



Via Email

October 3, 2017

Diane Fields Geocaris
Chief Campus Counsel, University of California, Irvine

Dr. Marcelle Holmes
Associate Vice Chancellor, Wellness, Health & Counseling, University of California, Irvine

cc: Kyhm Penfil, Campus Counsel; Howard Gillman, Chancellor; Thomas A. Parham, Vice Chancellor, Student Affairs; Douglas M. Haynes, Vice Provost for Academic Equity, Diversity, and Inclusion.

Dear Ms. Geocaris and Dr. Holmes,

We write on behalf of UCI Students for Justice in Palestine (SJP) to demand that UCI reverse its decision to sanction SJP for chanting at a group of Israeli soldiers after a member of the soldiers' entourage physically assaulted a student.

The August 22 decision against SJP is the latest in a series of faulty investigations and discriminatory enforcement actions that restrict student speech activity in violation of the First Amendment and the Due Process Clause of the U.S. Constitution, California law and UC policy.

Factual Summary

The following represents our understanding of the relevant facts.

From Monday, May 8, 2017, through Thursday, May 11, 2017, a diverse coalition of UCI students erected a "mock wall" on campus as part of "Anti-Zionism Week." The wall was covered in words and imagery designed to provoke discussions about the Palestinian struggle for freedom. Throughout each day, volunteers were on hand to answer questions and engage in conversation with interested students, faculty and community members.

The students' modest efforts during this annual event have drawn international attention, including from Reservists on Duty, a group of Israeli combat soldiers whose mission is to

counter Palestinian activism on U.S. campuses.¹ Israeli soldiers traveled to UCI to counter Anti-Zionism Week² and spent four days verbally harassing students using racist and sexist language, and physically intimidating them. For example, the soldiers called the students terrorists, told a Jewish student that he is not a real Jew and does not deserve to be Jewish due to his support for Palestinian freedom, made a sexually threatening comment to a female student, shoved a student, and pushed students' signs during protests, hitting one student in the face.³ Several soldiers initially concealed their identities in an effort to collect information about the students.⁴ They recorded students against their wishes, following them to a private canopy set up as a place for volunteers to rest. They also tried to prevent students from fulfilling their aim by loudly and aggressively interfering with conversations between students and curious passersby.⁵

This conduct was particularly threatening to Palestinian students who have personally experienced violence and intimidation at the hands of Israeli soldiers in Palestine, or whose family members have experienced such violence.⁶ These students were aware that the soldiers' surveillance could result in detention at the Israeli border or denial of entry into Israel and Palestine, and could have consequences for their family members in Palestine.⁷

Campus administrators witnessed these events. When students reached out for support, they were told there was nothing the university could do to help; in one case an administrator dismissed a student's safety concerns, pointing out that the soldiers were not armed.⁸ As Israeli combat soldiers, reservists have been trained to use their bodies as weapons.⁹

On May 10, 2017, a group of UCI students traveled to Cal State Long Beach to attend a student government hearing on divestment from companies that profit from the occupation of Palestine, discrimination against the LGBTQ+ community, and private prisons. The same Israeli soldiers

¹ See Reservists on Duty, About Us, <http://onduty.org.il/about/>; Lidar Gravé-Lazi, Fighting for Israel on Another Front Reservists On Duty Group Counters BDS, Jerusalem Post, May 30, 2016, <http://www.jpost.com/Israel-News/Fighting-for-Israel-on-another-front-Reservists-on-Duty-group-counters-BDS-455398>.

² See Lidar Gravé-Lazi, Police Called To Escort Pro-Israel Activists from UC Irvine Campus Event, Jerusalem Post, May 13, 2017, www.jpost.com/Arab-Israeli-Conflict/Police-called-to-escort-pro-Israel-activists-from-UC-Irvine-campus-event-490615.

³ For details about the conduct of the Israeli soldiers, see UCI SJP's letter to Kirsten K. Quanbeck, director of the Office of Equal Opportunity and Diversity, May 30, 2017, at 2-3 [hereinafter Discrimination Complaint], attached to decision letter.

⁴ See ██████████, Statement in Response to Disruption Complaint Against SJP, attached to decision letter.

⁵ See Discrimination Complaint at 2-3.

⁶ See ██████████, supra note 4.

⁷ See ██████████, Statement for Disruption Complaint, attached to decision letter.

⁸ See Discrimination Complaint at 4.

