



January 28, 2013

Dear Chancellor Katehi,

As you know, we are faculty members at the University of California, who have been investigating and documenting anti-Jewish bigotry on California public university campuses for the last several years.

We are writing to you now to express our serious concern regarding an incident that occurred during a student protest on November 19, 2012, during which UCD students "occupied" an administration building on campus. We believe that numerous violations of state and federal law and university policy may have occurred at the event. To our knowledge, your administration has neither acknowledged nor addressed these violations.

In addition, it appears that at least 5 university administrators, including the Vice Chancellor of Student Affairs, were present and witnessed much of this behavior, yet they did not take action to ensure the safety of the students who were targets of possible assault and hate crimes. Please see below for an account of the events as well as the federal and state laws and university policies which were potentially violated as a result of them.

### **Detailed Account of Events**

#### *Takeover of Dutton Hall*

We have learned the following from newspaper articles, on-line videos, and conversations with Jewish students who attended the rally on the East Quad and the subsequent "occupation" of Dutton Hall.

At 12:30pm on November 19, a rally entitled "March in Solidarity with Gaza," sponsored by the Graduate Student Association, began on the East Quad.<sup>1</sup>

At approximately 2pm, about 40 of the protesters marched from the East Quad to Dutton Hall, where they hung a larger banner that read "DAVIS+GAZA ARE ONE FIST" from

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<sup>1</sup> For an announcement of the rally, see:  
<https://www.facebook.com/events/175738562564528/>

the building's entryway and "occupied" the building's entrance hall.<sup>2</sup> Several protesters held anti-Israel and anti-Zionist signs and large banners, two of which read "DEATH TO ZIONISM" and "LONG LIVE THE INTIFADA!"

The occupation leaders refused entry to Jewish students who were known to identify with the Jewish state, and at least one Jewish student associated with a pro-Israel group on campus reported that when he tried to enter Dutton Hall at the beginning of the "occupation," a rally organizer physically blocked his entry through the front doors and refused to let him pass, because he was a "Zionist."

At about 2:15pm, three Jewish students managed to slip into Dutton Hall, and one of them proceeded to film the discussion taking place inside the "occupied" entrance hall. Although a chief complaint of the "occupiers" was that pro-Palestinian students were being stifled on campus and not afforded their constitutionally-guaranteed right to freedom of speech, nevertheless, several times in the 20 minutes of the rally captured on video<sup>3</sup>, the "occupiers" themselves expressed the sentiment that "Zionists," including pro-Israel students at UCD, should not be given freedom of speech. For example, when a Jewish student wanted to know whether free speech could involve a civil discussion between pro-Israel and pro-Palestinian perspectives, the leader answered, "I would say absolutely not. I would never discuss anything with Hitler. He is our enemy...there's no question of free speech when it comes to the Nazis. And the KKK, when they march in Sacramento and the cops defend them...you should not talk to these white supremacist, racist, mother-fuckers."

#### *Escalation of the Protest*

At about 2:30pm the rally leader said, "I just want everyone to know that there are Zionists filming everything we're saying, and I think we should ask them to leave." Several protesters demanded that the Jewish students leave the public building, loudly chanting "Leave our space" and "Shame on you" repeatedly, and accusing the Jewish students of "hate speech" because of their support for Israel.<sup>4</sup>

After the Jewish student stopped filming, most of the 40 protesters surrounded the Jewish students, who were standing up against a wall of windows, and screamed "Death to Israel," "Fuck Israel," and other curses. For about 10 minutes the protesters, many of whom stood 1 to 2 feet away from the Jewish students, continued to scream at the Jewish students to leave Dutton Hall and pounded their fists into their hands in a threatening way. Although the Jewish students were not physically harmed, they reported feeling physically and emotionally harassed and threatened until they finally managed to leave the building.

