



## GLOBAL FRONTIER JUSTICE CENTER

111 Livingston Street – Suite 1928  
Brooklyn, New York 11201  
(718) 855-3627  
globalfrontierjustice@gmail.com

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Jeff Reisig  
District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695

April 10, 2012

Dear District Attorney Reisig:

We are writing to express our concern regarding a coordinated protest during a February 27 speech at UC Davis.<sup>1</sup> The speech was by two Israelis who came to talk with UC Davis students about matters of public concern. The protesters, primarily students affiliated with the campus chapters of the Students for Justice in Palestine (SJP), the Muslim Student Association (MSA), and the Movimiento Estudiantil Chicano de Aztlán (MEChA), could not tolerate that. Indeed, during their meeting prior to the speech, protest organizers said bluntly: “Events like these are not welcome on our campus anymore”.

Of course, it is not for student protesters to decide what events are “welcome” on the campus of UC Davis. Such decisions must be made with reference to campus policy, subject to the limitations imposed by California’s constitution and the Federal Constitution. The First Amendment to the Federal Constitution guarantees citizens, including university students, who wish to talk about controversial matters the right to do so. *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); *Snyder v. Phelps*, 131 S. Ct. 1207 (2011). Further, it guarantees expressive associations the right to hold meetings and to communicate with their members. *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). That right to expressive association includes the right to exclude others, including peaceful protesters, who wish to use the protected organization to communicate messages with which it does not agree. *Hurley v. Irish American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995). In other words, the sponsors of the February 27 talk have the constitutional right to deny even peaceful groups access to its meetings if those peaceful groups wish to use the meeting to communicate messages contrary to the sponsors’ interests. They would have been within their rights had they barred the protesters at the door.

The protesters undoubtedly have a right to free speech as well. We do not desire to prevent them from expressing their opinions—in fact, we want to see more speech, not less. But the constitutional right to free speech does not include a right to prevent others from speaking. Quite to the contrary, protests that disrupt the peace or liberty of others are typically denied

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<sup>1</sup> A video showing the organization prior to the speech and the prolonged protest during the speech is available here: [http://www.youtube.com/watch?v=fiymOE\\_F278&feature=youtu.be&noredirect=1](http://www.youtube.com/watch?v=fiymOE_F278&feature=youtu.be&noredirect=1).



constitutional protection. *Feiner v. New York*, 340 US 315 (1951); *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986); *Frisby v. Schultz*, 487 U.S. 474 (1998); *see also Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011) (“The [challenged] speech was indeed planned to coincide with Matthew Snyder’s funeral, but did not itself disrupt that funeral, and Westboro’s choice to conduct its picketing at that time and place did not alter the nature of its speech.”). Indeed, the sponsoring organizations’ rights to expressive association are *greater* in the face of non-peaceful protests designed to actually *prevent* the protected organizations from expressing their views.

California state penal law provides for the protection of the freedoms of speech and association by criminalizing the conduct of the protesters. CAL. PENAL CODE § 403 provides that “[e]very person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, . . . is guilty of a misdemeanor.”

Section 403 was recently used to convict student protesters who disrupted a speech by the Israeli Ambassador to the United States, Michael Oren, at UC Irvine. <http://www.volokh.com/2011/09/23/uc-irvine-students-convicted-for-disrupting-speech/>. The district attorney of Orange County explained that he decided to prosecute in light of the “organized attempted to squelch the speaker.” <http://www.volokh.com/2011/02/09/prosecution-of-students-who-disrupted-uc-irvine-speech-by-israeli-ambassador/>. The same facts are present in this case.

In some ways, the facts relating to the present case are far worse. The most vocal of the protesters rose before the speakers even took the floor and declared: “My only purpose today is that this event is shut down. You have turned Palestine into a land of prostitutes, rapists, and child molesters.” He later noted that he plans to “stand here, and . . . heckle you until you leave. . . . How many women have you raped? How many children have you raped? You are a child molester!” One of the speakers, seeking to reason with the protestor, asked “Are you willing to speak with me?” The disappointing response: “No. I just want you to shut up and get out.” That was followed not long after with “You’re going to have to kill me to shut me up [you] rapist, child molester, [and] murderer.”

Protests such as these do nothing but obstruct the flow of information, shut down the marketplace of ideas, and intimidate speakers and audiences alike. They have been criminalized for a very good reason.

We encourage you to prosecute these protesters just as your colleagues did in Orange County. By doing so, you will be working to ensure that speech—even controversial speech—remains possible on college campuses such as UC Davis. We are aware of numerous similar instances in which Muslim and anti-Israel student organizations have sought to monopolize the marketplace of ideas by denying their opponents the right to speak.<sup>2</sup> If the protesters are not forced to comply

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<sup>2</sup> The following is a representative, but incomplete, list of examples: (1) A series of protests during “Israel Apartheid Week” in 2009 at York University (Toronto), New York University, the University of Rochester, San Jose State University, and others (<http://www.jta.org/news/article/2009/03/09/1003572/campus-strife-over-israel-sparks-mobilization>); (2) A 2009 speech by former Israeli Prime Minister Ehud Olmert at the University of Chicago interrupted by the Students for Justice in Palestine (SJP)



with the Constitution and with norms pertaining to free speech, their obstructive protests will continue and speech on campus (along with the sharing of ideas on university campuses) will suffer. In the name of free speech, freedom of association, open discussion, and education, we urge you to stand for the silenced by prosecuting those who seek to silence.

We would appreciate your reply by April 30, 2012.

Sincerely,

Kenneth A. Leitner, Esq.  
Director

Meir Katz  
Counsel

cc:

Mark G. Yudof, President, University of California

Linda P.B. Katehi, Chancellor, UC Davis

Tony Rackauckas, District Attorney, Orange County

Tammi Rossman-Benjamin, the AMCHA Initiative

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([http://www.youtube.com/watch?v=wgN02ZTe5AU&feature=player\\_embedded](http://www.youtube.com/watch?v=wgN02ZTe5AU&feature=player_embedded)); (3) A 2011 speech by six Members of the Knesset at Brandeis University interrupted by SJP (<http://www.youtube.com/watch?v=tyH8iQByNIY>); (4) A 2012 table display celebrating Israeli culture at the University of Western Ontario was blocked from view so that no one could see it by the student group Solidarity for Palestinian Human Rights and by Occupy London (<http://www.cjnews.com/campus/protesters-disrupt-pro-israel-event-western>); (5) A 2012 speech by Nonie Darwish at the University of New Mexico interrupted by SJP and unOccupy Albuquerque (<http://www.youtube.com/watch?v=hePOFEC1qbc>).