

Via Fax and Email

December 3, 2012

President Mark Yudof
University of California Office of the President
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Members of the Advisory Council on Campus Climate, Culture and Inclusion

RE: The UC's responsibility to end the chilling of Arab and Muslim student speech

Dear President Yudof:

The undersigned civil rights organizations write on behalf of student organizations to express our collective alarm about developments at University of California (UC) campuses that threaten students' civil rights and forsake the University's responsibility to make the campus welcoming for a range of political viewpoints on the Israeli-Palestinian conflict. We write in anticipation of the December 4, 2012, meeting of the Advisory Council on Campus Climate, Culture and Inclusion (Advisory Council) to express the perspective of Arab and Muslim students, and students of all backgrounds who advocate for Palestinian rights.¹

As detailed in this letter, escalating efforts to chill Palestinian rights advocacy have a dangerous impact on individual students and on Muslims and Arab communities as a whole. In some cases, the University is not itself responsible for efforts to chill speech, but rather a target. These cases include false and inflammatory claims related to Title VI claims in the *Felber* lawsuit and in complaints to the Department of Education (DOE) filed against UC Berkeley, UC Santa Cruz and UC Irvine as well as the DOE's investigation of such claims (the "Legal Claims").

¹ Twelve chapters of the Muslim Students Association (MSA) and Students for Justice in Palestine (SJP) from throughout UC have endorsed this letter, including: UC Berkeley SJP, UC Irvine SJP, UCLA SJP, UC Riverside SJP, UCSB SJP, UCSD SJP, UC Berkeley MSA, UC Davis MSA, UC Irvine MSU, UCLA MSA, UC Riverside MSA, and UCSD MSA. The Muslim Student Association represents hundreds of Muslim students of various ethnic backgrounds, and Students for Justice in Palestine is a political advocacy group with a diverse membership, including many of Arab, Muslim, or Jewish background. Twenty-three student organizations from California universities also recently voiced similar concerns about threats to their civil rights in comments to the US Commission on Civil Rights (USCCR). See, <http://ucsjp.posterous.com/uc-sjp-and-msa-groups-letter-to-us-commission>.

We appreciate that the University has honored its obligation to protect students' rights in the *Felber* litigation and the Title VI claim brought against UC Berkeley. We begin by discussing those legal controversies in order to provide context for the escalating pattern of repression that confronts Arab and Muslim students, and students of all backgrounds who advocate for Palestinian rights at UC.

Still, despite its defense of the legal claims, the University has directly contributed to a climate which intimidates and punishes students who wish to express pro-Palestinian views, including: the Campus Climate Jewish Student Task Force Report; the ensuing House Resolution 35 (HR 35) passed in the California State Assembly; and other actions by UC officials that brand advocacy for Palestinian human rights as anti-Semitic.

The Office of the President has rightly recognized that a discriminatory atmosphere has a negative effect on student learning and work environments.² We urge you to recognize that this concern applies equally to students of all colors, religious affiliations and political viewpoints – and to Jewish students and Arab, Muslim, and pro-Palestinian students alike. Accordingly, we likewise urge the University to stop disparaging students who criticize Israeli policy as an expression of their political views on the urgent moral, political and legal questions surrounding the Israel/Palestine issue.

We respectfully request that the Advisory Council consider the comments below in all further discussions and decisions regarding the Campus Climate assessment process.

I. Legal challenges aim to silence political groups and marginalize Arab, Muslim and Palestinian rights activist students

Pattern of Baseless Title VI Complaints

A series of baseless Title VI complaints filed against UC frames the context for the threats to Arab, Muslim, and pro-Palestine students. We raise this at the outset of this letter to emphasize the concerted nature of efforts by off-campus groups to repress the political activity of Arab, Muslim and pro-Palestine students, and to describe the impact of such efforts on these students.

Three Title VI complaints have been filed with the Department of Education (DOE) against UC schools alleging that speech critical of Israel is anti-Semitic and creates a hostile environment for Jewish students. These complaints include: UC Berkeley (ongoing), UC Santa Cruz (ongoing), and UC Irvine (dismissed and later reopened, ongoing). Two others were filed at universities outside the UC system.³ Each complaint asserts false facts about campus activity critical of Israel, and university administrations' insufficient responses. Each advances the core contention that criticism of Israel is anti-Semitic hate speech that creates a "hostile environment" for Jewish students. So far, none of these complaints have succeeded.