⁹ Elite soldiers fight it out in IDF's first-ever Krav Maga tournament, Israeli Defense Forces, May 27, 2013, <https://www.idfblog.com/2013/05/27/elite-soldiers-fight-it-out-in-idfs-first-ever-krav-maga-tournament/> ("A combat soldier, whether he is from an elite unit or from regular infantry, is the only one prepared to contend face to face with the enemy ... Another weapon at [the soldier's] disposal is his body – his physical ability.")

were present at the Long Beach hearing, and they smiled and jeered at the UCI students.¹⁰ The students believed the soldiers had followed them to Long Beach.

On their way back to campus, the students decided to attend an event featuring the Israeli soldiers,¹¹ which was scheduled for 6-8 p.m. that night.¹² They gathered with allies on campus briefly before attending the soldiers' speaking event.¹³ Together they decided that although they had missed a majority of the event, they would attend the Q&A portion at the end of the event.¹⁴ Prior to the event, students spoke with ██████████, a legal observer from the UCI Law chapter of the National Lawyers Guild.¹⁵ ██████████ asked them about their plans, and they explained that they were going to have a silent demonstration and then ask the soldiers challenging questions.¹⁶ Just before entering the room, the students told ██████████ that they did not plan to disrupt and that they knew there would be student conduct consequences if they did so.¹⁷

On their way into the event, the students were stopped by Associate Vice Chancellor Edgar Dormitorio and interrogated about their intentions.¹⁸ They explained that they were there to ask questions.¹⁹ Mr. Dormitorio sought permission from the event organizers before allowing the students inside.²⁰ They entered at approximately 7:30 p.m.²¹

Once inside, the students participated in a lively Q&A session for about 20 minutes.²² Students asked questions, made comments, and expressed boisterous approval and disapproval by clapping and cheering.²³ Audience members on both sides (in support and in opposition to the soldiers) interrupted other speakers.

At around 7:50 p.m., an audience member and known agitator²⁴ named Gary Fouse posed a question to the students about whether they had engaged in military service.²⁵ One student expressed outrage at the question.²⁶ A camerawoman with the Israeli soldiers then began

¹⁰ See ██████████, supra note 7.

¹¹ *Id.*

¹² See SSI and Reservists on Duty flyer, attached to decision letter.

¹³ See ██████████, supra note 4.

¹⁴ *Id.*

¹⁵ See ██████████, Witness Statement, attached to decision letter.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See ██████████, supra note 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Email of Edgar Dormitorio to Rameen A. Talesh, Event Report: SSI - 051017, Woods Cove, UCI Student Center, May 11, 2017, attached to decision letter.

²² See Transcript of HD0284, attached to decision letter; Transcript of IMG0475.MOV, attached to decision letter.

²³ See Transcript of IMG0475.MOV.

²⁴ Since 2007, Mr. Fouse has written a conservative blog "Fousesquawk", often tracking UCI students with whom he has political disagreements. See Fousesquawk, <http://garyfouse.blogspot.com/>.

²⁵ Transcript of IMG0475.MOV.

²⁶ *Id.*

shouting at the student and tried to push her way toward the student.²⁷ In the process, she shoved one student before being restrained by Mr. Dormitorio and others.²⁸ This camerawoman had also been present on campus for the previous three days harassing and threatening students at the mock wall, as described above. Students responded to the assault by clapping and chanting in an effort to provide an outlet other than physical confrontation.²⁹ They left the room after about four minutes, and the event continued for another half an hour, ending at about 8:30.³⁰

The next day, the Israeli soldiers continued to harass and film the students at their mock wall.³¹ They repeatedly got in the face of SJP [REDACTED] and yelled at her while she gave a speech at a rally that day.³² At one point, while a member of Reservists on Duty attempted to get through a group of students protecting [REDACTED], [REDACTED] made the claim that students had attended the soldiers' event in order to "disrupt" it.³³ [REDACTED] explained in her statement to the investigator that the claim was not true, but, feeling vulnerable, she had felt compelled to make a defiant statement in order to rally strength and support.³⁴

In the aftermath of these events, students were accused in the press of violence and antisemitism.³⁵ Several websites were established specifically to harass them.³⁶ One site included names and personal contact information for seven students, along with pictures with sniper targets on their faces.³⁷ Others linked to their social media profiles, encouraging visitors to harass the students.³⁸ In response to the blacklisting site Canary Mission tweeting at SJP calling for the group to be "shut down," a twitter user "[REDACTED]" replied with the comment, "let me go pay [REDACTED] a visit."³⁹

UCI took no action against the camerawoman who lunged at the students or against the Israeli soldiers who came to campus with the intent to sabotage a student event and proceeded to engage in sustained harassment. During the week of May 10, UCI administrators took no action to support the students who were targeted with harassment by foreign soldiers.⁴⁰

²⁷ *Id.*

²⁸ See Transcript of IMG0475.MOV.

