



August 24, 2018

Rameen Talesh
Office of the Dean of Students
G308 UCI Student Center
Irvine, CA 92697-5125

Via Email

Re: UCI Must Protect the Rights of Students for Justice in Palestine and Their Allies

Dear Dean Talesh:

I write on behalf of Students for Justice in Palestine at the University of California Irvine (SJP) to share concerns regarding the way UCI has, over the past two years, treated students with SJP – many of whom are of Arab and/or Muslim backgrounds, as well as members of other vulnerable groups. I expect this will ensure that these concerns are known to you, that you take corrective measures, and that SJP members' rights are respected in the future.

Palestine Legal is an independent organization dedicated to protecting the civil and constitutional rights of people in the U.S. who speak out for Palestinian freedom. Since 2014, we have advised numerous students at UCI on issues relating to the suppression of Palestine advocacy on campus, both by campus officials and off-campus entities.

Drawing on the events of the last two academic years, this letter includes recommendations to ensure that, in line with its legal obligations, UCI protects students engaged in Palestinian human rights advocacy, even when those inside and outside the campus community disagree with the views they express.

Discrimination and Harassment During Anti-Zionism Week 2017

During the week of May 8, 2017, a group of foreign military agents came to UCI to engage in a campaign of race, national-origin, and gender-based harassment against students supporting Palestinian rights. As described more fully in their May 30, 2017, complaint (attached), on Monday through Thursday of that week, a coalition of UCI students put up a "Mock Wall" display near the flagpoles on Ring Road to raise awareness about the apartheid wall that surrounds Palestinian towns and villages. As part of their annual Anti-Zionism Week (AZW), Palestinian and Middle Eastern students, together with a diverse group of allies, handed out information about the wall and the ways in which it violates international law. These were free speech activities fundamental to the participating students' educational experience at UCI.

For four straight days, for hours each day, a group who identified themselves as Israeli soldiers and others accompanying them targeted Palestinian and Middle Eastern students and their allies

with sustained verbal harassment, surveillance, disruption and physical assaults both near the wall and elsewhere on campus.

On May 10, the students who had been targeted responded to the pervasive harassment by addressing the soldiers verbally and peacefully during the Question and Answer period of an event featuring the soldiers. The group's camerawoman then came lunging at the pro-Palestinian students, gesturing aggressively and yelling. She shoved a student who stood in the way as she was charging toward the group. She was not removed from the event and was instead encouraged by a UCI administrator to file a police report against the students she had attacked. No administrator checked to see if the students were okay. This attack, as well as the other events of the week, were witnessed both by UCI administrators and by National Lawyers Guild legal observers.

Throughout the week, students supporting Palestinian rights went to administrators, including you and Sharon Stead, to describe the threatening behavior of the soldiers and to ask administrators to intervene. They were told that nothing could be done.

The harassment did not end when the soldiers left the campus. As SJP members notified UCI in July¹, several students' names and personal information were subsequently publicized on blacklisting websites, including one where students were pictured with sniper targets on their faces. In September 2017, several SJP members were named on posters put up on campus that accused them of supporting terrorism.² These attacks left the named students concerned for their physical safety and made some fearful about continuing to play a public role on campus.

UCI Failed to Adequately Address Student Complaints

On May 30, 2017, five Palestinian and Arab students filed the attached complaint with the Office of Equal Opportunity and Diversity (OEOD) and requested an investigation into the university's failure to adequately respond to the harassment and the university's decision to engage in victim blaming by investigating and punishing SJP instead.³

The investigation was initially delayed by exams and the students' summer schedules, and later by the departure of the initial investigator. Nearly a year after the complaint was filed, on March 20, 2018, UCI informed the students who filed the complaint that it was dismissed. The written dismissal stated that the university's conduct fell within the range of applicable policies and procedures. Specifically, the report relied on the notion that even if the acts of the soldiers "were sufficiently severe or pervasive, they would not be attributable to UCI Student Affairs and thus

¹ Email from [student name redacted] to Rameen Taleh, Crystal Lugo, Douglas Haynes, and Teresa Truman, re: Continued harassment, July 24, 2017.

