

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of

STUDENTS FOR JUSTICE IN PALESTINE,  
COLUMBIA-BARNARD JEWISH VOICE FOR  
PEACE, MARYAM ALWAN, and CAMERON  
JONES,

Petitioners,

-against-

TRUSTEES OF COLUMBIA UNIVERSITY IN THE  
CITY OF NEW YORK, COLUMBIA UNIVERSITY IN  
THE CITY OF NEW YORK, MINOUCHE SHAFIK, in  
her official capacity as President of Columbia University  
in the City of New York, and GERALD ROSBERG, in  
his official capacity as Senior Executive Vice President  
of Columbia University in the City of New York,

Respondents,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules.

Index No.: \_\_\_\_\_

**AFFIRMATION OF KATHERINE FRANKE**

I, Katherine Franke, affirm on this 11th day of March 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

1. I am the James L. Dohr Professor of Law at Columbia Law School and have been a member of the faculty at Columbia Law School since 1999. I am also on the faculty of Columbia University Center for Palestine Studies, and a graduate of Barnard College, class of 1981.
2. I have been involved in supporting and advising the petitioner students and student groups in the within petition over the past few months regarding their Pro-Palestine activism and their experiences with the Columbia and Barnard administration(s).
3. Over my more than forty-five-year affiliation with the Columbia/Barnard community, I have either been part of or witnessed a wide range of forms of student activism on our campus.

### My Experience Supporting Petitioner Students and Petitioner Student Groups Engaged in Palestine Advocacy (Fall 2023-Present)

4. In keeping with past student engagement around Israel and Palestine at Columbia University, in the aftermath of the attacks on October 7, 2023, students immediately engaged on our campus. In response to numerous statements from within and outside Columbia University condemning the Hamas attacks, Columbia students issued a statement on October 9, 2023, in which they aimed to situate the October 7<sup>th</sup> attacks in a larger history of the occupation of Gaza and the Palestinian struggle for independence.
5. The immediate response from many parties both inside and outside the university was to condemn the students, portraying their statement as antisemitic. I worked with several other faculty to draft a statement defending the students' right to voice the views expressed in their statement, and contesting the notion that its contents were unequivocally antisemitic. We did not defend the claims in the student statement, but merely defended their right to make them as a matter of academic freedom and free speech. In response to our letter, another group of faculty took issue with our statement and issued their own statement reiterating condemnation of the students.
6. Around this time, students within the Columbia chapters of Students for Justice in Palestine and Jewish Voice for Peace (hereinafter "SJP and JVP") reached out to me and other faculty to support their rights to academic freedom.
7. I recall that on October 12, 2023, SJP, JVP, and other student organizations participated in an on-campus protest, and Students Supporting Israel held a counterprotest, collectively drawing hundreds of affiliates of Columbia University to the South Lawn of Columbia's Morningside Campus (*See* attached **Exhibit A** for a true and correct copy of a map of Columbia University's Morningside Heights Campus.<sup>1</sup> It is fair to say that emotions ran very high at this event, but it was peaceful and not unlike past demonstrations regarding this same issue.
8. Student demonstrations continued after October 12<sup>th</sup>, often announced through student groups' social media pages. In keeping with past practice on campus, many of these events were called on short notice, in response to news from Israel and Gaza.
9. On November 9, 2023, Columbia's SJP and JVP student groups held a walk out, art installation, and die-in on the steps of the Low Library, attended by hundreds of students.
10. The next day, on November 10, 2023, Columbia University publicly announced on its website that it had suspended SJP and JVP because the groups had "repeatedly violated University policies related to holding campus events" and that the November 9<sup>th</sup> event included "threatening rhetoric and intimidation."<sup>2</sup> To my knowledge, the university did not circulate an internal university-wide email at any time before or after publicly announcing the suspension of SJP and JVP on its website. Prior to this date, and my forty-

---

<sup>1</sup> <https://visit.columbia.edu/content/maps-and-directions-update>

<sup>2</sup> <https://news.columbia.edu/news/statement-gerald-rosberg-chair-special-committee-campus-safety>

five years as part of the Columbia community, I had never seen the university suspend a student group for its members' activism, nor issue a public announcement of doing so.

