



Via Email

October 18, 2016

Chancellor Dirks, University of California Berkeley
Executive Dean of the College of Letters and Science Carla Hesse
Chief Counsel Christopher Patti

Dear Chancellor Dirks, Executive Dean Hesse, and Chief Counsel Patti:

I write to follow up on my letter of September 16 2016 on behalf of Paul Hadweh, the student facilitator of Ethnic Studies 198, Palestine: A Settler Colonial Inquiry (“ES 198” or, “the course.”). The university’s summary suspension of Mr. Hadweh’s course mid-semester was an extreme and unprecedented measure, for which the university has failed to provide any valid justification.

All indications are that the university suspended the course because of controversy created by complainants who disfavored the perceived political viewpoints in the course. The suspension violated the free speech and academic freedom rights of students and faculty, resulting in harm to the educational environment, severe disruptions to Mr. Hadweh’s studies, and confusion as to the meaning and application of UC policies. Mere reinstatement of the course is insufficient without further steps to remedy the harms done, and we request that the university take several immediate actions, including apologizing to Mr. Hadweh and issuing written clarifications to applicable university policies.

A. Factual Background

My September 16, 2016 letter, attached, provides a detailed summary of facts up until that date. In brief, Mr. Hadweh spent eight months preparing to facilitate a student-led course on Palestine. Executive Dean of the College of Letters and Science Carla Hesse suspended ES 198 on September 13, 2016, three weeks after the semester started and one week after the course began, without consulting Mr. Hadweh, the faculty advisor, or the department chair. The university publicly announced its decision less than 30 minutes after informing the faculty advisor and department chair that the course was suspended.¹

¹ Dean Hesse emailed Shari Huhndorf, Chair of the Ethnic Studies Department to inform her of the course suspension on September 13 at 9:59 a.m. (Email on file with Palestine Legal). The Chancellor’s Office informed the AMCHA initiative within 30 minutes (Email from Chancellor Departmental to Tammi Rossman-Benjamin, “Re: Serious Concerns about vetting procedure for DeCal Courses at UCB,” September 13, 2016 at 10:26 a.m., <http://www.amchainitiative.org/wp-content/uploads/2016/09/Letter-from-Chancellor-Dirks-9.13.2016.pdf>.) The AMCHA initiative promptly publicized the suspension.

The decision followed heavy pressure from Israel advocacy organizations and the Israeli government, which complained the course violated the Regents Policy on Course Content.²

The university's public statement claimed erroneously that, "the facilitator for the course in question did not comply with policies and procedures."³ No policies or procedures were cited to support this claim.

The course did not meet as scheduled on September 13. Mr. Hadweh spent the following week fighting to reinstate the course and defending his name amidst an international media storm. The story was covered in Israeli, Arab, European, national, and local media outlets.⁴ Mr. Hadweh was depicted falsely throughout the coverage as a student who violated university policies and attempted to indoctrinate his peers with antisemitic thinking.⁵ The university made no statements in his defense.

On September 19, Dean Hesse announced that she was reinstating ES 198.⁶ The enrolled students met on Tuesday September 20, but Mr. Hadweh was unable to engage his students in the planned discussion of the course material because of questions about the university's suspension of the course and its reinstatement. They fell two weeks behind on the course syllabus as a result of the suspension.

On Tuesday September 20, the Academic Senate Divisional Council released a statement condemning the university's suspension of ES 198 as a major infringement on delegated authority, and demanding that the university retract and apologize for false statements accusing

² See, Letter to Chancellor Dirks from the AMCHA Initiative and 43 other organizations, September 13, 2016, "Letter to UC Berkeley Chancellor Dirks Regarding Serious Concerns About Vetting Procedure for DeCal Courses at UC Berkeley," <http://www.amchainitiative.org/letter-to-uc-berkeley-chancellor-dirks> ("this course violates the Regents Policy on Course Content.") See also, statement from Hillel International President and CEO Eric Fingerhut and Berkeley Hillel Executive Director Rabbi Adam Naftalin-Kelman as quoted in *Jweekly*, September 13, 2016, "U.C. Berkeley suspends student-led Palestine course after Jewish outcry," <http://www.jweekly.com/article/full/78411/u.c.-berkeley-suspends-student-led-palestine-course-after-jewish-outcry/>, ("This course seems to be a matter of political indoctrination in the classroom and is a violation of the newly adopted principles by the U.C. regents on intolerance.") See also, Israel Channel Ten News, September 11, 2016, <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>, translation on file with Palestine Legal, ("Both Minister Erdan and the Association of University Heads have been trying covertly to prevent the course from taking place. The Association of Heads University Heads has told us this is illegal, and is contrary to Berkeley's own regulations.") Translation from Hebrew on file with Palestine Legal.