² <http://www.universityofcalifornia.edu/news/article/28359>

³ These include a claim filed against Barnard College (dismissed), and Rutgers University (some claims dismissed, ongoing on one claim).

The impetus for these Title VI complaints comes from a small group of staunchly Israel-aligned off-campus organizations that aim to combat what they call “anti-Israelism” on campuses. In addition to promoting favorable views of Israel, these organizations seek to silence discussion of Palestinian human rights. A primary tool in this effort is to mislabel as “anti-Semitic” what is in reality pure political speech that criticizes the *policies* of the Israeli government.

The effect of the pending Title VI investigations inevitably creates a chill over one side of the debate about Israel and Palestine at UC. As the Supreme Court has explained, “[t]he sanction emanating from legislative investigations is of a different kind of loss of employment. But the stain of the stamp of disloyalty is just as deep. The inhibiting effect in the flow of democratic expression and controversy upon those directly affected and those touched more subtly is equally grave.”⁴ The administration is not to blame for the Title VI investigations. But the “stamp of disloyalty” that the Title VI investigations place on Arab, Muslim and Pro-Palestine students makes them especially vulnerable to the longer-term effects of stigma.

***Felber v. Yudof* and the Title VI complaint against UC Berkeley**

As you are aware, UC Berkeley is a primary target for the baseless Title VI allegations. In March of 2011, two students filed a complaint in federal court, falsely accusing UC Berkeley of failing to protect Jewish students from a hostile environment resulting from criticism of Israel.⁵ The *Felber* plaintiffs eventually settled with the University, but on July 9, 2012, the same day they signed the settlement agreement, their attorneys filed a Title VI complaint with the DOE alleging the same claims.

The Title VI complaints at Berkeley and other universities are designed to restrict Palestinian rights activism on campuses. Both plaintiffs in the Berkeley case, Jessica Felber and Brian Maissy, were affiliated with the Israel-advocacy student group Tikvah. Plaintiff Felber was employed at the time she filed the complaint as a campus coordinator for an organization called “Hasbara Fellowships,” a program that trains students how to oppose pro-Palestinian activism.

UC Berkeley rightly argued in its defense that the “hostile environment” claims and the underlying factual assertions in the cases against it are baseless. The University has correctly emphasized that the complaints are a cynical attempt to tilt the field of campus discourse in favor of a preferred viewpoint on an issue of great public concern and properly acted to defend the rights of targeted students in this case.

The federal judge that dismissed the *Felber* complaint with leave to amend also recognized that the Palestinian rights activism complained of could not be the basis of a Title VI claim because it is protected political speech.⁶ The plaintiffs’ amended complaint was also dismissed after the University agreed to settle the case, though without making any meaningful

⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 248 (1957).

⁵ Second Amended Complaint, *Felber v. Yudof*, No. 3:11-CV-01012 (N.D. Cal. Mar. 4, 2011)

⁶ *Felber v. Yudof*, 851 F.Supp.2d 1182, 1188 (N.D. Cal 2011) (“A very substantial portion of the conduct to which [the complainants] object represents pure political speech and expressive conduct, in a public setting, regarding matters of public concern, which is entitled to special protection under the First Amendment”).

concessions to the plaintiffs.⁷ But despite this dismissal, the Office for Civil Rights (OCR) is now investigating the same claims filed before the DOE.

Although we appreciate the University's role in defending against these Title VI claims, the filing of the lawsuit and the ongoing DOE investigation have nevertheless harmed students' reputational interests. The *Felber* complaint, a widely available public document, was laden with Islamophobic and baseless allegations that the Muslim Students Association (MSA) at Berkeley has a "pro-terrorist" agenda,⁸ that it is an "incubator to recruit and radicalize students to support Hamas,"⁹ and that membership in MSA at Berkeley is a prerequisite to membership in the Muslim Brotherhood.¹⁰ These are particularly damaging allegations to level at Muslim and Arab students in the post- 9/11 environment when such suspected affiliations carry potential criminal consequences, and where they generate a climate of intimidation and fear.