11. The action came as a disturbing surprise to me for other reasons, too. In my many years at Columbia University and Barnard College I have never seen the university unilaterally suspend and discipline a student group for peaceful protest on campus. For example, when members of "Columbia Divest for Climate Justice" organized an 8-day sit-in in Low Library in 2016, several students were charged with disciplinary violations, but the student group was not disciplined or suspended. There are many other similar examples in which student-based organizations engaged in protests that included disruption of the campus, and while individual students may have been charged with disciplinary violations, the student groups of which they were a part were not.
12. After receiving the suspension notice, student organizers of SJP and JVP reached out to me discuss how they might contest their suspensions.
13. Later that afternoon, I emailed Vice President Gerald Rosberg on behalf of the students, seeking clarification about the nature and basis of the suspension (attached as **Exhibit B**). For example, because the suspension decision seemingly invoked the Rules of University Conduct, which prohibit speech that "constitutes a genuine threat of harassment," I asked what was the "threatening rhetoric and intimidation," to which the suspension referred. I also asked which part, if any, of Sec. 443(a) of the Rules of University Conduct were being invoked as justification for this suspension.
14. In this email, I also asked questions about the "Special Committee on Campus Safety," on whose behalf Mr. Rosberg had signed the suspension notice. Specifically, I asked, "What is the "Special Committee on Campus Safety?" "Who else is on this committee?" "What is the committee's authority and charge?" "How were they Appointed and by whom?" "Did the Executive Committee of the University Senate do so?" "If so, when and by what instrument?"
15. Mr. Rosberg replied on November 12 (attached as **Exhibit C**). In his response he explained "I want to clarify that we took no action against individual students as part of the Rules of University Conduct at this time. The student groups have been suspended because they repeatedly violated the University's Event Policy and Student Group Event Policy and Procedure" (*Id.*). He also stated that he would need to consult with others before responding to my email, and that he hoped to do so early that week.
16. While I did not receive a follow-up from Mr. Rosberg, I continued to work with leaders in the two student groups, hoping that we could convince the university to reverse this unprecedented action. We set up a meeting with Mr. Rosberg, which took place in my office at Columbia Law School, on November 30, 2023.

#### November 30th Meeting with Columbia Administration Regarding SJP and JVP's Suspensions

17. Mr. Rosberg came to my office on November 30, 2023, accompanied by Cristen Kromm, Columbia Dean of Undergraduate Student Life, and Joseph Defraigne Greenwell, Senior Vice President for Student Affairs in Columbia's Office for University Life. Maryam

Alwan, a student member in Students for Justice in Palestine, and Cameron Jones, a student member in Jewish Voice for Peace, attended. Two University Senators attended, Jaxon Williams-Bellamy, Co-Chair of the Senate Rules Committee, and Jalaj Mehta, member of the Senate Rules Committee. Professor Joseph Slaughter also attended, as did University Senate President Jeanine D'Armiento remotely, by Zoom. I recorded a portion of this meeting, and I understand that one of the students did as well.