²⁹ See Students for Justice in Palestine's Account of Events and Reply to Complaint, attached to decision letter.

³⁰ See Dormitorio, *supra* note 21.

³¹ See Qussiny, *supra* note 7.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See, e.g., US college students attack, spit on Israeli delegation, Arutz Sheva, Sept. 4, 2017, <http://www.israelnationalnews.com/News/News.aspx/235005>.

³⁶ See Letter of Palestine Legal to Chancellor Howard Gillman, Re: UC Irvine must protect Palestinian students from continued harassment, Aug. 11, 2017.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See [REDACTED] on Twitter, [REDACTED].

⁴⁰ After UCI's lack of action to protect students, they filed a discrimination complaint with the Office of Equal Opportunity and Diversity. The University of California Office of the President is now investigating the complaint.

Instead, UCI proceeded with a student conduct investigation against SJP. During the investigation, the university received a number of letters from Israel advocacy organizations demanding not only that students be punished on campus but that they also be criminally prosecuted.⁴¹ One of the letters identified the students by name and contained imagery that looks to be from one of the harassment sites.⁴²

On August 22, 2017, the Office of Academic Integrity and Student Conduct (“Conduct Office”) concluded its investigation, determining that SJP “disrupted a portion of the question and answer portion of [the Israeli soldier speaking event]” and was therefore responsible for violating campus policy Section 102.13 prohibiting disruption.

The investigation and the determination violated students’ First Amendment rights, violated their right to due process, and imposed excessively harsh sanctions.

UCI Violated Students’ First Amendment Rights

The Supreme Court has long recognized that “state colleges and universities are not enclaves immune from the sweep of the First Amendment.”⁴³ As UCI officials have articulated many times, free speech is not only a legal requirement, but a core educational principle: to nurture a rigorous intellectual environment of open debate and inquiry.⁴⁴ Such a rigorous environment is not always a cordial one. “[A] function of free speech under our system of government is to invite disputes. It may indeed best serve its high purpose when it induces a condition of unrest,

⁴¹ See, e.g., Letter of StandWithUs Legal Department to Chancellor Howard Gillman, RE: Disruption of Students Supporting Israel Event at UC Irvine, July 6, 2017, attached to decision letter (calling for criminal prosecution); Letter of Hillel Orange County to Chancellor Howard Gillman, May 30, 2017 (accusing SJP of “harass[ing] Jewish and pro-Israel students by seeking to shut down their events and by shouting loud, threatening chants of hateful and demonizing slogans that have the intended effect of making Jewish students and those with a connection to Israel feel intimidated and marginalized on their own campus”); Letter to UCI Chancellor Gillman June 2017, AMCHA Initiative, June 14, 2017, <https://amchainitiative.org/letter-to-uc-irvine-chancellor-gillman-june-2017> (implying that SJP “should not be allowed to operate freely at UCI”); Students Supporting Israel – SSI, Subject: SJP UC Irvine, Violation of Student Conduct Code - 2nd year in a row, <https://www.facebook.com/SSIonCampus/photos/a.675674685833678.1073741830.674828905918256/1443124212422051/?type=3&theater> (launching call-in campaign demanding that “SJP be suspended as we can not tolerate an organization that spreads hate and violence and terrorizes the academic community.”); Frommer, Pro-Israel Groups Claim Criminal Action Took Place at UC-Irvine Protest, Call on School to Hold Perpetrators ‘Accountable,’ *Algemeiner*, July 10, 2017, <https://www.algemeiner.com/2017/07/10/pro-israel-groups-claim-criminal-action-took-place-at-uc-irvine-protest-call-on-school-to-hold-perpetrators-accountable/> (calling for suspension and describing acts as criminal). This is an illustrative, not an exhaustive, sampling of the many communications and action alerts from Israel lobby campaigns pressuring UCI to restrict speech and punish SJP.