The *Felber*/Title VI complaints were also full of false facts about the conduct of Cal MSA and Students for Justice in Palestine (SJP). For example, the complaints accused Cal SJP of brandishing realistic looking assault weapons,¹¹ committing acts of violence¹² and conducting political theater that involved confronting other students and demanding to know if they are Jewish.¹³ Cal SJP never engaged in this conduct.¹⁴ The complaints accused Cal SJP members of anti-Semitic speech.¹⁵ SJP members have repeatedly explained that such allegations are untrue. Nonetheless, the false, inflammatory and Islamophobic allegations against Cal SJP and Cal MSA are recycled in the press, and continue to taint these student groups.

⁷ See <http://newscenter.berkeley.edu/2012/07/12/plaintiffs-in-felber-v-yudof-case-dismiss-lawsuit/>.

⁸ Second Amended Complaint, at p. 5.

⁹ Second Amended Complaint, at p. 10.

¹⁰ Second Amended Complaint, at pp. 6,10.

¹¹ Second Amended Complaint, at p. 6.

¹² Second Amended Complaint, at p. 8.

¹³ Second Amended Complaint, at p. 13.

¹⁴ For example, page 3 of the Title VI complaint gives the following description of mock checkpoint protests:

"During Berkeley's Passion Play, student activists from the Muslim Student Association ("MSA") and Students for Justice in Palestine ("SJP") ... portray themselves as Jews by wearing Stars of David, yarmulkes (skull caps), fringed garments (tsizit), and their depictions of Jews are clearly racist and anti-Semitic. Moreover, they have been authorized by the University to carry realistic looking assault weapons which they brandish as they interrogate innocent students on campus about their religious and ethnic backgrounds. All this in an effort to convey a portrayal that 'all' Jews are blood-thirsty barbarians."

This activity never occurred, as Cal SJP members have attested to in declarations submitted to the University Counsel's Office. No Cal SJP or MSA member ever dressed as a religious Jew. No Cal SJP or MSA member ever carried realistic looking assault weapons, only clearly marked toy guns. No Cal SJP or MSA member ever interrogated non-actors to ask them about their religion. Cal SJP has never committed acts of violence. These allegations are simply false.

¹⁵ Second Amended Complaint, at p. 3 (referring to "anti-Semitic/anti-Israel SJP, MSA and MSU"); p. 8 (referring to "anti-Israel activism and anti-Semitic posturing"); p. 9 (referring to "anti-Israel, anti-Semitic demonstrations").

Moreover, as we make clear below, despite UC Berkeley's vigorous defense of students' free speech rights in the Title VI complaints, your own public statements fail to recognize, let alone properly condemn, the baseless nature of the complaints. We are also concerned that the University appears to have also increased scrutiny over Palestinian rights advocacy on campus to avoid repeated legal action in the future. The students we represent are acutely aware of this effect and they feel the repercussions from the University's increasing condemnation of their activism.

II. Arabs, Muslims, and Palestinian rights activists on campus are subject to violent threats and racist language

In addition to unfounded legal claims, Arab, Muslim and Palestinian activist students also face racist and violent threats on campus. For example, in September 2008, graffiti appeared in one of the major lecture halls at UC Berkeley threatening "SJP, DON'T FUCK WITH THE JEWS ON THIS CAMPUS ANYMORE" and "NEVER AGAIN" -- a reference understood to equate Cal SJP with Nazis. Cal Students for Justice in Palestine (SJP) members reported and discussed this incident with the University administration. It took nearly one week for the University to remove the graffiti from view.

In November 2008, Cal SJP was sent a hate email titled "Eat Shit," which included death threats such as, "The day the world finally nukes all you subhuman sand monkeys will be a day to rejoice. ... Die." Also in November 2008, a member of Tikvah posted the following on his Facebook page: "I am waging a war against organized crime (SJP)." One of his friends responded, "need ammo? men? i suggest an alliance." These incidents were raised and discussed with the UC Berkeley Administration.

