



President Mary A. Papazian
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Via email

October 25, 2018

Re: San José State Must Defend Academic Freedom

Dear President Papazian,

We write to express our concern regarding threats against the academic freedom and free speech of students and faculty at San José State University. Palestine Legal is an organization dedicated to protecting the civil and constitutional rights of people in the United States who speak out for Palestinian freedom. There are ongoing efforts at SJSU to silence scholarship and activism relating to Palestine. These efforts include a cyberbullying campaign targeting students and professors who support Palestinian rights and, most recently, a threat from a professor and program director who indicated that an event on Palestine could trigger an investigation by the Trump administration. These incidents threaten to suppress academic freedom, and free speech more broadly. We urge you to publicly resist efforts from those, emboldened by the Trump administration, who wish to narrow campus debate.

November 2016 Event

On November 9, 2016, the Department of Justice Studies hosted Dr. Nadera Shalhoub-Kevorkian for a discussion of her book *Security Theology, Surveillance and the Politics of Fear* as part of the Ann Lucas Lecture Series. The book examines Palestinian experiences of life and death within the context of Israeli settler colonialism.

Eight days before the event, Jonathan Roth, a professor in the History Department, wrote to the event organizer, associate professor Sang Hea Kil, demanding that the Department of Justice Studies also sponsor a talk “giving the Zionist perspective on the issue,” and that the department ensure that “all sides are fairly represented.” Roth copied the Consulate General of Israel in San Francisco on this email, along with Mary Schutten, dean of the College of Applied Sciences and Arts.

Dean Schutten responded, explaining that Roth was free to organize his own talk and that the college would not interfere with the department’s academic freedom. Roth then demanded to

know whether the Department of Justice Studies or the College of Applied Sciences and Arts would sponsor “a talk rebutting an anti-Zionist lecture.” Dean Schutten once again explained to Roth the college’s commitment to free speech and academic freedom, as well as the importance of faculty decision making within colleges and departments.¹

September 2018 Event

On September 25, 2018, the Department of Justice Studies hosted another event in the Ann Lucas Lecture Series, discussing the book *We Will Not Be Silenced: The Academic Repression of Israel’s Critics*. The event, a panel discussion featuring three professors and a recent graduate of SJSU, described the tactics of intimidation and repression scholars and students face while advocating for Palestine.

A week and a half before the event, Frances Edwards, director of the Masters of Public Administration program, emailed Kil, who had organized event, and James Lee, chair of the Department of Justice Studies, complaining that the event “only presents one viewpoint.” Edwards asked Kil to describe her “plans for providing other viewpoints on this issue.” She then cited to an investigation by the Department of Education into anti-Zionist activities at Rutgers University,² and issued a veiled threat, stating that she “would not recommend a presentation to students unless it were balanced or part of a series that would provide balance.”

Roth, who had been copied on Edwards’ email, followed up with another demand that the Department of Justice Studies schedule a panel “to balance what many would consider a one-sided view presented by the upcoming Ann Lucas panel.” In response, Lee, the department chair, explained that the department would not interfere in event organizers’ academic freedom and that the department does not have the resources to take on others’ aspirations and organize academic events for them.³

A SJSU student who heard about this email exchange contacted our office on behalf of the student organization Students for Justice in Palestine to express their concerns about the threat against the event and more generally about faculty members who, as the student described, “continually harass” students and faculty who support Palestine. Given Edwards’ improper suggestion that the *We Will Not Be Silenced* event could be the subject of a federal investigation into antisemitism, students might reasonably fear that they will be prohibited from having an event supporting Palestinian human rights if the event is deemed “one-sided” for not including an opposing, anti-human rights viewpoint. This fear could chill their free speech and ability to engage in political issues of their choosing at SJSU.

¹ A copy of this email thread is attached for your reference.

² See Erica L. Green, Education Dept. Reopens Rutgers Case Charging Discrimination Against Jewish Students, NY Times, Sept. 11, 2018, <https://www.nytimes.com/2018/09/11/us/politics/rutgers-jewish-education-civil-rights.html>.

³ A copy of these emails is attached for your reference.

