

Thoughts on Columbia University's Dilemma, and a Proposed Solution

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University and college structures relating to governance and accountability have been tested during times of student unrest and protest. Such is the case at Columbia University.

Columbia University has been at the epicenter of strident pro-Hamas demonstrations during 2023-2024, erupting soon after Hamas' murderous incursion from Gaza into sovereign Israeli territory on Oct. 7, 2023, the Jewish holy day of Simchat Torah.

Hamas, recognized by the United States as a terrorist organization had controlled Gaza with an iron hand since 2005 when Israel ceded any control or occupation of that territory. Not long after the events of Oct. 7, pro-Hamas demonstrations broke out on campuses across the country, including Columbia.

Jewish students in particular became targets and experienced overt acts of antisemitism from these student demonstrators and, at other times, from some faculty as well. Many of these Jewish students have uttered the same message—we don't feel safe here. The response by the University to these legitimate concerns of Jewish students, whose safety has been threatened and academic progress and achievements compromised, has been tepid at best.

Columbia's reluctance to protect its Jewish students from acts of antisemitism has resulted in charges by the U.S. Department of Education's Office for Civil Rights (OCR) that it is in violation of federal anti-discrimination laws—in particular Title VI of the Civil Rights Act of 1964, in that its leadership is alleged to have acted with deliberate indifference towards the harassment of Jewish students on its campus since Oct. 7, 2023.

The charges have been formally communicated to the Middle States Commission on Higher Education (the Commission), the accrediting entity for Columbia University, alleging that due to its violation of federal anti-discrimination laws, Columbia has failed to meet the standard for accreditation.

While it is an open question if the Commission is required to act on the federal government's communication, if Columbia were to lose or even face the possibility of losing its accreditation, it could affect the ability of students to receive federal loans and grants. This is one of the harshest punishments a university might face and would lead to students transferring out of Columbia to another accredited institution, and a far diminished pipeline of new students willing to enroll.

The OCR found that Columbia did not establish effective mechanisms for reporting and remediating antisemitism.

Thoughts on Columbia University's Dilemma, and a Proposed Solution

This included failing to adhere to its own policies when responding to complaints from Jewish students, not investigating or punishing acts of vandalism such as swastikas and other universally recognized hate images placed in classrooms and not enforcing restrictions on post-October 7 campus protests.

Columbia University Apartheid Divest, the major student coalition organizing the protests has called for the "total eradication of Western civilization," distributed material produced by the Hamas Media Office on campus, backed calls for violence against "Zionists" and asserted that "violence is the only path."

The recent antisemitic disturbances carried out by the pro-Hamas, antisemitic agitators at a student-packed Columbia University's Butler Library, on the cusp of final exams, raises the issue once again, of whether the University, and in particular, its Senate, has failed to properly demand and enforce adherence to school rules of conduct and discipline.

The Columbia University Senate, an important prong in Columbia's shared governance framework, came into existence in 1969 as a unicameral legislative body, largely in response to the 1968 anti-war protests and building seizures at Columbia. It included faculty, students, alumni and administrative staff and was provided with broad policy making authority over university-wide concerns. Uniquely among peer institutions, it included the mandate to "promulgate a code of conduct for faculty, students, and staff and provide for its enforcement."

The present campus upheavals have resulted in an on-going review of the University Senate's response to student protests and attendant disciplinary action. The Senate has been blamed, we think appropriately, for its reluctance and delay in enforcing school rules of conduct concerning the antisemitic demonstrations that have roiled the campus.

The University Senate responded to the campus disturbances by releasing an anonymously-authored "Sundial Report" that purported to be a comprehensive account of the 2023-2024 campus protests and the University's response. This report has met with concern by many others affiliated with the University.

A group comprised of members of the Columbia community including tenured faculty and some current members of the University Senate, and published by the Stand Columbia Society, issued a responsive study, "The Sunlight Report: A Reappraisal of the Sundial Report." Our law firm, Morrison Cohen, was pleased to act in a pro bono advisory capacity in connection with the release and issuance of the Sunlight Report.

This commentary presents our views only and not those of the Stand Columbia Society. We have examined both reports however and believe that the Sunlight Report clearly points out the inadequacies in the Sundial Report.

In doing so, we were struck by the governance failures associated with the Sundial Report. For example, the Sunlight Report identified 470 cases of factual errors, material omissions, and evidence of bias-in particular, selective framing and theoretical asymmetries that give the appearance of institutional consensus where none exists.

Although intended as a link to an institutional memory reflecting Columbia's response to this student chaos of 2023-2024, the Sundial Report because of its inadequacies, risks offering the university community as well as the public, a watered-down, incomplete and confusing narrative; and furthermore as it is issued under the authority of the Senate, places the institution at risk. Furthermore, the Sundial Report was issued in violation of Columbia's own by-laws, which require such reports to be addressed to the Trustees through the President. The Senate willfully bypassed both.