At UC Davis in the spring of 2012, students sought the protection of the administration after they were harassed and physically threatened by members of an off-campus Israel-aligned organization called StandWithUs. Members of StandWithUs had previously used physical violence, including the use of weapons such as pepper spray, against individuals who criticize the Israeli government. The students of UC Davis SJP expressed concerns about their physical safety to you directly. According to these students, you declined to address their concerns and declined to meet with them.¹⁶

¹⁶ The grievances of UC Davis students surrounding the "Israeli Soldiers Speak Out" event in spring, 2012, are detailed in a letter sent to President Yudof from UC Davis SJP, *available at* <http://sjpatucd.blogspot.com/2012/04/open-letter-in-response-to-president.html>. ("Mr. Yudof did not mention any of [the physical threats and harassment directed at Palestinian students] in his statement nor did he care to address them in his letter back to us. Yudof's statement equated the political speech of supporters of Palestinian rights with categorical hate crimes and disregarded the campus climate for Palestinian students and their allies. ... [W]hen Palestinian students and their allies feel threatened, Yudof blatantly ignores our request to meet. It saddens and shocks SJP that the UC system appears to have aligned themselves with [Stand With Us], an aggressive, violent, and racist group rather than supporting their own community and students. When Yudof so quickly jumped to the defense of a radical organization such as SWU, his words and actions make Palestinian, and all Arab students along with their allies, feel unsafe, insecure, and oppressed on our own campus.").

These incidents, among many others on campuses across the country, illustrate that Palestinian rights activists are themselves often targets of racist, derogatory and sometimes violent threats. The University is obligated to protect them against such threats. The examples above also show that these students are utilizing the appropriate University channels to report these incidents, rather than resorting to frivolous legal remedies or abusive and racist tactics of a like kind.

III. The University has exacerbated the intimidating climate for Arab and Muslim students

While the UC administration is not behind the legal claims and violent threats targeting Arab, Muslim and pro-Palestine students at UC, it has an obligation to recognize the harm, and take steps to protect the targeted students where possible. Instead, the University has exacerbated the situation for these students.

Campus Climate Report and House Resolution 35

The “Campus Climate” assessment process has added to the atmosphere of intimidation and further tarnished the students we represent. On July 9, 2012, the same day that the Title VI complaint was filed against UC Berkeley with the DOE, the “Jewish Student Campus Climate Fact Finding Team” released its report and recommendations (“Campus Climate Report”). Just like *Felber* and the Title VI complaint, the report falsely claims that SJP and MSA activities should be understood as “hate speech” which creates a hostile campus climate for Jewish students.¹⁷

On the heels of the Campus Climate Report, the state Assembly passed HR 35 in August, praising the Jewish Student Report.¹⁸ HR 35 made the plainly unconstitutional recommendation that “no public resources” be used to facilitate what it mislabels anti-Semitic activity but what is in reality political speech critical of Israel. HR 35 was passed with no real discussion or debate, and it followed President Yudof’s troubling involvement in its drafting, as detailed below.

The undersigned and others have already written to you about the serious flaws in the Campus Climate Report.¹⁹ Many have also voiced their concerns to you and to the California Assembly about the content and anti-democratic nature of HR 35, including student

¹⁷ See http://www.universityofcalifornia.edu/news/documents/campus_climate_jewish.pdf.

¹⁸ See http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/hr_35_bill_20120828_amended_asm_v97.html.

¹⁹ See Letter from the Council on American-Islamic Relations and the National Lawyers Guild to Mark Yudof, President of the University of California, July 10, 2012, *available at* <http://www.nlginternational.org/report/LtrYudofFreeSpeech.pdf>; Letter from the UC Ad Hoc Committee on Jewish Campus Climate to Mark Yudof, President of the University of California, *available at* <http://www.change.org/petitions/letter-to-pres-yudof-in-response-to-jewish-campus-climate-report>. (or use this site: <http://ucjewishcampusclimate.wordpress.com/2012/10/10/letter-to-president-yudof-in-response-to-jewish-campus-climate-report/>) ?

representatives,²⁰ faculty,²¹ and civil rights advocates.²² These letters explain that the Campus Climate Report and HR 35 badly misrepresent the facts of what has occurred on UC campuses and deliberately mislabel as anti-Semitism numerous forms of legitimate speech about Israeli state policy. And both misrepresent the campus climate as hostile to Jewish students when in fact extensive data demonstrates that UC provides a positive environment for Jewish students.²³

The Report and HR 35 compound the damage caused by the Title VI complaints and other efforts to silence pro-Palestine activism. The mischaracterizations cited in both were echoed repeatedly in the press.²⁴ Thus the report has been used to create a false factual record of “anti-Semitic fervor” on California campuses.