³ Email from Chancellor Departmental to Tammi Rossman-Benjamin, "Re: Serious Concerns about vetting procedure for DeCal Courses at UCB."

⁴ Mr. Hadweh is uncertain as to whether he will live and work in California, Palestine, or elsewhere internationally and thus the negative coverage potentially limits his opportunities anywhere he might go.

⁵ For example, the Israeli news media claimed the course offered "practical tips for how to drive Jews out of Israel." (See Israel Channel Ten News, September 11, 2016, <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>, translation on file with Palestine Legal.)

⁶ Hesse Letter Regarding ES 198 Fall 2016, September 19 2016, attached.

Mr. Hadweh of failing to follow university procedures.⁷ To date, the university has issued no public response to the Academic Senate.

For the week that followed the reinstatement, Mr. Hadweh was forced to devote himself full time to defending his reputation and responding to high interest from international and local media outlets. He fell irreparably behind in an intensive Hebrew language course. Mr. Hadweh lost sleep, had trouble concentrating, and was consumed with anxious thoughts about the consequences of the reputational harm on his future and his family.

Mr. Hadweh sought support from the Dean of Students office for a tutor on September 16, and he followed up on September 21, and again on October 3. Specifically, he requested the university provide him with a compensated and qualified Hebrew language tutor. On October 4, a case manager from the Dean of Students office replied to Mr. Hadweh informing him that the university is unable to provide compensated tutoring support, and Mr. Hadweh would have to rely on volunteers from the class.⁸

The university has not apologized to Mr. Hadweh, has not retracted its public statements blaming Mr. Hadweh, or provided him additional academic support as he requested.

B. The mid-semester course suspension was an extreme and unprecedented action.

Academic Senate officials advised Mr. Hadweh that the university has never before taken action to suspend a course in the middle of a semester. Meanwhile, many other courses on hot-topics, with deeply contested viewpoints, are taught every semester at UC Berkeley and are rarely, if ever, reviewed by Dean Hesse. Many of these courses arguably espouse a “singular political viewpoint” or provide “forums for political organizing” (as the university originally framed its concern about ES 198).⁹

The mid-semester suspension was extreme because it communicated to the campus that the questions explored in Mr. Hadweh’s course are so dangerous that they must be censored on an emergency and unprecedented basis.¹⁰ The timing meant that the students enrolled in ES 198 had already committed their academic schedules and course credit arrangements to the course but were then left in limbo, with no communication from the university as to the fate of their course.

⁷ Divisional Council (DIVCO) statement on the suspension of a student-facilitated course, Tuesday September 20, 2016, attached.

⁸ Correspondence on file with Palestine Legal.

⁹ Email from Chancellor Departmental to Tammi Rossman-Benjamin, “Re: Serious Concerns about vetting procedure for DeCal Courses at UCB,” September 13, 2016.

¹⁰ John K Wilson wrote in *Academe Blog*, blog of *Academe*, the magazine of the American Association of University Professors (AAUP), “Universities should never suspend courses in the middle of a semester except under the most dire circumstances, where a course has been proven to violate university policies and cannot be fixed, or some kind of extraordinary fraud has occurred.” (*Academe*, September 15, 2016, <https://academeblog.org/2016/09/15/berkeley-bans-a-palestine-class/>.)