⁴² Compare StandWithUs, supra note 41, with Email of [REDACTED] to Theresa Truman, Subject: Continued harassment, July 24, 2017.

⁴³ *Healy v. James*, 408 U.S. 169, 180 (1972). Free expression at UCI is also protected by Article I, Section 2 of the California Constitution and The University of California Policy on Speech and Advocacy.

⁴⁴ Chancellor Gilman’s Annual Message on Free Speech in Our Scholarly Community, <http://inclusion.uci.edu/2016/09/23/annual-message-on-free-speech-in-our-scholarly-community/>.

creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging.”⁴⁵

The Student Conduct Office investigated whether SJP disrupted the Israeli soldier speaking event in violation of Section 102.13 of the University of California Policies Applying to Campus Activities, Organizations and Students, which prohibits “Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other University activities.”

UCI’s rationale for the prohibition of disruption is that rigorous debate “cannot happen if universities attempt to shield people from ideas and opinions they might find unwelcome, or if members of the university community try to silence or interfere with speakers with whom they disagree.”⁴⁶ Nurturing unfettered debate requires the university to balance competing rights of speakers – in this case, the rights of panelists and audience members with an interest in providing counter-speech to ideas they view as hateful.

The Conduct Officer investigating the charges against SJP began her investigation by asking the students what disruption means to them and continued her analysis by looking up the word “disrupt” in a dictionary. While these approaches may be sufficient in other contexts, when treading in an arena as zealously guarded by the courts as free speech at a public university,⁴⁷ the Conduct Officer should instead have sought legal guidance on the proper balance of competing free speech interests.

California Education Code section 66301 prohibits the University of California from sanctioning students for speech activity that is protected by the First Amendment.⁴⁸ UCI may not enforce a stricter speech code than government authorities can enforce off-campus.

Courts have determined that students’ peaceful protests and other forms of free expression cannot be prohibited unless they “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.”⁴⁹ California courts have been clear that government regulation of free expression on campus, even when intended to prevent willful

⁴⁵ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

⁴⁶ Chancellor Gilman’s Annual Message on Free Speech in Our Scholarly Community, <http://inclusion.uci.edu/2016/09/23/annual-message-on-free-speech-in-our-scholarly-community/>.

⁴⁷ See, e.g., *College Republicans at San Francisco State v. Reed*, 523 F. Supp. 2d 1005, 1011 (N.D. Cal. 2007) (granting preliminary injunction against the enforcement of university speech code provisions that allowed the university to punish students for behavior that was not “civil”). The court wrote, “The dilemma is that it is conceivable that the goals and policies of a university, e.g., to promote respectful and reasoned discourse on issues of moment, might be in direct conflict with rights protected by the First Amendment, which can entitle people, in some settings, to express themselves in unreasoned, disrespectful and intensely emotional ways.”

⁴⁸ See Cal. Ed. Code § 66301 (“Neither the Regents of the University of California . . . nor an administrator of any campus of those institutions, shall make or enforce a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.”).

⁴⁹ *Tinker v. Des Moines Independent Community School Dist.*, 393 US 503, 509 (1969); see also *Healy*, 408 U.S. at 189 (citing *Tinker*’s “material and substantial” test in university context).

disruption of the orderly operation of the campus, must be narrowly interpreted or else it “would suffer First Amendment overbreadth.”⁵⁰

In the case *In re Kay*, the California Supreme Court considered the question of what kind of disturbances, or disruptions, can be prohibited by government authorities under the First Amendment. The Court evaluated Section 403 of the Penal Code, which prohibits “willfully disturb[ing] or break[ing] up any assembly or meeting.”⁵¹ Recognizing that “the modern techniques of the ‘politics of peaceful confrontation’ frequently result in a clash of ideological expressions which may, in many senses, ‘disturb’ a meeting,” the court noted that if the section were “applied with the breadth of coverage that its terms could encompass” it would be unconstitutionally overbroad.⁵²

To avoid striking the law down, the court reinterpreted it to penalize only those who “substantially impaired the conduct of the meeting by intentionally committing acts in violation of implicit customs or usages or of explicit rules for governance of the meeting, of which he knew, or as a reasonable man should have known.”⁵³

At the very least, the First Amendment and California law prohibit UCI from punishing students for disruptive speech unless the disruption resulted in the *substantial and material* impairment of a university function.

Had the Conduct Office applied the proper standard, she would have found the students’ speech to be protected.

