

The Resurgence of Antisemitism in American Higher Education

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KEY TAKEAWAYS

Antisemitism is back, as the events on America's campuses have proved in the months since Hamas's savage attack on Israel and its people on October 7, 2023.

Several lawsuits have been filed against universities for fostering a campus environment hostile to Jewish students.

If the plaintiffs can prove their claims, American law allows them to obtain relief under one or more of the legal doctrines that they have invoked.

A Cascade of Antisemitism on American College Campuses

In the world of virology, a communicable disease can become an epidemic as a virus is passed from one person to another and increases the number of affected individuals. A similar phenomenon, however, can take place outside of science. The term “cascade” describes a cognitive psychological process by which an idea, an attitude, a credo, a policy, or some comparable expression of knowledge or belief captures the mind of an increasing series of parties, multiplying the effect of the original thought through its endorsement by a large number of people regardless of its original merit.¹ For example, individuals can hold a particular belief because of a large and growing number of other people who find it credible. Some scholars have used that model to describe the spread of antisocial

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conduct and crimes following a particularly noteworthy event.² An example would be the widespread riots following the death of George Floyd while in the hands of the police in 2020.³

It is important to keep two points in mind when thinking about cascades. One is that it is a mistake to conclude that a widely held proposition is correct simply because a large number of people endorse it. LeBron James might be seen as the GOAT (Greatest of All Time for non-sports fans) in professional basketball today, but that belief could merely reflect the fact that the number of people who remember the exploits of Michael Jordan, Kareem Abdul-Jabbar, or Bill Russell grows smaller over time. A crowd effect also could be an example of the blind leading the blind.⁴ The second point is that a particular cascade can be harmless or pernicious. The 1970s “Pet Rock” phenomenon was an example of the former, and widespread, neighborhood racially exclusionary housing discrimination is an example of the latter.⁵ Unfortunately, we are in the midst of just such a malignant bias right now.

Antisemitism was thought to be an attitude without legitimate purchase in the United States. The text of the Constitution prohibits the adoption of a religious qualification as a prerequisite for holding federal office,⁶ and the First Amendment’s Free Exercise Clause bars the federal or state governments from denying anyone the ability to adopt whatever religious beliefs he or she chooses to treat as sacred.⁷ But culture can be upstream or downstream of the law. In the case of antisemitism, American society did not extirpate it; it merely drove antisemitism underground, where it lay in wait for a chance to return.⁸ Sadly, it’s back, as the events on America’s campuses have proved in the months since Hamas launched its brutal, murderous, and savage attack on Israel and its people on October 7, 2023.⁹

Despite our best efforts to eliminate it, antisemitism, like crime, is the result of a human character defect that seems bent on challenging the cockroach for its ability to survive. Even before the October 7 attack, antisemitism had not disappeared, including from American institutions of higher learning, which should not have been a welcome site for its vile hatred.¹⁰ The raft of antisemitic words, chants, and actions—uttered and endorsed not only by college students who might be excused for their immaturity,¹¹ but also by college faculty members who cannot claim that excuse¹²—give evidence of a serious problem with many—fortunately, not all—of the nation’s institutions of higher education.¹³ What are ordinarily thought of as bastions of America’s higher learning are infected with a left-wing, identity-politics rot that posits a Manichean view of the world as divided into Oppressors and Oppressed, with Jews lumped into the former category, and spiced with more than a dollop of “hatred for the values of Western Civilization.”¹⁴

Today, it is Jews who must be silenced, put in their place, and, if necessary, excluded from the benefits of American society by making university life so uncomfortable for them that they go elsewhere. Tomorrow, that elsewhere might be *sheol* or worse. Unless this poisonous value system is extirpated from American society, the dream of America as a melting pot will itself dissolve into a Hobbesian war of all against all as every race, religion, and social class treats every feature of American life as a zero-sum game demanding a fight to the death. We must stop it now. We must draw a line forbidding Leftist Marxists and Nihilists from further corrupting our colleges.

This *Legal Memorandum* is intended to help that process along. The opening parts will describe the necessary background: what happened in Israel on October 7, 2023, and what followed on America's campuses during the 2023–2024 school year, activities that might reoccur this fall when universities commence a new academic year. This *Legal Memorandum* then goes on to identify some of the legal claims that could be brought against universities for sowing, watering, and feeding antisemitism in what should be one of the last places its despicable head should appear: America's educational system.

Hamas's October 7, 2023, Attack on Israel

Hamas,¹⁵ a terrorist organization—so designated by the United States and the European Union¹⁶ and whose “covenant...urges the slaughter of Jews ‘smitten with vileness wherever they are found’” and “obliteration of the state of Israel”¹⁷—has controlled Gaza since 2007 when it wrested that status from the Palestinian Authority.¹⁸ Committed to the destruction of Israel and its residents, Hamas has committed acts of terrorism against Israel for years. As a defensive measure, Israel occupied Gaza from 1967 to 2005.¹⁹ Yet just as December 7, 1941, is “a date which will live in infamy” for the United States,²⁰ October 7, 2024, the third deadliest terrorist attack since data started being kept in 1970, will have the same status for Israel.²¹ “The death toll exceeds the number of Israelis killed in all violence between Israelis and Palestinians over the prior 20 years.”²² A greater number of Jews were murdered on October 7—more than 1,300—than on any other day since the Holocaust. Considered proportionally, the number of people killed on October 7 was slightly more than one for every 10,000 Israelis. Compared to the 9/11 attacks, that ratio is commensurate with the death of 40,000 to 50,000 Americans.²³

At dawn on that day, the Jewish holy day of Sukkoth, Hamas launched an unannounced, organized, multipronged attack accompanied by 2,200

mortars and rockets fired as cover for the invasion.²⁴ Hamas “infiltrated border communities and army bases, as well as an outdoor music festival, opening fire on men, women and children.”²⁵ As the Office of the United Nations Secretary General concluded, “The complexity and modus operandi of the attacks appears to demonstrate a significant level of planning, coordination and detailed prior knowledge of the targets selected, including civilian ones.”²⁶ The terrorists were well equipped with “high caliber and military grade weapons and equipment ranging from rocket propelled grenades, automatic rifles, often reported by witnesses as M16s or Kalashnikovs, ample ammunition, grenades, explosives, flammable substances, and restraints including zip ties.”²⁷

Hamas executed a sophisticated invasion up to 15 miles inside of Israel to catch unaware, ensnare, torture, and murder the civilian population and assault military targets.²⁸ At nearly 30 points in the fence around Gaza, more than 1,000 Hamas fighters overcame Israel’s physical defenses—a nearly 40-mile-long, 20-foot-high barrier with cameras, radar and other sensors, and barbed wire coupled with observation towers every 500 feet using emplaced, automatic machine guns—by using a combination of tactics.²⁹ Some terrorists broke through the barrier (using explosives and bulldozers) in technical vehicles; others went over it (using fan-powered paragliders) under cover of a rocket barrage.³⁰ Once inside, Hamas wounded 3,300 people and massacred more than 1,300 others—sometimes in an especially grisly manner³¹—22 of whom were Americans, perhaps 87 percent of them civilians, before the Israel Defense Forces could prepare an organized counterattack.³²

Murder was not the only weapon that Hamas unleashed on Israel. Hamas kidnapped approximately 240 others, dragging them back to Gaza to serve as “bargaining chips” for Hamas or trophies to be displayed in Hamas’s underground tunnels.³³ Most of the hostages were Israelis, but some were from elsewhere, including the United States. Some were women and children. Some were alive; others, dead. More than 100 of the people kidnapped have not yet been released, remaining hostages or worse.³⁴ The hostages also have been victims of ongoing sexual violence.³⁵

Hamas denies it³⁶—the refusal to accept responsibility for its terrorist acts seems to be par for the course when it comes to Hamas³⁷—but Hamas terrorists also used rape as a weapon of terror against Israeli women.³⁸ Both the Office of the United Nations Secretary General and *The New York Times* so concluded.³⁹ In fact, to illustrate the utterly cold-blooded and wicked nature of Hamas’s barbaric conduct, some terrorists actually filmed their own and their cohorts’ commission of human rights atrocities using body

cameras and cellphones,⁴⁰ conduct that *Atlantic* writer Graeme Wood called “pure, predatory sadism.”⁴¹ In short, as the U.N. Secretary General’s Office concluded:

[Hamas engaged in] an indiscriminate campaign to kill, inflict suffering and abduct the maximum number possible of men, women, and children, soldiers and civilians alike—in the minimum possible amount of time. People were shot, often at close range; burnt alive in their homes as they tried to hide in their safe rooms; gunned down or killed by grenades in bomb shelters where they sought refuge; and hunted down at the Nova music festival ground. Other violations included sexual violence, abduction of hostages and corpses, the public display of captives, both dead and alive, the mutilation of corpses, including decapitation, and the looting and destruction of civilian property.⁴²

American Campuses Are Rocked by Antisemitism

Before the spring semester ended in 2024, America’s campuses became the scene of large-scale protests reminiscent of the ones that took place late in the 1960s in opposition to the Vietnam War. College students—at least some of whom likely were either callow or ignorant of what happened on October 7⁴³—overtook American universities to utter antisemitic slogans and—inexplicably—blame Israel for Hamas’s attacks and horrific brutality.⁴⁴ Yet students were not the only ones to spout them. Some college faculty,⁴⁵ allied personnel,⁴⁶ and professional rabble rousers⁴⁷—who do not have the excuse of immaturity that students can cling to—also blamed Israel for Hamas’s barbarity, spouted vile antisemitic chants, issued absurd demands, or possibly (because some number of protesters were masked) assaulted Jewish students and others.⁴⁸ For example, a Cornell University professor claimed that the horrors were “exhilarating” and “energizing.”⁴⁹ A Columbia University professor described the Hamas attacks as “awesome.”⁵⁰ Apparently, neither one called for the release of the hostages held by Hamas or was disturbed by the sexual assaults on Israeli women by Hamas fighters.

The opposition, begun after the October 7 attacks, reached a crescendo this spring⁵¹ as schools like Columbia University, Harvard University, MIT, New York University, Northwestern University, the University of Pennsylvania, and others saw in-person classes halted, buildings occupied and damaged, student life roiled, and graduations disrupted by rabid antisemitism.⁵² Students and associated parties created encampments on campuses that ultimately often had to be cleared by police officers in riot

gear.⁵³ Protesters issued demands—again, which apparently did not include releasing the Hamas-held hostages—that were sometimes nonsensical and therefore were more likely an exercise in virtue signaling than a serious call to alleviate any alleged suffering by Palestinians.⁵⁴ In any event, the protests, along with the universities’ passive response, displayed a troubling, antisemitic image of American higher education.

At their core, according to one commentator, was “an unholy alliance of radical Islamists, rabid antisemites, and revolutionary Marxists” who “hate the Jews,” both as members of that faith and “as avatars of everything they hate about the West,” and also “hate Israel as a colonial outpost of the United States in the Middle East.”⁵⁵ Protesters shouted slogans like “From the river to the sea, Palestine will be free,” a thinly veiled endorsement of slaughtering the 9.6 million people living in Israel. Chants like “October 7 will be every day,” “Globalize the intifada,”⁵⁶ “Death to the Zionist state,” “Burn Tel Aviv to the ground,” and “Go Hamas, we love you, we support your rockets, too” are among the “routine calls for their execution” that Jewish students have been made to endure.⁵⁷ Atop that, Cornell saw an outbreak of threats to ‘shoot up’ a building and rape and slash the throats of Jewish students on campus by pseudonymous harassers calling themselves “‘hamas,’ ‘jew evil,’ ‘jew jenocide,’ ‘hamas warrior’ and ‘kill jews.’”⁵⁸ One person made that point Kristallnacht-clear by saying that, like Nazis, “Zionists don’t deserve to live.”⁵⁹ The *Times of Israel* reported that “anonymous antisemitic posts on a Greek life website” at Cornell contained these statements from an antisemitic erstwhile e.e. cummings: “‘If i see a pig male jew i will stab you and slit your throat,’” and “‘If i see another pig female jew i will drag you away and rape you and throw you off a cliff. if i see another pig baby jew i will behead you in front of your parents.’”⁶⁰ That is what hundreds of thousands of dollars in tuition and other costs buys a student at an Ivy League school these days.

