U.S.C.A. - 7th Circuit
F I L E D
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CHRISTOPHER G. CONWAY
CLERK

07-24-90109

May 29, 2024

VIA U.S. MAIL
Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, New York 10278-0001

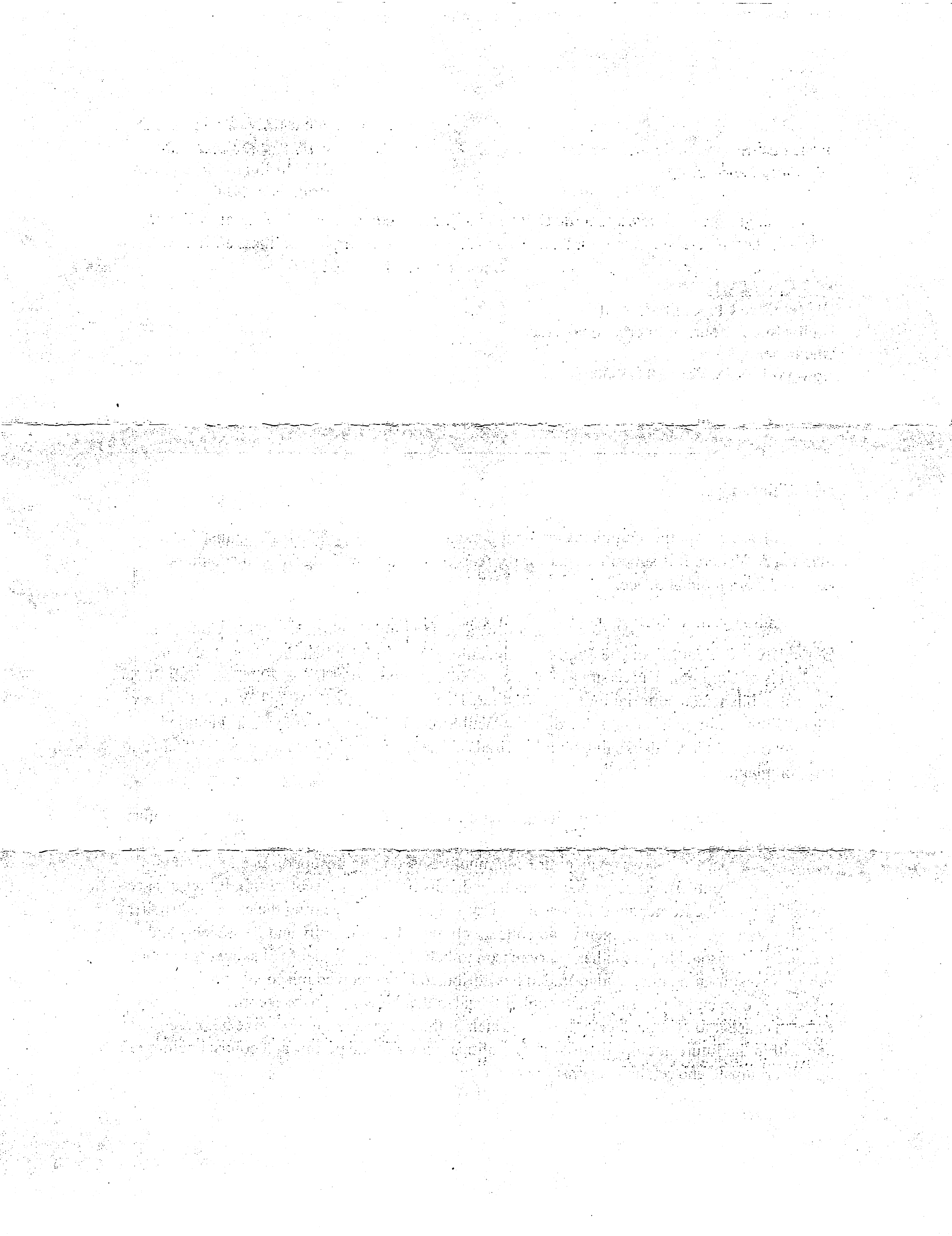
RE: Complaint Against Judge Stephen A. Vaden Pursuant to 28 U.S.C. § 351(a)

Dear Chief Judge:

Please accept this complaint, brought pursuant to 28 U.S.C. § 351(a), against Judge Stephen A. Vaden. It is submitted that for the reasons that follow, Judge Vaden should be removed from judicial office.

