

Testimony of Richard W. Painter
Before the Minnesota Senate Committee on the Judiciary and Public Safety
Hearing of June 25, 2024 on Antisemitism in Higher Education

Members of the Committee:

Since July 2007 I have been the S. Walter Richey Professor of Corporate Law at the University of Minnesota Law School. I teach and publish in the field of securities law, lawyers' ethics and government ethics. My spouse Karen Painter is a tenured full professor at the University of Minnesota School of Music.

I testify before you today about the antisemitism crisis we confront on university campuses around the nation, including the University of Minnesota.

I should emphasize at the outset that Jews are not the only victims of discrimination in American universities. Karen and I both have reported multiple incidents of discrimination against other minorities, particularly persons of African descent. These problems also need to be corrected to fulfill our educational mission and to comply with federal and state law.

The focus of today's hearing is antisemitism, so it is on that concern that I will elaborate here.

The CLA Websites

Last December, former Regent Michael Hsu and I filed a complaint with the United States Department of Education (DOE) Civil Rights Division alleging antisemitism at the University in violation of Title VI of the Civil Rights Act. Among other concerns, we reported collective faculty statements condemning Israel that, within days of the October 7, 2023 terrorist attacks, were posted on official College of Liberal Arts (CLA) departmental websites.

These websites, paid for with university funds, are intended for faculty to provide students and other community members with information about curriculum offerings, requirements to major in a field, contact information for faculty and departmental events. These websites are not an appropriate place to post political statements and certainly not statements targeting minority groups on our campus.

This includes targeting the many Jews who support the existence of Israel as a Jewish state.

I should emphasize that individual faculty, staff and students have broad individual free speech rights protected under the First Amendment, Minnesota law and principles of academic freedom. These rights, however, belong to individuals, not to departments. Faculty are in a position of power over their students and should avoid using their official positions within a department to promote political views, particularly when their collective action creates a hostile learning environment for Jews or any other protected class under Title VI. Posting extreme anti-Israel statements on official university websites crosses that line.

We repeatedly asked Interim CLA Dean Ann Waltner to have these websites taken down. She never responded. We also wrote Interim President Ettinger and Provost Croson who recognized our concern and said that they would investigate the issue. In December we reported it to the DOE.

CLA has yet to remove and retract the extreme anti-Israel faculty statements that were posted on the official websites of three separate CLA departments shortly after the terrorist attacks of October 7, 2023.

I will not recommend legislative solutions to this problem, as it is very difficult to draft legislation that would prohibit all or even most official capacity statements by faculty that are extremely offensive to Jews and other minorities. Keeping offensive content off departmental websites requires deans who have good judgment which we have in most parts of the University where this has not been a problem. CLA sadly is an exception. The Minnesota Legislature should urge the University to exercise more supervision over CLA rather than specify by statute exactly how that is to happen.

Cultural Critique

Cultural Critique is a journal housed in the University of Minnesota and published by the University of Minnesota Press:

<https://cla.umn.edu/cscl/research/cultural-critique>

<https://www.upress.umn.edu/journal-division/journals/cultural-critique>

In May 2024 I received copies of:

1) An email sent from the email address of the journal Cultural Critique <cultcrit@umn.edu> dated mid-May 2024 to an author who submitted a manuscript telling that author:

“We regret to inform you that we cannot consider your submission for publication due to the journal's commitment to BDS guidelines, which include "withdrawing support from Israel's...cultural and academic institutions." (See <https://bdsmovement.net/what-is-bds>). We thank you for submitting your work to *Cultural Critique*, and we hope for better times.

Sincerely,

[five names, several of whom are professors at the University of Minnesota]

Editors"

2) A follow up email from two assistant editors of Cultural Critique to the same author stating:

“Your submission was not considered solely on the basis of your current work at and affiliation with Israeli academic institutions.”

“Could you please verify the institutions where you work and with which you are affiliated at present? Should the information we found online be incorrect and should you in fact not be currently employed at any Israeli academic institution, we would be glad, of course, to consider your submission. Thank you.”

This email dated within the past week was sent from the same email account <cultcrit@umn.edu> with the following signature line:

Cultural Critique
235 Nicholson Hall
[216 Pillsbury Drive SE](#)
[Minneapolis, MN 55455](#)
Tel 612.626.8940

Fax 612.625.4170

[Facebook](#) || [Twitter](#) || [Cultural Critique Online on Manifold](#)"

Both University of Minnesota Press and *Cultural Critique* are affiliated with the University of Minnesota. So are the editors of *Cultural Critique* who are employed by the University.

Minnesota Statutes, 16C.053 CONTRACTS WITH VENDORS, provides:

(a) A state agency may not enter into a contract with a vendor that engages in discrimination against Israel or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business.

(b) For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

I am not here to debate whether the University is a “state agency” and whether this statute covers the publication contract that the University of Minnesota Press has with *Cultural Critique* or the provision of University staff and offices for *Cultural Critique* in Nicholson Hall, a building that ironically was renamed by the Regents just this month because of antisemitism during Dean Edward Nicholson’s tenure at the University in the 1940’s. My concern is that an academic boycott of the only majority Jewish country in the world - Israel -- was orchestrated out of Nicholson Hall in 2024.