The lunacy and odiousness were not limited to students who might be forgiven for lacking maturity and being blinded by a desire to belong to something that gives them a purpose in life.⁶¹ Much of the universities’ responses took the form of malign neglect or willful blindness to what was happening on campus.⁶² Some went further, capitulating to the protesters’ demands. Northwestern University is an example of the latter.⁶³ It agreed to support visiting Palestinian faculty and students for two years and establish five full scholarships for Palestinian undergraduates.⁶⁴ Apparently, no one at Northwestern ever camped out West. The National Park Service tells campers never to feed bears, because feeding the beasts only encourages them to come back for more.

But that is not all. When testifying before Congress, the presidents of Harvard University and the University of Pennsylvania refused to condemn the endorsement of the genocide of the Jewish people as a violation of their college's codes of conduct.⁶⁵ "When the president of a university refuses to condemn genocide without first considering the 'context' of a call for the extermination of millions of people, it is easy to see how numbskull students might believe that anything goes."⁶⁶ Part of Columbia University became a tent city to protest—in truth, to protest the right of Israel and Jews to exist. The George Washington University Law School chose to treat its students like jurors in a Mafia trial by moving final exams to an undisclosed location.⁶⁷ The University of Southern California cancelled its graduation ceremonies, possibly in part because of the fear that it could not restrain the disruptive Hamas supporters whom the school thought would show up just to torpedo a celebratory event.⁶⁸

The phenomenon of avowed, widespread antisemitism on America's campuses—once thought to be a movement that could not possibly arise in this nation—has several parents. Hamas has generated both sympathy for its murderous terrorist members and worldwide outrage at Israel's efforts to prevent the reoccurrence of the rapes and murders that Hamas willfully inflicted on innocent people in Israel on October 7, 2023. Certain elements of the media have also displayed slavish affection for "The Squad," a small group of members of the U.S. House of Representatives who have ignored Hamas's vile conduct on that day. And all that *without* the media demanding that Hamas release the hostages taken on October 7—people who did not provoke the attack, let alone the resulting barbarity, by doing anything other than being Jewish or being in the company of Jews.

The Available Remedies

Several lawsuits have been filed against universities for fostering a campus environment hostile to Jewish students.⁶⁹ To date, the lawsuits have been filed in federal court, but plaintiffs could bring suit in state court as well. As a legal basis for challenging the universities' hostile environments, Jewish plaintiffs could invoke the First Amendment Free Exercise Clause,⁷⁰ the Fourteenth Amendment's Equal Protection Clause,⁷¹ the Civil Rights Act of 1866,⁷² Title VI of the Civil Rights Act of 1964,⁷³ and potential state law claims as well. The two constitutional provisions prohibit state universities from discriminating on the basis of religion, and the two statutes impose the same duties on private schools that receive federal funds.⁷⁴

Consider the allegation made in one of those lawsuits.

On November 29, 2023, the Louis D. Brandeis Center and Jewish Americans for Fairness in Education (JAFE), on behalf of the organization and its members who are undergraduate, graduate, and law students, and faculty, at Berkeley, filed a lawsuit in the United States District Court for the Northern District of California against, among other parties, the Regents of the University of California.⁷⁵ The plaintiffs alleged that there has been a long-standing and still enduring practice on the California state university to overlook “on-campus displays of hatred, antisemitism, and physical violence against Jews,”⁷⁶ as well as antizionism, which is a form of antisemitism.⁷⁷ As an example of that hostility, at least 23 Berkeley law student organizations “have enacted policies to discriminate against and exclude Jewish students, faculty, and scholars.”⁷⁸ Under the policies adopted by those organizations, “Jewish students, faculty, and guest speakers must deny a central part of their cultural, ancestral heritage and a fundamental tenet of their faith in order to be eligible for the same opportunities Berkeley accords to others.”⁷⁹ The dean of the Berkeley Law School acknowledges that anti-Zionism is a form of antisemitism but has not interceded on behalf of the school’s Jewish students.⁸⁰ “Conditioning a Jew’s ability to participate in a student group on his or her renunciation of a core component of Jewish identity is no less pernicious than demanding the renunciation of some other core element of a student’s identity—whether based on race, ethnicity, gender, or sexual identity,” something that would never be demanded of other identifiable student groups.⁸¹ “By abdicating responsibility and failing to act as required by UC rules and U.S. law, the University has enabled the normalization of anti-Jewish hatred on campus. Jewish students feel compelled to hide their identities.”⁸² Those insults have continued since the October 7 attacks on Israel.⁸³ “Jewish students at UC Berkeley have been the targets of harassment and physical violence.” As an example, the complaint states that (1) “[a] Jewish student draped in an Israeli flag was attacked by two protestors who struck him in the head with a metal water bottle;” (2) “Jews on campus have been receiving hate e-mails calling for their gassing and murder;” and (3) “Jewish students have reported being afraid to go to class, which would require them to pass through the pro-Hamas rallies taking place in Berkeley’s main thoroughfares.”⁸⁴ If proved, the plaintiffs argue, these allegations constitute a violation of the Equal Protection and Free Exercise Clauses, as well as the federal civil rights laws.⁸⁵ The plaintiffs are seeking declaratory and injunctive relief as well as an award of attorneys’ fees.⁸⁶

A complaint is not itself proof; it consists of allegations that the plaintiffs intend to show to establish a violation of law that injures them and

entitles them to a judicial remedy of some type. The allegations here are quite serious, even greatly disturbing. They reflect a division of rights and responsibilities that is not impartially applied regardless of a student's creed. It is the educational equivalent of a hostile work environment.⁸⁷ Indeed, the allegations are precisely the type of conduct that we would expect to see if *Group A* intended to ostracize, separate, and isolate—not just subtly, but openly and blatantly—*Group B* from the educational opportunity that universities contract with Jewish students to provide them.⁸⁸ No college includes in its online campus life descriptions or printed brochures joyous descriptions of how Jews can expect to be treated like second-class students—and people—if they decide to enroll in their schools. Yet what we saw across public and social media this past spring is scarily reminiscent of what Jews faced in Germany early in the 1930s. In fact, on-campus assaults up the ante. American law does not allow a government entity to pick among religions for the purpose of allowing one group of students—aided and abetted by faculty, administrators, or outsiders—to oppress another group because the latter holds religious beliefs that make others uncomfortably or firmly reject. If the plaintiffs can prove their claims, American law allows them to obtain relief under one or more of the legal doctrines that they have invoked.

Israel is now at war with Hamas, having invaded Gaza after October 7 to find and eliminate every terrorist hiding there.⁸⁹ Among the countless items that bring sadness, one is the effete hypocrisy of many in the United States toward Israel's efforts to protect its people against another round of massacres.⁹⁰ “A large and expanding corner of the West refuses to accept that Israel's war in Gaza is a *response* to evil, or that Israelis might be victims in *any* way,” Bret Stephens has written for *The New York Times*.⁹¹ Why? “It disturbs the narrative of the war in Gaza as a case of strong against weak, the settler-colonialist Israelis against righteous and indigenous victims.”⁹²

Conclusion

America has seen political protests that destroyed property before. The Boston Tea Party, for example, was one of the series of events that set the Thirteen Colonies on a path to become the United States of America, a nation that has been the source of far, far more good for the world than anything or everything it has ever done wrong. America is also familiar with revolution, having come into being by virtue of the one that we declared on July 4, 1776. So Americans have sympathy for others who also yearn to have their own homeland free from outside control.

But the Colonists who rebelled against the British did not commit the horrors that Hamas committed on October 7—and, in the case of the hostages it took, have continued to commit since then. Sometimes, American Presidents have drawn a so-called red line past which no one may cross, but when precisely that happened, our Presidents lacked the stomach to enforce it. Remember President Barack Obama’s red line on Syria’s use of chemical weapons. This time, however, we need to do just that.

The protests that have taken over many of America’s sites of higher education bring familiar images to mind, not all of them good. I could explain why that is so, but the editors of *The Spectator World* have already made that point more eloquently than I can in words that bear repetition here:

Campus protests are nothing new in America. They’ve been a feature of university life since at least the Vietnam War. And beyond. And sure, it’s fun to get wrapped up in a romantic cause you only just learned about and of which you have only a surface-level knowledge. It might give your life meaning at a time when you’re trying to figure out what the point of all this is. Like you’re part of something greater than yourself. Plus, it used to be a great way to meet girls. (Nowadays, these girls are all enbies.[⁹³] Ask your teenager.)

But a more worrying kind of activism is rearing its head on campuses across America. These new protests all tend to carry the same characteristics—encampments, silly demands, militant checkpoints stopping students from moving freely about campus, violent chants and buildings being taken over. But these eruptions have a distinguishing characteristic: the protesters don’t seem to be very fond of Jews. If you attend protests to meet girls, these may not be the types you want to meet your parents. Unless your parents happen to be actual Nazis—then, boy, these are the protests for you.

These encampments are remarkable not by their tactics—we’ve seen this sort since the WTO protests in the Nineties and Occupy Wall Street in 2011—but by what’s being said. Calls for intifada are the norm, and chants of “From the river to the sea,” a call to wipe Israel off the map, are de rigueur. Jewish students are being targeted, and in some cases attacked. Calls for genocide against Israelis and Zionists run rampant. The antisemitism on display is startling, even for those of us used to stumbling on the worst segments of the internet: it’s like 4chan messageboard come to life. Maybe more surprising—to people who only started paying attention to politics last year, anyway—is that it’s coming from the political left...

[W]hat's spreading across the country doesn't just amount to protests. These are militant acts, carried out by Hamas sympathizers, that put Jews and gentiles alike in danger. As a student, when you can't walk through your campus unmolested and free without attesting your support for an ideology you disagree with, then we've lost the plot. If left to their guerilla gambit on campus, it's only a matter of time before their gestapo tactics spread elsewhere as well. Administrators, elected officials and police need to enforce our laws and protect the citizenry. Not from speech, but from true, actual violence. Please, go protest—wear a sandwich board in Times Square declaring your hatred of Zionists, hire a skywriter and tell everyone of your odious views. But when you cross the line from free speech and protest to violence, there should be consequences. Otherwise, soon enough, the rest of the country will start to look a lot like the campuses—protestor and counter-protestor alike.⁹⁴

If we're lucky, our elected officials nationwide are subscribers.