With regard to both the Report and HR 35, we understand that you have distanced yourself from any suggestion that speech should be banned, along with your stated position that the University neither supported nor opposed HR 35. But we also note that you were in direct conversation with California State Assemblywoman Linda Halderman to encourage her introduction of HR 35.

In your August 13, 2012, letter to Ms. Halderman, for example, you expressed “appreciation” for her work on HR 35 and indicated that you had reviewed an early draft of the bill and that a number of your proposed changes had been accepted. We are disturbed to learn that you knew much earlier about the existence of what became HR 35 and participated in its drafting – yet failed to insist that the legislators who would vote on it hear a variety of views on the subject.²⁵

You further indicated to Ms. Halderman that you would “enthusiastically” support the bill if language suggesting that funding should be pulled from student organizations critical of Israel was removed and replaced with language urging UC administrators to actively condemn

²⁰ See the resolution passed by the University of California Student Association, September 15, 2012, available at <http://calsjp.org/?p=1297>

²¹ See letter from California Scholars for Academic Freedom to the California Assembly available at http://www.csun.edu/~vcnth00m/OpenLetterHR_35.html

²² See letter from six civil rights organizations and four student organizations to the California Assembly, available at, http://ca.cair.com/images/uploads/HR_35_Letter_to_Lawmakers.pdf; letter to President and Yudof, dated October 11, 2012, and signed by Sacramento area civil rights organizations.

²³ University of California Undergraduate Experience Survey (UCUES), Spring 2012. For example, 79 percent of Jewish respondents at Berkeley said that they are respected on campus. Jewish students at Berkeley reported not only remarkably high absolute levels of satisfaction with their campus experience, but *greater* satisfaction than non-Jewish students by statistically significant margins. The undersigned authors were not able to access data from other campuses. The data from Berkeley are impossible to reconcile with the unsupported assertions that a negative climate exists for Jewish students.

²⁴ See, for example, an op-ed in the J Weekly where the CEO for the Jewish Community Federation of San Francisco, the Peninsula, Marin and Sonoma Counties claims that there is anti-Semitic fervor on UC campuses, available at <http://www.jweekly.com/article/full/66341/house-resolution-35-exposes-anti-semitic-fervor-on-california-campuses/>

²⁵ For a fuller discussion of our strong objections to your support for HR 35, see a letter from the Sacramento Regional Coalition for Palestinian Rights to President Yudof, dated November 11, 2012, via email.

“anti-Semitic activity.” But such an endorsement is highly problematic because the text of HR 35 makes it clear that the “anti-Semitic activity” you are comfortable condemning would include speech critical of Israeli policies.

The University’s condemnation of speech critical of Israel harms the entire campus community. Giving credence to false allegations of anti-Semitism not only trivializes the phenomenon, but also makes more difficult efforts to counter the occasional instances of real anti-Jewish hatred when they occur. To squelch one side of a debate about one of the most critical policy issues of our time does a great disservice to the mission of the UC. Your defense of free speech is important, but it falls far short of your duty as leader of UC to make the campus environment safe for a range of viewpoints.

UC administrators stigmatize speech critical of Israel

Actions by the UC administration have further contributed to the marginalization and intimidation of students advocating for Palestinian rights. While the University acknowledges that it cannot censor speech based on its content,²⁶ and while the University decried allegations of an anti-Semitic hostile environment as baseless in defending against the Title VI cases, University officials repeatedly denounce criticism of Israeli state policies as hateful toward Jewish students in their public statements. The following illustrates the University’s repeated condemnation of pro-Palestinian speech.

In the Fall 2010, Cal SJP students asked the administration for help following a number of incidents where their property was vandalized with anti-Muslim graffiti.²⁷ The students asked the administration to condemn the graffiti in a statement to the campus community. The administration did so, but also took the opportunity to publicly stigmatize the students’ political views. In an email to the campus community, the administration denounced the vandalism as part of a list of hateful incidents, stating as follows: “We must work to support dialogue about our differences and eschew expressions of demonization of others, including virulent attacks on Israel, anti-Muslim graffiti, racism towards African-Americans, Chicano/Latinos and other underrepresented minority groups, and homophobic acts.”

