

September 9, 2016

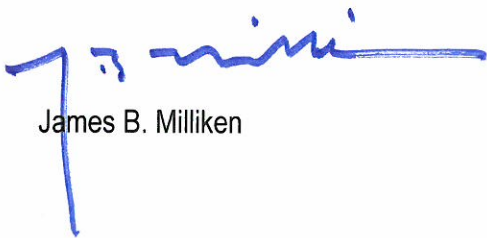
Dear Colleagues:

I am pleased to share with you the report prepared at my request by outside counsel concerning allegations of specific incidents of anti-Semitism on four of our campuses over the last several years. I want to thank Paul Shechtman and Barbara Jones for their thoughtful and thorough treatment of this assignment. In the course of their investigation, they interviewed more than 60 people, including every person suggested to them by interested parties, and reviewed relevant videos, written accounts and other evidence. I am grateful for their careful evaluation in each case of the facts, the applicable law and policies, and the responses by CUNY and campus leaders.

Their report contains a thorough analysis of the facts as well as observations and recommendations that will help guide our work going forward. CUNY's college leadership will find this report useful as we all work to ensure that our policies and procedures reflect applicable law and best practices in responding appropriately to speech and actions. As the authors are careful to emphasize, preserving the right to free expression is at the core of every university's mission. As they also note, CUNY leaders have promptly and strongly condemned speech—even when legally protected—that is hateful, discriminatory, and anti-Semitic. And in those cases where speech and conduct violate law or university policy, the university will continue to respond with appropriate action.

As you know, I have also convened a CUNY-wide working group, chaired by presidents Gail Mellow and Felix Matos Rodriguez, to assess the climate on our campuses, consider best practices at CUNY and elsewhere, and make recommendations for how colleges can take steps to ensure that students, faculty and staff are welcome and supported without compromising free speech and academic freedom. CUNY takes seriously our commitment to creating an environment that is inclusive, free of discrimination, and respectful of multiple and often conflicting points of view – the bedrock of any university and of a healthy democratic society.

Sincerely,



James B. Milliken

REPORT TO CHANCELLOR MILLIKEN ON ALLEGATIONS OF ANTI-SEMITISM

Barbara Jones
Paul Shechtman
Bracewell LLP

September 6, 2016

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I. INTRODUCTION

On March 6, 2016, Chancellor James B. Milliken engaged us to conduct an independent investigation of alleged incidents of anti-Semitism on the campuses of the City University of New York (CUNY) and to review the University's responses to those incidents. Because the allegations relate to numerous incidents on several CUNY campuses, the investigation has been no small task. We have interviewed more than 60 people—administrators, faculty, students, alumni, the Executive Directors of the CUNY Hillels, and the faculty advisors for Students for Justice in Palestine (SJP). In addition, we have reviewed video footage; social media postings; the school's policies, including the Henderson Rules; and other relevant documents, including materials provided by those we interviewed. Although our report is not exhaustive, it seeks to present a detailed picture of the pertinent events. It also discusses individual experiences and the feelings, opinions, and perceptions of those involved. We offer conclusions only when we can do so with confidence and offer general observations in other instances.

II. METHODOLOGY

A primary source of the allegations of anti-Semitism on CUNY campuses is the February 22, 2016 letter of the Zionist Organization of America ("ZOA") to Chancellor Milliken and the CUNY Board of Trustees. We therefore began our investigation by focusing on the incidents discussed in ZOA's letter and reached out to ZOA for assistance. We offered to interview all of those who had contacted ZOA, and ZOA assisted us in that regard. We also requested interviews of the Hillel Executive Directors for Hunter, Brooklyn College, College of Staten Island, John Jay, and Baruch. They, in turn, identified students and alumni who had relevant information.

Because ZOA's letter focused on one particular student club, Students for Justice in Palestine ("SJP"), we requested interviews of the SJP faculty advisors at four CUNY campuses. We asked the faculty advisors to identify SJP members who would be willing to speak to us, and a number of SJP members agreed to be interviewed. We also spoke with representatives of Palestine Legal, which seeks to protect the rights of those who advocate for Palestine. They provided us relevant information and identified additional faculty, students, and alumni to interview.

Numerous interviewees requested anonymity, and we have honored their requests. No interviewee's name is disclosed. When news of our interviews circulated in the CUNY community, several individuals reached out to us. Many of them were initially reluctant to come forward but heard that the investigation was being conducted fairly and thus felt secure in sharing their stories. We thank them and all those who spoke to and assisted us, and hope that our Report confirms their trust.

III. FINDINGS OF FACT

CUNY is comprised of eleven senior colleges, seven community colleges and six graduate and professional schools with more than 270,000 students enrolled full- or part-time. It has one of the most diverse student bodies of any higher educational institution in the world. Our investigation focused on four campuses where allegations of anti-Semitism have been raised: Hunter College, the College of Staten Island, Brooklyn College, and John Jay College. Initial interviews at Queens College and Baruch College did not indicate as serious concerns, and we did not devote more time to those campuses.