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Endnotes

1. See Cass R. Sunstein & Timur Kuran, *Availability Cascades and Risk Regulation*, 51 *STAN. L. REV.* 683, 685 (1999).
2. See John Braithwaite, *Crime as a Cascade Phenomenon*, 44 *INT'L J. COMPARATIVE & APPLIED CRIM. JUST.* 137 (2020).
3. See, e.g., *Police Violence, Race and Protest in America*, *ECONOMIST*, June 4, 2020, <https://www.economist.com/leaders/2020/06/04/police-violence-race-and-protest-in-america>.
4. See DOUGLAS MURRAY, *THE MADNESS OF CROWDS: GENDER, RACE AND IDENTITY* (2019).
5. See THOMAS C. SCHELLING, *MICROMOTIVES AND MACROBEHAVIOR* (Revised ed. 2017).
6. U.S. CONST. art. VI, cl. 2 (“[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”).
7. U.S. CONST. amend. I (“Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof[.]”). The Free Exercise Clause applies to the states through the Due Process Clause of the Fourteenth Amendment. See *Cantwell v. Connecticut*, 310 U.S. 296, 303–04 (1940).
8. Largely but not entirely. See U.S. COMM’N ON CIVIL RIGHTS, *CAMPUS ANTISEMITISM, BRIEFING REPORT 3* (2006) (“• Many college campuses throughout the United States continue to experience incidents of anti-Semitism, a serious problem warranting further attention[.] • When severe, persistent or pervasive, this behavior may constitute a hostile environment for students in violation of Title VI of the Civil Rights Act of 1964[.] • Anti-Israeli or anti-Zionist propaganda has been disseminated on many campuses that include traditional anti-Semitic elements, including age-old anti-Jewish stereotypes and defamation. • Anti-Semitic bigotry is no less morally deplorable when camouflaged as anti-Israelism or anti-Zionism[.] • Substantial evidence suggests that many university departments of Middle East studies provide one-sided, highly polemical academic presentations and some may repress legitimate debate concerning Israel. • Many college students do not know what rights and protections they have against anti-Semitic behavior. • More data are required to determine the full extent of this problem. While the Department of Education’s Office of Postsecondary Education...requires recipient institutions to report hate crimes involving bodily injury, these institutions are not currently required to report many crimes that do not involve bodily injury.”); *id.* at 35–39 (“Major Findings: 1. Anti-Semitism and anti-Israelism are systemic in higher education and can be found on campuses all over the United States.... 2. Anti-Semitic behavior often cloaks itself as ‘legitimate’ criticism of Israel. Pervasive anti-Israelism sets the stage for campus anti-Semitism. The distinctions between Israel and Jews become increasingly blurred as the rhetoric becomes more uncivil.... 3. The assault on Jewish nationalism is embedded in the ideology of the left.... 4. The failure to appropriately address anti-Semitic and anti-Israel bigotry is an indicator of a frightening breakdown in a number of university processes involving many stakeholders within higher education.... Trustees, often successful business leaders who are much more attentive in their entrepreneurial spheres, fail to appropriately execute their fiduciary duties both in the operations of the institution and the mission. For example, they tend to rubber-stamp tenure decisions. Most of all, faculty and administrators exhibit unawareness, indifference, and sometimes even cowardice in their failure to exert moral leadership in condemning anti-Semitism and anti-Israelism. 5. Anti-Semitism and anti-Israelism are shielded by a wrongly defined academic freedom and free speech.... 6. Universities, both public and private, are part of a public trust owned or financed by the American people.... 7. Because Americans, both individually and through public financing, invest heavily in higher education, colleges and universities have a contractual understanding with the public that teaching and research are to be free of politics and propaganda.... 8. Jewish students report being intimidated, both inside and outside the classroom, and being intellectually and socially threatened for what they believe.... 9. The university has the necessary structural mechanisms and procedures that unfortunately are not fully deployed in the case of anti-Semitism and anti-Israelism.... 10. Both federal and state governments have the legal and moral authority and necessary means to address anti-Semitism and anti-Israelism on campus.”) (emphasis omitted).
9. It seems that even some high schools have been infected. See Zach Kessel, “*Rabid Antisemitic Propaganda*”: *New Jersey High School Teachers Give Twisted Israeli History Presentation*, *NAT’L REV.*, May 31, 2024, https://www.nationalreview.com/news/rabid-antisemitic-propaganda-new-jersey-high-school-teachers-give-twisted-israeli-history-presentation/?utm_source=recirc-desktop&utm_medium=article&utm_campaign=river&utm_content=more-in-tag&utm_term=first (“History teachers at Fort Lee High School in New Jersey recently gave an anti-Israel presentation to students that included assertions that Israel is committing genocide against Palestinians in its war against Hamas, claims that Hamas is simply a ‘resistance movement’ rather than a terrorist organization, and characterizations of the anti-Israel and pro-Hamas protest movement as ‘peaceful’ and solely about divestment from Israel.”) (last visited June 1, 2024).
10. In fact, less than 24 hours after the attack, Jewish students were under siege on America’s campuses. HARVARD JEWISH ALUMNI ALLIANCE, *THE SOIL BENEATH THE ENCAMPMENTS: HOW ISRAEL AND JEWS BECAME THE FOCUS OF HATE AT HARVARD 3* (2024) (“On October 8th, as the terrorist attack on Israel that murdered 1,200 people was still ongoing, more than 30 Harvard student groups signed a statement that ‘[h]e Israeli regime entirely responsible for all unfolding violence.’ In the following weeks, many Harvard students rallied in support of a genocidal terrorist group that had just committed crimes against humanity while simultaneously condemning Israel as a racist, apartheid, and genocidal state worthy of elimination.”) (emphasis in original), https://harvardjewishalumni.org/docs/Final%20HJAA%20Report.The_Soil_Beneath_the_Encampments.pdf. Some of the report’s conclusions were the following: (1) “Jewish students also were harassed, bullied, and excluded by other students well before October 7th. Since then, it just got louder, prouder, and more visible.” (2) “Jewish students feared for their safety.” (3) “Th[e] narrative” that is “taught across departments, courses, events, and faculty advocacy...promotes the view that Israel—a tiny country with half of the world’s Jewish population—is the last remaining colonial settler power embodying the world’s worst evils: racism, apartheid, and genocide. The narrative promotes the view that the Palestinian people are innocent victims of Jewish (white) oppression and that known terrorist groups are simply ‘political movements.’” (4) “Harvard opens its classrooms and event spaces

to a steady stream of speakers and fellows with a paper trail of unchecked antisemitism. The views of these speakers include: ● ‘Fascists. Terrorists. Colonizers. There is no morally defensible argument for supporting Zionism. It’s blood-thirsty and violent.’ ● ‘It’s also a historical fact that American Jewish immigrants have always been a foundational building block for the white supremacist infrastructure in this country....We know that from the data.’ ● ‘Israel tests its weapons on Palestinian children.’ ● ‘What happened on 10/7? The burnt bodies were Hamas militants & now we learn Israeli helicopter fire may have killed ravers!’” (5) “Jewish students who attend one-sided events can be marginalized and publicly ridiculed—or even blocked from entry.” (6) “[W]hen Harvard’s protesters rally for Hamas as freedom fighters and lob at Israel labels that represent the worst evils, they are repeating what they are being taught in classrooms and at campus events.” (7) “Soviet Union Cold War Propaganda Disseminated to Western Academics.... We can thank Soviet propaganda for many of the slogans we hear across Harvard’s campus today, including: ● ‘Zionism is Racism.’ ● ‘Zionists weaponize antisemitism.’ ● ‘Anti-Zionism is not equal to antisemitism.’ ● ‘Israel is conducting genocide.’ ● Israel is a ‘settler colonial state.’ (This was coined in 1965 by a Syrian-Palestinian academic/diplomat, Fayeze Sayegh, before Israel controlled the Palestinian territories.)” (8) Professors, lecturers, and event speakers whom Harvard invites to campus celebrate violence (against Israel and the West) and traffic in antisemitic tropes (including the blood libel claim that Jews kill non-Jews to use their blood for their ritual food and drink.) More recently, speakers have denied the October 7th massacre or blamed it entirely on Israel.” *Id.* at 5–7, 14, 24, 29, 32.

11. See Jesse O’Neill, *Cornell University Professor Calls Hamas Terror Attack “Exhilarating” and “Energizing,”* N.Y. POST, Oct. 16, 2024, <https://nypost.com/2023/10/16/russell-rickford-says-hamas-terror-was-exhilarating-exciting/> (“Cornell’s Ivy League rival, Harvard University, made headlines last week when more than 30 student organizations co-signed a letter circulated by Harvard Palestine Solidarity Groups that held Israel ‘entirely responsible’ for the terror attack.”) (last visited May 30, 2024).
12. See *infra* note 45.
13. Fortunately, not all of them. The Universities of Florida and Texas decided that they would not permit a minority to take control of a university and invited law enforcement officers onto campus to establish and maintain order. Paul J. Larkin & Lindsey Burke, *How to Stop the Campus Antisemitism Cascade*, DAILY SIGNAL, May 1, 2024, <https://www.dailysignal.com/2024/05/01/how-stop-campus-antisemitism-cascade/> (last visited June 1, 2024); see Haley Chi-Sing, *UT Austin Suspends Pro-Palestine Student Group After Anti-Israel Protest*, FOX NEWS, Apr. 27, 2024, <https://www.foxnews.com/us/ut-austin-suspends-pro-palestinian-student-group-anti-israel-protest> (last visited June 1, 2024); Lillian Lawson, *Controversy: UF May Trespass Protestors Engaging in Prohibited Activities*, GAINESVILLE SUN, Apr. 26, 2024, <https://www.gainesville.com/story/news/education/campus/2024/04/26/uf-threatens-protestors-with-campus-ban/73470240007/> (last visited June 1, 2024); David Zimmerman, *UT Austin Places Pro-Palestinian Student Group on Interim Suspension Following Anti-Israel Protest*, NAT’L REV., Apr. 26, 2024, https://www.nationalreview.com/news/ut-austin-places-pro-palestinian-student-group-on-interim-suspension-following-anti-israel-protest/?utm_source=recirc-desktop&utm_medium=blog-post&utm_campaign=river&utm_content=top-bar-latest&utm_term=fourth (last visited June 1, 2024).
14. William A. Jacobson, *Hatred of Western Civilization Stokes the Campus Antisemitism Crisis*, JAMES G. MARTIN CNTR. FOR ACADEMIC RENEWAL, Dec. 6, 2023, <https://www.jamesmartin.center/2023/12/hatred-of-western-civilization-stokes-the-campus-antisemitism-crisis/> (last visited May 30, 2024). Cornell Law School Professor William Jacobson recently said it well: “The unspeakable brutality and depravity of the October 7 Hamas assault on Israel led soon afterward to aggressive protests on many of our college campuses. The protests (and declarations, blog posts, marches, signs, etc.) were overwhelmingly in favor of Hamas, not the victims. Liberal feminist and women’s-rights groups were silent or dismissive of the widespread gross sexual abuse of Israeli women during the attack.... Jewish students have been vilified as if they were guilty of some heinous crime. Mobs of pro-Hamas students have harassed and taunted them. At Cooper Union, a group of Jewish students had to take refuge in the library when they were harassed by an anti-Israel mob. At George Washington U., slogans like ‘Glory to Our Martyrs’ were projected on buildings. The genocidal chant ‘From the river to the sea, Palestine will be free’ is now commonplace. At Arizona State, Jewish students needed a police escort to escape a howling mob throwing rocks. ‘By any means necessary’ is the frequent phrase used by these student mobs to justify Hamas’s crimes against humanity. [¶] Why did American campuses erupt with expressions of hatred for Israel and Jewish students? What could possibly motivate college students to act in such an inhumane, deplorable way? [¶] In my view, the October 7 assault ignited an antisemitic blaze that has been decades in the making. I can trace it back to my days at Harvard Law School in the early 1980s, with the racialization of education. That is when Critical Legal Theory, later repackaged as Critical Race Theory (CRT), took hold at Harvard and quickly spread throughout American colleges and universities. At my website, CriticalRace.org, we have documented how deeply CRT, and variants like ‘anti-racism’ and Diversity, Equity, and Inclusion (DEI), have captured American education. [¶] These racialized ideologies simplistically divide the world into oppressor and oppressed groups, and in them Israelis (and, by extension, Jews everywhere) are identified as part of the white, privileged, oppressor class. The chief concern of those who support DEI ideology is the destruction of that supposed power structure so that we can have social justice and equity. This belief system has metastasized into open antisemitism. [¶] Yet the problem is even deeper than expressions of antisemitism. What the mobs are against, at the core, is Western civilization, with its distinctive characteristics of individual liberty, limited government, and capitalism. They are intent on tearing our system down and have made common cause with Islamicists who desire a world with only one religion, which they would enforce through Sharia law. This is what many now call the Red–Green alliance. [¶] Both the Islamicists and American DEI advocates portray Israel as an evil force in the world, but, for the latter, Israel is merely a proxy for Western civilization. [¶] To Islamicists such as the Iranian Mullahs and their followers, Israel is ‘the little Satan’ and the United States ‘the Great Satan.’ American left-wing academics use ‘social-justice’ verbiage more palatable to a Western audience, speaking of the U.S. as ‘systemically racist.’ They constantly tell their students that America is irredeemably stained by slavery and colonialism. They often succeed in getting their impressionable students, who seldom hear any rebuttal, to see themselves as detached from their country and eager to see it radically transformed. Radicalized American academics and Islamicists have a shared goal of tearing down the United States and destroying Israel.” *Id.*
15. Hamas is an acronym of the group’s official name: Harakat al-Muqawama al-Islamiya, or Islamic Resistance Movement.