18. I asked Mr. Rosberg to clarify why the student groups were suspended, and he explained that there had been no violations of the Rules of University Conduct, but rather that the students had not complied with the university's events policies.
19. I pressed him on the content of the suspension notice, specifically the language alleging that the protest they had engaged in "included threatening rhetoric and intimidation." I wanted to know to what he was specifically referring. He then stated that the decision to suspend the two groups had not been based on "threatening rhetoric and intimidation" but rather on failure to comply with the Events Policy. He noted that he had watched many of these protests himself and that he didn't think there were violations of the University Rules of Conduct.
20. He then continued, "at the same time, I think that the events were, and I'm back to my words here about 'intimidating' and even 'threatening'—they're scary, some of these events. And that to me is why we need rules about *when* you can have them." When I pressed further into what he meant by "scary," Mr. Rosberg specifically said: "I think all the talk about genocide all the talk about apartheid state and racist state, 'Minouche Shafik, you're supporting genocide.' I think if you're saying that—you don't think why would anybody be upset about that, but I think, I could imagine that somebody listening to that, that an Israeli student being told that their state is an apartheid state, a racist state committing genocide, *seems* to them like an incitement of violence against them."
21. One of the students, Maryam Alwan, then asked Mr. Rosberg why the Special Committee for Campus Safety would post publicly on the University website that the groups had engaged in threatening, intimidating language if it was based on a subjective interpretation. She expressed that this implied the university was "taking a side at that point." He responded: "I'm saying rhetoric is intimidating and threatening based on how it is perceived by the people who hear it. And I believe that a lot of what is said on both sides is perceived as intimidating and threatening by people on the other side."
22. At a later point in the conversation, I circled back to Mr. Rosberg's response to our question about the language of the suspension notice and asked if, as he had just shared, the student groups' reference to apartheid and genocide at the November 9, demonstration was, at the time, what the university understood to be intimidating and threatening. I did not hear an answer to my question, so I then asked specifically: At the time that Mr. Rosberg put the phrase "threatening rhetoric and intimidation," in the suspension notice, what was he referring to?
23. He responded saying, "There was no finding on this effect, to this effect. I would say that with my own eyes, what I observed were references to genocide. And, I hate to open this

door because it always leads to wonderland, but ‘from the river to the sea.’ But, all this stuff is upsetting to people.”

24. Jaxon Williams-Bellamy, Co-Chair of the Senate Rules Committee, then stated that a regulation by the university [such as this suspension decision] that in any way cites the contents of something that someone says is itself a violation of the Rules of University Conduct, and specifically section 440. He went on to explain: “The administration can violate the rules in the same way that individual students can violate the rules. It’s just different provisions of the rules.”
25. I continued to stress to Mr. Rosberg that principles of academic freedom and free speech protected our students in saying things that might, to him, be uncomfortable or “scary” but that this did not meet the standards for disciplining students under the Rules of University Conduct or justify suspension or discipline of a student group.
26. We also pressed Mr. Rosberg on the authority of the “Special Committee on Campus Safety” to unilaterally suspend and discipline the two student groups without consulting the Student Governing Board, or other relevant bodies. He maintained that the University had plenary and unreviewable authority to suspend and discipline student organizations such as SJP and JVP. When one of the senators pressed Mr. Rosberg, asking if he was saying that the President was involved with this action and that they [the committee] did this with her knowledge and power, Mr. Rosberg stated, “She knew about the sanction, yes. If that's what you mean. And it was ultimately our decision to say that this was, it was a collective decision by the leadership of the university.” When we asked Mr. Rosberg who the members of this committee are, he said himself, Mr. Greenwell, and that he would get us the names of the other members of the committee. Despite my follow up asking for these names, I never received them.

#### Columbia/Barnard’s Subsequent Responses to Palestine-Related Speech

27. On November 23, 2023, Columbia University cancelled a Palestine-focused event that I was personally scheduled to participate in and that had been scheduled for November 30<sup>th</sup>. Organized by the Columbia Global Centers in Amman, Jordan, this virtual panel was entitled “*The Legacies of Edward Said: Academic Praxis and the Question of Palestine.*” The organizer of the event, a Fellow at Yale Law School, informed the speakers by email on November 23rd that “Columbia Global has informed me that they can no longer host this discussion because all their events are postponed indefinitely subject to review over the coming months.” I wrote to Waffa el-Sadr, the head of Columbia Global, to ask about the cancelation of this event, and all other Columbia Global events. She responded to me saying, “We certainly recognize the extraordinary scholarly contributions of Edward Said and his stature as a revered Columbia professor. Based on this, the decision was to defer (not cancel) this event to allow for full appreciation of his legacy with ideally an in-person audience in the auditorium at our Amman Center. The decision to defer this session was transmitted to the person who was working directly with you and the other speakers in organizing the session. I am hopeful that the second event that is part of the Edward Said series will be scheduled soon and allow for inviting an in-person audience at the Center.” When I shared this email with the organizer of the Said panel and the staff at the Amman

Center, they asserted that Columbia Global had never informed them of this rationale or the purported plan for an “Edward Said series.” As of this date, no second event has been scheduled by Columbia Global. Ultimately, we were able to find another non-Columbia sponsor to host the event on November 30<sup>th</sup>, and the event was extremely well attended and well received.