A. Hunter College

1. The Million Student March

On November 12, 2015, a rally was held at Hunter College in the plaza at the southwest corner of East 68th Street and Lexington Avenue. It was advertised as the Million Student March and was part of a broader, nationwide campaign for free tuition and the cancellation of student debt. The Hunter SJP was a main organizer of the event, providing banners and fliers. The rally was also endorsed by NYC Students for Justice in Palestine, a coalition comprised of the CUNY-based SJPs, as well as SJP chapters at other colleges throughout the city. Several other CUNY organizations reportedly co-sponsored the event, including Students Without Borders, Black Lives Matter, the Revolutionary Student Coordinating Committee (“RSCC”), the International Marxist Club, and the Professional Staff Congress (“PSC”), the union that represents CUNY’s faculty and staff.

Because the rally was held near a subway entrance, it is difficult to determine the number of participants. Estimates range from 50 to 200. The rally appears to have started at about 4:30 p.m. with a “speak out.” The crowd formed a U-shape, and speakers stood in the middle with a megaphone, voicing their opinions on different issues. After the speak-out, a crowd marched down 68th Street to Chancellor Milliken’s apartment building. When NYPD officers announced that the protestors could not remain there, they returned to the Hunter campus.

What is clear is that initial calls for free tuition and loan forgiveness soon gave way to issues of particular concern to SJP and its supporters. One student speaker, a member of the executive board of a CUNY SJP chapter, held a Palestinian flag and criticized CUNY for bringing Benjamin Netanyahu’s brother to City College, funding Birthright trips, and investing in firms that support “apartheid” in Israel. There were chants of “Palestine will be free, from the

river to the sea,” “Free, Free Palestine,” “Long Live the Intifada,” “There Is Only One Solution: Intifada, Revolution,” and “Zionists Out of CUNY.” A speaker encouraged the protestors to “work to divest CUNY of Israeli occupation.”

Several pro-Israel students attended the rally. When a pro-Israel student asked what Zionism had to do with tuition, someone in the crowd responded that “Jews control the government and the banks.” Another pro-Israel student was told that Zionism and tuition hikes were not directly linked, but that the protestors were seeking common causes and that “the occupation is one of them.”

There is evidence that some members of the crowd shouted “Jews Out of CUNY” and “Death to Jews.” A video of the event shows a person in the crowd saying “Is that all you can do, come along, take for your people, Jewish people, come along, you racist sons of bitches.” One student told us that a protestor shouted “Go back home, and get the fuck out of my country.”¹ The pro-Israel students also told us that protestors said that they would “make sure that [pro-Israel students did] not graduate” and repeatedly asked them “How much are you paid to be here?” One student told us that as he was leaving the rally, a person behind him said “We should drag the Zionist down the street.” (Although a report claims that the words “Drag the Jews down the Street” were chanted, no one interviewed heard such a chant.) The student was alarmed and asked a nearby security officer for assistance. Protestors told pro-Israel students that they should “be happy those cops are here protecting you.”²

¹ On the video of the rally, a person affiliated with RSCC can be heard yelling, “get the fuck out of my country.”

² In addition, a student walked through the crowd with a laptop playing videos of Syrian refugees fleeing to Europe, and yelling “refugees are de-purifying Europe” and “Islamizing Europe,” and other neo-Nazi rants. The student was shouted down, but returned flanked by two campus security officers and continued his diatribe. The video from the event reveals a student leader saying “We’ve got a problem with racism in the crowd tonight; we’ve got two cops over

There was other conduct that was equally disturbing. A student who had an Israeli flag draped on her shoulders felt people tugging on it, and a student holding a pro-Israel sign had it pulled from his hands and stomped on. The pro-Israel signs said “We support lower tuition, not terrorism against Israel,” “Pro-Israel, Pro-Affordable Education, SJP doesn’t speak for me,” and “This is What a Zionist Looks Like. Pro-Peace. Pro-Education.” One student told us that he “ha[d] never felt the need for protection from other students” until that night. Another spoke of experiencing “a mob mentality” and feared being subsequently recognized on campus and harassed. And a third reported that in the aftermath of the rally, he heard one or two Jewish students say that they didn’t feel safe identifying as Jewish on campus.

The day after the rally, the Hunter College President, along with the President of Student Government and the President and Chair of the Hunter College Senate, condemned the anti-Semitic comments. Their statement emphasized that “there is no place for hate speech and other acts of bigotry, harassment, intimidation, exclusion and intolerance based on an individual’s beliefs and background” at CUNY. That same day, Chancellor Milliken issued a statement emphasizing that “Universities are places where free speech, debate and the open exchange of ideas are . . . necessary to our mission [but that] intolerant, hateful and bigoted speech, while it may be legally protected, is anathema to our values.” SJP also issued a statement saying that “[i]f there were any anti-Semitic comments made at the rally we firmly condemn them, as we condemn all forms of racism, and had we discovered any expressions of anti-Semitism among protesters, we would have ejected them from the rally.”³ In interviews,

there protecting someone who is openly watching Nazi videos on his laptop. He’s standing over there screaming by himself like an idiot, watching Nazi shit.”