Canary Mission Blacklist

Over two thousand professors and students—including at least 30 current and former members of the SJSU community—are currently blacklisted on the website Canary Mission, where they are falsely defined as “racists” or “terrorists” because they have spoken critically about Israel’s policies toward Palestinians. Over a thousand university faculty members have condemned the site as a defamatory intimidation tactic to undermine advocacy for Palestinian rights.⁴ Canary Mission exposes students and faculty members to harassment and violent threats by Israel supporters in online forums such as Twitter and Facebook. Canary Mission contacts employers, schools and law enforcement with false and unsupported claims that Palestine rights activists support terrorism.⁵

On June 25, 2018, professors Kil and Alessandro De Giorgio wrote to you expressing their concerns about Canary Mission.⁶ They asked you to condemn Canary Mission and to support members of the SJSU community targeted by the site. Receiving no reply, they sent you follow-up emails on July 9 and August 3. As of the date of this letter, they still have not received any response.

* * * *

Open and diverse debate on college campuses is vital to our democracy and is a core value protected by the First Amendment.⁷ Universities must endeavor to expose students to diverse points of view, particularly those to which they would not otherwise be exposed outside the university context.

However, the demand of Edwards and Roth, who argue that an academic department must sponsor equal time for two sides of an issue under the guise of “balance” or “diverse perspectives,” under threat of a federal investigation, is a demand for government regulation of academic content. This is particularly true in the case of Edwards, who wields institutional authority as the director of the Master of Public Administration program.

Government regulation of academic programming violates the First Amendment and academic freedom, especially when motivated by narrow partisan or political considerations or official disagreement with certain ideas.⁸ Though universities should expose students to a robust

⁴ See Josh Nathan-Kazis, 1000 Professors Condemn Blacklisting of Pro-Palestinian Activists, Sept. 26, 2017, Forward, <https://forward.com/news/350911/1-000-professors-condemn-blacklisting-of-pro-palestinian-activists/>.

⁵ *Id.*

⁶ For your reference, a copy of the letter is attached.

⁷ See, e.g., *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 601 (1967) (striking down law requiring investigation and removal of teachers who advocated “treasonous” or “seditious” ideas, in part because it would “stifle that free play of the spirit which all teachers ought especially to cultivate and practice” and “[i]t would be a bold teacher who would not stay as far as possible from utterances or acts which might jeopardize his living by enmeshing him in this intricate [enforcement] machinery”) (citation and quotation omitted).

⁸ See, e.g., *Bd. Of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (“[S]chool boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other

variety of viewpoints, that variety should reflect scholarly judgments that are based on pedagogical and curricular value, not political considerations.⁹

The demands made by Edwards and Roth inhibit – rather than promote – wide-ranging debate. Their demand that the Justice Studies Department condition their programming on a commitment to sponsor events with opposing viewpoints is likely to result not in more debate, but less – in other words, a chilling effect on engagement with the Israeli-Palestinian conflict, in the Justice Studies Department and campus-wide. As such, their recommendations are intolerable intrusions on academic freedom that undermine the principles of the First Amendment.

Department Chair Lee and Dean Schutten both appropriately defended the academic freedom rights of departments to organize panels. However, given the chilling impact of their repeated demands for imposed balance and the threat of federal investigation implied in Edwards email, the university must do more.

The prospect of a federal investigation, even when the underlying claims are ultimately deemed to be meritless, has an inherent chilling effect on scholars and universities.¹⁰ Such threats encourage scholars to steer clear from controversial issues that tend to invite criticism from partisans inside or outside the university. Faced with the prospect of “bias” complaints, busy scholars will likely avoid organizing panels on controversial topics if they may be required to devote their limited time and resources to responding to a government investigation rather than fulfilling their research and teaching missions.

Edwards’ threat carries particular weight when viewed in the context of ongoing efforts to suppress the speech and academic freedom of students and faculty who support Palestinian rights. The investigation referenced in Edwards’ email is the reopening of a seven-year-old case at Rutgers University. In reopening the case, Kenneth Marcus, the head of Trump’s Department of Education Office for Civil Rights, adopted a controversial re-definition of antisemitism that

matters of opinion.”) (quotation and citation omitted); *id* at 870 (government discretion over pedagogical matters “may not be exercised in a narrowly partisan or political manner”).

