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# **The Cooley Report: Sloppy, Unsubstantiated and Biased**

**A Review of the Cooley Report on the April 2024  
Indiana University Encampment Protests**

**University Alliance for Racial Justice  
July 28, 2024**

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## The Cooley Report: Sloppy, Unsubstantiated and Biased

Late in the evening of April 24<sup>th</sup>, 2024, President Pamela Whitten, having received reports of an encampment to be established the next day in Dunn Meadow, convened an ad hoc group of administrators that repealed a 55-year-old policy setting aside that location as a zone of free expression. That action, and the arrests of over 50 students, faculty and staff on April 25<sup>th</sup> and 27<sup>th</sup> have created intense controversy. On July 25<sup>th</sup>, President Whitten released a [report](#) she commissioned from Cooley LLC that appeared to vindicate her administration's actions in Dunn Meadow and the call for a new expressive activity policy in line with those.

The University Alliance for Racial Justice has conducted its own analysis of what the Whitten Administration has termed an “independent review.” Results of that analysis raise serious questions concerning the adequacy of the Cooley Report. Together, issues of incomplete reporting, biased presentation, unsubstantiated allegations, and failure to investigate possible racial discrimination appear to invalidate the report's conclusions. In response, UARJ recommends tabling consideration of the proposed expressive activity policy until a more comprehensive and unbiased investigation can be considered through shared governance involving the Trustees, the Administration, and the entire body of the Bloomington Faculty Council.

### Problems with the Report Itself

President Whitten called the Cooley Report an “independent review.” There are, however, a number of problematic aspects of the report, some of which call into question that characterization:

- Can a report commissioned by one of the two interested parties in the Dunn Meadow controversy, tainted by a no confidence vote and calls for resignation from much of the faculty, actually be regarded as independent?”
- The author of the report, Cooley LLC, is a member of the “[White Collar Defense and Investigations Group](#)” serving corporations and their concerns. Its goal is to provide defensive strategies “against enforcement actions brought by the US Department of Justice, the US Securities and Exchange Commission, the Federal Trade Commission” and other Federal and state agencies.
- The report notes that it was conducted on a “compressed timeline” to meet an August 1<sup>st</sup> deadline set by President Whitten. The investigation and report were completed in little over a month (June 14 – July 25).
- The presence of serious typographical errors--both the Bloomington and University Faculty Councils, for instance, are spelled as *Counsel*—suggests that the report was completed with undue haste, without the care befitting an investigation that a serious controversy demands.

### Incomplete Investigation

Under HEA 1190, any restriction placed on free expression on a college campus must be “viewpoint-neutral.” As an Indiana University faculty member, President Whitten is also

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required by state law, SEA 202, to promote intellectual diversity by providing alternate perspectives when presenting a policy viewpoint. Yet the report fails to provide numerous sources of evidence and perspectives that could contradict the administration's position. There is no mention in the report of:

- Numerous condemnations by the [Indiana University community](#) and [the surrounding community](#) of the ad hoc policy and the arrests.
- The perspective of faculty and staff who were arrested on April 25<sup>th</sup> or 27<sup>th</sup>.
- The perspective of students and student leaders of the protest who were arrested.<sup>1</sup>
- A lawsuit by the [Indiana ACLU](#) on behalf of arrested professors whose First Amendment rights were violated by the arrests and subsequent bans from campus
- An [interview](#) in which the Chief of the ISP told Rep. Matt Pierce that he had to “slow the University down” in order to ensure that the police followed required protocol in the arrests.
- The physical and emotional harms inflicted upon members of the IU community by the arrests at Dunn Meadow. Contrary to the report, a number of protesters received physical injuries from being pushed, beaten, and choked.
- Negative press coverage both locally and nationally, raising questions about Indiana University's handling of the protests, including the New York Times, the Chronicle of Higher Education, Inside Higher Education, Indiana Public Media, Bloomington Herald Times/Indianapolis Star, the Bloomingtonian, and the Indiana Daily Student.

## Biased Presentation

In instances where the report includes information that could be viewed as unsupportive of the positions of the administration, it does so in a way that is slanted towards the Whitten Administration:

- There is no exploration of the specific reasons why the Monroe County Prosecuting Attorney's Office stated that the “[constitutionally dubious process](#)” surrounding the arrests made it a “poor use of resources” to pursue prosecution of those arrested on April 25<sup>th</sup> or 27<sup>th</sup>
- The report's main concern about the sniper placed on the roof of the Indiana Memorial Union appears to be that “a photo of an ISP sniper went viral and caused negative reactions on campus,” not the danger it presented to protesters and onlookers.
- The Cooley Report did not mention a [research study conducted at Princeton University](#) of 1100 demonstrations (including 300+ encampments) protesting the Gaza incursion between October 7<sup>th</sup> and May 12<sup>th</sup>. It found only five instances in which the police—invited by university administrators--trained deadly force on its own students and faculty. Of those five incidents, IU was responsible for two.