³ See <https://nycsjp.wordpress.com/2015/11/19/post-msm-cuny-zionism-and-organized-repression/>.

SJP student leaders told us the speakers should have said “Zionism out of CUNY,” not “Zionists out of CUNY,” because SJP opposes a particular ideology, not particular people.

In December 2015, following the rally, the Hunter College chapter of SJP held an event entitled “What does Palestine Have to do with a Liberated CUNY?” The event was co-hosted by CUNY4Palestine, a coalition of faculty members and graduate students, and the International Jewish Anti-Zionist Network. Its focus was “how the Palestinian struggle relates to the struggle for access to education in CUNY, and how we cannot divorce the fight against the privatization and militarization of education with international solidarity with oppressed peoples.”⁴ At the event, SJP members and their supporters contended that accusations of anti-Semitism were aimed at silencing their opposition to Israel’s policies. That belief was also conveyed in two letters that CUNY4Palestine wrote to the CUNY administration, one before and one after the November 12 rally.

It is undeniable that some protestors made anti-Semitic and threatening comments at the rally and that pro-Israel students felt unsafe. Some actions, such as pulling a sign from a student’s hands, went beyond offensive speech and were tantamount to assaults. Regrettably, our interviews and the available video do not allow us to identify the individuals responsible for that conduct.

2. Other Events at Hunter College

According to Hunter’s Director of Security, there have been four or five other SJP events since the November 2015 rally, and all have been much smaller and less heated. Pro-Israel students have attended those events and shouted down anti-Zionism comments.

⁴ See <https://www.facebook.com/events/929646840416382>.

One of the more recent events was a rally held on March 31, 2016, in the same location as the November 12 rally. Although it was hosted by CUNY Struggle, the protestors used the same banners and flags that SJP regularly uses. A larger number of pro-Israel students attended, holding posters saying “CUNY–Jewish Students Say Not In Our Name; No To Anti-Semitism, No To Cuts.” There was yelling between the two sides. The pro-Israel students report that protestors shouted “You support killing children” and “baby killers.” One speaker blamed Zionists for tuition hikes, but most speakers focused on tuition and adjunct employment issues. A video clip of the rally shows a calm event. The pro-Israel students can be heard chanting “Stop Blaming Zionists.” In the background, one can hear a speaker talking about the PSC’s potentially going on strike for the first time in fifty years.

CUNY-wide, SJP puts on events each Spring during “Israel Apartheid Week” to draw attention to Israel’s policies. In recent years, the events at Hunter have included the erection of a physical wall or mock checkpoint. One year, SJP members lay on the floor of the West Building with sheets painted red to depict blood. At another event, SJP members pretended to be Israeli Defense Force soldiers; the mock soldiers did what was described as a “Hitler-walk.” We also heard (from SJP and pro-Israel students) that, at the same event, an anti-SJP student made Islamophobic comments directed at female students wearing hijabs. A video of the exchange was supposedly posted, but we have not found it.

One pro-Israel student told us that, except for the November 12 and March 31 rallies, he has not observed anti-Semitism at Hunter.

B. Brooklyn College

During the course of our investigation, we interviewed more members of the Brooklyn College community than those at any other campus. Many interviewees spoke only about the February 7, 2013 Boycott, Divestment, and Sanctions (“BDS”) forum. Because that

forum, and the expulsion of four Jewish students from it, has already been thoroughly investigated, we did not re-investigate it. But the forum and its aftermath have greatly affected the Brooklyn College community and colored perceptions of subsequent events at the school.⁵

1. Chalking Outside Campus

In October 2015, the Brooklyn College SJP chucked on the public sidewalk outside the main campus gates, calling for a free Palestine and giving statistics relating to Israel and Gaza. Photographs show chalkings saying “Violence ≠ The Way to Peace,” “3 Palestinian Youths Killed by Israeli Forces in 24 Hours,” “Free Palestine,” “Boycott Israel,” and “2,600 Palestinians Murdered.” According to accounts, the chalkings also included “End the Occupation on Palestine,” “Murdering Civilians ≠ Resistance,” “Resistance is justified when people are occupied,” and “Judaism is not Zionism.”⁶ A number of Jewish students told us that the chalkings made them uncomfortable. Subsequently, pro-Israel students chucked slogans in the same location expressing their views on the issue.

One Jewish student was so upset by the chalkings that her mother tried to wash them from the sidewalk. (The student’s parents had come to pick her up after class.) What happened next is disputed although it is clear that several SJP students approached the mother. The mother reports that she was cursed and told “You’re lucky you don’t go here or I would’ve gotten you tomorrow.” One SJP student took pictures of the chalkings and of the mother washing them from the sidewalk and posted the pictures to Facebook. According to the post, the mother had asked her husband what the SJP student was saying because she could not

⁵ Notably, after the BDS forum, the President of Brooklyn College apologized personally to the four students who were expelled from the event and issued a lengthy statement “publicly apologiz[ing]” to them and noting that the College had “institutionalized new policies and guidelines for student-hosted events.”