SJP had no intent to substantially disrupt or impair the event.

⁵⁰ *Braxton v. Municipal Court*, 514 P.2d 697 (Cal. 1973). The California Supreme Court required a narrow interpretation of Section 626.4 of the California Penal Code, which allows schools and colleges to exclude a person when there is “reasonable cause to believe that such person has willfully disrupted the orderly operation” of the campus. The Court noted that “the regulation of the loud and disturbing noises that often erupt from campus demonstrations can be sustained only upon a careful balancing of competing interests; yet on its face section 626.4 purports to reach any noise that ‘disrupt[s] the orderly operation of the campus,’ and thus ... without a narrowing construction, would suffer First Amendment overbreadth.”

⁵¹ *In re Kay*, 1 Cal.3d 930 (Cal. 1970).

⁵² *Id.*

⁵³ *Id.* California Penal Code Section 403 was also applied to reach a criminal conviction of a group of UCI and UC Riverside students who were found to have disrupted a speech by Israeli Ambassador Michael Oren in 2010. The conviction under Penal Code 403 rested on the finding that the students had the requisite intent prior to the event, and that the disruption was substantial because the speaker was able to speak for less than half the allotted time. See *People v. Sayeed*, No. 30-2011-518649 (Cal. App. Div. Feb. 26, 2014). We disputed the application of the California Penal Code to the “Irvine 11,” and we maintain that even this application is a discriminatory, unconstitutional and overbroad application of the disruption standard. See Amici Curiae Brief of the Center for Constitutional Rights and Jewish Voice for Peace, *People v. Sayeed*, No. 30-2011-518649 (Cal. App. Div. Oct. 9, 2013). But even if the Irvine 11 decision were to set the standard for punishable disruption, the students’ conduct in this case falls far short of the Irvine 11 protest.

The Conduct Office investigator failed to properly analyze the students' intent. In support of her conclusion that the students disrupted the event, she repeatedly quoted a statement by SJP [REDACTED], who said on May 11, the day after the event, "Last night we went to disrupt their event." The investigator's repeated references to [REDACTED]'s May 11 comment suggest that she gave it significant weight.

Even if the comment is interpreted as reliable evidence of [REDACTED]'s intent to disrupt, it does not absolve the university of responsibility to determine whether there was a disruption *substantial and material* enough to merit punishment given the legal obligation to balance First Amendment interests. Intent is a necessary requirement to punish disruption under the penal code, but it is certainly not sufficient to punish student speech on campus if the disruption was insubstantial.

Furthermore, [REDACTED]'s comment is not sufficiently credible evidence that SJP intended to disrupt. The investigator failed to acknowledge the ample evidence that the students had no prior intention to disrupt the event. The investigator ignored NLG Legal Observer [REDACTED]'s statement that the students had informed her that they did not intend to disrupt, as well as a similar statement made to Edgar Dormitorio.

Moreover, the decision gave no weight to [REDACTED]'s state of mind at the time she made the May 11th comment, as [REDACTED] described both in her witness statement and in SJP's Account of Events and Reply to Complaint. Describing the week as a whole, [REDACTED] said:

My anxiety became really terrible that week and I had multiple panic attacks and nightmares throughout that week and until today, as a result of [the Israeli soldiers'] presence on campus, as they reminded me of the violence that I experienced at the hands of the military they were so proudly representing and defending.

Focusing on the statement she made on Thursday, [REDACTED] explained:

At the moment I said this, I was being yelled at by a specific soldier who was trying to enter the bubble of students surrounding me to protect me. I was really scared in that moment. The reason that I said we went to disrupt the event, when actually we did not go with that purpose in mind, is because I was trying to show the soldiers that I'm strong. I was trying to think of something I could say back to them.

The investigator did not make any finding against [REDACTED]'s credibility, but simply ignored this evidence.

Lastly, the investigator failed to acknowledge the spontaneous nature of the chanting, which erupted in response to an attack on one of the students, discussed further below. The responsive nature of the chanting shows that they did not have a preconceived intent to disrupt.

SJP did not substantially and materially impair the event.

Instead of evaluating the event as a whole to determine whether it was substantially and materially impaired, the Conduct Officer narrowly framed the question as whether SJP disrupted the Q&A portion of the event. Looking at the event as a whole shows that the students did not impair the event, and certainly not in a substantial and material way.