16. U.S. DEP'T OF STATE, BUREAU OF COUNTERTERRORISM, *Foreign Terrorist Organizations, Designated Foreign Terrorist Organizations*, <https://www.state.gov/foreign-terrorist-organizations/> (last visited Apr. 25, 2024) (so designated October 8, 1997); COUNCIL OF THE EUROPEAN UNION, *EU Terrorist List* (Apr. 12, 2024), <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/> (last visited Apr. 25, 2024); COUNCIL OF THE EUROPEAN UNION, Common Position 2001/931/CFSP, Official Journal of the European Union 4 (Dec. 27, 2001), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF> (listing “ Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)” as a terrorist group); COUNCIL OF THE EUROPEAN UNION, Press Release: *Hamas and Palestinian Islamic Jihad: Council Establishes Dedicated Sanctions Framework and Lists Six Individuals*, Jan. 19, 2024, <https://www.consilium.europa.eu/en/press/press-releases/2024/01/19/hamas-and-palestinian-islamic-jihad-council-establishes-dedicated-sanctions-framework-and-lists-six-individuals/> (last visited Apr. 25, 2024).
17. See, e.g., Roger Cohen, *Slaughter at the Festival of Peace and Love Leaves Israel Transformed*, N.Y. TIMES, Dec. 27, 2023, <https://www.nytimes.com/2023/10/15/world/middleeast/israel-music-festival-massacre.html>.
18. *Hamas's Atrocities and Israel's Retaliation Will Change Both Sides Forever*, ECONOMIST, Oct. 12, 2023, <https://www.economist.com/briefing/2023/10/12/hamas-atrocities-and-israels-retaliation-will-change-both-sides-for-ever> (last visited May 29, 2024) [hereafter *Hamas's Atrocities*].
19. *Id.*
20. Speech by President Franklin D. Roosevelt, President Requests War Declaration, Dec. 7, 1941, Library of Congress, https://www.loc.gov/resource/afc1986022.afc1986022_ms2201?st=text.
21. Daniel Byman et al., *Hamas's October 7 Attack: Visualizing the Data*, CNTR. FOR STRATEGIC & INT'L STUDS. (2023), <https://www.csis.org/analysis/hamas-october-7-attack-visualizing-data#:~:text=Hamas's%20October%20terrorist%20attack,years%20of%20the%20Second%20Intifada> (“[T]he October attack is more than 31 times as large as the number of people killed in the next most fatal attack—the Coastal Road Massacre of 1978, in which Fatah militants hijacked a bus and murdered 38 Israeli citizens.”).
22. *Hamas's Atrocities*, *supra* note 18.
23. Byman et al., *supra* note 21.
24. OFF. OF THE SPECIAL REP. OF THE SEC'Y GEN'L ON SEXUAL VIOLENCE IN CONFLICT, UNITED NATIONS, MISSION REPORT: OFFICIAL VISIT OF THE OFFICE OF THE SRSRG-SVC TO ISRAEL AND THE OCCUPIED WEST BANK, 29 JANUARY–14 FEBRUARY 2024, at 3, 11 (Mar. 4, 2024) [hereafter UN SPECIAL REPORT].
25. Ephrat Livni & Gaya Gupta, *What We Know About the War Between Israel and Hamas*, N.Y. TIMES, Nov. 20, 2023, <https://www.nytimes.com/article/israel-gaza-hamas-what-we-know.html>.
26. UN SPECIAL REPORT, *supra* note 24, at 11.
27. *Id.*
28. Byman et al., *supra* note 21 (“The attack on October 7 is unprecedented from Hamas both in scale and sophistication, displaying characteristics of a special forces operation that employed small units with bespoke training, equipment, and tactics to achieve outsized strategic results.”). “The first hours were chaos. Residents of southern Israel, near the border with Gaza, woke to the sound of incoming rockets and mortars. They rushed to shelters—a grim routine in this part of the country, but a routine nonetheless. Then, a few minutes later, they heard gunfire drawing steadily closer and shouting in Arabic. That was not routine at all. [¶] Nor were the unimaginable scenes outside their homes, snippets of which began to trickle out on social media: Palestinian militants on the bed of a pickup truck, driving through an Israeli town firing at passers-by; a pile of bodies at a bus stop, another at an army post. The morning dragged on, and no help arrived. Frantic Israelis called television-news shows from their safe rooms and asked, in hushed tones, where their army was. [¶] Then, no less shocking, came the reports of abductions. A mother said her two sons, one of them just 12 years old, had been kidnapped and dragged across the border. A video showed an elderly woman, her stiff smile belying her shock, paraded through the streets of Gaza on a golf cart, an armed man seated behind her.” *Hamas's Atrocities*, *supra* note 18.
29. Byman et al., *supra* note 21.
30. *Id.*
31. “Men, women, and children are shot, blown up, hunted, tortured, burned, and generally murdered in any horrible manner you could predict, and some that you might not.” Graeme Wood, *A Record of Pure, Predatory Sadism*, ATLANTIC, Oct. 23, 2023, <https://www.theatlantic.com/ideas/archive/2023/10/why-israeli-officials-screened-footage-hamas-attack/675735/>; *id.* (“The videos show pure, predatory sadism; no effort to spare those who pose no threat; and an eagerness to kill nearly matched by eagerness to disfigure the bodies of the victims. In several clips, the Hamas killers fire shots into the heads of people who are already dead. They count corpses, taking their time, and then shoot them again. Some of the clips I had not previously seen simply show the victims in a state of terror as they wait to be murdered, or covered with bits of their friends and loved ones as they are loaded into trucks and brought to Gaza as hostages. There was no footage of rape, although there was footage of young women huddling in fear and then being executed in a leisurely manner.... To me the most disturbing section was not visual at all. Like the clip of the father and his boys hunted in their pajamas, it was upsetting in part because it showed a relationship between parent and child. The clip is just a phone call—placed by a terrorist to his family back in Gaza. He tells his father that he is calling from a Jewish woman's phone. (The phone recorded the call.) He tells his father that his son is now a 'hero' and that 'I killed 10 Jews with my own hands.' And he tells his family, about a dozen times, that they should open up WhatsApp on his phone, because he has sent photographs to prove what he has done. 'Put on Mom!' he says. 'Your son is a hero!'”); UN SPECIAL REPORT, *supra* note 24, at 19 (“The reviewed photos and videos revealed widespread mutilation of bodies, involving both attempted and actual decapitation, numerous gunshot wounds, and various other forms of extensive violence.”).

32. See, e.g., Cohen, *supra* note 17 (describing the scene at the Hamas attack on a music festival: “[Rockets first thought to be fireworks] were, in fact, the white flashes of Hamas rockets from Gaza, the fire at dawn signaling an attack that would turn fields full of young Israelis dancing to psychedelic music into a slaughterhouse. In this massacre of its youth, Israel’s 75-year-old quest for some carefree normalcy met the murderous fury of those long-oppressed Palestinians who deny the state’s right to exist.... They were rounded up and shot like animals within hours of losing themselves, and the pressures of Israeli life, in thumping soundtracks of mystical peace and love. ‘There were these crazy maniacs with guns and people falling one by one,’ Ms. Fakliro said. ‘It was like a shooting range.’”); *Hamas’s Attack Was the Bloodiest in Israel’s History*, *Economist*, Oct. 12, 2023, <https://www.economist.com/briefing/2023/10/12/hamas-attack-was-the-bloodiest-in-israels-history> (last visited May 29, 2024); *Hamas’s Atrocities*, *supra* note 18; *Hamas Has Failed to Rally the Middle East to Its Cause*, *Economist*, Oct. 12, 2023, <https://www.economist.com/briefing/2023/10/12/hamas-has-failed-to-rally-the-middle-east-to-its-cause> (last visited May 29, 2024); Jeffrey Gettleman et al., “Screams Without Words”: *How Hamas Weaponized Sexual Violence on Oct. 7*, *N.Y. Times*, Mar. 25, 2024, <https://www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html?smid=nytcore-ios-share&referringSource=articleShare> (last visited May 29, 2024) (“The Times viewed photographs of one woman’s corpse that emergency responders discovered in the rubble of a besieged kibbutz with dozens of nails driven into her thighs and groin.”).
33. Isabel Kershner, *Israelis Are Making Desperate Pleas for Missing Relatives, Possibly Abducted to Be Bargaining Chips for Hamas*, *N.Y. Times*, Oct. 8, 2023, <https://www.nytimes.com/live/2023/10/08/world/israel-gaza-attack-hamas-news#israelis-are-making-desperate-pleas-for-missing-relatives-possibly-abducted-to-be-bargaining-chips-for-hamas> (last visited May 31, 2024); Arieh Kovler, *Israel Has Faced Its Darkest Day for Fifty Years*, *Spectator World*, Oct. 8, 2023, <https://thespectator.com/topic/israel-faced-darkest-day-fifty-years/> (“Videos circulating online show terrorists bundling men, women, the elderly and young children into trucks and driving them into Gaza. Some of the victims were later paraded in the streets before being hidden in the deep tunnels underneath the strip.”); Arijeta Lajka & Riley Mellen, *Video Captures Concertgoer Being Kidnapped by Militants*, *N.Y. Times*, Oct. 8, 2023, https://www.nytimes.com/live/2023/10/08/world/israel-gaza-attack-hamas-news?action=click&pgtype=Article&module=&state=default®ion=footer&context=breakout_link_back_to_briefing#violent-graphic-imagery-is-flooding-social-media-platforms (last visited May 31, 2024). “The hostage crisis in Gaza has few precedents. It involves mass hostage-taking of many countries’ citizens, efforts to negotiate during a major military operation, and the distribution of hostages across many locations. It may not approach the largest or longest hostage incident in history, but such an incident defies easy comparisons. Indeed, many of the comparable cases have involved authoritarian governments such as Russia, which have historically accepted greater loss of life among their own citizens in both wartime and hostage situations.” Byman et al., *supra* note 21; see also UN SPECIAL REPORT, *supra* note 24, at 3, 12; Cohen, *supra* note 17; *Hamas’s Atrocities*, *supra* note 18; Cassandra Vinograd & Isabel Kershner, *Israel’s Attackers Took About 240 Hostages. Here’s What to Know About Them*, *N.Y. Times*, Nov. 20, 2023, <https://www.nytimes.com/article/israel-hostages-hamas-explained.html?smid=nytcore-ios-share&referringSource=articleShare>.
34. Aaron Boxerman & Sheera Frenkel, *Dozens Were Killed at a Music Festival and Others Abducted*, *Wall St. J.*, Oct. 8, 2023, https://www.wsj.com/us-news/israel-hamas-attack-us-backlash-ff5f25e8?mod=article_inline; Ronny Reyes & Reuven Fenton, *Sickening New Video Shows Hamas Line Up Female Israeli Soldiers on Oct. 7: ‘Here Are the Girls Who Can Get Pregnant.’*, *N.Y. Post*, May 22, 2024, <https://nypost.com/2024/05/22/world-news/sickening-new-video-shows-hamas-line-up-female-israeli-soldiers-on-oct-7-here-are-the-girls-who-can-get-pregnant/>.
35. UN SPECIAL REPORT, *supra* note 24, at 18 (“The mission team reviewed incidents of alleged sexual violence related to hostages in Gaza. Based on the first-hand accounts of released hostages, the mission team received clear and convincing information that sexual violence, including rape, sexualized torture, and cruel, inhuman, and degrading treatment occurred against some women and children during their time in captivity and has reasonable grounds to believe that this violence may be ongoing.”).
36. “Hamas denies that its men sexually assaulted Israelis, calling the charges ‘lies and slanders against the Palestinians and their resistance.’ And Hamas’s fellow travelers and useful idiots in the West, most of them self-described progressives, parrot that denialism in the face of powerful and deeply investigated evidence of widespread rapes, documented most recently in a United Nations report released on Monday.” Bret Stephens, *The New Rape Denialism*, *N.Y. Times*, Mar. 5, 2024, <https://www.nytimes.com/2024/03/05/opinion/hamas-sexual-violence-israel.html?smid=nytcore-ios-share&referringSource=articleShare>; Katherine Rosman & Lisa Lerner, *Accounts of Sexual Violence by Hamas Are Aired Amid Criticism of U.N.*, *N.Y. Times*, Dec. 4, 2023, <https://www.nytimes.com/2023/12/04/world/middleeast/israel-hamas-sexual-violence-un.html?pgtype=Article&action=click&module=RelatedLinks> (“Hamas has denied that its fighters committed sex crimes, which it said would violate Islamic principles. [¶] But ample evidence has been collected, like the bodies of women found partially or fully naked, women with their pelvic bones broken, the accounts of medical examiners and first responders, videos taken by Hamas fighters themselves, and even a few firsthand witnesses like a woman, in a video made public last month by police officials, who said she had watched Hamas terrorists take turns raping a young woman they had captured at a music festival, mutilate her and then shoot her in the head.”).
37. See Mike Cote, *Nothing Is Ever the Palestinians’ Fault*, *Nat’l Rev.*, June 1, 2024, <https://www.nationalreview.com/2024/06/nothing-is-ever-the-palestinians-fault/> (“The Palestinian cause, its leadership, and its foreign backers fully embrace the psychologically unhealthy option—a totally external locus of control. Everyone else, but particularly Israel and the Jewish people writ large, is to blame for the woes of the Palestinian people. In reality, however, the Palestinians have a great deal of control over their situation. The self-abnegation of their agency is a tactic meant to camouflage consistently poor choices and overwhelming hatred of Jews, while garnering sympathy from useful idiots in the West. [¶] This pretending at a lack of agency has been the narrative core for the Palestinians from 1948 onward.”) (last visited June 1, 2024).
38. See, e.g., UN SPECIAL REPORT, *supra* note 24, at 4; Stephens, *supra* note 36; Talya Minsberg, *Oct. 7 Assaults, Including Sexual Violence, Could Be Crimes Against Humanity, 2 U.N. Experts Say*, *N.Y. Times*, Jan. 8, 2024, <https://www.nytimes.com/2024/01/08/world/middleeast/hamas-sexual-violence-un-israel.html?smid=nytcore-ios-share&referringSource=articleShare>; Rosman & Lerner, *supra* note 36 (“The body of one woman had ‘nails and different objects in her female organs.’ In another house, a person’s genitals were so mutilated that “we couldn’t identify if it was a man or a woman....”); Haley Strack, *Israeli Hostages Endured Violent Sexual Assault in Gaza, Doctors Confirm*, *Nat’l Rev.* Dec. 22, 2023, <https://www.nationalreview.com/news/israeli-hostages-endured-violent-sexual-assault-in-gaza-doctors-confirm/>; Wood, *supra* note 31.