² Email from [student name redacted] to Rameen Taleh, Marcelle Holmes, Douglas Haynes, and Teresa Truman, re: Hate Incident at UCI, Sept. 22, 2017.

³ In contrast to the dismissive attitude towards students' myriad concerns for their safety and speech rights, the university pursued an investigation against the students for "disruption" of the soldiers' event, and upheld punitive sanctions against the group, including probation for two years. We expressed our disagreement with the finding of disruption and the severity of the sanctions in a letter to Vice Chancellor Holmes. See Irvine SJP Appeals Punishment for Chanting at Israeli Soldiers, Palestine Legal, Oct. 4, 2017, <https://palestinelegal.org/news/irvine-sjp-appeals-punishment>. We continue to object to the disparate treatment of SJP students.

do not support an animus or bias on the part of Student Affairs.” The university’s investigation failed to address discrimination in several critical aspects, and was riddled with factual errors, which went uncorrected despite complainants making the errors known to investigators.

The investigation refused to examine the events of May 10, 2017, and the administration’s response to those events, despite the fact that the May 10 events formed the core of the complaint. By narrowly framing the investigation, the investigator was able to make a statement about there being “no physical touching at the Mock Wall on any of the days during 2017 Anti-Zionism Week.” There are video recordings showing assaults by the Reservists on Duty camerawoman during the May 10 Students Supporting Israel event and during a protest the next day. Because neither of these took place “at the Mock Wall,” the quoted statement is technically accurate but willfully ignores the core of the discrimination complaint. Having ignored some incidents and taken others out of context, the investigation failed to properly consider the cumulative impact the harassment by Reservists on Duty and the administration’s limited response to this harassment had on the educational environment of the students who filed the complaint.

The investigator did not examine whether administrators themselves exhibited bias in their treatment of the students who filed the complaint, instead saying that the bias of the soldiers was not attributable to UCI. It absolved administrators since they did not take part in or encourage the soldiers’ harassment, but failed to examine whether the university fulfilled its duty to prevent and counter the hostile environment created by the Israeli soldiers. Title VI requires school officials who are notified of a hostile environment to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.⁴

In contrast with the broad leeway the investigation provided in its review of the actions of university administrators, the investigation was largely dismissive of student concerns. For example, the investigation discounted students’ fear of the presence of Israeli soldiers on campus simply because students willingly attended a public event featuring the soldiers. In doing so, the investigator equated a situation where individual students were being harassed, videotaped and bullied at close range in open campus spaces by soldiers who had underhandedly concealed their identities, with a conscious decision by a group of students to go together to an indoor event where they could listen and respond to the soldiers in a closely moderated environment. Similarly, instead of examining the reasons for students’ distrust and unwillingness to engage with law enforcement officers, investigators held it against the students that they decided not to request police presence at their events, stating that “SJP did not avail itself of enhanced protection from available University resources.”

The investigator’s dismissiveness toward the students who filed the complaint can also be seen in their refusal to make requested corrections. Students were given an opportunity to correct errors before the report became final. However, their corrections were ultimately listed as footnotes, leaving the main body of the report riddled with incorrect characterizations of the students’ statements. For example, an assault by the camerawoman with the Reservists was called an

⁴ See U.S. Department of Education, Office for Civil Rights, Race and National Origin Discrimination: Frequently Asked Questions, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html>.

“approach,” and details one student had provided about the behavior of one of the Reservists—the types of questions he asked and his persistence in following her around and invading her personal space after she had made it clear to him that his actions were unwelcome—were boiled down to simply saying he “bothered” her.

The investigation similarly disregarded students’ concerns about the university’s lack of response to students’ requests for assistance with cyberbullying and harassing posters on campus. Both administrators and the investigator seem to equate a police response with action by the administration. When students reported the cyberbullying and on-campus posters, they made specific requests for action. For example, they asked for a public statement affirming that SJP had not engaged in any violence and for a condemnation of the entities behind the bullying. These requests were ignored. Instead the matter was referred to police, who aggressively pursued students who did not wish to communicate with them, sending letters to their permanent addresses and causing their parents alarm.

