsel against codifying any particular definition of antisemitism?" Baker equivocated on his answer. Goodlatte then turned to me. Noting that Kenneth Marcus, a lawyer who had fought antisemitism as president of the Louis D. Brandeis Center for Human Rights Law, had just been nominated to be assistant secretary for civil rights in the Department of Education, he asked whether it might not be best to wait and see the outcome of the cases that would fall under his jurisdiction before legislating the working definition into statutory law. Of course, I agreed. When the chairman asked Anti-Defamation League CEO Jonathan Greenblatt the same question, Greenblatt responded that expeditiously passing the bill remained the best solution.

In the end, the bill never passed in the 115TH Congress. I presume that it was never reported out of committee.

Yet, as I write these remarks in the summer of 2019, the Anti-Semitism Awareness Act has been reintroduced into the 116TH Congress.⁹ Since that hearing in the autumn of 2017, antisemitism, including horrifically murderous antisemitism, has continued to spike in the US. It comes from the right and the left. Each week, sometimes each day, brings new evidence. I'm writing these remarks the week the president of the United States accused Jews who vote for a Democrat of "great disloyalty."¹⁰ That will be old news by the time this appears.

Perhaps in today's climate, the bill, with its rather bland title, will pass. But maybe it won't. So far, neither the Senate nor the House has sent it to committee.

Kenneth Marcus, who was confirmed as the Department of Education's assistant secretary for civil rights after a contentious battle, recently reflected that, of the 10,000 to 15,000 complaints his office receives each year, "only...a handful" are about antisemitism. When asked specifically about the Anti-Semitism Awareness Act, he admitted: "To adopt a definition formally would require something that is probably beyond the scope of enforcement actions." His office uses the Interna-

9. "Anti-Semitism Awareness Act of 2019," S. 852, 116TH Congress, 1ST sess., March 14, 2019; H.R. 4009, 116TH Congress, 1ST sess., July 25, 2019.

10. "Trump: Jewish People Who Vote Democratic Show 'Great Disloyalty,'" <https://www.nbcnews.com/politics/donald-trump/trump-jewish-people-who-vote-democrat-show-great-disloyalty-n1044621>.

tional Holocaust Remembrance Alliance's definition of antisemitism for investigating complaints.¹¹

Given Marcus's recent remarks, the reintroduction of the Anti-Semitism Awareness Act seems, to me, to be the politics of the gesture. I would be surprised if it passed. But what does not surprise me is that Jewish communal organizations continue to push for it. So much of American Jewish history is the story of intra-Jewish communal fighting. The Anti-Semitism Awareness Act is another episode in the long history of *Jew vs. Jew*, to borrow the title of Samuel Freedman's terrific book.¹² It pits those who think they know what is best for America's Jews—the government stepping in to combat antisemitism—against those who also think that they know what is best for America's Jews—standing up for the First Amendment.

11. Jackson Lipman, "At U.S. Department of Education, Kenneth Marcus Tackles Anti-Semitism in All Its Varied Forms," *JNS.org*, July 24, 2019, <https://www.jns.org/at-us-department-of-ed-kenneth-marcus-tackles-anti-semitism-in-its-varied-forms/>.

12. Samuel G. Freedman, *Jew vs. Jew: The Struggle for the Soul of American Jewry* (New York: Simon & Schuster, 2000).