On May 6, 2024, Judge Vaden and several federal judges wrote a letter to Columbia University President Minouche Shafik stating, among other things, that they would not hire graduates of Columbia University as law clerks. Subsequently, on May 9, 2024, the Wall Street Journal published an editorial by Judge Matthew H. Solomson titled, "Why I Won't Hire Law Clerks From Columbia". That same day, the Wall Street Journal published an article titled, "Conservative Judges Blackball Columbia Grads". The letter and articles have been attached to this complaint.

In his editorial justifying the judges' letter, Judge Solomson stated that he and the other judges, including Judge Vaden, "are justified in using the tools at their disposal" to impose their will and their partisan views on an entire community based upon unsupported and baseless allegations of "anti-American and antisemetic radicalism". This is disconcerting because these "tools" include the tremendous discretion federal judges have in deciding the cases before them. If Judge Vaden is willing to openly and collectively punish a university and its students and graduates, a reasonable person has every reason to believe Judge Vaden will skew his judicial rulings in a similar manner. Judge Vaden has attributed his perceived misconduct by a few protesters to an entire institution and explicitly stated that he will punish an entire community in order to cause it to change course. It is no stretch of the imagination to conceive he presently is and will in the future attempt to discern the political views of the parties and counsel before him and discriminate and retaliate against them.



The judge's actions are clearly prejudicial to the effective and expeditious administration of the business of the courts. *See Rule 4(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.*

- Judge Vaden violated specific standards of judicial conduct by (1) using his office to obtain special treatment for friends and (2) engaging in partisan political activity or making inappropriate partisan statements. *See Rule 4(a)(1)(A), (D).*

- Furthermore, his conduct constitutes abusive behavior in that his statements demonstrate that he presently is and will be treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner. *See Rule 4(a)(2)(B).*

- Judge Vaden has also used the "Columbia University community" as a proxy to discriminate against various races, religions, and national origins that may share in the views of his targeted community. *See Rule 4(a)(3).*

- Finally, the judge's conduct occurred outside the performance of official duties and was "reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people." *See Rule 4(a)(7).*

Initially, investigators should determine whether any outside organizations or foreign governments orchestrated the judges' letter to Columbia University. Given the geographical diversity of the judges, it is highly likely that the very same partisan and political organizations that lobbied for their appointment to the bench prompted them to submit the letter at issue. Accordingly, investigators should obtain communications among these judges and organizations. At the very least, this would entail obtaining relevant emails. Further, evidence that Judge Vaden collaborated in these extrajudicial activities during his working hours would serve as proof of a crime.

Judge Vaden and his colleagues stated in their letter that Columbia University "applies double standards when it comes to free speech and student misconduct". This purported application of double standards was yet another fabrication by the judge, as it is immediately followed by a hypothetical scenario rather than the actual application of a purported double standard: "If Columbia had been faced with a campus uprising of religious conservatives upset because they view abortion as a tragic genocide, we have no doubt that the university's response would have been profoundly different." These judges make no mention of religious conservatives' bombings of abortion clinics and their murders of doctors who perform abortions. See, e.g., United States v. Rudolph, 92 F.4th 1038 (11th Cir. 2024). These same judges would be up in arms if another judge had publicly stated she would discriminate against all religious conservatives due to the actions of these radicals.