C. The university's procedural justifications for suspending ES 198 are baseless and pretextual.

In reports to the public, the procedural justifications shifted several times. First, in suspending the course on September 13, the Chancellor's office claimed the course facilitator – Mr. Hadweh – had not followed the correct procedures to get the course approved. This was erroneous. In fact, Mr. Hadweh stated that he followed every posted procedure,¹¹ and the Divisional Council (DIVCO) of the Berkeley Division of the Academic Senate confirmed his account.¹²

Second, university spokesperson Dan Mogoluf told the media on September 14 that the course was never submitted to Dean Carla Hesse of the College of Letters and Sciences and that this justified the suspension.¹³ On September 19, upon reinstating the course, Dean Hesse reiterated the claim that she suspended the course because she had not “been made aware formally of this DeCal class offering, nor seen the syllabus.”¹⁴ However, the DeCal website, which outlines procedures on course approval for student-instructors, clearly states in bold font that, “**DeCals in the College of Letters & Science no longer need to submit a copy of their proposals to the Dean starting Fall 2014.**”¹⁵ In other words, Dean Hesse's not being aware “formally” of a DeCal class is not a basis for its suspension. Mr. Mogoluf told the *Academe* blog that Dean Hesse was unaware of a policy change.¹⁶ This may be true, but ignorance of procedures (implemented two years previously) is not a justification for suspending the course. Rather, it is a reason to offer Mr. Hadweh an apology.

Third, Mr. Mogoluf asserted that despite the clear instruction on the DeCal website, campus policy still requires a copy of the approved course syllabus be delivered to Dean Hesse.¹⁷ However, even if Dean Hesse believed this to be true, the appropriate remedy would be to ask Mr. Hadweh, or the faculty advisor, for a copy of the syllabus – not the extreme measure of an indefinite mid-semester suspension. Moreover, Dean Hesse does not have the authority to suspend a course on an emergency basis given that authority over course approvals remains delegated to the faculty, as discussed below.¹⁸

Fourth, the university also claimed, in a statement provided to *Academe* blog, that the acting chair of the Ethnic Studies department did not have authority to approve the course. The university failed to explain why an acting chair would lack such authority. Moreover, there were

¹¹ Mr. Hadweh explained this to Dean Hesse during their first communication in a meeting on September 13, 2016, and explained in a public statement that he followed every posted procedure. (See, <http://palestinelegal.org/news/2016/9/14/uc-berkeley-censors-course-on-palestine-and-settler-colonialism>.)

¹² Divisional Council (DIVCO) statement on the suspension of a student-facilitated course, Tuesday September 20, 2016.

¹³ John K. Wilson, “Berkeley Bans a Palestine Class,” *Academe*.

¹⁴ Hesse Letter Regarding ES 198 Fall 2016, September 19 2016.

¹⁵ See, <http://www.decal.org/start-a-course/>.

¹⁶ John K. Wilson, “Berkeley Bans a Palestine Class,” *Academe*.

¹⁷ *Id.*

¹⁸ Divisional Council (DIVCO) statement.

eight other courses sponsored by the Ethnic Studies department this semester, and there was no problem raised with the acting chair's authority to approve those courses.

The Divisional Council (DIVCO) of the Berkeley Division of the Academic Senate, which investigated the matter, disputed the university's procedural justifications for suspending the course, noting:

The course proposal was reviewed and considered according to posted procedures, which include three levels of oversight. The student-facilitator adhered to University policy at all stages of the process. Concerns were never raised at any stage, and the course went into effect at the start of the fall 2016 semester uneventfully.¹⁹

University administrators first became aware of the course at least as early as August 26, when Mr. Mogolof made statements to the media.²⁰ If Dean Hesse believed that the appropriate procedures had not been followed, or merely needed "clarifications" (as described in the September 19 reinstatement letter), she should have contacted the facilitator, the faculty advisor or the department chair to address her concerns at any time before the semester began. There is no valid justification for waiting nineteen days to take action.

The university failed to describe a single procedural error that could justify suspending the course. The absence of a valid procedural justification strongly suggests that such an explanation is pretextual.