The event was scheduled for 6 to 8 p.m. Three-quarters of the event had already taken place before the students entered the room. An hour into the event, the Event Management Team and UCIPD had decided that there were no issues at the event and no need to remain on site. When the students initially entered the room, they actively engaged in the Q&A session for twenty minutes. The alleged disruption did not begin until after 7:50 p.m., 110 minutes into the two-hour event. The alleged disruption lasted no more than five minutes total, and the event continued 30 minutes past the allotted time, totaling 150 minutes. Such a small interruption relative to the whole event should not be regarded as substantial impairment.

The chanting of the students also cannot be viewed as impairing the event given that the aggressive actions of the camerawoman were the cause of the students' peaceful response. The Conduct Officer largely disregards video evidence showing that the alleged disruption occurred in response to an assault on a student. Instead she describes the camerawoman "advanc[ing] in a manner that required two adults to get in between the camerawoman and the SJP affiliate at whom she was yelling." This euphemistic description omits context that is relevant in understanding the intent and effect of the chanting and whether it amounted to disruption. Chanting could not substantially impair the conduct of a meeting after the camerawoman's violent action had already caused a commotion.

Outside the few minutes of chanting, there was no other impairment of the event. SJP members certainly engaged in clapping and some students spoke out of turn before the chanting began. However, clapping in unison because a large number of audience members strongly disagree or agree with a point that has been made is well within the normal customs and usages of university events. Audience members who speak out of turn, or interrupt each other during lively debate is also well within the customs and usages. Further, the findings make it clear that audience members on all sides of the issue spoke outside of the strict Q&A format, and that such behavior was hardly limited to SJP members.

We understand that the university is concerned with balancing the First Amendment rights of the speakers on the panel and rights of the audience members who came to hear the speakers' ideas. But this consideration cannot exclude the First Amendment rights of SJP students to peacefully express counter speech to ideas they view as hateful. On balance, SJP students' counter speech occupied a small percentage of a two-hour event. There was no substantial impairment to the event and no substantial impairment to the panelists' ability to convey their message.

UCI Violated Students' Right to Due Process

UCI violated the students' right to due process not only in the manner in which it conducted the investigation, but also in enforcing an impermissibly vague policy.

Section 102.13 is unconstitutionally vague.

A fundamental principle of due process requires that laws must be sufficiently clear so that a reasonable person may understand what is prohibited, and so that officials cannot arbitrarily enforce rules in a manner that discriminates against disfavored ideas. The Supreme Court has ruled:

“[A]n enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms,’ it ‘operates to inhibit the exercise of [those] freedoms.’ Uncertain meanings inevitably lead citizens to “steer far wider of the unlawful zone’ . . . than if the boundaries of the forbidden areas were clearly marked.”⁵⁴

Section 102.13 is unconstitutionally vague. As written, “Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other University activities,” does not provide sufficient information for students to know what conduct is prohibited. As applied, the standards are no clearer. In this investigation, the Conduct Officer looked at the following conduct to find disruption: clapping, snapping, speaking over each other, and chanting. Are clapping and snapping or speaking over another audience member prohibited at UCI?

In a previous investigation into whether students disrupted a May 18, 2016 film screening, the Conduct Officer looked into the extent and volume of chanting, whether students were near the class, and whether they held signs in windows. She concluded that she found it “likely that SJP chanted a lot (for a period of time) and loudly outside of the screening.” She also found that “[d]ue to the proximity of the demonstrators to the classroom, the loud chanting, and the signs held up against window,” it was “more likely than not that the participants could not hear the screening of the movie and thus SJP disrupted the screening event.”

While the types of conduct considered could be seen as guideposts in understanding the policy, the conclusions the Conduct Officer draws leave more questions than answers. How long is too long? How loud is too loud? How close is too close? What is disruptive about snapping in agreement with a question during a Q&A? Is sign-holding prohibited near windows of an event venue?

It is also apparent that the vagueness of the policy encourages arbitrary enforcement. For example, in October 2016, students loudly protested outside an event featuring Los Angeles

⁵⁴ *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972).

Police Chief Charlie Beck.⁵⁵ A witness attending the event reported that the chanting could be heard inside the room.⁵⁶ The students involved do not seem to have faced any consequences for their protest, while SJP received a year of probation for similar conduct just five months earlier, and are currently facing excessive punishment for briefly chanting in response to an attack on them at the end of an event.

UCI did not give SJP proper notice and opportunity to respond.