⁹ See Nancy Whitmore, *First Amendment showdown: Intellectual diversity mandates and the academic marketplace*, Communication Law and Policy, Vol. 13, No. 3, at 370-71 (Summer 2008), available at

http://digitalcommons.butler.edu/cgi/viewcontent.cgi?article=1007&context=ecom_papers (“The content selected and ultimately disseminated through curricular offerings and scholarly pursuits represents a professional judgment by the university’s academicians on the value of the communication to the discipline it serves. Academicians, therefore, are not disseminators of government ideas or scripted professional speech. They function as instructors and scholars whose proper role may well include the evaluation of government administrators, policies and actions.”).

¹⁰ See, e.g., *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1029 (9th Cir. 1998) (noting that “[legal] complaints based on speech protected by the First Amendment have far-ranging and deleterious effects, and the mere threat of civil liability can cause potential defendants to ‘steer far wider of the unlawful zone’”) (citation omitted). The Ninth Circuit has noted that the threat of civil liability based on academic programming protected by the First Amendment has the inevitable and undesirable effect of motivating schools to “buy their peace” by “avoiding the use of books or other materials that express messages” likely to invite complaints. *Id.* (quotation omitted).

classifies virtually all criticism of Israel as antisemitic.¹¹ Marcus' attempt to use the re-definition to silence criticism of Israel's discriminatory policies has been widely denounced.¹² For example, Marcus's re-definition makes it a civil rights violation, and grounds for a federal investigation, to call the Israeli state "racist." This is unconstitutional and will likely face legal challenge, but not before creating a culture of intimidation on U.S. campuses. Those who value academic freedom must actively resist this intimidation.

Universities should be places where professors are free to teach and students are encouraged to learn, express their viewpoints and engage with the world around them. It is the constitutional right of students and faculty to be able to support Palestinian human rights without being smeared, censored or investigated by the federal government. This includes the right of faculty members to organize a scholarly panel discussing the intimidation of academics who support Palestinian human rights.

Censoring and suppressing criticism of a state is dangerous to democracy. Students and professors should be free to speak openly about Israel's policies and the U.S. role in supporting those policies. We should encourage debate, not stifle free speech.

* * * *

We reiterate the requests made in professors Kil and De Giorgio's June 25 letter that you condemn Canary Mission and support members of the SJSU community targeted by the site. We urge you to respond to the letter and to speak out forcefully against the efforts by the anonymously authored website Canary Mission to suppress the free speech rights of students and faculty.

Canary Mission's campaign of vilification should alarm university administrators who value academic freedom and free speech rights on their campuses, along with university leaders whose job it is to ensure the safety and well-being of their students and help them to secure decent jobs after graduation. Canary Mission's tactics threaten students' right to pursue an education without harassment and the employment prospects of those whom the website targets by name. Ultimately, Canary Mission seeks to silence free and open campus discussion.

Just like Kenneth Marcus' re-definition of antisemitism, those behind Canary Mission rely on an overbroad, vague and misleading definition of antisemitism in order to further their narrow political agenda. In effect, Canary Mission contends that any criticism of Israeli policy or of Zionism as a political ideology, any form of support for Palestinian human rights or for boycotts as a way to secure those rights and any criticism of U.S. policy in the Middle East are all tantamount to antisemitism and support for terrorism. Many SJSU students were profiled simply for protesting against U.S. military aid to Israel, silently walking out of an event featuring

¹¹ For more information about the case, see Palestine Legal, Department of Education Redefines Antisemitism With No Public Notice, Sept. 11, 2018, <https://palestinelegal.org/news/2018/9/11/kenneth-marcus-adopts-controversial-antisemitism-definition-at-doe-with-no-public-notice-reopens-dismissed-rutgers-case-from-2014>.

¹² See, e.g., LA Times Editorial Board, Trump embraces a dangerously broad definition of anti-Semitism, LA Times, Sept. 15, 2018, <http://www.latimes.com/opinion/editorials/la-ed-trump-antisemitism-20180915-story.html>.