28. In addition to working with the two student groups related to their suspension and discipline, I have served as an “advisor” for a number of students who have been charged by Columbia and Barnard with disciplinary violations since November, 2023. The University’s use of the disciplinary process in this period is unprecedented, and to many faculty, quite alarming. The reasons why include:
- a. The Rules Administrator (the university officer charged with initiating and investigating rules violation charges) has denied students due process rights of notice, as those rights are clearly stated in the University Rules of Conduct. When students raised concerns about these notice violations, the Rules Administrator rejected their objections. The students sought clarification from the Senate Rules Committee about the requirements for notice that the Rules Administrator must follow, and it found that indeed the students’ rights had been abridged and the complaints brought against them were dismissed.
  - b. The disciplinary process has been invoked for actions by students that have never been treated as plausible violations of the rules. This includes walking past a demonstration or protest, hanging flags outside of a student’s own dorm room, reading the names of people killed in Gaza, and silently walking out of an event;
  - c. When asked during investigatory meetings with students about the basis upon which the Rules Administrator would determine to “informally resolve” a complaint rather than dismiss it or refer it for a full hearing before the University Judicial Board, she has responded “if I don’t think it is worth proceeding any further.” When pressed about what grounds she would use to make that decision, she has said that it is “entirely in my discretion.”
  - d. The most recent round of disciplinary notices demonstrates an even more aggressive strategy being taken by the Rules Administrator, skipping the informal step in the process by meeting with students first to inform them of the charges against them, brief them on the process of investigating the complaint, and offering the students an opportunity to respond to the complaint. Quite often, the Rules Administrator would then propose an informal resolution for the complaint in which the student might acknowledge the meaning and purpose of the Rules and that their conduct may have technically violated those rules, accompanied by a representation that they will follow the rules in the future. At that point the Rules Administration typically “informally resolved” the matter, ending it there. The most recent notices sent to students indicate that she is no longer pursuing informal meetings with students or providing any opportunity to resolve the complaints informally, but rather is formally charging them in writing and demanding a written response from them before determining whether to refer the matter to the University Judicial Board for formal prosecution. This marks an unprecedented departure from her own practice as Rules Administrator and of the almost universal practice of previous Rules Administrators.

- e. What advisors have witnessed in the Rules administration process since November 2023 is a punitive, unprecedented, and at times arbitrary application of the Rules of University Conduct against students who have engaged in speech supporting Palestinians. Historically, the administration has given wide latitude to students to engage in protest and speech on campus as a matter of academic freedom. In the past, students have engaged in conduct that plausibly raised disciplinary code violations (such as rushing the stage in protest of a speaker's message or blockading a university building for days or weeks). These students received mere warnings as punishment, yet now we witness students being threatened with serious findings of rules violations for merely attending a protest, walking silently out of a speech, or respectfully reading names of people who have been killed in contexts and spaces that do not disrupt teaching.
- f. We also witness the Rules Administrator reading from a script that has been prepared for her by counsel, likely the University's Office of General Counsel, raising serious concerns about the impartiality of the Rules administration process being influenced by other offices and officers of the University, in direct violation of the University statutes governing the administration of the Rules of University Conduct.