⁶ See <http://forward.com/news/323214/bds-battle-at-brooklyn-college-is-written-in-chalk/#ixzz4CzWuMbM4>.

“understand [the student’s] stupid Arab accent.” Other witnesses also claim that the mother made Islamophobic comments. When interviewed, the mother denied making such comments. She said that an SJP student had told her that many Jews agreed with SJP’s stance and that she responded “I’m Jewish, and we do not agree with you.” The Jewish student never made a formal complaint about the incident but worried that she would be recognized and harassed on campus.

After the incident, the Brooklyn College administration spoke with an SJP board-member, advising her that chalking violated city law. SJP has not chalked since that admonishment.

2. Graffiti

In the Spring of 2015, anti-Semitic graffiti was found in a library restroom and on the third floor of Ingersoll Hall, which houses science departments. The offensive message and the handwriting were the same in each location. Campus security was unable to determine who wrote the graffiti. It was promptly removed, and the College President denounced it in a campus-wide email. No evidence links the graffiti to any student group.

During our investigation, we learned of two other graffiti incidents at Brooklyn College. The first occurred in late February 2013, when the words “Never Again!!! Stop the Hate. Never Again. Stop SJP” were spray painted on a public wall, leading into the campus. The second occurred in Spring 2016, when the study-abroad program put up posters featuring several Brooklyn College students, including the President of the school’s SJP chapter. Her poster was defaced: her eyes were blacked out and an upside down cross was drawn on her forehead. A security officer discovered the posters and removed them, and the Head of Security informed the student of the defacement. The College administration initially believed that issuing a statement would be hurtful to the student. When she posted about it on Facebook, the administration publicly condemned the defacement.

3. Interruption of the Faculty Council Meeting

On February 16, 2016, the Faculty Council meeting was disrupted by several students. Brooklyn College has investigated the incident, and the University asked us not to duplicate those efforts. The College's investigation is now completed and revealed this: After the College President spoke at the meeting, students took part in a call-and-response, in which one student made a statement and the others repeated it.⁷ Thereafter, a student shouted "Zionist" or "Zionist Jew" at the chairperson, who wears a kippah. According to the Brooklyn College investigation, several witnesses heard the student shout "Zionist," one heard "Zionist Jew," and one heard "Zionist" followed by another word that he could not discern. Four students have been disciplined for the disruption. The student who shouted at the chairperson was not an SJP member.

4. Harassment

A Jewish student who actively supports Israel told us that an SJP member repeatedly harassed her. The SJP student messaged the Jewish student, seeking to convince her of the soundness of SJP's position. According to the Jewish student, the SJP student would not leave her alone, and the messages became more alarming, including "I hope you don't walk alone on campus." The same student told us that she had frequent exchanges with a former CUNY student who holds pro-Palestine views. (The former student apparently visits Brooklyn College often.) After one argument, he told her that she "had better watch her back." Another Jewish student told us that when she refused to take a flyer from an SJP member at a die-in, another SJP protestor told her that "they would knock on every door in Midwood until they found her." (Midwood is a section of Brooklyn where many Jewish students live.) We were

⁷ The report of the investigation can be found at: <http://www.politico.com/states/f/?id=00000155-2cc0-df17-a3fd-6ecec3cb0002>.

also told that in 2011 or 2012, members of the Brooklyn College Israel Club were called “dirty Jews” and similar expletives while tabling on campus. The student who reported the incident could not identify the cursing students as SJP members. In each of these incidents, the Jewish students felt threatened.

SJP students told us that they have also been victimized on the internet. The website Canary Mission, whose host is unknown, has posted the names and photographs of Brooklyn College students who hold pro Palestinian views. (The website boasts that it exposes “people and groups that are promoting hatred of the USA, Israel and Jews on college campuses in North America.”) The website is a searchable database, and students have been questioned about it in job interviews.

5. Violations of Rules for Student Clubs

We have been told that SJP has violated College rules governing student clubs by posting signs in bathrooms and other unauthorized locations. We found evidence of one incident. In November 2013, handwritten fliers for an SJP event were posted in bathroom stalls. Custodial staff removed the posters, and a college administrator informed the SJP President about the infraction. She promised to remind her members of the rules. Although several people told us of unauthorized postings, the November 2013 incident is the only one that we could confirm.

6. Discomfort for Pro-Israel Students in the Department of Political Science

Among the matters that we investigated was an allegation that Jewish students did not feel comfortable taking Political Science courses because of the Department’s anti-Israel bias. We did not find substantial support for the allegation. For the most part, the interviewees said that the Department’s professors facilitated dialogue on the Israel-Palestine issue but did not impose their own views. The issue was not gratuitously raised in the classroom. Only one

student expressed a dissenting view. She switched out of a class conducted by the then head of the Department because she was disturbed by his lack of response to the 2013 BDS forum. She also reported that another professor had referred to “Israel apartheid” in an international law class, but that, when she spoke with him after class, he handled the matter well.