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<sup>2</sup> See:

<https://www.facebook.com/photo.php?fbid=180741878730796&set=oa.376588602429329&type=1&theater>

<sup>3</sup> <http://www.youtube.com/watch?v=xIFpoVkQk0c&feature=youtu.be>

<sup>4</sup> See: <http://www.youtube.com/watch?v=xIFpoVkQk0c&t=18m>

When an *Aggie* photographer who had photographed the confrontation inside the hall followed the Jewish students outside for comments and contact information, protesters at the rally turned on him and demanded to see his photos of the physical confrontation and that he delete them. *Aggie* staff members were also told by protesters that unless they were on the side of the "occupiers," they would also have to leave the administration building.

In an editorial about the event in the *Aggie*, staff members asserted, "We witnessed many students...[end] up leaving, disgusted, as soon as the bullying began. Free speech is crucial. Ideally, our campus would be rife with protests, counter-protests and open dialogue regularly. But if students are scared to speak — scared of other students who resort to intimidation tactics — we have a serious problem."<sup>5</sup>

At approximately 2:45pm, after a student in Dutton Hall expressed disagreement with one of the protest signs, a protester grabbed his collar, raised his fist and forced the student to leave the building.

#### *UCD and Staff Member Witnesses of Event*

According to a student outside of Dutton Hall at the time of the "occupation," 3 UCD administrators (the Vice Chancellor and 2 Associate Vice Chancellors of Student Affairs) and 2 staff members associated with the Center for Student Involvement were right outside the building during the "occupation." According to one of the 3 Jewish students surrounded by protesters inside Dutton Hall, since she and her friends were standing against a bank of windows which were in full view of those standing outside, she believed the 5 administrators and staff members could see them being harassed and intimidated by the mob of protesters.

The administrators and staff standing outside did nothing to help the 3 Jewish students, but when they exited the building, one of the administrators asked one of the students if she was OK, which suggests that the administrator had witnessed the violent behavior of the protestors but did not take action. The Vice Chancellor of Student Affairs, who it appears also witnessed the protestors' behavior toward the Jewish students, spoke earlier that afternoon at the rally on the East Quad, where she was quoted as saying: "I will not permit violence to occur in the context of free speech."<sup>6</sup> There were no other administrators, staff or faculty present at the rally inside Dutton Hall, and at no time did any campus police appear in or near the hall.

#### **Violations of Federal, State, and University Policy**

We would like to bring to your attention the following aspects of this deeply troubling series of events:

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<sup>5</sup> <http://www.theaggie.org/2012/11/27/editorial-let-students-speak/>

<sup>6</sup> <http://www.davisenterprise.com/local-news/ucd/gathering-to-mark-nov-18-protesters-turn-focus-to-gaza/>

- 1) We believe that incidents of this sort have the potential to create liability under the following legal authority:
- **Civil assault (Restatement 2d, Torts §21)** - "An actor is subject to liability to another for assault if (a) he acts intending to cause a harmful or offensive contact with a person, or an imminent apprehension of such a contact, and (b) the other is thereby put in such imminent apprehension."
  - **Civil battery (Restatement 2d, Torts §13,18)** - "An actor is subject to liability to another for battery if (a) he acts intending to cause a harmful or offensive contact with a person, and (b) harmful or offensive contact with the person directly results."
  - **Criminal assault (CA Penal Code 240)** - Assault is "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." To be charged with criminal assault, physical contact is not required. A person must simply place another in reasonable fear of immediate bodily harm.
  - **Criminal battery (CA Penal Code 242)** - Battery is "any willful and unlawful use of force or violence upon the person of another."
  - **Disturbing the peace (CA Penal Code 415(3))** - It is illegal to "...maliciously and willfully disturb another person by loud and unreasonable noise...[and to] use offensive words in a public place which are inherently likely to provoke an immediate violent reaction." In other words, it is illegal to use "offensive words" that "necessarily invite a breach of the peace."
  - **CA Civil Code 51.7 "The Ralph Civil Rights Act"** - "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics."
  - **CA Civil Code 52.1 "The Bane Civil Rights Act"** - "If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured."
  - **CA Penal Code 422.6** - "No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim."