A faculty member is free to decline to travel to Israel or to any other country. A faculty member can refuse to read news outlets from Israel or anywhere else. A faculty member is not free, however, to refuse to teach students from Israel, to refuse to serve on dissertation committees of students from Israel, to refuse to invite Israeli scholars to conferences hosted by the University of Minnesota, or to refuse to publish Israeli authors in journals published by the University. That is not academic freedom – that’s discrimination.

Going forward there are two alternatives. First, the Board of Regents can pass a resolution stating that the University and its departments and programs must comply with the Minnesota anti-BDS statute regardless of whether the University

is a “state agency.” Second, the legislature can pass an amendment adding the University to the language of the statute. One of these measures should be taken before the legislature approves another budget request from the University.

The Holocaust Center

Earlier this month, two members of the board of the Holocaust and Genocide Studies Center resigned to protest CLA Interim Dean Ann Waltner’s decision to appoint Professor Raz Segal to be the next director of the Holocaust Center. Professor Segal’s views on the Middle East conflict are extreme, and deeply offensive to many people who believe Israel has a right to defend itself. Only days after the October 7 terrorist attack Professor Segal published this piece blaming Israel, not the Hamas terrorists, for “genocide”:

<https://jewishcurrents.org/a-textbook-case-of-genocide>

It’s one thing to hire instructional staff with such extreme views; there are numerous extremist faculty in CLA already. Nothing new. It is quite another thing to hire an extremist on Israel to run the Holocaust Center. The Hamas terrorists who murdered 1200 civilians on October 7, 2023 seek to expel or exterminate all seven million Jews currently living in Israel. Hamas’s genocidal slogans are chanted at pro-terrorism rallies on our campus and are scrawled in chalk and paint on our buildings. The last thing we need is a Holocaust Center director who blames Israel rather than Hamas for genocidal intent in the Middle East.

The CLA interim dean embarked on this reckless appointment of a Holocaust Center director only days after the journal *Cultural Critique*, also housed in CLA, was caught intentionally boycotting all prospective authors affiliated with Israeli academic institutions. I believe the matter has been appropriately resolved by Interim President Ettinger and no further action by the Minnesota Legislature is required. If the University were again to fail to consult the Jewish community in selecting a director for the Center, the Legislature may need to address the status of the Center and the process by which its leadership is selected.

Revisionist History

Part of the problem at the University of Minnesota and elsewhere in the United States is the rise of revisionist history. Revisionist history of the Middle East is

one phenomenon – some extremists go so far as to describe all Jews living in Israel as “settler colonials” even though it’s a known fact that Jewish people came from Israel before the diaspora.

Revisionist history of the Nazi era also is on the rise.

Last week my spouse Karen Painter separately wrote the Chairman of this Committee, Senator Ron Latz, to report one such example. In Fall 2023 a university band conductor criticized her for not being sufficiently balanced in teaching a class where she strongly criticized Hitler’s star orchestra conductor, Wilhelm Furtwängler. As Karen explained in her letter to Senator Latz, under Furtwängler, the Berlin Philharmonic expelled all its Jewish members and played for numerous Nazi party events. Aryan orchestra members knowingly bought instruments confiscated from Jewish musicians who were deported to concentration camps. Furtwängler accepted praise from Hitler and other Nazi officials for illustrating the cultural supremacy of Germany. Despite all this the university band conductor wrote Karen an email saying “Personally, I do have an incredible amount of respect for Wilhelm Furtwängler.”

Karen wrote two colleagues in Jewish studies to discuss this troubling perspective on Furtwängler. The School of Music Director Patrick Warfield then sharply criticized Karen, over email, for having shared this information with her Jewish studies colleagues. Director Warfield claimed that sharing the information was somehow “unprofessional” and “unacceptable” without pointing to a single University rule prohibiting it. CLA Dean Ann Waltner chimed in with “I agree with Director Warfield.”

We cannot address antisemitism at the University of Minnesota if we can’t talk about it with colleagues, including Jewish colleagues. Revisionist history also is on the rise, including sugar-coating collaboration with the Nazi regime. We must be free to talk about that. At a minimum, University administrators should not stand in the way of campus dialogue by telling faculty, staff or students what they may say and to whom. That is an abuse of power and a violation of the First Amendment.

Concluding Thoughts

The incidents I describe here are part of an ongoing pattern of antisemitism, anti-Zionism and revisionist history adversely impacting the educational mission of

CLA. Former Regent Michael Hsu and I reported some of these incidents to the United States Department of Education Civil Rights Division last December and a formal investigation was opened in January.

The answer is not to suppress free speech on campus but to allow more free speech by individuals expressing their own views. Faculty, however, should not collectively use positions of power within the university to force their views on others. CLA deans should not allow official departmental websites to be used for Israel bashing and must stop threatening discipline against individual faculty who communicate, even privately via email or verbally, about racism, antisemitism and historical revisionism in their units.

The University Regents or the Minnesota Legislature should adopt policies prohibiting boycotts of Israel that are already illegal for contractors with state agencies, and prohibiting overnight encampments and defacing of university property with pro-terrorist and antisemitic slogans. Most important ours must be a community where people have the freedom to dissent from antisemitism, racism or revisionist history condoned by others.