39. See, e.g., UN SPECIAL REPORT, *supra* note 24, at 4 (“Based on the information gathered by the mission team from multiple and independent sources, there are reasonable grounds to believe that conflict-related sexual violence occurred during the October 7 attacks in multiple locations across [the] Gaza periphery, including rape and gang rape, in at least three locations.”); *id.* at 4–5 (describing where such sexually related violence occurred), 5 (“With respect to hostages, the mission team found clear and convincing information that some have been subjected to various forms of conflict-related sexual violence including sexualized torture and desexualized cruel, inhuman and degrading treatment[,] and it also has reasonable grounds to believe that such violence may be ongoing.”); Reuven Fenton & Olivia Land, *Father–Son Hamas Terrorists Casually Describe Taking Turns Raping Israeli Woman, Then Executing Her, in Bone-Chilling Video*, N.Y. Post, May 23, 2024, <https://nypost.com/2024/05/23/world-news/father-son-terrorists-describe-rape-executing-woman-on-oct-7/> (“Bone-chilling new footage shows a Hamas terrorist and his teenage son casually telling Israeli interrogators how they took turns raping a woman, then executed her during the Oct. 7 terror rampage. [¶] Jamal Hussein Ahmad Radi, 47, and his 18-year-old son, Abdallah, were seized by the Israel Defense Forces in the Gaza Strip this spring and subsequently questioned about the terror attack, the Daily Mail revealed. [¶] ‘My father raped her, then I did and then my cousin did and then we left but my father killed the woman after we finished raping her,’ Abdallah said in his own interview tape.... Jamal appeared unfazed as he explained in horrifying detail how he entered one home and killed the couple who were hiding inside. [¶] ‘In the first house, I found a woman and her husband, and we hit them with fire and killed them.... [T]hey were in their late 40s,’ he recalled.”) (last visited May 30, 2024); Gettleman et al., *supra* note 32 (“Relying on video footage, photographs, GPS data from mobile phones and interviews with more than 150 people, including witnesses, medical personnel, soldiers and rape counselors, The Times identified at least seven locations where Israeli women and girls appear to have been sexually assaulted or mutilated. [¶] Four witnesses described in graphic detail seeing women raped and killed at two different places along Route 232, the same highway where Ms. Abdush’s half-naked body was found sprawled on the road at a third location. [¶] And The Times interviewed several soldiers and volunteer medics who together described finding more than 30 bodies of women and girls in and around the rave site and in two kibbutzim in a similar state as Ms. Abdush—legs spread, clothes torn off, signs of abuse in their genital areas.”); *id.* (reporting a description by a surviving witness: “The first victim she said she saw was a young woman with copper-color hair, blood running down her back, pants pushed down to her knees. One man pulled her by the hair and made her bend over. Another penetrated her, Sapir said, and every time she flinched, he plunged a knife into her back. [¶] She said she then watched another woman ‘shredded into pieces.’ While one terrorist raped her, she said, another pulled out a box cutter and sliced off her breast. [¶] ‘One continues to rape her, and the other throws her breast to someone else, and they play with it, throw it, and it falls on the road,’ Sapir said. [¶] She said the men sliced her face and then the woman fell out of view. Around the same time, she said, she saw three other women raped and terrorists carrying the severed heads of three more women.”); Reyes & Fenton, *supra* note 34 (“Harrowing video released Wednesday shows the moment the five female Israeli soldiers—covered in blood—and surrounded by the bodies of their massacred comrades—were threatened with rape then taken away to Gaza by Hamas terrorists on Oct. 7. [¶] Bodycam footage from the Hamas gunmen shows the moment the young women, operating at the Nahal Oz base outside the Gaza Strip, were handcuffed and pressed against a wall while still in pajamas.... In the sickening video, the terrorists could be heard gloating and announcing their apparent plans to sexually assault the soldiers. [¶] ‘Here are the girls who can get pregnant, one of the gunmen said.”)

On October 8, 2023, the day after Hamas’s attacks, Israel invited the United Nations to visit Israel to see firsthand what Hamas had done. The U.N. largely ignored Israel’s request. The U.N. Office of Sexual Violence in Conflict did not respond until November 27 and did not visit Israel until January 2024. Rosman & Lerner, *supra* note 36. The U.N. did not condemn the use of rape as a tool of warfare for an additional five to six months after the October 7 attacks. See UN SPECIAL REPORT, *supra* note 24; Gettleman et al., *supra* note 32. Perhaps that was due to the time needed to conduct an investigation and draft a report. Or perhaps it was due to the need to respond to the overwhelming evidence that Hamas had engaged in sexual atrocities on October 7—including evidence captured on Hamas’s “bodycams and dashcams,” *id.* at 10, which could no longer be ignored. See also, e.g., Post Editorial Bd., *Rape-Talk Video Proves NYers Right Not to Buy the Big Lie from Pro-Hamas Protest Thugs*, N.Y. Post, May 23, 2024, <https://nypost.com/2024/05/23/opinion/new-yorkers-dont-buy-the-pro-hamas-big-lie-from-protest-thugs/> (“Despite the endless screeching of the Hamas fifth columnists, the American public understands what’s going on—and given the newly released videos revealing the Hamas program of weaponized rape and sexual violence, it’s no surprise.... Like video of Hamas terrorists lining up women at a kibbutz and crowing about how beautiful they are and how they can get pregnant.”) (last visited May 30, 2024).

40. Sheera Frenkel, *Violent, Graphic Imagery Is Flooding Social Media Platforms*, N.Y. TIMES, Oct. 8, 2023, https://www.nytimes.com/live/2023/10/08/world/israel-gaza-attack-hamas-news?action=click&pgtype=Article&module=&state=default®ion=footer&context=breakout_link_back_to_briefing#violent-graphic-imagery-is-flooding-social-media-platforms (noting that “social media has been flooded with gruesome photos and violent images” and that the videos “appeared to have been recorded by Palestinian gunmen”) (last visited May 31, 2024).
41. Wood, *supra* note 31; see also Stephens, *supra* note 36.
42. UN SPECIAL REPORT, *supra* note 24, at 12.
43. Brian Flood et al., *Influencer Turns the Tables on Anti-Israel Protesters with Quiz on Basic Gaza War Knowledge: “No One Knew Anything,”* N.Y. POST, May 24, 2024, <https://nypost.com/2024/05/24/media/viral-influencer-zach-sage-fox-put-spotlight-on-anti-israel-protesters-no-one-knew-anything/> (“Comedian and social media influencer Zach Sage Fox went viral for putting a spotlight on anti-Israel protesters who were clueless about the Israel–Hamas war they claim to be so passionate about. He asked which river and sea are being referenced in the notorious ‘From the river to the sea’ rallying cry they admitted to chanting, what Hamas claims its No. 1 goal is, how many years Israel occupied Gaza, the definitions of Zionism and intifada, and other pertinent questions. [¶] None of the anti-Israel protesters were able to answer correctly, and the video piled up millions of views.... It turned out that the anti-Israel agitators were largely in the dark about what they claim to be so passionate about.”) (last visited May 30, 2024).
44. See *supra* note 11.