The classification of “virulent attacks on Israel” as a racist hate incident unfairly lumps together pure political speech critical of human rights violations with incidents that can be truly

²⁶ See e.g. Sept. 21, 2011 email from UC President Yudof, *available* at <http://www.universityofcalifornia.edu/news/article/26327> (“...the First Amendment bars the University from using the content of speech as the basis for censoring or impeding events on campus”).

²⁷ The Cal SJP signboard was twice defaced with “Fight Islamic Terrorism” stickers (UCPD case numbers 10-04064 and 10-04951); the doors of Boalt Hall were defaced with “Fight Islamic Terrorism” stickers outside a Cal SJP event held at the law school (UCPD case number 10-04951); Cal SJP posters were defaced with “Want Sharia Law” fliers; the Cal SJP signboard was defaced with a swastika and crescent moon; posters appeared on campus reading “Welcome to Palestine” and “God Bless Hitler.” SJP leaders presented a PowerPoint to UC administrators documenting the vandalism and asked the administration to make a statement to the campus community.

deemed anti-Semitic and directed at the Jewish people as a whole. As the *Felber* court recognized, criticism of Israeli policies is pure political speech. It is not hate, nor is it a poisonous or lethal assault on Israel as a state, as the phrase “virulent” suggests.

In September 2011, you issued a statement addressing campus climate concerns from the Jewish community, and you stated that the Advisory Council on Campus Climate was formed “immediately following the unfortunate incidents of spring 2010.”²⁸ All of the “unfortunate incidents” were not enumerated, but one incident in particular was discussed at length – the interruption of a speech by the Israeli ambassador by students at UC Irvine in February 2010.²⁹ You also mentioned the two bills put forward for a vote before student organizations in 2010 that called on the University to divest from companies profiting from Israel’s military occupation. While you may disagree with students’ political positions, portraying non-violent protest and advocacy as equivalent to “acts of violence, hatred, or intimidation” such as the “Compton Cookout” is a gross mischaracterization.

You further vilified pro-Palestinian speech in a November 2011 address to the Anti-Defamation League (ADL) when you described it as “bad speech.”³⁰ We note that the ADL is an organization that is itself dedicated to silencing criticism of Israel on campuses.³¹ In those remarks, you declared that there are moments when Jewish students feel “physically threatened and uncomfortable [and] outnumbered and outgunned,” and that Palestinian Awareness Week is such an example. First, the assertion that the Jewish community monolithically views Palestinian Awareness Week as threatening is untenable, given the large number of Jewish students that organize and participate in these events each year.

Second, there is no evidence that Jewish students feel physically threatened. Even the Jewish Student Report to the Campus Climate Advisory Council twice emphasized that no Jewish students reported feeling physically threatened.³² The provocative term “outgunned” portrays Palestinian human rights advocates on campus as violent, which they are not.

You also revealed bias in a March 2012 public email “in response to a number of recent incidents of intolerance” on UC campuses.³³ Troublingly, you again singled out pro-Palestinian student speech as inappropriate and unwelcome on campus when you characterized protest of Israeli soldiers³⁴ as “wrong.” The event in question involved a peaceful walkout organized by the UC Davis SJP chapter, which you conflated with a longer verbal disruption by only one student, who had no connection to SJP. He disrupted both the Israeli soldiers speaking and SJP’s planned

²⁸ “President Yudof addresses campus climate concerns from Jewish community” *available at* <http://www.universityofcalifornia.edu/news/article/26327> .

²⁹ For this brief interruption of a political speaker, Palestinian rights activists were singled out with unprecedented criminal sanctions.

³⁰ <http://www.ucop.edu/newsroom/newswire/img/44/4492707094ebc36ba8c0c2.pdf>.

³¹ See, http://www.adl.org/main_Anti_Israel/campus-anti-israel-activity-reveiw-2011-2012.html

³² Campus Climate Report at pg. 2 (“Importantly, no students indicated feeling physically unsafe on UC campuses”) and pg. 5 (“It should be stressed that not one Jewish student indicated that they perceive the Jewish student community as physically unsafe at UC.”)

³³ “Open letter to UC community from President Yudof”, March 8, 2012, *available at*, <http://www.universityofcalifornia.edu/news/article/27279>.