Political Science faculty members are clearly sensitive to the issue. The current chair of the Department told us that Hillel students had brought this concern to his attention. The students did not raise particularized complaints, but expressed their general discomfort. He urged them to report any future incident directly to him. The meeting occurred in 2014, and he has not heard similar concerns since then. A pro-Israel professor told us that the head of the Department takes the issue seriously and that he would be “shocked” if there were inappropriate comments in class.

No doubt, some of the concern about the Department stems, not from classroom issues, but from its co-sponsorship of the 2013 BDS forum and a 2014 event featuring Steven Salaita.⁸ Some Jewish students and alumni believe that the co-sponsorships evidenced anti-Zionism, and questioned whether a department should be lending its name to such potentially polarizing events. The Department takes the position that it will co-sponsor any student event that has an educational purpose and notes that it has co-sponsored at least one event that featured a pro-Israel speaker.

A few students reported classroom issues outside the Political Science Department. A student told us that an adjunct English professor had called Israelis assassins and baby killers. The adjunct also made disparaging comments when Jewish students informed him that they had to miss class for a religious holiday. He no longer teaches at CUNY. Another

⁸ Salaita’s employment offer at the University of Illinois was revoked after a series of Tweets that some saw as anti-Semitic.

student reported that in a broad survey course on Western history, a professor skipped the chapter on the Holocaust, telling the class “you all know this story.” Finally, a Jewish student told us that when a professor was discussing faculty contract negotiations, a classmate stated that liberating CUNY required liberating Palestine and that the administration was run by Zionists. The professor did not respond to the classmate’s remarks, and the Jewish student felt attacked and unsupported. None of these incidents was reported to the College administration.⁹

C. John Jay College of Criminal Justice

SJP was the first explicitly political student group at John Jay, other than groups supporting the major parties. Its advocacy agenda has raised new issues for the school.

1. SJP Die-In

In 2014, SJP held a die-in vigil in the main atrium at John Jay College; it was designed to link Ferguson, Missouri, with Palestine. SJP reserved the space and had permission for the event. Shortly before the scheduled day, the Student Affairs coordinator called an SJP leader into his office and asked if “bloodied sheets” -- sheets with red paint dried on them -- would be used in the event. When the SJP leader answered yes, the coordinator reportedly said that painted sheets would make people uncomfortable and urged SJP not to use them. After discussing the issue, the SJP Board decided that half the sheets would be painted red and half would be white. All bore the names of people who had died in Palestine or the United States in military or police shootings. Approximately 50 people participated in the die-in. Some formed a circle and held signs, while the rest lay on the ground underneath the sheets. Several SJP members spoke, and their voices echoed in the atrium.

⁹ The CUNY Manual of General Policy includes procedures for student complaints about faculty conduct in the classroom. See Policy 5.20; <https://protect-us.mimecast.com/s/dqY5B4U2DZvgtD>.

A small group of pro-Israel students, at least one of whom was affiliated with the John Jay Hillel, staged a counter-protest. The SJP leadership learned about the counter-protest the night before the event and encouraged its members not to engage with the counter-protestors. One SJP participant, who was under a sheet at the die-in, told us that she heard people booing and shouting at the protestors but that the noise came from a different direction than where the counter-protestors were standing.

We were able to view a video from the event, which was edited by a pro-Israel student, who posted it with his own words and music. On the video, one hears SJP students chanting “No Justice, No Peace” and calling for boycotts of companies doing business with Israel. Signs can be seen with slogans like “Ferguson to Palestine; Intifada, Intifada.” One speaker can be heard talking about Hamas -- that Israel funds Hamas to undermine legitimate Palestine resistance; that Hamas is not the only Palestinian resistance; and that Hamas attacks Israel because Israeli soldiers are committing genocide. A Hillel student who was present at the die-in bemoaned SJP’s language. The student has attended other SJP events often holding an Israeli flag. At one event, someone said “Can I wipe my butt with that flag?” At another, he was told that the Israeli flag is stained with blood. He found the words offensive but not threatening, and told us that he has never felt threatened on campus.

Although it has been alleged that three Jewish students left John Jay in response to the die-in, we found no evidence to support the allegation. A Hillel student leader told us that two Jewish students had left John Jay, but that their transfers were not the result of anti-Semitism: one left for Queens College because it was closer to his home, and the other left because he wanted to pursue a different major. Another Hillel student leader told us that a

Jewish student had wanted to transfer, but decided to stay at the school. The College administration has no record of any student leaving because of perceived anti-Semitism.

2. Cancelled MSA Sponsorship of MSA-Hillel Event

In November 2015, the John Jay Hillel and the Muslim Students Association (MSA) planned to co-host an event entitled “Coexistence & Diversity with the NYPD,” which featured two NYPD lieutenants, one Jewish and one Muslim. After fliers for the event were posted, MSA leaders were pressured online not to co-sponsor it. A Hillel student told us that SJP chapters from around the country told MSA that if it co-sponsored the event, SJP would not work with them again.

The MSA dropped its sponsorship, writing to the Hillel Director that it had “received backlash, opposition, threats, and people want to protest the event. The number of protestors will outweigh the audience.” “We fear for your safety and ours,” MSA leaders wrote, “and have to come to the conclusion that it would be best for us to cancel the event altogether.” The event was held as scheduled without MSA sponsorship but with the sponsorship of the Student Council; it went off without interruption and was reportedly a success.