While due process requirements can vary within the university context, they generally require some type of notice, an explanation of the evidence against the students, and an opportunity for students present their side of the story.⁵⁷ The Conduct Officer did not give the students access to witness statements and other submissions made against them during the investigation. Had they been aware that Gary Fouse was testifying as a witness, they could have offered evidence to impeach his credibility as an external agitator with a history of encouraging UCI to punish SJP.

Another problematic submission to which students did not have access is a letter from StandWithUs, the Louis D. Brandeis Center, and Students Supporting Israel, which contained an attachment⁵⁸ that looks to be lifted with minor modifications from a now-defunct website that also contained pictures of seven UCI students along with sniper targets on their faces. The site listed personal information about several of the students, including hometowns, a home address, email addresses, and a cell phone number. The students informed the university about these websites and provided screenshots in an email on July 24, 2017 with the subject line “Continued harassment.” It is unclear what if any connection these entities have with the website, but even their reliance on such a site as a source of information, or shared information between them and the site’s operators, suggests an indifference or active hostility with regard to the safety of these students. Such hostility would call into question the credibility of these entities. The students would have raised these issues had they been aware that the investigator was weighing input from lobby groups demanding they be criminally prosecuted for a short bout of spontaneous chanting in response to days of harassment by the speakers.

UC carried out the wishes of an outside lobby group.

Due process requires an impartial arbitrator.⁵⁹ A statement the Conduct Officer made during the May 31, 2017 meeting revealed that she entered the meeting with preconceived notions about SJP that prevented her from conducting the investigation in an impartial manner. Specifically, the Conduct Officer thanked the students for being “civil” and informed them that all her colleagues had warned her that SJP students were not civil. The Conduct Officer’s wonder at the students’ ability to be civil during a student conduct meeting indicates that she began the

⁵⁵ Scott Schwebke, Black Lives Matter protesters shout anti-police chants at UC Irvine to protest L.A. police chief, OC Register, Oct. 8, 2016, <http://www.ocregister.com/2016/10/08/black-lives-matter-protesters-shout-anti-police-chants-at-uc-irvine-to-protest-la-police-chief/>.

⁵⁶ Interview with student witness, [name redacted], Sept. 21, 2017, on file with Palestine Legal.

⁵⁷ See *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

⁵⁸ StandWithUs, *supra* note 41.

⁵⁹ See *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (“And, of course, an impartial decisionmaker is essential.”); *Furey v. Temple University*, 730 F. Supp. 2d 380, 395-396 (E.D. Penn. 2010).

investigation with preconceived biases that the students were uncivilized and therefore prone to disrupting the orderly activities of more civilized students.

The potential for bias is particularly high in this case due to the ongoing pressure campaign by Israel advocacy organizations demanding that UCI suppress viewpoints favorable to Palestinian rights. UCI officials have repeatedly entertained and appeased demands by outside organizations to suppress student speech critical of Israeli policies.⁶⁰ For example, in July 2016, a few weeks after Tammi Rossman-Benjamin of the AMCHA Initiative made demonstrably false and racially charged allegations of mob violence against SJP,⁶¹ Edgar Dormitorio met with her, along with Chancellor Gilman's chief of staff, Mike Arias. Mr. Arias described the meeting as "delightful" and expressed interest in continuing to work with Ms. Rossman-Benjamin in the future.⁶²

Mr. Dormitorio is the primary witness against SJP in the present matter. His witness statement was prejudicial in numerous respects, including the fact that he referred to SJP members as "protesters" from the beginning, when in fact they were audience members. Mr. Dormitorio also testified at trial as a witness against UCI students during the criminal prosecution of the "Irvine 11" for protesting the Israeli ambassador's speech at UCI. Mr. Dormitorio is a professional colleague in the same office as the Conduct Officer who investigated the present matter.

⁶⁰ For example, in direct response to demands from Israel lobby groups who falsely equate criticism of Israel with antisemitism, UCI released a report in October, 2016, "Higher Ground," which purported to address issues of intolerance for all vulnerable communities at UCI, but which devoted all nine pages to discussing only the concerns of a particular subset of Jewish students at UCI – namely, those that strongly identify with a Zionist political ideology. The report excluded non-Zionist Jewish students, and every other vulnerable group. The report made recommendations inviting the university to violate the First Amendment by restricting speech favorable to Palestinian rights. See Letter from Civil Rights Organizations to University of California, President Napolitano, November 21, 2016, at 10, <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5833459cbeba52bb7902cd/1479755178747/Letter+to+UC+Regents-UCOP+Nov+21+2016.pdf>.