Judge Vaden has effectively disqualified himself from hearing any cases in which a litigant or their counsel has publicly taken a position on the Israeli-Palestinian conflict. A reasonable person has every reason to believe Judge Vaden would be biased against those supporting Palestinians and would favor those supporting Israelis. He has disqualified himself from any cases in which a current or former member of the "Columbia University community" is a litigant or an attorney. Given the protests at hundreds of colleges throughout the United States and the world, he has disqualified himself cases in which graduates of those colleges are parties. Anyone who has publicly criticized Israel's war crimes in Gaza will have trepidation in appearing before Judge Vaden and his coileagues and anyone who has voiced the opposite view will be overjoyed. Even if litigants and counsel who appear before the judges do not hold the nebulous "anti-American or anti-Semitic" views criticized by the judges, they will reasonably assume Judge Vaden will associate them with such views and collectively punish them with negative rulings.

In sum, Judge Vaden represents a threat to the Constitution and must be removed from judicial office. His conduct has made it apparent that he is a politician and possibly a foreign agent masquerading as a federal judge. The judge's resort to collective punishment is an affront to this nation's core principles of individuality and individual rights. While Judge Vaden decries protesters at Columbia University as "anti-American" radicals, it is the judge who is actually anti-American. The men who founded this nation had once been labeled radicals by their opponents. They engaged in both lawful and unlawful resistance which ultimately culminated in the Constitution that Judge Vaden took an oath to uphold.

Judge Vaden is an appointed federal judge bound by an oath to serve as an impartial arbiter. His explicit declaration of partiality has eroded the public's trust in the independence of the judiciary. It has also violated fundamental standards for judicial conduct and requires his removal from office.

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

Respectfully submitted:

May 6, 2024

Minouche Shafik
Columbia University
202 Low Library
535 West 116 Street MC 4309
New York, NY 10027

Dear President Shafik,

Since the October 7 terrorist attacks by Hamas, Columbia University has become ground zero for the explosion of student disruptions, anti-semitism, and hatred for diverse viewpoints on campuses across the Nation. Disruptors have threatened violence, committed assaults, and destroyed property. As judges who hire law clerks every year to serve in the federal judiciary, we have lost confidence in Columbia as an institution of higher education. Columbia has instead become an incubator of bigotry. As a result, Columbia has disqualified itself from educating the future leaders of our country.

If Columbia were serious about reclaiming its once-distinguished reputation, it would undertake the following steps, at a minimum:

1. Serious consequences for students and faculty who have participated in campus disruptions and violated established rules concerning the use of university facilities and public spaces and threats against fellow members of the university community.

In recent years, citizens have been told that unlawfully trespassing on and occupying public spaces is a sufficient basis to warrant incarceration. So that same conduct should surely be sufficient to warrant lesser measures such as expulsion or termination. After all, elite universities purport to train not just law-abiding citizens but future leaders. Universities should also identify students who engage in such conduct so that future employers can avoid hiring them. If not, employers are forced to assume the risk that anyone they hire from Columbia may be one of these disruptive and hateful students.

2. Neutrality and nondiscrimination in the protection of freedom of speech and the enforcement of rules of campus conduct.

Freedom of speech protects protest, not trespass, and certainly not acts or threats of violence or terrorism. Speech is not violence, and violence is not speech. Universities that are serious about academic freedom understand the difference, and they enforce the rules accordingly. It has become clear that Columbia applies double standards when it comes to free speech and student misconduct. If Columbia had been faced with a campus uprising

of religious conservatives upset because they view abortion as a tragic genocide, we have no doubt that the university's response would have been profoundly different. By favoring certain viewpoints over others based on their popularity and acceptance in certain circles, Columbia has failed as a legitimate, never mind elite, institution of higher education.

3. Viewpoint diversity on the faculty and across the administration—including the admissions office.

Recent events demonstrate that ideological homogeneity throughout the entire institution of Columbia has destroyed its ability to train future leaders of a pluralistic and intellectually diverse country. Both professors and administrators are on the front lines of the campus disruptions, encouraging the virulent spread of antisemitism and bigotry. Significant and dramatic change in the composition of its faculty and administration is required to restore confidence in Columbia.

* * *

Considering recent events, and absent extraordinary change, we will not hire anyone who joins the Columbia University community—whether as undergraduates or law students—beginning with the entering class of 2024.