The College administration was notified of the purported threats against MSA and conducted an investigation. It found no evidence of threats. We have also looked for such evidence and found none. There is little doubt, however, that MSA received pressure that caused it to withdraw its sponsorship.

3. Water-Bottle Throwing Incident

A John Jay student told us that in February 2015, someone called him a Zionist pig and threw a water bottle past his head while he was on an escalator in Haaren Hall. The student had an Israeli flag patch on his backpack, and he believes that the patch triggered the hostile action. The student told us that he had reported the incident to a security officer, but the

college has no record of a report. A year later, when *The Forward* reported the incident, Public Safety interviewed the student. He said that he has not seen the individual who threw the water bottle since the incident. The student did not feel intimidated but was angry that such a thing could happen at John Jay.

4. Graffiti

As several interviewees told us, swastikas and Jewish slurs were found in a men's bathroom at John Jay. The graffiti was reportedly on a wall that was rife with anti-black, anti-Arab, and anti-LGBT scribbles. Security was unable to identify the perpetrators. Most recently, the words "brown people go home" were written in an area of the college under construction. An investigation determined that a construction worker had written the offensive words, and the construction company took appropriate action against him.

D. College of Staten Island

Like many CUNY colleges, the College of Staten Island ("CSI") is a commuter school, which limits the ability of students to participate in campus activities. Because of its location, it is rare that students from other CUNY campuses visit CSI.

1. SJP Banner in the Rotunda

In the rotunda of the main student center, each of the chartered student groups, including SJP, Hillel and Birthright, has a banner of its own design. Each is the same size. The SJP banner includes an outline of the map of Israel, the West Bank, and the Gaza Strip, overlaid with the pattern of a keffiyeh, a traditional Palestinian scarf. ZOA and the CSI Hillel have complained about the banner and asked that it be removed. ZOA interprets it as a "call[] for the destruction of the Jewish state to be replaced with a Palestinian Arab state." Quite properly, the College administration views the banner as protected speech and has not removed it. See infra at 20.

2. The November 12, 2015 Rally

The same day as the Hunter College rally, there was a demonstration at CSI, with 25 to 30 participants. The demonstration was organized by Staten Islanders Against Racism and Police Brutality and by the PSC, the union representing CUNY faculty and staff. It was not an SJP event. A college administrator and a plain clothes Public Safety officer were present, and neither heard any anti-Israel (or anti-Semitic) remarks. The focus was tuition hikes and the CUNY contract. The CSI Hillel Director, however, told us that she heard a few speakers say that CUNY's problems were due to Zionist control of the University.

3. Other Protests

In 2014, during the Israeli campaign in Gaza, SJP held a die-in at CSI and handed out pamphlets opposing Israel. Another SJP protest occurred in late November 2015, during which SJP members chanted "we don't need your occupation" and "from the river to the sea, Palestine will be free." At the same time, a Hillel student carried a sign saying "Keep Calm and Hug a Jew." The student said that his message was one of "love" -- that he was responding to the Paris attacks and was tired of "negativity." He received some positive responses, including a hug from a professor who supports SJP, but one student told him "I wouldn't hug a Jew."¹⁰

¹⁰ The Daily News reported that the student had said "I don't hug murderers." The sign carrier told us that the newspaper's report was incorrect. The words were "I wouldn't hug a Jew" and came from someone he did not believe was affiliated with SJP. Relatedly, we were asked to look into comments by the faculty advisor to SJP at Staten Island, which ZOA brought to the attention of a State Senator in mid-March 2016. The ZOA letter reports that "[i]n a recent article published by Forward [the SJP Faculty advisor] went on record to argue that it is appropriate to harass Jewish students at CUNY by labeling them murderers." In the Forward article, the SJP advisor responded to the alleged statement "I don't hug murderers" by saying "so what if a girl said that.... Palestinians are murdered in large numbers.... That's not anti-Semitic to say that people who kill people murdered them." Although not a call for harassment of Jewish students, this comment was thoughtless. We would also note that in October 2014, the same advisor tweeted "I question the idea of exceptionalisms. The murder of 2,000 Gazans also reflects Jewish values." The comment is protected speech, but a faculty advisor to a student club

As at other campuses, SJP at CSI has held events during Israeli Apartheid Week. In 2014, it held an event at which the protestors wore boards bearing graffiti copied from the wall between Israel and the West Bank. A video clip of the protest shows an exchange between a male pro-Israel student and a female SJP student. He shouts: “Being anti-Zionism is the same as being anti-Semitic” and “the destruction of the Jewish state is not going to help the creation of a Palestinian one—the only way you will ever have a home is to acknowledge the Jewish state.” She responds: “We are asking for the end of colonization; we are not asking for the destruction of anything. We are all Palestinians; do not deny us our heritage.” He then says: “If you are interested in your heritage, there is a very nice place called Jordan, and you’re welcome to take a trip there.”