⁶¹ For example, Tammi Rossman-Benjamin of the AMCHA Initiative has written multiple public letters broadcasting demonstrably false accusations against SJP students, in support of the demand that SJP be punished for its expression of criticism of the Israeli military. For example, describing the protest outside a May 18, 2016 film screening, she wrote, "SJP carried out a pre-meditated and violent disruption of an event," accusing an "angry mob" of trying to "forcibly enter" the room and "terrorizing" Jewish students with "anti-Jewish violence." UCI's student conduct office conducted a factual investigation and determined that accusations that protesters terrorized Jewish students were unfounded. As explained above, UCI sanctioned SJP for disruption because the volume of the protest was too high.

⁶² Email from Michael Arias, Associate Chancellor and Chief of Staff to Tammi Rossman-Benjamin, Re: Our Meeting Last Week, July 18, 2016, on file with Palestine Legal, disclosed through public records request. Michael Arias wrote, "Dear Tammi, thank you for meeting last week with Edgar Dormitorio and me. Our conversation was productive and delightful! Your praise for how Chancellor Gilman has managed the various challenges and incidents at UCI was especially welcome, as was your encouragement and offer of assistance as we move forward."

This year, an array of pro-Israel groups have likewise accused students of committing crimes and called for UCI to suspend SJP.⁶³ This campaign may have made it difficult for the university to separate fact from the false narrative these groups have woven.

The students have informed us that the Conduct Officer said during the appeal meeting that she had been shielded from external pressure and that the StandWithUs letter attached to the Decision Letter was only included because of the student conduct violations alleged therein. We encourage efforts by UCI to protect decision makers from external influence, but we are concerned that these efforts are insufficient. UCI could, for example, have conveyed the student code of conduct allegations to the Conduct Officer without including the false accusations of criminality and fears of “mob violence” in the letter.⁶⁴

In addition to the pressure on UCI to restrict speech supportive of Palestinian freedom, there are several other indicators that UCI is engaged in viewpoint discrimination against SJP. As discussed above, UCI has not enforced a similar application of the disruption policy against at least one other group chanting in response to a speech by the LA Police Chief. Furthermore, UCI arbitrarily chose to charge SJP, and no other group, with disruption, attributing to SJP the actions of a diverse group of individuals, not all affiliated with SJP. This choice is further indication that UCI is carrying out the wishes of outside lobby groups demanding that SJP’s activities be curtailed.

The Sanctions Are Too Harsh

The pre-planning requirement requires SJP to plan events at least two weeks in advance. This requirement would make it impossible for SJP to respond in a timely manner to current events. “Notice periods restrict spontaneous free expression and assembly rights safeguarded in the First Amendment.”⁶⁵ Such a requirement would prevent SJP from being able to stage a spontaneous demonstration while an issue remains relevant, infringing on important First Amendment rights.⁶⁶ Importantly, such a requirement would not prevent what happened on May 10, 2017, since the event the students attended was not an SJP event. Since campus discipline is meant to be educational rather than punitive, it is unclear what the value of such a sanction would be.

Likewise, the two-year probation is excessively long. Many of the students involved will have graduated within that period, leaving new students to face the risk of “further disciplinary action, normally in the form of Suspension or Dismissal” even though they played no role in this incident.

Lastly, having to schedule and attend twelve meetings with Dean of Students (or designee) is unduly burdensome for SJP. As students who juggle work and school demands, SJP leaders and

⁶³ See supra note 41.

⁶⁴ StandWithUs, supra note 41.

⁶⁵ *Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007).

⁶⁶ See *American-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005) (“There is scarcely a more powerful form of expression than the political march. ... It is intended to provoke emotive and spontaneous action, and this is where its virtue lies.”)

members would have difficulty making time for these meetings twice per quarter over the next two years. But as noted above, the consequences of failing to do so could be severe.

Conclusion

To remedy the unconstitutional application of an overly broad and vague disruption prohibition, applied to SJP in a discriminatory manner, we request that UCI immediately take the following steps:

- Reverse the decision against SJP
- Clarify and narrowly tailor the university's disruption policy
- Improve legal oversight of the student conduct office.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zoha Khalili', written in a cursive style.

Zoha Khalili
Staff Attorney, Palestine Legal