45. Gabriel Scheinmann, *How to Save Universities from Chaos*, NAT'L REV., May 25, 2024, <https://www.nationalreview.com/2024/05/how-to-save-universities-from-chaos/> (last visited May 29, 2024) ("It is tempting to chalk the views and behavior of students up to youthful exuberance, but no such excuse exists for faculty. Many faculty have joined or aided the encampments, canceled classes or exams in solidarity, and called for amnesty for rule- and law-breakers. Their abetment is unsurprising when you consider their views. A recent survey of the Harvard faculty shockingly revealed that while it is Jewish students that feel under assault, 37.5 percent of faculty feel there's systemic anti-Arab and anti-Muslim bias on campus whereas only 25 percent think there's systemic antisemitism on campus. Even worse, 28 percent of faculty believe that Israel's actions in Gaza constitute genocide. A recently released report by the Harvard Jewish Alumni Alliance details in depth the number of faculty who support violence against Israel and how that has colored the curriculum and events they sponsor. Just as a university should not want someone who supports the KKK to educate its students, it should not want those who glorify Hamas and seek the elimination of the state of Israel to be molding young minds either."); Zach Kessel, *Who Are the Anti-Israel Campus Protesters?*, NAT'L REV., May 16, 2024 [hereafter Kessel, *Protesters*], https://www.nationalreview.com/magazine/2024/07/who-are-the-anti-israel-campus-protesters/?utm_source=recirc-desktop&utm_medium=article&utm_campaign=river&utm_content=more-in-tag&utm_term=first ("The wall of professors preventing members of the press—including National Review—from entering served as evidence of the institutional power that the ideologues possess despite their every effort to claim otherwise. And right there, behind the infantry line of the professoriate, shrieking at reporters attempting to enter, in a voice that would later become instantly recognizable, was Khymani James."); Zach Kessel, *Northwestern Cuts Deal with Encampment Organizers, Establishes Full-Ride Scholarship for Palestinian Students*, NAT'L REV., Apr. 30, 2024 [hereafter Kessel, *Northwestern Cuts Deal*], <https://www.nationalreview.com/news/northwestern-cuts-deal-with-encampment-organizers-establishes-full-ride-scholarship-for-palestinian-students/> (last visited May 29, 2024) ("One of those Northwestern employees who violated university policy is Steven Thrasher, chair of social justice in reporting at the Medill School of Journalism. With a history of unsavory comments about Israel—comparing the Jewish state to Nazi Germany and transatlantic slave traders—and a thread posted on X immediately after October 7 in which he justified Hamas's terrorism, Thrasher was one of several Northwestern professors to join the encampment and the most visible. [¶] When Northwestern police attempted to dismantle the tents and disperse the protesters shortly after students and faculty occupied the lawn, Thrasher, alongside other professors, was captured on video fighting with the officers. [¶] He acknowledged as much in a speech he delivered to the encampment occupants, the text of which he later shared online: [¶] 'King went up against the American empire. And so have you. *You* have gone up against the American empire,' he said. 'It might feel scary at times. Because, in essence, a colonial war of occupation is playing out on this lawn. The empire has not just struck back at our efforts; it has hit extremely close to your homes. And when the university became an imperial battle site, the administration wanted to side with the warmongers instead of with *you*, the peacemakers.'").
46. See, e.g., Lauren Noble, *First Degree Criminal and Academic Mischief at Yale*, NAT'L REV., May 19, 2024, <https://www.nationalreview.com/2024/05/first-degree-criminal-and-academic-mischief-at-yale/> (last visited May 29, 2024) ("Last month, police arrested a Yale University Ph.D. student named Beshouy Botros for first-degree criminal mischief. Botros is alleged to have taken down the American flag in Yale's Beinecke Plaza during anti-Israel protests last month, racking up more than \$9,000 in estimated repair costs for the university.... Botros is not simply some random activist 'animated by feminist and queer of color critique,' as his bio says on a Yale webpage. He actually co-taught a Yale course this past academic year that covered, among other topics, 'toleration and violence' and 'settler colonialism.' Botros also serves as a teaching fellow, running 'seminar-style sections for a course on histories of medicine and race.'").
47. "While there is a distinction between organizers on campus and the unaffiliated professional activists—the 'outside agitators'—who have joined the students, faculty, and staff in their protests, it is possible to draw that distinction too sharply, as many seeking to play down the nature of the campus side have done. Indeed, individuals with no relation to the universities where the rallies have taken place arrived on campuses in droves. Many of those who broke into Columbia's Hamilton Hall with hammers in hand and faces covered with keffiyehs were not enrolled at the university and, as Northwestern students and parents told NR, outside activists took buses from Chicago to Evanston and arrived on campus in the middle of the night. The student organizers have used Telegram, an encrypted messaging service, to disseminate information about their encampments, inviting outsiders to 'escalate for Gaza' and go 'all out' in defense of the tent cities against police officers dismantling them." Kessel, *Protesters*, *supra* note 45; see also, e.g., Tawnell D. Hobbs et al., *Activist Groups Trained Students for Months Before Campus Protests*, WALL ST. J., May, 2024, https://www.wsj.com/us-news/education/student-campus-protests-veteran-activist-groups-17ccd094?mod=series_campuspeech ("The recent wave of pro-Palestinian protests on college campuses came on suddenly and shocked people across the nation. But the political tactics underlying some of the demonstrations were the result of months of training, planning and encouragement by longtime activists and left-wing groups."); Michael Schill et al., *NORTHWESTERN, Agreement on Deering Meadow*, Apr. 29, 2024, <https://www.northwestern.edu/leadership-notes/2024/april-29-agreement-on-deering-meadow.html> (stating that "[r]eported antisemitic and anti-Muslim/Palestinian incidents over the weekend—in most cases, fueled by demonstrators who are not affiliated with Northwestern—are unacceptable").
48. See, e.g., Ari Blaff, *SUNY Student Suspended After Trying to Rip Down Administrator's Israeli Flag*, NAT'L REV., Dec. 12, 2023, <https://www.nationalreview.com/news/jewish-suny-administrator-assaulted-by-student-for-displaying-israeli-flag-in-office/>; Douglas Belkin & Lindsay Ellis, *Blaming Israel for Hamas Attacks Sparks Backlash Across U.S., Exposing Deep Rifts*, WALL ST. J., Oct. 11, 2023, https://www.wsj.com/us-news/israel-hamas-attack-us-backlash-ff5f25e8?mod=article_inline (last visited (May 31, 2024); Editorial Bd., *Northwestern's Deal With Campus Antisemites*, WALL ST. J., May 28, 2024, <https://www.wsj.com/articles/michael-schill-house-committee-education-workforce-northwestern-protests-palestine-israel-69ae3b23> ("The encampments were illegal[,] and protesters' conduct included multiple violations of university policy as Mr. Schill defined it during the hearing. Rep. Elise Stefanik (R., N.Y.) noted reports that Jewish students at Northwestern were assaulted and spat on. Mr. Schill says no students have been suspended or expelled, so presumably the perpetrators are still on campus."); Editors, *Put Down the Protests*, NAT'L REV. Apr. 22, 2024, <https://www.nationalreview.com/2024/04/put-down-the-protests/> (last visited May 29, 2024) [hereafter Editors, *Put Down the Protests*] (noting that (1) "an Israeli student was beaten with a stick outside Columbia's library" and (2) "[s]ince 10/7, students have been intimidated and physically

- harassed by their colleagues at Harvard. They've been beaten at Tulane. They've been forced out of their kosher dining halls at Cornell. They've been besieged at Cooper Union—forced to hide in attics and spirited away from a braying mob through secret corridors. Just this weekend, former *National Review* intern Sahar Tartak was 'stabbed in the eye with a Palestinian flag' on Yale's campus, according to the *New York Post's* reporting on her ordeal. 'Tartak, who was shopping for an eyepatch when speaking with *The Post*, said she tried to report the assault to campus police, but they told her there was nothing they could do,' the horrifying report read."); Rebecca Massel et al., *General Studies Student Allegedly Assaulted in Front of Butler Library, Suspect Arrested and Charged, NYPD Says*, COLUMBIA SPECTATOR, Oct. 14, 2023, <https://www.columbiaspectator.com/news/2023/10/12/general-studies-student-allegedly-assaulted-in-front-of-butler-library-suspect-arrested-and-charged-nypd-says/>.
49. Speaking to a group of students, Russell Rickford, an associate professor of history at Cornell University, said the following about the Hamas October 7 attacks: "It was exhilarating. It was exhilarating. It was energizing. And if it weren't exhilarating [*sic*] by this challenge to the monopoly of violence, by this shifting of the balance of power, then they would not be human. I was exhilarated!" Jesse O'Neill, *Cornell University Professor Calls Hamas Terror Attack "Exhilarating" and "energizing"*, N.Y. POST, Oct. 16, 2024, <https://nypost.com/2023/10/16/russell-rickford-says-hamas-terror-was-exhilarating-exciting/> (posted video) (last visited May 30, 2024); *id.* ("The prof said the coordinated Oct. 7 attack, in which militants broke through concrete walls and paraglided into Israel to indiscriminately murder civilians, 'shifted the balance of politics and punctured the illusion of invincibility' of Israel, which has imposed a blockade on the Gaza Strip since terrorist group Hamas seized power there in 2007."); see also *id.* ("F—k your fake outrage at Palestine when you've literally been silent about the violence perpetuated [*sic*] by Israel against Palestine every day," Derron Borders, of the Cornell Johnson Graduate School of Management, wrote on Instagram the day of the attack. [¶] Borders later condemned the violence, but said it was on par with Israel's 'state-sanctioned violence' against the Palestinian people."); Yaron Steinbuch, *Cornell Professor Who Found Hamas Attack "Exhilarating" and "Energizing" Now on Leave of Absence*, N.Y. POST, Oct. 25, 2024, <https://nypost.com/2023/10/25/news/cornell-prof-who-found-hamas-attack-exhilarating-now-on-leave-of-absence/> ("After initially standing by his statements, the embattled professor later apologized 'for the horrible choice of words,' admitting they were 'reprehensible'—before his students were told he would no longer teach this semester. [¶] 'Professor Russell Rickford has requested and received approval to take a leave of absence from the university,' the Ivy League school confirmed to the campus newspaper, the *Cornell Review*.") (last visited May 30, 2024).
50. See Doree Lewak, *Petition Grows to Oust Ivy League Columbia Prof Who Praised Hamas Attack as "Awesome,"* N.Y. POST, Oct. 15, 2023, <https://nypost.com/2023/10/15/petition-mounts-to-oust-ivy-league-columbia-prof-who-praised-hamas-attack-as-awesome/> ("A petition to oust a controversial Columbia University professor with an ugly track record against Israel has already garnered more than 20,000 signatures—after he praised last week's Hamas terror attacks as 'awesome.'... The petition targets Massad over his screed on a site called 'Electronic Intifada' that was posted one day after the brutal Hamas massacres in the Jewish nation—and in which he hails 'the stunning victory of the Palestinian resistance' against 'cruel colonizers.' [¶] Massad—a professor of Columbia's modern Arab politics and intellectual history departments who has been employed by Columbia since 1999—gushed about the 'astonishing,' 'astounding,' 'awesome' and 'incredible' nature of the terror attacks against thousands of Israelis, 1,300 of whom were murdered and 3,000 more wounded.") (last visited May 31, 2024).
51. But not a conclusion. See Arvind Asokan, *BREAKING: Pro-Palestine Activists Seize President's Office, Deface Main Quad*, STANFORD REV., June 5, 2024, <https://stanfordreview.org/breaking-anti-israel-activists-seize-presidents-office-deface-main-quad/> ("During a dramatic pre-dawn protest, thirteen pro-Palestine demonstrators were arrested on Wednesday morning after seizing the office of Stanford University's Interim President, Richard Saller. At approximately 5:30 a.m. the protesters broke into and barricaded themselves inside Building 10, home to the offices of both Richard Saller and Provost Jenny Martinez. [¶] University police were alerted shortly after the occupation began. Upon arrival, they found that the protesters had blocked entrances to the office. External walls and pillars throughout Main Quad, in which the building is located, were defaced with profane graffiti condemning the police, Stanford, Israel, and the United States. [¶] Slogans such as 'Death 2 US,' 'Pigs Taste Best Dead,' and 'Kill Cops' were spray painted across the historic Main Quad. In addition, Main Quad's war memorial commemorating fallen veterans in the Spanish–American War was defaced with a message of 'F**k Amerikkka.' [NB: The graffiti did not use asterisks.] The student protest group People's University for Palestine, which organized the break-in, denied creating the graffiti.").
52. Brittany Bernstein, *USC Cancels Graduation Ceremony over Anti-Israel Protests*, NAT'L REV., Apr. 25, 2024, <https://www.nationalreview.com/news/usc-cancels-graduation-ceremony-over-anti-israel-protests/> (last visited Apr. 25, 2024); Editors, *Put Down the Protests*, *supra* note 48 ("Columbia president Nemat 'Minouche' Shafik informed students that their classes would be held remotely as college leaders gathered to discuss ways to end 'this crisis.'"); Peter Kirsanow, *Campus Antisemitism. Again*, NAT'L REV., Apr. 25, 2024, <https://www.nationalreview.com/corner/campus-antisemitism-again/>.
53. See, e.g., Erin Ailworth, *Columbia Starts Suspending Pro-Palestinian Student Protesters in Standoff*, WALL ST. J., Apr. 29, 2024, https://www.wsj.com/us-news/education/columbia-university-pro-palestinian-student-protesters-encampment-house-democrats-48b842e7?mod=article_inline (photographs of encampments at Columbia); Melissa Korn, *Congressional Committee Takes Aim at Leaders of UCLA, Rutgers, Northwestern*, WALL ST. J., May 23, 2024, https://www.wsj.com/us-news/education/congressional-committee-takes-aim-at-leaders-of-ucla-rutgers-northwestern-a6949052?mod=Searchresults_pos3&page=1 ("The encampment-style protest at Columbia was replicated on campuses around the country, including at the schools whose leaders appeared Thursday."); Chris Panfolfo et al., *Anti-Israel Campus Protests Continue as Police Clear Encampments, Make Arrests*, FOX NEWS, May 12, 2024, <https://www.foxnews.com/live-news/may-11-anti-israel-campus-protests> (last visited May 31, 2024).
54. See Julio Rosas, *The Kids Are All Spite*, SPECTATOR WORLD 14 (June 2024) ("They demanded that institutions cut ties with Israel, topped off with requiring criminal pardons and straight 'A's for themselves, lest their noble impulses hinder their career prospects."); Kessel, *Protesters*, *supra* note 45 ("We will remain until Columbia concedes [*sic*] to our demands,' the sign read. The encampment organizers demanded that the university divest itself from 'corporations that profit from Israeli apartheid, genocide, and occupation in Palestine.' They insisted that the university provide 'complete transparency