4. Classroom Incident

We were told of an incident in a Sociology class in which a pro-Palestine student disrupted another student’s presentation on Women in the Israeli Army with shouts that Israeli soldiers were “killers.” The professor did not intervene but subsequently apologized to the class for not doing so.

5. Cyber-Bullying

During the Spring 2014 semester, someone created a Facebook account named “Hillel Twit O” and posted the photograph of a Hillel student who had been a summer volunteer with the Israel Defense Forces (“IDF”). The photograph was overlaid with text saying “Living in Gaza is not a fun thing I can tell you. I was an IDF soldier . . . er, I made sure of it” and “Studies politics and says Palestinians need to acknowledge the Jewish state and make peace. Palestine has both recognized Israel and renounced terrorism while Israel has negated peaceful

should speak wisely. Whatever one thinks of the actions of a government, they should not be confused with the values of a people or religion.

negotiations for decades.” A photograph of the CSI Hillel Executive Director was also posted with text saying “How to keep a straight face when debating Israel? She admitted . . . (How she keeps it one sided) ‘No, I have not read any international reports condemning Israel for it’s [sic] extensive violations on the Palestinian people.” We interviewed the student and the Hillel director, who believe that SJP created the Facebook account. Both found the postings menacing. When the College administration learned of the postings, the SJP leadership was summoned to a meeting, at which they disclaimed any connection to the postings. The posts have since been removed from Facebook.

After the November 12, 2015 rally, a CSI student circulated a petition on change.org calling for SJP to be disbanded. Someone responded by posting multiple Tweets calling her a “zionist bitch” and a “zionist Jew,” defacing her picture with obscenities, and claiming that she had an arrest record. The College administration was not told about the harassing Tweets and therefore could not respond.

The SJP leadership and the club’s faculty advisor told us of cyber harassment directed at them. We were able to review some posts, including ones calling the faculty advisor a “traitor” and “terror advocate.”

6. Graffiti

Records show that in 2013, swastikas were found in a bathroom, a classroom, and a basement at the school. Public Safety was notified, and the swastikas were quickly removed. In May 2015, a library book, *Reader’s Guide to Judaism*, was defaced with a swastika and a hate statement. Public Safety treated the defacement as a hate crime and reported it to NYPD’s Hate Crimes Unit. There is no evidence that SJP was involved in either incident.

IV. OBSERVATIONS

Based on our factual findings, we make these observations.

1. Much of what we have reported is protected speech. Die-ins, mock checkpoints, and the SJP banner may offend some, but the First Amendment does not permit a public university to take action against them. As the Supreme Court has reminded, free speech may “best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”¹¹ Political speech is often provocative and challenging, but that is why it is vital to university life. If college students are not exposed to views with which they may disagree, their college has short-changed them.

2. As a public university, CUNY is limited in the ways that it can respond to hate speech, whether the words are anti-Semitic, racist, anti-Muslim, or anti-LGBT. CUNY cannot punish such speech unless it is part of a course of conduct so pervasive or severe that it denies a person’s ability to pursue an education or participate in University life. It cannot mandate civility or sanction isolated derogatory comments. As one federal court has observed:

Civility connotes calmness, control, and deference or responsiveness to the circumstances, ideas, and feelings of others. Given these common understandings, a regulation that mandates civility easily could be understood as permitting only those forms of interaction that produce as little friction as possible, forms that are thoroughly lubricated by restraint, moderation, respect, social convention, and reason. The First Amendment difficulty with this kind of mandate should be obvious: the requirement “to be civil to one another” . . . reasonably can be understood as prohibiting the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause [M]andating civility could deprive speakers of the tools they most need to . . . move their audience to share their passion.

College Republicans at San Francisco State University v. Reed, 523 F. Supp. 2d 1005, 1019 (N.D. Cal. 2007). But what CUNY cannot punish, it can still condemn. As a general rule,

¹¹ Terminiello v. Chicago, 337 U.S. 1, 4 (1949).

CUNY's Administrators and College Presidents have spoken out against anti-Semitic comments. That practice must continue; hate speech must be challenged promptly and forcefully lest it breed.

In this context, an event that occurred at John Jay in Fall 2015 deserves mention. The Office of the Dean of Students and the Center for Student Involvement and Leadership sponsored two programs entitled "Hateful vs. Hurtful Speech," which were aimed at addressing questions such as: "What kind of language is hateful, and should not be tolerated" and "what kind of language is hurtful but is still protected by freedom of speech." The program sought to teach students that discomfort is often a precondition for learning. It also sought to equip them to distinguish communications that make them uncomfortable from those that make them unsafe. Discussing those issues openly represents the best of college education.

3. What CUNY can sanction is threatening conduct that puts a community member in fear for his safety. It is one thing to shout "free Palestine" and another to chant "Drag the Zionist down the street" or to pull signs from the hands of those who support Israel. No student should leave a Hunter rally in fear for his safety, yet that is what happened at the Million Student March. As noted above, we have been unable to identify the wrongdoers. If they can be identified, they should be punished.