D. Dean Hesse did not have the authority to override the faculty's judgment on scholarly or content-related concerns.

In her reinstatement letter on September 19, Dean Hesse added several content-related reasons for the course suspension. Hesse explained that she suspended the course in order to question: (1) whether the course was properly hosted in the Ethnic Studies department, (2) whether the course had a "particular political agenda ... and whether it potentially violated the 2007 Regents Policy on Course Content and/or the 2015 Regents Statement of Principles Against Intolerance" and (3) whether the course "violated Regents Policy by crossing over the line from teaching to political advocacy and organizing."²¹

By assuming authority to suspend the course mid-semester due to such content-related concerns, Hesse usurped faculty power to authorize and supervise course curricula. Under the UC structure of shared governance, the faculty body – not administrators – has authority to make decisions about course curricula because faculty members are the experts in the professional standards of their fields. As the September 20 Academic Senate DIVCO statement explained in detail, DIVCO "reject[s] the notion of decanal authority to approve or suspend courses" because "that authority is vested in the faculty"²² The faculty had already approved ES

¹⁹ Id.

²⁰ Id.

²¹ Hesse Letter Regarding ES 198 Fall 2016, September 19 2016.

²² Divisional Council (DIVCO) statement.

198 course based on an evaluation of professional standards, and when Dean Hesse suspended the course mid-semester, based on course content concerns, she abrogated faculty governance.

In the September 19 reinstatement letter, Dean Hesse acknowledges that “Dean’s [sic] review, but do not approve the academic content of DeCal courses.” However this fails to acknowledge that if a Dean does not “approve” academic content, she also does not withhold approval. In other words, a Dean may not suspend a course due to concerns about the academic content.

E. The Regents Policy on Course Content could not justify the suspension.

Dean Hesse’s professed concern that the course potentially violated the Regents Policy 2301: Policy on Course Content²³ echoed the complaints of Israel advocacy organizations, which alleged that the course “intended to indoctrinate students to hate the Jewish state and take action to eliminate it,” in violation of the Course Content policy’s prohibition on political indoctrination.²⁴ But Dean Hesse’s concern misinterprets the policy, which must be read harmoniously with the university’s Academic Freedom policies.

During the spring of 2015, UC Riverside (UCR) considered the meaning of the Course Content Policy as applied to a similar student-led course on Palestine with a Palestinian student facilitator. The course was similar in tone and content, and it faced the same accusations of political indoctrination from many of the same groups that complained about Mr. Hadweh’s course. Rather than prohibit or suspend the course, UCR administrators refrained from interfering.²⁵

Given complaints about the course, UCR Chief Compliance Officer Bill Kidder analyzed the Course Content Policy alongside UC Academic Freedom and Faculty Governance policies, and concluded:

[T]here was not a failure to adhere to the “political indoctrination” prohibition in Regents Policy 2301 when that policy is interpreted harmoniously with (as it should and must be) and alongside the University’s robust commitment to academic freedom (APM – 010) animated by the academic judgment of the faculty (Regents Standing Order 105.2).²⁶

²³ Regents Policy 2301: Policy on Course Content, <http://regents.universityofcalifornia.edu/governance/policies/2301.html>. The policy was adopted in 1970. It states, “The Regents...are responsible to see that the University remain aloof from politics and never function as an instrument for the advance of partisan interest. Misuse of the classroom by, for example, allowing it to be used for political indoctrination...constitutes misuse of the University as an institution.”

²⁴ Letter to Chancellor Dirks from the AMCHA Initiative and 43 other organizations, September 13, 2016.

²⁵ For a summary of the UC Riverside “Palestinian Voices” student-led course, please see “Palestine Exception to Free Speech, UC Riverside Case Summary,” <http://palestinelegal.org/the-palestine-exception-appendix#riverside1>.

²⁶ Bill Kidder, Chief Compliance Officer and Associate Vice Chancellor, “UCR Review of the Spring 2015 “Palestinian Voices” Student-Led Course,” <http://tinyurl.com/jzctx58>.

The same analysis applies here. ES 198 is “political” in nature because of the deeply contested issues surrounding Palestine-Israel. Faculty with authority and expertise to judge whether the course met professional standards for educational inquiry determined that the course was intellectually rigorous and appropriate.²⁷ Complaints from others who disagree with the conclusion of the faculty that the course is a valid educational endeavor cannot override the decisions of the faculty.