³⁴ This walkout was from an event entitled “Israeli Soldiers Speak Out.”

peaceful walkout. Tactics like peaceful walkouts in protest at political events are a form of protected expression that have a long history on UC and other universities.³⁵ But yet again, when such speech is critical of Israel, it is singled out for harsh reprisals, including criminal sanction.

Your March 2012 email went on to discuss an incident in which a noose was hung at a campus library at UC San Diego and an incident at UC Davis where derogatory words were painted across the entrance to the campus's Lesbian, Gay, Bisexual and Transgender Resource Center. It bundled together a peaceful walkout of a political event with racist and homophobic incidents and listed them together as morally equivalent. This messaging characterizes legitimate political speech as hate speech and slanders students critical of Israel as bigots.

It is not difficult to imagine the extent to which all of these public remarks by the highest campus authority, denouncing and mischaracterizing the political speech of the students we represent, are perceived as attempts to intimidate them into silence.

IV. The chilling impact on Arab, Muslim and Palestine activist students is real

In fact, the University's public statements, along with the legal tactics employed by outside organizations, have had a marked chilling effect on the students we represent. UC administrators have the right to express personal opinions on this and other political debates. But, as officials of the University, you also have an obligation to understand and mitigate the negative effects of these public, personal stances on students who disagree with your viewpoints, and ensure that their constitutional rights are not infringed upon.

Your public positions branding students as anti-Semitic are particularly harmful to those who are in fact ardent anti-racists advocating to end what they view as human rights violations. The accusation carries the potential to destroy opportunities for talented students who will graduate from UC to pursue professional careers. It also hurts students academically when they are forced to take time away from their studies to correct the factual record and defend their reputations. Before expressing viewpoints that are so obviously disfavored by their campus administrators, students must accept the risk of reputational harm, harsh treatment or even affirmative reprisals and criminal prosecution.

The following accounts provide examples of how students at UC are intimidated from participation in Palestine or Muslim student organizations as a consequence of the way pro-Palestinian activism has been negatively branded:

- A PhD student active with Cal SJP was told by his adviser that his public status as a Palestinian rights activist would be detrimental to his career, as it has been to many academics that express pro-Palestinian views.

³⁵ For example, in November, 2008, members of the Israel-aligned student organization Tikvah disrupted a lecture at Boalt Hall by a Jewish advocate for Palestinian human rights by chanting "From the River to the Sea, Israel will be free," screaming "Fuck you, Traitor," and setting off a siren as they walked out. The event continued, and no harsh reprisals or criminal sanctions were imposed on the disruptors.

- A Muslim student of Arab descent stated that he would not get involved with Cal MSA's political activities, for fear that it would jeopardize his chances of getting into graduate school.
- Muslim and Arab students at Berkeley Law are reluctant to join Law Students for Justice in Palestine because they fear their reputational interests would be at risk if such membership were public.
- Palestinian students often decline to join Cal SJP because they "don't want to risk anything." Although more than 20 students participate actively in Cal SJP, there are only two or three Palestinian members.
- A recent transfer student of Arab heritage was warned by her mother not to get involved with Cal SJP. Her father told her, "If you get involved in these things you won't be able to advance academically or professionally."
- Many students decline to express their political views about Israel and Palestine. For example, when a European immigrant student active with Cal SJP tried to discuss Palestinian rights with a friend who is also a foreign student, her friend told her that she no longer expresses her pro-Palestinian views to people in high places because it previously affected her opportunities, and she warned that such activism could affect her opportunities as well.
- Students frequently express anxiety about being falsely branded as anti-Semites at SJP meetings, in small group discussions and in private.
- A Cal SJP member sought advice from an immigration attorney, fearing that her participation in Cal SJP and the allegations in the *Felber* litigation would jeopardize her citizenship application.
- A Pakistani international student says he was told that he should not get involved in Cal MSA, because if he did, his visa status would be at risk.
- A Saudi international student declined his nomination for the Cal MSA board for fear that his student visa would be jeopardized if he were associated in any way with Cal MSA.
- Students understand that their liberty is at stake. They are aware that the FBI infiltrates and monitors Arab, Muslim and pro-Palestine student groups.
- Cal SJP students are routinely subject to video surveillance by Israel-aligned activists who attend Cal SJP events. Counter protestors from Israel-aligned organizations – both on and off-campus groups – frequently attend SJP events and take close-up videos. Students feel physically unsafe after being videoed at events because they do not know how Israel-aligned organizations will use data collected against them..