4. Many of those we interviewed recognize that criticism of Israel is protected speech but feel that the use of the word Zionist is often a cover for anti-Semitism. The disruption of the Brooklyn College Faculty Counsel meeting gives some credence to that view. There, a protestor shouted "Zionist" at a faculty member who wore a kippah but whose views on Israel were unknown. In that context, to conclude that "Zionist" was a code word for "Jew" is no stretch. It would be wrong, however, to conclude that is generally the case. Calls for divestment

and boycotts are not new to universities, and those who shout for “CUNY out of Israel” should not be tarred as anti-Semitic.

Notably, one Jewish student who supports SJP told us that that the only anti-Semitism he experienced at Hunter College came from other Jewish students. He was called a “self-hating Jew” and “a traitor” and told that he was “not a real Jew if [he] didn’t support Israel.” The reality is that many Jews question some of Israel’s policies and yet cherish their Jewish heritage. Suffice it to say that whoever called the Hunter student a “self-hating Jew” was as misguided as the protestor who shouted “Zionist” at the faculty member who wore a kippah at a meeting.

5. We recognize that some take particular offense at SJP’s calls for intifada. Although the word means “a tremor, a shudder or a shiver” in Arabic, it has come to be a call for violence in a region that has already experienced far too much violence.¹² Many find the word profoundly alarming. But CUNY administrators cannot ban the word, no matter how much they may regret its use. See Doe v. University of Michigan, 721 F. Supp. 852, 863 (E.D. Mich. 1989)(a public University cannot “proscribe speech simply because, it was found to be offensive, even gravely so, by large numbers of people”). Passions run high in discussions of Israel and Palestine, and with passions come heated and offensive words.

6. Significantly, we found no support for the claim that several Jewish students have left CUNY because of anti-Semitism. As far as we can tell, that is simply untrue. Moreover, we heard very few complaints that faculty members were misusing their classrooms to espouse anti-Israel views. What we did learn of were several incidents in which a student interrupted a class to proclaim a pro-Palestinian (or anti-Israel) position in a way that could not

¹² Thomas C. Friedman, From Beirut to Jerusalem, 375 (1989).

help but offend. Contentious classroom discussion can be vital to learning, but shouting that Israel soldiers are “killers” in a Sociology class during a student presentation about Women in the Israeli army is surely out of bounds. Tellingly, what upset Jewish students as much as their classmates’ words was their professors’ lack of response. Managing classroom discussions around contentious issues is difficult, even for the most experienced instructor. (This past academic year, John Jay commendably held a training session for its faculty that focused on the issue.) A classroom must be a space where students hear opposing views, but faculty must make every effort to promote civil discourse and protect students from personal attacks.

7. A number of Jewish students across CUNY campuses told us that they were disappointed that SJP would not hold joint events with Hillel or other pro-Israel groups. As we understand it, SJP’s refusal is part of its stance against “normalization”: it will not participate in joint events unless “the Israeli party in the project recognizes the comprehensive Palestinian rights under international law.”¹³ For SJP, a joint project must espouse “co-resistance,” not “co-existence.” Given that normalization is integral to SJP’s philosophy and constitutionally protected, CUNY cannot require SJP to abandon it.

It bears note that Hillel International has issued guidelines that do not allow its affiliated chapters to “partner with, house or host organizations, groups or speakers that as a matter of policy or practice [d]eny the right of Israel to exist, [d]elegitimize, demonize, or apply a double standard to Israel [or] [s]upport boycott of, divestment from, or sanctions against the state of Israel.”¹⁴ Thus, the street runs both ways.

8. We would be remiss if we did not address directly calls for SJP to be banned from CUNY campuses. Our investigation does not support that action. There is a

¹³ See <http://pacbi.org/etemplate.php?id=1108>.

¹⁴ See <http://www.hillel.org/jewish/hillel-israel/hillel-israel-guidelines>.

tendency to blame SJP for any act of anti-Semitism on any CUNY campus. That is a mistake. The student who shouted Zionist at the chairperson at the Faculty Counsel meeting was not an SJP member. Nor is there any evidence linking SJP to the swastikas found at John Jay and CSI or the anti-Semitic scribbles at Brooklyn College. And although SJP led the Million Student March, those we can identify (by affiliation though not name) as engaging in threatening behavior were not SJP members. Regrettably, CUNY has also seen its share of Islamophobia. The defacement of a poster of the President of an SJP Chapter -- a poster that sought to promote study abroad -- is but one example. No fair-minded person would attribute that conduct to Hillel, and SJP should be judged by the same standards.

V. CONCLUSION

As we said at the outset, we have tried to conduct a dispassionate investigation. The picture that has emerged is not one of unchecked anti-Semitism, far from it, but it is hardly perfect. Undoubtedly, the CUNY Administration takes seriously its responsibility to ensure that students can pursue their educational goals without fear that their religious beliefs, race, ethnicity or sexual orientation will make them targets for threatening or harassing behavior. It seeks to foster a culture in which robust debate is encouraged and respect for others is the norm. We share that desire and hope that this Report proves constructive.