UCR’s application of the Regents Policy on Course Content is consistent with guidance issued in 1970 from then-UC President Charles J. Hitch, which he wrote shortly after the Policy on Course Content was adopted.²⁸ President Hitch questioned, what does “political” mean for purposes of implementing the Regents prohibition of political indoctrination? He wrote, “certainly scholarly instruction and research on politics is not only appropriate but desirable.”²⁹ If this guidance continues to apply as it should, then ES 198, is a desirable course offering, and there is no justification for applying special scrutiny to second guess the original assessment of the faculty.

Dean Hesse’s concern about a potential violation of the Course Content Policy seems reserved only for courses on Palestine. No other course in the DeCal program – many of them explicitly framed with a “political agenda”³⁰ received similar scrutiny under the Regents Course Content Policy. Such special scrutiny for the study of Palestine is most likely attributable to the record of complaints from the same Israel advocacy organizations that have pressured the university on numerous previous occasions to apply the Regents Policy on Course Content to restrict academic endeavors that they deem politically unacceptable.³¹

²⁷ Letter to Carla Hesse from Shari Huhndorf, Department of Ethnic Studies Chair, “Department Assessment of Ethnic Studies 198: Palestine: a Settler Colonial Inquiry,” September 18, 2016, attached. The Ethnic Studies departmental executive committee undertook an examination of the course with particular attention to Regents Policy 2301: Policy on Course Content, and determined the course is structured by open inquiry. (“Nothing in the syllabus indicates that a single viewpoint is taught uncritically; on the contrary, the syllabus indicates that multiple viewpoints are welcomed and debated in the class.”) This examination was special scrutiny that occurred after controversy caused Dean Hesse to suspend the course, as part of the reinstatement process. The faculty who reviewed the course during the normal approval process made the same determination.

²⁸ President Hitch issued this guidance three months after the Regents adopted the Course Content Policy in June 1970, and to our knowledge it is still in effect.

²⁹ September 18, 1970 Policy Guidance from UC President Charles J. Hitch, Restrictions on the Use of University Resources and Facilities for Political Activities, page 4, available at, <http://policy.ucop.edu/doc/1200368/FacilPolitActiv>.

³⁰ See, for example, DeCal courses offered this semester such as: “Helping the Navajo Rebuild with Project Pueblo”, which provides opportunities for students to “actually do something about [Navajo nation issues]” (<http://www.decal.org/courses/4188>), “Copwatch: Community-Based Police Accountability,” which “provides students with opportunities to participate in community organizing throughout the semester” (<http://www.decal.org/courses/4158>), or “Invisible Forces of Mass Incarceration,” which explores “how we as students can continue to push for change” (<http://www.decal.org/courses/4177>).

³¹ In 2014 the AMCHA Initiative and other organizations complained to President Napolitano and the UC Regents after UAW 2865, the union of graduate workers, announced its intention to vote on an initiative to support Boycott Divestment Sanctions (BDS) against Israel. At that time, AMCHA and others

F. The UC Regents Statement of Principles Against Intolerance could not justify the suspension.

The Regents of Statement of Principles Against Intolerance (“Intolerance Statement”) is not a policy document, and is not enforceable. During discussion prior to adoption of the Intolerance Statement, UC General Counsel Robinson stated to the Committee on Educational Policy that the statement is “aspirational rather than prohibitory” and it “does not provide basis for sanction or enforcement activity against anyone in the university community.”³² He reiterated that there are already university policies in place governing speech, which the Intolerance Statement does not supersede.

Second, even as an aspirational guidance to administrators grappling with controversy, it is so vague that it provides no measurable standard as to what type of speech and scholarship constitutes “intolerance” or “antisemitic forms of anti-Zionism,” to the point that a reasonable person is unable to discern what type of speech and scholarship “has no place at the university.” Is discussion of a “decolonial Palestine” an antisemitic form of anti-Zionism? This is a question that could be the basis of endless scholarly and political debate. It is untenable under the university’s academic freedom and faculty governance policies for Dean Hesse, or any other administrator, to exercise a subjective view of what constitutes an “antisemitic form of antisemitism.” As in this case, allowing such a subjective and arbitrary interpretation of, and subsequent reliance on, the statement to justify administrative actions that restrict academic activities paves the way for serious violations of First Amendment rights and academic freedom principles.