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<sup>1</sup> There was no mention or exploration of the fact that the two students who declined an interview did so because they feared retribution from the Whitten Administration.

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- The report focuses on the perspectives of at least one Jewish member of the IU community, but there is no evidence of interviews with Palestinian, Arab, and/or Muslim members of IU’s community.

## **Unsubstantiated Allegations**

The report contains numerous unsubstantiated and often misleading allegations about the protest, reactions of the university community, and events since the protest. The report:

- Claims, without documentation, that there was a drug overdose that occurred in Dunn Meadow. In fact, no such event occurred.
- Claims that the initial encampment was promoted by a coalition of outside groups with names clearly intended to invoke othering (e.g. Central Indiana Democratic Socialists of America, Indiana Resiste). The only evidence for this assertion is a footnote to a flier that contains only information about the protest, with no listing of institutional affiliations.
- Suggests, throughout the report, that “multiple interviewees” or “multiple members of the IU community” made statements critical of the encampment or supporting the administration’s actions. The identity of any of those respondents is never specified, but since those contacted by Cooley for this investigation were largely IU administrators, that response pattern is unsurprising, and clearly not viewpoint-neutral.

## **Ignores Serious Racial Discrimination**

Those most targeted by the police—during and after the action—were students of color. Observers visiting the encampment noted that 30-50% of those in the encampment at the time of the arrests were students of color. In addition, a Black student and a Palestinian student, designated as “leaders,” were the prime targets of police action and received disproportionate levels of punishment afterwards.

- A Black student, Bryce Greene, one of the leaders of the encampment<sup>2</sup>, was targeted by the sniper as “the Black male with the afro”
- Prior to the sweep, both Mr. Greene and a fellow student, Aidan Khamis, were [particularly targeted](#) for arrest by the police, though neither had committed any offense justifying that action.<sup>3</sup>
- While all other protesters who were arrested received a one-year ban from campus, the Black leader of the protest, Mr. Greene was given a five-year ban.

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<sup>2</sup> While both Mr. Greene and Mr. Khamis were among the leaders of the encampment, the organization of the camp is such that there are no primary leaders, despite the sniper nest overwatch communication designating them as the “main actors.”

<sup>3</sup> From body cam footage, the exact words used by the police in speaking about Mr. Greene just prior to the arrests were “Black afro guy” and “if he f---ing moves in and gets entrenched, we’re f---ing going in after him.”

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## **Conclusion: Can a Flawed Investigation Lead to Unbiased Conclusions?**

An expression frequently used by peer reviewers considering submissions to scientific journals is *GIGO*—“Garbage In, Garbage Out.” It represents the widely accepted principle in academia that the conclusions of an investigation containing fundamental errors in the collection, analysis and reporting of data can in no way be trusted. It is clear that the investigation and writing of the report were severely rushed, leading to sloppiness and error. Some critically important data that may have contradicted many of the report’s conclusions were entirely missing, while other relevant information was presented in a slanted way favoring the viewpoint of the administration. The report violates a key principle of unbiased investigation by making numerous allegations that are unsupported by any evidence.

Most important for the University Alliance for Racial Justice, the report ignores numerous data points suggesting a pattern of racial discrimination during and after the events in Dunn Meadow. The presence of so many students of color among those arrested is in itself cause for concern. But the specific targeting of two students of color through a prior decision to arrest, targeting by a sniper, and disparities in consequences is a dire echo of the egregious actions of police in the targeting, physical harm, and differential consequences routinely levied upon citizens of color in our nation.

On a broader level, the Cooley Report fails to address what should be the most central issue in reviewing the events at Dunn Meadow: Was the level of aggressive police intervention, involving arrests with physical force, military hardware, and a sniper nest justified for this level of protest? The report presents no evidence that there was any actual threat to student or campus safety prior to the arrests. Yet the level of force used by the police at the administration’s behest appears to be among the most extreme reactions in the nation to the Gaza protests.

While calls have been made for the Indiana University Board of Trustees to reject the proposed expressive activity policy outright, we would argue instead that the policy should be tabled at this time. We would urge that further consideration of the policy be delayed until a new investigation and report can be considered that includes all relevant data, strives for viewpoint neutrality, and can be considered on a more reasonable timeline, with full involvement of the entire body of the Bloomington Faculty Council in the fall.

We therefore call upon the Board of Trustees to table consideration of a policy whose primary source of support is a report that must be seen as rushed, unbalanced, and potentially racially discriminatory.

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## Endnotes

Contributing authors from the University Alliance for Racial Justice include Russ Skiba, Heather Akou, Barbara Dennis, Linda Johnson, Amrita Myers, and Sonia Song-Ha Lee.

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