for all of Columbia's financial investments.' They would not leave, they wrote, until the university provided 'amnesty for all students and faculty disciplined or fired in the movement for Palestinian liberation.' Next to the list of demands stood the encampment's Ten Commandments.") (last visited July 15, 2024); see also, e.g., Kevin Hassett, *Negotiating with Terrorists: Campus Edition*, NAT'L REV., May 29, 2024, <https://www.nationalreview.com/2024/05/negotiating-with-terrorists-campus-edition/> (explaining why divestment from Israel would not benefit Palestinians: "From news coverage at the time, it seemed clear that if universities had agreed to divest, things may well have settled down. But what else would that have accomplished? [¶] First, consider that global capital markets for the most part are efficient, and equity prices are a risk-adjusted expectation of their future free cash flows. If every university in the U.S. dumped Israeli equities all at once, it would in all likelihood have no effect on the price of Israeli equities or on their future performance—in other words, it would do no harm to Israel—as other buyers would swoop in. Assuming the endowments were also invested in some other equities that were priced in an efficient market, universities' portfolios would be expected to have the same risk-adjusted return going forward. So, the students demanded something that would have had no effect on the situation in Gaza or on their universities, and the universities refused. [¶] On the other hand, perhaps the students believed in the very unlikely possibility that they could convince a large number of global investors to boycott Israeli equities. In that case, the market price of the equities would drop right away below their expected future profits, and they would therefore be expected to outperform relative to their price. So, an opportunistic Warren Buffett-like investor could swoop in and buy the undervalued stock and make outsized returns. But notice, since only 'bad people' who support Israel hold or would be interested in buying Israeli stocks (or oil stocks), the effect of the change would be to take money that should have gone to 'good people' and hand it over to 'bad people.' From the students' perspective, it would achieve the exact opposite of their goal. [¶] The students' final objective, perhaps, beyond proclaiming their own (supposed) virtue and establishing leadership positions for themselves on the campus left, was to 'send a message' to Israeli firms that their government's actions should be opposed. In this case, divestment would be exactly the wrong thing to do. Consider a careful and clever study by economist Matthew Kahn and his co-authors, who found striking evidence that firms whose equities were purchased by green activist funds reduced their pollution emissions relative to those not targeted. The logical conclusion, then, is that if the activist students wanted to affect the behavior of Israeli firms, they should have advocated that university endowments load up on Israeli equities. [¶] In other words, the major demand of these fools, fanatics, and those who exploit them makes absolutely no sense whatsoever. Many employers have announced that they will carefully examine job applicants and disqualify those who participated in the protests. Even abstracting from antisemitism, a college student who thinks poorly enough to make divestment his No. 1 issue has no place in a position with any material decision-making responsibility.").

55. Kessel, *Protesters*, *supra* note 45.
56. See, e.g., Zach Kessel, *Ivy-League Anti-Israel Activists Call for "Open Intifada in Every Capital and Every City"*, NAT'L REV., May 29, 2024, https://www.nationalreview.com/news/ivy-league-anti-israel-activists-call-for-open-intifada-in-every-capital-and-every-city/?utm_source=recirc-desktop&utm_medium=article&utm_campaign=river&utm_content=more-in-tag&utm_term=first ("Anti-Israel student groups from five different Ivy-League universities shared a social-media message on Sunday calling for 'an open intifada in every capital and every city.' [¶] 'Escalate disruption and confrontation across historic Palestine, from every checkpoint and street corner to the face of every settler and soldier,' the groups—from Columbia, Harvard, Princeton, Yale, and the University of Pennsylvania—wrote in an Instagram post. 'Escalate protests to an open intifada in every capital and every city in order to deprive the world from its heavy slumber that comes at the expense of the bodies and remains of those who survive; disrupt all facets of daily life until our people can breathe freely without the taint of the Israeli, American, and European war machine.' [¶] The statement continued, with the student groups urging followers to disrupt day-to-day activity across the globe. [¶] 'In every city and street, in every school and university, in every place of work and gathering,' they wrote, 'it is time to paralyze all aspects of normal life until the massacres stop and Gaza and its people are given the justice they deserve.'").
57. See, e.g., Editors, *Put Down the Protests*, *supra* note 48 ("Since the 10/7 massacre, Columbia's Jewish students have been forced to endure routine calls for their execution. It shouldn't have taken the slaughter, rape, and brutalization of Israeli Jews to expose chants like 'Globalize the intifada' and 'Death to the Zionist state' as calls for violence, but the university refused to intervene on behalf of its besieged students. When an Israeli student was beaten with a stick outside Columbia's library, it occasioned little soul-searching from faculty. Indeed, it served only as the impetus to establish an 'Antisemitism Task Force,' which subsequently expressed 'serious concerns' about the university's commitment to enforcing its codes of conduct against antisemitic violators. But little was done. Indeed, as late as last month the school served as host to speakers who praised the 10/7 attacks and even 'hijacking airplanes' as 'important tactics that the Palestinian resistance have engaged in.'"); Kessel, *supra* note 9.
58. Editors, *Put Down the Protests*, *supra* note 48 ("We were verbally harassed, and some of my friends were physically assaulted,' one matriculated student told *Jewish Insider*. 'They yelled at us to go back to Poland, that we have no culture, and chanted, "Strike, strike Tel Aviv.'" Her experience is borne out by video footage of the protests that cascaded onto the internet."); Jackie Hajdenberg, *Cornell University Jews Told to Avoid Kosher Dining Hall After Vicious Threats Online*, TIMES OF ISRAEL, Oct. 30, 2023, <https://www.timesofisrael.com/cornell-university-jews-told-to-avoid-kosher-dining-hall-after-threats-posted-online/> (last visited May 29, 2024).
59. The Persian Jewess (@persianjewess), X, Apr. 25, 2024, <https://x.com/persianjewess/status/1783552970694750675>.
60. Hajdenberg, *supra* note 58.
61. Immature, ignorant, and in need of a sense of belonging to a civil rights cause—yes. Stupid—no. "These students are among the nation's most highly educated people. The students at these universities are well-aware [sic] of what they are espousing and calling for, and their genocidal slogans underscore how unmoored they have become from any sense of reasonable disagreement and civility." Larkin & Burke, *supra* note 13.
62. See, e.g., Korn, *supra* note 53 (quoting a House hearing: "'The world is now being directly influenced by the culture of hatred on American campuses,' said Lori Chavez-DeRemer (R., Ore.) 'Evil does not rear its cowardly head unless given permission.'"); Scheinmann, *supra* note 45

- (“Commencements canceled. Ceremonies disrupted. Buildings and spaces damaged. Exams and classes moved online. One set of students has been suspended, expelled, and arrested. Another group of students is scared, frustrated, and silenced. Universities continue to fail to quell the pro-Hamas demonstrations and encampments that have erupted on hundreds of campuses across the country because they misdiagnose the problem.”); Video, *Hundreds of Graduates Walk Out of Harvard Commencement*, WALL ST. J., May 23, 2024, <https://www.wsj.com/video/hundreds-of-graduates-walk-out-of-harvard-commencement/C69003E4-8ACE-47A5-958B-CE88DCEA1983.html>; Video, *Columbia Cancels Main Commencement Ceremony After Weeks of Protests*, WALL ST. J., May 6, 2024, https://www.wsj.com/video/columbia-cancels-main-commencement-ceremony-after-weeks-of-protests/74BDC4F2-D56E-4773-B518-3A5DD49FB439.html?mod=WSJvidctr_upnext_pos3.
63. See, e.g., Schill et al., *supra* note 47; Text of Northwestern Agreement (undated) [hereafter Northwestern Agreement], <https://www.northwestern.edu/leadership-notes/2024/agreement-on-deering-meadow.pdf>; Kessel, *Northwestern Cuts Deal* (“One of those Northwestern employees who violated university policy is Steven Thrasher, chair of social justice in reporting at the Medill School of Journalism. With a history of unsavory comments about Israel—comparing the Jewish state to Nazi Germany and transatlantic slave traders—and a thread posted on X immediately after October 7 in which he justified Hamas’s terrorism, Thrasher was one of several Northwestern professors to join the encampment and the most visible.”).
64. Northwestern Agreement, *supra* note 63, at 1.
65. See, e.g., Joseph De Avila & Melissa Korn, *Republican Lawmakers Spar with University Presidents at Campus Antisemitism Hearing*, WALL ST. J., Dec. 5, 2023, https://www.wsj.com/us-news/education/harvard-mit-penn-presidents-antisemitism-congress-f39aacfe?mod=article_inline; Lindsey Kornick, *Harvard President’s Attempt to “Cleanup” Antisemitism Statement Flops on Social Media: “It’s Too Late Now,”* FOX NEWS, Dec. 7, 2023, <https://www.foxnews.com/media/harvard-presidents-attempt-cleanup-antisemitism-statement-flops-social-media-late-now> (last visited June 1, 2024).
66. Larkin & Burke, *supra* note 13.
67. Steve McGuire (@sfmcmguir79), X Apr. 25, 2024, <https://twitter.com/sfmcmguir79/status/1783566599066173748> (last visited Apr. 25, 2024).
68. Bernstein, *supra* note 52. The media bear some share of the responsibility for what is happening because they have taken sides. Remember the “Unite the Right” rally in Charlottesville, Virginia, in 2017? A small number of extreme *right-wing* people demonstrated, and one person was killed. The media labeled the group as a new generation of Brown Shirts. By contrast, the media largely give a pass to extreme *left-wing* antisemites, as Columbia Professor John McWhorter and *National Review* editor-in-chief Rich Lowry have noted. See John McWhorter, *I’m a Columbia Professor. The Protests on My Campus Are Not Justice*, N.Y. TIMES, Apr. 23, 2024, <https://www.nytimes.com/2024/04/23/opinion/columbia-protests-israel.html?smid=nytcore-ios-share&referringSource=articleShare> (“I thought about what would have happened if protesters were instead chanting anti-Black slogans or even something like ‘D.E.I. has got to die,’ to the same ‘Sound Off’ tune that “From the river to the sea” has been adapted to. They would have lasted roughly five minutes before masses of students shouted them down and drove them off the campus. Chants like that would have been condemned as a grave rupture of civilized exchange, heralded as threatening resegregation and branded as a form of violence. I’d wager that most of the student protesters against the Gaza war would view them that way. Why do so many people think that weekslong campus protests against not just the war in Gaza, but Israel’s very existence are nevertheless permissible?... What I do know is that even the most peaceful of protests would be treated as outrages if they were interpreted as, say, anti-Black, even if the message were coded, as in a bunch of people quietly holding up MAGA signs or wearing T-shirts saying ‘All lives matter.’”); Rich Lowry, *The KKK at Columbia*, NAT’L REV., Apr. 24, 2024, <https://www.nationalreview.com/2024/04/the-kkk-at-columbia/> (last visited May 29, 2024) (“Imagine if a contingent of alt-right students established their own encampment on a corner of the quad and began to shout antisemitic slogans—say, the infamous chant ‘Jews will not replace us’ from the ‘Unite the Right’ rally in Charlottesville in 2017. [¶] Would the president of Columbia, Nemat ‘Minouche’ Shafik, hesitate to have them arrested as many times as necessary to make them go away? [¶] Would a huge contingent of faculty walk out to protest the arrests? [¶] Would the president of Barnard, Laura Rosenbury, quickly lift the suspensions of the arrested students? [¶] Answers: No, never, and of course not.”).
69. See, e.g., Ari Blaff, *Rutgers Law Student Sues School for Ignoring Rampant Campus Antisemitism*, NAT’L REV., Jan. 2, 2024, <https://www.nationalreview.com/news/rutgers-law-student-sues-school-for-ignoring-rampant-campus-antisemitism/>; Hannah Grossman, *Harvard Sued for Violating Jewish Students’ Civil Rights, Allowing “Antisemitism Cancer” to Grow on Campus*, FOX NEWS, Jan. 11, 2024, <https://www.foxnews.com/media/harvard-sued-violating-jewish-students-civil-rights-allowing-antisemitism-cancer-grow-campus>.
70. See *supra* note 7.
71. U.S. CONST. amend. XIV “No State shall...deny to any person within its jurisdiction the equal protection of the laws.”).
72. 42 U.S.C. § 1981 (Westlaw 2024).
73. 42 U.S.C. § 2000d et seq. (Westlaw 2024).
74. See *Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181, 198 & n.2 (2023).
75. See Complaint in *Louis D. Brandeis Center, Inc. & Jewish Americans for Fairness in Education (JAFE) v. Regents of the University of California et al.*, Case No. 3:23-cv-06133 (filed Nov. 28, 2023).
76. *Id.* ¶ 1, at 2. “Anti-Semitism has been allowed to take root and grow at the UC Berkeley School of Law (‘Berkeley Law’), which is located on the UC Berkeley campus. For over a year, student organizations at Berkeley Law have been enacting and enforcing policies that confront Jews with an unthinkable and unlawful ultimatum: Disavow an integral component of your Jewish identity—Zionism—or be denied the same rights and opportunities enjoyed by other members of the campus community. Although UC administrators have publicly acknowledged the fundamentally anti-Semitic nature of such policies, they have taken no action to address them. Even now, in the wake of October 7, UC Berkeley and Berkeley Law have failed to confront, much less combat, the anti-Semitic environment their inaction has fostered.” *Id.* ¶ 2, at 2.