The university refused to protect students at the time of the harassment, refused to adequately respond to and alleviate their concerns after the fact, and refused to take steps to prevent similar incidents in the future. For example, during AZW 2017, after one of the Reservists attacked a student during the May 10 event, the university could have availed itself of California Penal Code Section 626.4(a) and barred the Reservist from returning for up to 14 days. The university did not do so, and the Reservist returned the next day to assault students once again.

Students Continue to Experience the Chilling Impact of AZW 2017

AZW 2018 took place the week of April 30, 2018. Traumatized by the harassment they experienced during and after AZW 2017, SJP members and their allies planned a much more limited AZW this year. They scheduled AZW during a different week of the quarter. They did not announce the dates in advance. They scheduled only one event besides their Mock Wall. Their experience at the wall was different as well. After seeing the doxxing and online harassment their peers went through last year, many students at the wall this year covered their faces and engaged with the public in a much more limited manner than they would have liked.

Students felt compelled to focus more on protecting themselves from dangers posed by outside agitators than on their original mission of educating the local community about the ongoing human rights abuses in Palestine, including Israel’s ongoing lethal attacks on hundreds of nonviolent protestors in Gaza. Students made the choice to curtail their speech activity, and sacrifice the reach of their message, to protect themselves from further harassment.

These chilling effects are deeply concerning at a time when the stakes are so high for communities of color and for social justice and human rights issues. Universities should be empowering their students to engage on difficult issues. Instead, these students feel inhibited and silenced by the university’s pattern of punishing them for expressing their views, rather than protecting their speech rights from attacks by outside groups aiming to undermine them.⁵

⁵ This pattern can be traced back over a decade. This includes a 2016 protest, after which Chancellor Gillman publicly announced prior to any investigation that protestors had “crossed the line of civility.” See National Lawyers Guild-Los Angeles Chapter, NLG Contests Allegations made by UCI Chancellor and others, June 7, 2016,

Despite the steps students took to avoid publicizing the dates of AZW, Reservists on Duty learned when AZW was taking place and sent its members back to the campus. Students are concerned about how Reservists on Duty were able to discover this information.

UCI Botches Response to AZW 2018

Throughout AZW in Spring 2018, students were concerned about the presence of police and administrators near the wall and the image this projected to passersby. The constant presence of police not only deterred people who might otherwise have approached the wall, but also signaled to the community that there was some type of wrongdoing or danger present. The presence of police had a negative impact on both students and their audience, particularly students of color and Muslim students, who are often profiled by the police. As students have repeatedly informed you, they find the university's monitoring disturbing and discouraging. This is particularly true due to UCI's refusal to issue any kind of public statement affirming that SJP and their allies pose no danger or indicating that the police were present to protect students supporting Palestinians rights from Israeli agitators.

When I was on campus on Monday, April 30, concerned students pointed out a middle-aged man watching them intently from a distance and speaking occasionally into a walkie-talkie. They did not know who the man was or why he was watching them. Having previously been covertly videotaped and questioned—and subsequently finding their personal information on the internet—students reasonably feared that the man meant them harm. I spoke with him and learned that he was a UCI employee. He told me he would put on a UCI baseball cap to make his affiliation clear. Rather than empowering or simply protecting students, members of the administration caused them unnecessary anxiety.

The presence of police officers was even more problematic. On Wednesday, May 2, during a protest at the wall, an officer shoved a student who crossed a row of officers standing between students at the Mock Wall, and Reservists on Duty and their supporters. The student had not been warned about crossing the police line and was simply walking around during the protest. On Thursday, May 3, one of the Reservists on Duty intentionally approached and bumped into a student who was volunteering at the wall. She then shouted at that student to get out of her way. Though there were many officers around who witnessed the soldier initiate physical contact with the student, they ignored this, instead warning the student about the Palestinian flag he was holding. When the student asked them why they ignored the soldier's assault, the officer reportedly told the student that they were “not talking about that right now.”

www.nlg-la.org/article/nlg-contests-allegations-made-uci-chancellor-and-others. While UCI eventually cleared SJP of many of the false charges brought against them, the school had already referred the case to prosecutors for criminal investigation, Palestine Legal, Press Release: UC Irvine Dismisses Allegations Against Students for Justice in Palestine, Aug. 23, 2016, <https://palestinelegal.org/news/2016/8/23/press-release-uc-irvine-dismisses-allegations-against-students-for-justice-in-palestine>. For a summary of incidents from 2004 through 2014, see <https://palestinelegal.org/the-palestine-exception-appendix#irvine1>.