Ironically, the chilling of speech also makes it difficult for students to defend their speech

rights. For example:

- A former Cal SJP member had direct knowledge of the factual allegations in the UC Berkeley Title VI complaint and desired to give a declaration to correct the factual record. He ultimately declined to give a declaration because he feared it would interfere with his visa application.
- Many students declined to submit their names in declarations to the DOE because they fear being targeted and smeared as anti-Semites.
- A Palestinian student who is active with Cal SJP and Cal MSA co-authored a public statement by student groups and civil rights organizations concerning efforts to repress student speech critical of Israel. He did not want to sign his name to the statement for fear of backlash. He asked attorneys among the group about the risks of signing his name and decided to remain anonymous.
- Another student of Arab heritage was afraid to sign the opinion pieces she authored critiquing efforts to chill student speech that were published in the Daily Cal for fear of backlash. She intentionally misspelled her name to protect herself from smear.
- Another student of Arab heritage wrote a letter to the editor of the Daily Cal protesting attempts to silence her speech about Palestinian rights but refused to give her full name for fear of being smeared as anti-Semitic.
- Recently at a Cal SJP meeting, the group had trouble finding a volunteer willing to sign his or her name to the group's open letter to the Daily Cal. The letter addressed the student paper's coverage of Cal SJP's effort to defend its speech rights. The students decided to sign the letter collectively in Cal SJP's name.

V. The Office of the President and other UC administrators must publicly affirm that robust speech on Palestine and Israel is welcome at UC

It is the duty of university leaders to foster an educational environment where students of all racial backgrounds, national origins and political persuasions are free to voice their political viewpoints without fear of reprisal.

Therefore, we implore President Yudof and the University to publicly affirm that robust speech and activism on these issues, whether critical or supportive of Israel or Palestinian entities or causes, is welcome at UC. As long as speech involves a free exchange of ideas, and as long as activism on these issues does not interfere with the expression of opposing views, it must be encouraged. It is your obligation to make this clear to the campus community without stigmatizing a community of students advocating on one side of the issue.

To this end, we:

1. Urge you to make a public statement clarifying that criticism of Israel is not inherently anti-Semitic, nor is it repugnant. It is a valid and valuable contribution to a highly contentious issue of international importance, and one of the foremost human rights issues of our time. We also suggest that you reach out to SJP and MSA students throughout the system who have been unfairly branded as anti-Semitic to communicate that robust speech is welcome at UC, and that their rights will be protected.
2. Encourage you to renounce both HR 35 and the recommendations in the Campus Climate Report that call for curbing speech rights in clear violation of the First Amendment. We understand that the recommendations may be on the Chancellors' desks, and request that University leaders remove the Campus Climate Report from consideration so that the report may be redone with proper methodology and input.
3. Request that the Advisory Council act to control the damage of the Campus Climate Report by correcting the mischaracterizations of SJP and MSA activity. In particular, the Advisory Council must clarify that SJP's activities criticizing Israeli policy are not anti-Semitic and have never involved the use of swastikas or religious symbols.
4. Remind you that as civil rights organizations, we are monitoring the climate of intimidation and fear that exists at UC for Arab and Muslim students. We are prepared to protect the rights and interests of students who are expressing their political viewpoints on the Israel/Palestine issue.

VI. Conclusion

We appreciate the opportunity to voice our concerns about the interests of Arab, Muslim and Palestine activist students at UC. We are confident that you will do what is necessary to adjust UC's position to clarify that the students on whose behalf we write today are equal members of the university community whose viewpoints and concerns are worthy of the same respect as are all others.

We look forward to further conversation about how the Office of the President and the Advisory Council can support robust and inclusive debate for all students. You may reach any of the undersigned organizations through Liz Jackson, Cooperating Counsel with the Center for Constitutional Rights, at Lizjackson@gmail.com, (617) 947-4593.

Sincerely yours,

Center for Constitutional Rights
Asian Law Caucus of San Francisco
American Muslims for Palestine
National Lawyers Guild, San Francisco Bay Area and Los Angeles Chapters
Council on American-Islamic Relations, San Francisco Bay Area