The Sunlight Report, in order to restore institutional credibility, proposed the following:

• clarification of the Sundial Report's authorship and funding; and

• the formal withdrawal of the Report as an institutional document; and

Thoughts on Columbia University's Dilemma, and a Proposed Solution

Â· the commissioning of an independent, external review by a commission similar to the Cox Commission of 1968, a task force comprised of prominent individuals external to Columbia.

But beyond the resolution of the complexities scrutinized by these two dueling Reports is a necessary focus on what is at stake for Columbia and what must be done presently. The continued campus disruptions, that seem to be immune from an adequate student disciplinary process, have targeted Jewish college students and have resulted in giving the Trump administration an opening to retract federal funding that Columbia receives.

At present, the federal government has frozen \$430 million but cumulatively over multiple years, if the freeze continues, the amount at stake is estimated to rise to \$5 billion, dealing a crippling blow to the operation of the University.

At the center of this is the manner and scope and thoroughness of the student disciplinary process that has been in place to deal with the chaos on campus. Student Discipline at Columbia operates in a diffuse manner. Although Columbia's trustees have the ultimate fiduciary responsibility in this area, both the Administration and the University Senate have authority to administer discipline for misconduct.

The complexity of a multi-disciplinary system, as exists here, leads to fragmentation, overlap, poor coordination and disagreement over jurisdiction. Notably, last Spring, the University Senate demanded-and the Administration ceded-exclusive jurisdiction over the protests. Eleven months then elapsed, fraught with procedural slowdowns and the Senate's reluctance to administer discipline, before the processes concluded with expulsions and suspensions. In that time, the lack of discipline placed Columbia at considerable legal and financial risk. This process has worked poorly at Columbia and the University Senate must shoulder substantial blame. The Administration is also at fault for caving to the Senate's demands, although recently, its response to the Butler Library demonstrations have been encouraging.

The demonstrators are for the most part, not the benign keffiyeh-wearing students that the progressive press have been extolling. With their continued cries of "Free Palestine," they present the challenge and threat of terrorism, aimed not only at Jews and Israel but at America as well. Indeed, "Free Palestine" calls for the destruction of Israel, by any and all means, the killing of Jews and the embrace of Hamas.

"Free Palestine" is an integral part of the Intifada-only now it's the American Intifada. Could the recent execution of the two young diplomats-in-training outside the Jewish Museum in Washington, D.C. and the Molotov-cocktail attack on elderly Jews and children marching for the October 7 hostages in Boulder Colorado make this any more evident? There simply is not an innocent interpretation for this call to eliminate the Jewish state and its people. These threats of terrorism now brought to our country must be dealt with quickly and forcefully. To underscore this point, a recent legal filing reveals that a Hamas captor showed an Israeli hostage news about protests at Columbia University and said to them "You see, we have our own people everywhere."

In our opinion, these demonstrators are influenced and aided by foreign monetary infusions and terrorist ideology designed to produce chaos on American campuses and to induce fear among Jewish students. It is the type of activity that is far, far more involved and insidious than yelling fire in a theater-the paradigm for First Amendment conversations. It is a link in the war to disrupt American institutions and American society.

We support legitimate criticism of Israel through peaceful protest. The government of Israel is not immune from criticism and rebuke. Israeli citizens are often in the forefront of such activity. But protests and demonstrations that encourage the destruction of Israel and the killing of Israelis and Jews elsewhere, cross the line and must be stopped.

We are saddened to see that many university presidents and faculty have refused to defend Jewish students who have been assaulted, forced to endure this stream of invective and harassment that has been all too common at Columbia and elsewhere and to have experienced the disruption of their academic studies along with the instances where they must listen to the biased diatribes disseminated as terrorist propaganda by certain faculty.

Thoughts on Columbia University's Dilemma, and a Proposed Solution

Columbia University has an obligation to respond forcefully to these problem; that means, we think, that the University trustees in the exercise of their fiduciary responsibilities must re-establish primary jurisdiction in all matters that may place the University at legal or financial risk.

In March, it commendably did so in removing student and faculty discipline from the purview of the University Senate. For too long, Columbia, through its University Senate has demonstrated an unwarranted leniency toward student protests that have disrupted serious academic pursuits on campus.

We believe that school expulsion or lengthy suspensions for these "Free Palestine" spewing agitators is long overdue-their antisemitic voices and acts of harassment directed at Jewish students must come to an end if Columbus is to regain its credibility and vibrancy. This is the path, in our view, that the University Trustees should embark on. Of course, we believe that an appropriate disciplinary hearing structure must be maintained by the Trustees in order to validate Columbia's historic commitment to fairness and justice.

At the same time, Columbia's failure to respond to the disturbances and attacks aimed at Jewish students has spiraled into a potentially calamitous fiscal situation that, if continued, could have drastic consequences for the continuation of Columbia as a pre-eminent academic institution. This too involves the fiduciary responsibilities of the University Trustees.

These two intertwined and inter-related issues are at the core of the dilemma facing Columbia. Only through the ascendancy of the trustees to their proper role of fiduciary oversight and governance, can Columbia emerge to a bright future.

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Thoughts on Columbia University's Dilemma, and a Proposed Solution

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