Looking to the future

SJP members and their allies would like to prevent these problems from recurring. Having successfully pushed for the prosecution of UCI students who spoke back to the Israeli ambassador in 2012, pro-Israel groups have increasingly demanded criminal prosecution of peaceful student protests at campuses throughout the state.⁶ Amid these efforts to criminalize and punish speech supportive of Palestinian rights, the university cannot continue to facilitate the demonization and undermining of students' right to speak out for Palestine. The university must take action to protect these rights. However, the increasingly visible presence of police is not the answer.

We, therefore, request that the university:

(1) Issue a public statement that SJP engaged in protected speech

While the harassment this past academic year was less severe than it has been in the past, SJP continues to be baselessly publicly smeared as violent thugs and terrorists.⁷ Given UCI's intense scrutiny of the Mock Wall this year, the administration should be able to respond to these false accusations by publicly stating that SJP and other organizers of AZW have engaged solely in protected speech and political advocacy that is at the heart of the First Amendment.

(2) Condemn outside harassment groups

The university should also condemn outside harassment groups such as Reservists on Duty, Canary Mission, and the David Horowitz Freedom Center, which have all targeted UCI students over pro-Palestinian activism. Students have repeatedly requested that the university take action to protect them from this harassment. While the university has a responsibility take a more active role in preventing outside groups from defaming and blacklisting your students, you can at the very least publicly express disapproval of their efforts to do so.

(3) Cease punishing students for protected expression

Punishing students for their political expression is a violation of their First Amendment rights, particularly when speech in support of Palestinian rights is singled out for unfavorable treatment.

⁶ See, e.g., Edwin Black, Pro-Israel Groups Pursue Criminal Aspects of Disruptions, Jewish Journal, June. 6, 2018, jewishjournal.com/news/los_angeles/234763/pro-israel-groups-pursue-criminal-aspects-disruptions/ (“pro-Israel groups began considering responses based on Title 11 of California’s criminal code that might apply to such conduct—not as an exceptional response, as it was for the Irvine 11 who disrupted an Israeli diplomat’s speech, but as a new rule of thumb in California.”)

⁷ See, e.g., Ariana Rowlands, Anti-Zionists aggressively disrupt pro-Israel event at UC-Irvine, Campus Reform, May 4, 2018, <https://www.campusreform.org/?ID=10863> (quoting UCI student Kevin Brum as saying that every year students chant for “terrorism and death to Israeli and Jewish civilians”); Gary Fouse, 2018 Anti-Israel Week at UC-Irvine: Thuggish Behavior, Terrorist Garb, and Another Disruption, Stop University Support for Terrorists, May 8, 2018, <https://www.stopuniversitiesupportforterrorists.org/news/2018-anti-israel-week-uc-irvine-thuggish-behavior-terrorist-garb-and-another-disruption> (saying students “look like real, bonafide Arab terrorists”); Pamela Geller, Muslim Stanford student threatens to assault Jews on campus, Geller Report, July 23, 2018, <https://gellerreport.com/2018/07/muslim-jew-hatred-stanford.html> (referring to “last May’s Muslim student riots against Jewish students at UCLA and UC Irvine”).

As we have previously noted,⁸ UCI has investigated and sanctioned SJP for speech favorable to Palestinian rights while tolerating similarly vocal student protests on other issues, likely due to pressure from Israel advocacy groups. Viewpoint discrimination is a violation of students' First Amendment rights.

Thank you for your time and attention to this important matter. I would be happy to discuss this further over the phone or during an upcoming meeting with SJP.

Sincerely,

Zoha Khalili

Cc: Yvette Gullatt, Vice Provost for Diversity and Engagement and Chief Outreach Officer for the University of California; Chancellor Howard Gilman.

⁸ See, e.g., Letter from Palestine Legal to Howard Gillman, UC Irvine must protect Palestinian students and their allies from harassment and discrimination, May 30, 2017, <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/5931bd20bf629a5d49f294a2>.