Justice William Brennan refused to hire law clerks from Harvard Law School because he disliked criticisms of the Supreme Court by some of its faculty. The objective of our boycott is different—it is not to hamper academic freedom, but to restore it at Columbia University.

Elizabeth L. Branch　　James C. Ho　　Matthew H. Solomson

Alan Albright
David Counts
James W. Hendrix
Matthew J. Kacsmaryk
Jeremy D. Kernodle
Tilman E. Self, III
Brantley Starr
Drew B. Tipton
Daniel M. Traynor
Stephen Alexander Vaden

cc: Gillian Lester, Dean, Columbia Law School

Why I Won't Hire Law Clerks From Columbia

By Matthew Solomson

I joined a dozen of my colleagues on the federal bench this week in signing a letter stating that we won't hire law clerks who matriculate at Columbia University beginning this fall. We have received criticism for our choice to punish an institution rather than target the individuals responsible for miring it in anti-American and antisemitic radicalism. I want to explain that choice.

The purpose of any boycott is to change the behavior of the target. To be effective, a boycott must rally a critical mass of the target's customers. Hardly anyone thinks Columbia's behavior is acceptable. The only question is whether we are being so overinclusive that we will punish the wrong people. I had this concern but ultimately decided that it is a criticism of boycotts per se, not of this particular one.

> **The reputational costs from our boycott ought to provoke some soul-searching at the school.**

Boycotts naturally have wide-ranging effects. Those advocating boycotts of Israel know they will hurt not only the country's hawks and elites but poor and working-class Arabs, black Israelis, dissidents, peace activists—you name it. Boycotts are naturally limited. The anti-Israel boycotters know they aren't targeting all regimes they perceive, rightly or wrongly, as unjust. Yet they proceed anyway because they have a goal in mind. Everyone who decides to boycott has to decide how legitimate the goal is and how important it is to achieve.

We think it's important to force Columbia and its peer institutions to change. Our boycott is prospective only, which means everyone is on notice. High-school guidance [illegible] who want to enroll at Columbia that they would likely be closing some doors for themselves. Law-school applicants should be smart enough to figure out that while some schools place many alumni in clerkships, others have the opposite reputation. Our boycott may make a difference in those considerations only on the margins, but other judges may be moved to join us. I hope the reputational costs of being shunned by federal judges will give Columbia's leaders reason to search their souls and change course before the boycott even begins. I signed the letter not to inflict punishment on students but to send a clear message to Columbia that its approach to campus antisemitism and anti-Americanism is unacceptable.

If federal judges found out there was a school tolerating or fostering a hostile and threatening environment for black students, all of us would boycott that school. We would do so because that's the tool available to us to enforce the basic norms of decency that undergird our constitutional system. In the process, we'd probably hurt the careers of a righteous majority of students at that school. But no one would lose sleep over that—it would be a small price to pay to do the right thing. Why are we now expected to sit idly by instead of doing what we can when a school has revealed the extent of its corruption?

Our position is no different in spirit from the remedy available under Title VI of the Civil Rights Act of 1964, which the Congressional Research Service summarizes this way: "Agencies also have at their disposal a uniquely powerful tool: the termination or refusal to provide federal financial support to an institution." Would such a funding termination, even in a proper case, punish professors and students who aren't part of the problem? Yes. Does that undermine, in some moral sense, the goal of inducing compliance and change? No.

Every elite university asks employers to make collective judgments about their alumni. Graduates of Columbia have been viewed as among the most capable young people in the country. Recent events have made clear that Columbia deserves a very different reputation.

I don't begrudge judges who choose not to join us in this effort, but I continue to believe that we who have chosen to boycott are justified in using the tools at our disposal—prestigious clerkship slots—as a force for good.

Judge Solomson serves on the U.S. Court of Federal Claims.

U.S. NEWS

Conservative Judges Blackball Columbia Grads

Trump appointees say they won't hire school's alumni after its campus unrest

BY JESS BRAVIN AND MELISSA KORN

Against the backdrop of campus protests, a group of federal judges appointed by former President Donald Trump say they will blackball graduates of Columbia University, ratcheting up a pressure campaign against schools they deem hostile to conservatives.