Third, the Intolerance Statement, somewhat ironically, incorporates and reaffirms the university’s robust commitment to free speech and academic freedom. Thus by its own terms, the Intolerance Statement cannot justify the extreme and unprecedented action to usurp faculty authority and suspend a course mid-semester because an administrator has concerns about the content.

The university should make clear that the Statement of Principles Against Intolerance is not to be used by administrators in reviewing, approving, or not approving course content.

(including the David Horowitz Freedom Center) demanded that UC enforce the UC Regents Course Content Policy against graduate student instructors to prevent them from discussing BDS in the classroom. (See, Letter from AMCHA Initiative and other organizations to President Napolitano Regarding UAW 2865, August 12, 2014, <http://www.amchainitiative.org/letter-to-uc-president-napolitano-regarding-uaw2865/>.) Vice Provost Dorr issued a memo in response to AMCHA’s demands naming the applicable policies, including the Course Content Policy. (See Letter from Provost Aimee Dorr to UC Chancellors, September 8, 2014.) The memo merely listed applicable policies but did not clarify how the policies would apply to discussion of BDS in the classroom. AMCHA issued a press release titled, “CHANUKAH SURPRISE FROM UC; MAJOR VICTORY HAILED” interpreting Dorr’s memo to mean that faculty and academic student employees are prohibited from bringing “the boycott of Israel into the classroom.” The university issued no further public clarification as to whether or not this is correct, or in what ways classroom instructors are prohibited from discussing opposition to Israeli policies.

³² UC General Counsel Robinson Statement on Statement Against Intolerance, March 24, 2016, <https://www.youtube.com/watch?v=ukc9qSuJZmU>

G. Conclusion

The absence of a valid justification for suspending the course, combined with the absence of similar scrutiny applied to any other DeCal course, and the ample evidence of an international pressure campaign on the university to restrict Palestinian perspectives, all point to the conclusion that the university suspended the course in response to controversy over the perceived political viewpoints in the syllabus. This is a violation of the University's obligation to uphold academic freedom and free speech under the California and U.S. Constitutions.


Such blatant viewpoint discrimination damages the educational environment by casting a pall of orthodoxy over the campus. Students in the course, prospective student facilitators, faculty and others in the campus community are left to wonder whether or not they are permitted to study Palestine from an anti-colonial perspective – or at all. Is critical inquiry into the process of expanding Israeli settlements in the West Bank permitted, or will that be scrutinized by administrators as potential indoctrination or antisemitism, in violation of university policy? Are students permitted to study alternatives to the “two state solution” in Palestine-Israel, or is that considered overly narrow range of viewpoints, and thus impermissible? It is intolerable for these to even be serious questions left to administrators who have no knowledge of the fields of inquiry.

To repair the harms the university's actions caused to Mr. Hadweh and the educational environment at UC Berkeley, we respectfully request the following:

1. Chancellor Dirks and Dean Hesse apologize to Mr. Hadweh and the enrolled students of ES 198, and retract the false statements blaming Mr. Hadweh for failing to follow procedures.
2. Issue a written statement to the university community recommitting to academic freedom with respect to course content on Palestine-Israel, and affirm that the university cannot and will not apply special scrutiny towards viewpoints that some might disfavor.
3. Clarify through written guidance to administrators, faculty and students that the Regents Policy on Course Content must be interpreted harmoniously with academic freedom and faculty governance policies.
4. Clarify through written guidance to administrators, faculty and students that the Regents Statement of Principles Against Intolerance is an aspirational statement of the Regents' views. As such, it cannot be used to justify university actions that infringe on First Amendment rights and the academic freedom of members of the university community, and it is not to be relied upon for approval or disapproval of course content.

I will follow up with the university counsel's office to request a meeting. Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is cursive and appears to read "Liz Jackson".

Liz Jackson
Staff Attorney, Palestine Legal
Cooperating Counsel, Center for Constitutional Rights