77. *Id.* ¶ 3, at 2 (“Anti-Zionism is discrimination against those who recognize the Jews’ ancestral heritage—in particular the Jews’ historic connection to the land of Israel and the right of the Jewish people to self-determination in their ancestral homeland—as key components of their Jewish identity. The United States, along with at least forty-two other nations, has recognized that demonizing, delegitimizing and applying a double standard to Israel—all forms of anti-Zionism that are distinct from criticism of the State of Israel or opposition to the policies of the Israeli government—are forms of anti-Semitism.... By erasing or denying the Jewish people’s ancestral connection to one another and to the land of Israel and by rejecting the very right of the State of Israel to exist, anti-Zionism denies to the Jewish people alone a fundamental human right to self-determination allowed to all other peoples of the world.”) (citation omitted), ¶¶ 45–62, at 13–19.
78. *Id.* ¶ 4, at 3 (“• To be a member of Women of Berkeley Law, the Queer Caucus at Berkeley, or the Asian Pacific American Law Students Association, Jewish students must accede to the groups’ support of the Boycott Divestment and Sanctions movement, which seeks to dismantle the modern State of Israel; • In order to volunteer to provide pro bono legal services through a number of Berkeley Law Legal Services organizations, Jewish students must undergo a ‘Palestine 101’ training program that emphasizes the illegitimacy of the State of Israel; • And to speak to any of these student organizations, invited speakers must first repudiate Zionism under a bylaw that prohibits speakers who hold Zionist views (the ‘Exclusionary Bylaw’). In fact, the Berkeley Journal of Gender, Law, and Justice, goes one step further, prohibiting Zionists not only from speaking to its members but from publishing in its pages.”) (citation omitted), ¶¶ 70–88, at 21–25.
79. *Id.* ¶ 5, at 3–4.
80. *Id.* ¶¶ 6, at 4, ¶¶ 89–97, at 26–28.
81. *Id.* ¶ 9, at 4–5.
82. *Id.* ¶ 13, at 5.
83. *Id.* ¶ 14, at 6.
84. *Id.* ¶ 14, at 6, ¶¶ 98–104, at 28–30
85. *Id.* ¶¶ 105–34, at 30–36.
86. *Id.* at 36–37.
87. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2(a)(1) (West 2024), effectively prohibits an employer, whether intentionally or negligently, from forcing an employee to resign instead of dismissing an employee on a prohibited basis, such as race, sex, or religion, by creating what has been termed a “hostile work environment.” See, e.g., *Vance v. Ball State University*, 570 U.S. 421, 426–27 (2013). If Title VI of that act supports a similar theory of liability, the plaintiffs’ complaint alleges facts that would support such a claim. Moreover, state tort law might also provide a basis for relief. The plaintiffs essentially claim that California state universities (1) knowingly created (or knowingly allowed to be created by someone else) an environment in which being Jewish deprives a person of educational opportunities open to Gentiles and exposes Jews to the risk of physical assault and (2) did nothing to stop such torts and crimes once they become public knowledge. If proven, those allegations are tantamount to driving someone out of school even though the school signed a contract to provide an education. The common law of contracts would provide a basis for relief in such a setting on the ground that the universities have breached their contracts with the plaintiffs to provide them with a safe educational environment. *Restatement (Second) of Contracts* § 235 (1981) (“Effect of Performance as Discharge and of Non-Performance as Breach: ... (2) When performance of a duty under a contract is due any non-performance is a breach.”); *id.* Comment: ...*b. Effect of non-performance.* When performance is due... anything short of full performance is a breach, even if the party who does not fully perform was not at fault and even if the defect in his performance was not substantial. Non-performance of a duty when performance is due is a breach whether the duty is imposed by a promise stated in the agreement or by a term supplied by the court (§ 204), as in the case of the duty of good faith and fair dealing (§ 205). Non-performance includes defective performance as well as an absence of performance.”); *id.* § 236 (“Claims for Damages for Total and for Partial Breach: (1) A claim for damages for total breach is one for damages based on all of the injured party’s remaining rights to performance. (2) A claim for damages for partial breach is one for damages based on only part of the injured party’s remaining rights to performance.”). Insofar as a university’s conduct makes it impossible for Jewish students to live in their dormitories or use the common areas of a school, the colleges also would have engaged in the constructive eviction of tenants. See *Restatement (Second) of Property, Land & Ten.* § 6.1 (1977) (“Except to the extent the parties to a lease validly agree otherwise, there is a breach of the landlord’s obligations if, during the period the tenant is entitled to possession of the leased property, the landlord, or someone whose conduct is attributable to him, interferes with a permissible use of the leased property by the tenant. For that breach, the tenant may, if the conduct does not cease promptly after an appropriate request by the tenant to the landlord: (1) terminate the lease in the manner prescribed in § 10.1 and recover damages to the extent prescribed in § 10.2; or (2) continue the lease and obtain equitable and legal relief including: (a) the recovery of damages to the extent prescribed in § 10.2; (b) an abatement of the rent to the extent prescribed in § 11.1; (c) the use of the rent to eliminate the interference to the extent prescribed in § 11.2; and (d) the withholding of the rent in the manner and to the extent prescribed in § 11.3.”); *id.* (“Comment: *a. Rationale.* When the landlord, or someone whose conduct is attributable to him, interferes with the tenant making a permissible use of the leased property and the tenant has not consented to the conduct, the landlord has deprived the tenant of his just expectations under the lease[,] and he should not be allowed to require the tenant to carry the full burdens of the lease. The rule of this section will tend to discourage that conduct. The conduct considered in § 6.1 is more commonly referred to as an eviction by the landlord.”).
88. The plaintiffs claim that they are the victims of discrimination on the basis of religion, in violation of (among other things) the Equal Protection Clause and Title VI of the Civil Rights Act of 1964, both of which apply to California state and private colleges. See *Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181, 198 & n.2 (2023). The plaintiffs also claim that the universities violated their rights under the Civil Rights

Act of 1866, 14 Stat. 27 (codified at 42 U.S.C. § 1981). That statute prohibits discrimination in contracting on the basis of race, which would have been understood in 1866 to include Jews. See *St. Francis College v. Al-Khazraji*, 481 U.S. 604, 611 (1987) (“Encyclopedias of the 19th century also described race in terms of ethnic groups, which is a narrower concept of race than petitioners urge. Encyclopedia Americana in 1858, for example, referred to various races such as Finns...gypsies...Basques...and *Hebrews*.... The 1863 version of the New American Cyclopaedia divided the Arabs into a number of subsidiary races...represented the Hebrews as of the Semitic race...and identified numerous other groups as constituting races, including Swedes...Norwegians...Germans...Greeks...Finns...Italians...(referring to mixture of different races), Spanish...Mongolians...Russians...and the like. The Ninth edition of the Encyclopedia Britannica also referred to Arabs...*Jews*...and other ethnic groups such as Germans...Hungarians...and Greeks...as separate races.”) The Ninth edition of the Encyclopedia Britannica also referred to Arabs...*Jews*...and other ethnic groups such as Germans...Hungarians...and Greeks...as separate races.”) (emphasis added, citations omitted).

89. See, e.g., Arieh Kovler, *Israel Has Faced Its Darkest Day for Fifty Years*, SPECTATOR WORLD, Oct. 8, 2023, <https://thespectator.com/topic/israel-faced-darkest-day-fifty-years/> (“*Hamas’s* surprise attack isn’t just ‘another round’ like we’ve seen over and over since 2006: rockets on Israel, warplanes on Gaza City, dozens killed and a ceasefire after two weeks that returns things to the status quo ante. Israelis will no longer accept a return to a world where Hamas can carry out mass murder on this scale, and the country’s right-wing government is politically incapable of compromise. This war will be different. We’re all just waiting to find out how.”); Limor Simhony Philpot, *Hamas’s Horrible Attack on Israel Was Meant to Bring War*, SPECTATOR WORLD, Oct. 7, 2023, <https://thespectator.com/topic/hamas-attack-israel-bring-war/>.
90. See Mike Cote, *Nothing Is Ever the Palestinians’ Fault*, NAT’L REV., June 1, 2024, <https://www.nationalreview.com/2024/06/nothing-is-ever-the-palestinians-fault/> (“The Palestinian line on the war, which is echoed by international media and NGOs, is to portray the airstrikes causing destruction in the [Gaza] Strip, the consequent deaths of civilians, and the ongoing dislocation of civilians as being carried out by Israel with the malicious intent of maximizing harm to Palestinian innocents. Unsurprisingly, there is no mention of the deliberate co-location of Hamas military assets within, underneath, and around civilian infrastructure. Hamas, backed by most Palestinians, sparked this war with its despicable terror massacre and kidnapping of innocent civilians, from babies to grandmothers. Hamas has continued to hold hostages, make ridiculous demands in negotiations, and steal humanitarian aid for its own use. The extension of the war is entirely Hamas’s responsibility. But it’s *We blame Israel* all the way down.”) (emphasis in original) (last visited June 1, 2024).
91. Stephens, *supra* note 36 (emphasis in original).
92. *Id.*
93. That is, a person whose gender identity is not simply male or female.
94. Editorial, *Why the Gaza Protests Are Worrying*, SPECTATOR WORLD 3 (June 2004).