Israeli soldiers and supporting a student government resolution that called on SJSU to divest from companies profiting from Israel's occupation of the Palestinian territories. This is an unacceptable attempt to intimidate supporters of Palestinian freedom and suppress rights guaranteed by the First Amendment.

* * * *

Given the serious constitutional and other issues at stake, we ask you to address the concerns outlined above and use your institutional authority to counteract the threats against academic freedom on your campus. We urge you to issue a statement that:

- 1) Affirms the rights of academic departments to organize panels around topics of their choosing in their field of study, including Palestine, free from the requirement to organize additional panels providing opposing viewpoints;
- 2) Affirms the rights of students and scholars to have academic and political conversations about Palestine; and
- 3) Condemns Canary Mission and makes clear that SJSU will not rely on Canary Mission or similar blacklisting sites in evaluating applicants or in any other decision-making process.

We look forward to hearing from you and respectfully request that we receive a response no later than November 16, 2018.

Sincerely,



Zoha Khalili
Staff Attorney, Palestine Legal



Liz Jackson
Senior Staff Attorney, Palestine Legal

Canary Mission letter



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To: President Mary A. Papazian, San Jose State University
From: Sang Hea Kil, Ph.D. Associate Professor, Justice Studies
Alessandro De Giorgi, Professor, Justice Studies.
Date: June 25, 2018
Subject: California Scholars for Academic Freedom’s concerns
about Canary Mission website

Dear Mary A. Papazian:

We write on behalf of California Scholars for Academic Freedom (cs4af) <https://cascholars4academicfreedom.wordpress.com>, an organization of more than 200 academics who teach in some 20 California institutions and who are committed to the defense of academic freedom at our institutions. Recently, Professor Sang Hea Kil was added to the [Canary Mission](https://canarymission.org/professor/Sang-Hea_Kil) website in March of 2018 [https://canarymission.org/professor/Sang-Hea_Kil]. We urge you to speak out forcefully against the efforts by the anonymously authored website Canary Mission to suppress the free speech rights of students and faculty members across California colleges and universities, who are currently profiled on the CM website, where they (along with many others in other states) are falsely defined as “racists” or “terrorists” because they have spoken critically about Israel’s policies toward Palestinians.

We are especially concerned—and believe that you should be as well—by the Canary Mission authors’ explicit goal of harming students’ prospects of employment because they hold views critical of Israel’s policies and belong to a legitimate student group, Students for Justice in Palestine (SJP), with chapters on a number of US campuses. Tarnishing such students’ reputations in the eyes of future employers is one of Canary Mission’s major aims, as the authors explain in a [YouTube video](#) produced soon after the website went live in 2015 and addressed to those who might hire students: “It is your duty to ensure that today’s radicals are not tomorrow’s employees.” For more background on the Canary Mission, see the Middle East Studies Association [informative and firm statement](#).

Recently, at campuses in California and across the nation, students in the organization Students for Justice in Palestine [SJP], who are systematically defamed on the Canary Mission website, have been reporting that they are facing difficulties gaining internships and jobs. The false accusation rests on a common CM tactic of conflating any criticism of Israel’s policies, or any expression of support of the non-violent Boycott, Divestment, and Sanctions movement, with anti-Semitism. That gross conflation has been widely questioned in academic, legal, and journalistic venues. It would be distressing to see it being effectively (and consequentially) tolerated by leaders of academic institutions such as San Jose State University, which prides itself as a diverse, multicultural, and progressive institution. We therefore call on you to remain vigilant against the insidious dangers posed by Canary Mission—a site that scorns the principles of academic freedom and inquiry by [allowing for no intellectual discussion or debate](#). The website has been critiqued in respected journals including *The Guardian* and *The Forward* for using “[McCarthyist](#)” [black-listing methods](#).

We call upon you to condemn Canary Mission's attempts to suppress the right to free speech in our academic community, and to support any member of SJSU who may in the future be targeted by Canary Mission's defamatory attacks.

Sincerely,

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