In a letter this week to Columbia University President Minouche Shafik, 13 jurists led by U.S. Circuit Judges James Ho and Elizabeth Branch said the New York City school's response to pro-Palestinian protests was inadequate and that the campus had become an "incubator of bigotry" with rampant antisemitism and a lack of diverse perspectives.

"Considering recent events, *and absent extraordinary* change, we will not hire anyone who joins the Columbia University community—whether as undergraduates or law students—beginning with the entering class of 2024," the letter said.

The university's central administration referred queries to Gillian Lester, dean of Columbia Law School. "We are proud that Columbia Law School graduates are consistently sought out by leading employers in the private and public sectors, including the judiciary," Lester said.

Tensions between some judges and campuses have been escalating for more than two years. In March 2022, an influential conservative judge, Laurence Silberman of the U.S. Court of Appeals for the District of Columbia Circuit, sent a message to fellow jurists asking them to consider rejecting clerkship applications from Yale University students who disrupted a Federalist Society event at the New Haven, Conn., campus.

In 2022 and 2023, Ho and Branch, the highest ranking judges to sign this week's letter, went further, saying they would refuse to hire any graduates of the Yale and Stanford University law schools after conservative speakers faced student-led disruptions there.

Ho declined to comment, but in speeches announcing the prior boycotts, he said he hoped to pressure school administrators to hire more faculty with conservative views.

Two other judges who signed the letter to Columbia, David Counts and James Hendrix, who both sit on federal district courts in Texas, declined through spokeswomen to comment. The other 10 signatories didn't respond to requests for comment.

The letter illustrates the relationship between influential judges and the law schools that train future attorneys and offers a glimpse into the potential repercussions for students and schools after a spring semester marked by disruptive pro-Palestinian demonstrations. Students at Columbia escalated their protest last week by occupying an academic building; police were called in to clear it and many students were arrested.

Some legal professionals questioned the wisdom of blacklisting specific institutions.

"Boycotts by employers of entire student bodies serve little purpose," said Nikia Gray, executive director of the National Association for Law Placement. "Hiring decisions should be based on a candidate's individual qualifications and conduct, not the institution named on their diploma."

MICHELLE MCLOUGHLIN/REUTERS

Judges Elizabeth Branch and James Ho at a 2022 event.

Federal judges "have wide latitude with respect to the hiring of law clerks," said Jeremy Fogel, a former federal and state judge who now directs the Berkeley Judicial Institute at the University of California. But he questioned whether the letter was "consistent with the dignity of the judges' office and the obligation of judges to be impartial."

The "ban on law clerks from Columbia Law School likely punishes people who may have had no involvement in the campus protests," Fogel said.

Federal judges at all levels typically hire recent law school graduates to serve as law clerks for one or two years, a prestigious position that can lead to lucrative employment offers or academic careers. The pinnacle achievement is a clerkship for a Supreme Court justice, which in current practice typically requires stellar performance in law school and a year clerkin[g] for a federal circuit judge.

Columbia has produce[d] prominent lawyers throughou[t] the nation's history, includin[g] the first chief justice, John Ja[y]. On the current Supreme Cour[t] Justice Neil Gorsuch holds [a] Columbia undergraduate de[gree]. Gorsuch didn't respon[d] to a request for comment.

Although the Harvard an[d] Yale law schools dominat[e] clerkship appointments at th[e] Supreme Court, Columbi[a] graduates typically are wel[l] represented in such position[s] there and throughout the federal judiciary. The judges wh[o] signed the letter are amon[g] the most conservative now serving and to date haven'[t] established their chambers a[s] regular feeders to the Supreme Court. It wasn't immediately clear how many, if any Columbia graduates hav[e] sought clerkships with th[e] signatories.

The boycott of Columbi[a] extends further than that o[f] Yale and Stanford, encompassing undergraduates as well a[s] law students.

There currently are 89[0] federal judge positions, 45 o[f] which are vacant, according t[o] government figures.