### **My Experience with On-Campus Activism During My Long Tenure Highlights the Unprecedented Nature of the Administration's Actions**

#### As an Undergraduate Student at Barnard College (1977 to 1981)

29. I chose Barnard College for my undergraduate education in significant measure because of its reputation for having a politically engaged student body and university leadership that allowed, if not welcomed, student engagement with the political events of the day. My experience as a student was that I learned almost as much from the teach-ins and protests on campus as I did in the classroom with my professors. Student political engagement on the campus – often on the steps of Low Library, exposed me to new ideas and information about U.S. military intervention in Central America, the anti-apartheid movement in South Africa, disputes between feminists on the role of pornography in women's sexual oppression, and so much more.
30. When I was an undergraduate student at Barnard College students on our campus were engaged in a wide array of social justice issues domestically and globally, and that engagement often motivated students to hold protests on the campus and around the city. I can recall at least thirteen distinct examples of student protest that took place at Barnard/Columbia while I was a student, including:
  - a. My classmates and I were actively involved in the movement to divest Columbia's endowment from South Africa as a way of protesting the apartheid government in that country.
  - b. In the late 1970s and early 1980s we also protested U.S. military engagement in El Salvador, and President Jimmy Carter's announcement that he might reinstate a military draft, including frequent protests on the steps of Low Library where

students engaged in political theater, U.S. flags were burned, and demonstrators tussled with counter-protesters.

- c. To my knowledge, during my time as a student, Columbia University and Barnard College allowed the protests and demonstrations enumerated above to take place on the campus, did not require students to request permission in advance for the events to take place. What is more, I recall no students or student groups being charged with disciplinary violations for organizing or participating in campus protests. I also did a comprehensive search of the Columbia newspaper, the Spectator, and found no mention of disciplinary charges being filed against students who protested while I was a student at Barnard/Columbia.

As a Columbia Law Professor (2000-Present)

31. I joined the Columbia Law faculty in 2000, and I was delighted to return to my alma mater, now as a professor after having been a student during an earlier era. What I found was a campus that continued to be engaged with the most pressing global and domestic issues of the day, including:

- a. Both protesting and supporting the Bush administration's invasion of Iraq in 2003.
- b. Students and faculty objecting to the University's plan to expand into West Harlem above 125<sup>th</sup> Street, through the use of eminent domain power between 2003 and 2007.
- c. Pro-Israel students protested the elections in Gaza that brought Hamas into the Palestinian government.
- d. Iranian President Mahmoud Ahmadinejad was invited to speak on campus generating intense protests against and in favor his appearance at Columbia.
- e. Students demanding that the University divest from fossil fuels protested on the steps of Low Library and held a sit in in President Bollinger's office.
- f. Students occupied Low Plaza to protest Donald Trump's threat to end DACA (Deferred Action for Child Arrivals) and to declare Columbia a sanctuary campus.
- g. Graduate students seeking to unionize held numerous protests on Low Plaza protesting the university's negotiating tactics.
- h. Students staged a walkout, protest, and sit-in in the School of International and Public Affairs objecting to the nomination of Brett Kavanaugh to the Supreme Court after he was alleged to have engaged in sexual assault and harassment.
- i. Student chapter of Extinction Rebellion held a sit-in, occupying the rotunda of Low Library to demand the university do better to get to emitting zero greenhouse gases.

32. Since I joined the Columbia faculty in 2000, there have been hundreds of student actions held on the campus related to the Middle East, particularly focusing on the rights of Palestinians, Jews, Israelis, and Arabs. Although the content of the speech expressed at these actions may have been uncomfortable for some students to hear, these actions were overwhelmingly peaceful. Most importantly, the University did not pursue disciplinary charges against student protesters, even when terms such as "from the River to the Sea," "genocide," "apartheid," or declaring students supporting Palestinians as "Nazis" were used at those events.



33. The current focus on Columbia's and Barnard's campus on Israel/Palestine is not new or exceptional. At a number of times in the past, there have been upticks in student attention to and protest around the Middle East.
34. When violence increased in Israel/Palestine, so too did student activism on campus in response. A search of the Columbia Spectator archives from 1877 to 2015 shows 1,015 articles that mention "Palestine," and scores more mention "Israel."

  
Katherine Franke