- **Title VI of the 1964 Civil Rights Act** – Prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving Federal financial assistance.
- 2) We believe the protesters' behavior may have violated the following UC Davis policies and principles:
- **UC Standards of Conduct for Students 102.06** - prohibiting the “unauthorized possession...of any University properties.”
  - **UC Standards of Conduct for Students 102.08** - prohibiting “physical assault, including threats of violence, or other conduct that threatens the health or safety of a person.”
  - **UC Standards of Conduct for Students 102.09** - prohibiting racial and other forms of harassment, defined as “conduct that is so severe...objectively offensive, and so substantially impairs a person’s access to University programs or activities, that the person is effectively denied equal access to the University’s resources and opportunities on the basis of his or her race...national or ethnic origin, alienage, religion...or perceived membership in any of these classifications.”
  - **UC Policies Applying to Campus Activities, Organizations and Students (PACAOS) Section 30** - “The University is committed to assuring that all persons may exercise the constitutionally protected rights of free expression, speech, assembly, and worship...It is the responsibility of the Chancellor to assure an ongoing opportunity for the expression of a variety of viewpoints.”
  - **UC Davis Policies and Procedures Manual Ch. 270 Section 05(C)** - “The University prohibits illegal, arbitrary, or unreasonable discriminatory practices. Campus organizations receiving University privileges, assistance, or supervision must abide by the University’s policy on nondiscrimination to qualify for any University privileges or assistance.”
  - **UC Davis Policies and Procedures Manual Ch. 270 Section 20** - Public expression in the form of freedom of speech and advocacy may be exercised on University properties at such times and places and in such a manner as is compatible with the use of the property and as follows: 1) Assures orderly conduct; 2) Avoids disruption or interference with University operations; 3) Allows for the free flow of persons and traffic; 4) Avoids disruption or interference with the ability of the University to carry out its responsibilities as an educational institution; 5) Protects the rights of all individuals who use University properties; 6) Protects persons against practices that would make them involuntary audiences; 7) Assures the safety of all members of the University community; 8) Does not interfere with property entrances or exits.
  - **UC Davis Student Judicial Affairs Statement on Free Expression** - “Efforts to quell unpopular opinions (e.g., by shouting down a speaker) stifle discourse and cut off dialogue...Even legal acts of intolerance and incivility erode our capacity to trust, and to work, live, and learn together...We can uphold both the need for respect and understanding and the right of free speech by responding appropriately to each incident. Crimes must be investigated and prosecuted to the fullest extent, and infringement of civil rights must be addressed by campus

administrative processes and/or state or federal agencies. Discriminatory acts or violations of campus conduct standards, including disruption, are subject to disciplinary sanctions or grievances.”

- **UC Davis Principles of Community** - “strives to maintain a climate of justice marked by respect for each other....affirms the right of freedom of expression...and commitment to the highest standards of civility and decency towards all...recognizing the right of every individual to think and speak as dictated by personal belief, to express any idea, and to disagree with or counter another's point of view... promoting open expression of our individuality and our diversity within the bounds of courtesy, sensitivity and respect.” In addition UC Davis vows to “confront and reject all manifestations of discrimination, including those based on race, ethnicity...religious or political beliefs, status...or any of the other differences among people which have been excuses for misunderstanding, dissension or hatred...striving to build a true community based on mutual respect and caring.”

3) We believe the UCD administrators and staff members who witnessed the illegal and unethical behavior of the protestors but did not take action may have been negligent in carrying out their administrative responsibilities:

- The Vice Chancellor and 2 Associate Vice Chancellors of Student Affairs who witnessed the "occupation" are responsible for Student Judicial Affairs, whose role is to enforce community standards and campus codes of conduct. As noted above, the protestors were in blatant violation of several UC policies which have the primary goal of ensuring student safety. Evidence points to the fact that the administrators were aware of most, if not all, of these violations, and that student safety was being threatened as a result of their inaction.
- Two staff members from the UCD Center for Student Involvement witnessed the "occupation." CSI avows that it promotes the *UC Davis Principles of Community*, which affirm the right of freedom of expression within the Davis community and its commitment to the highest standards of civility and respect, by helping students learn from each other in a safe and constructive environment. However, during the solidarity rally, the protestors were in blatant violation of the *Principles of Community* in addition to violating 7 UCD students' rights of free expression. Protestors also failed to treat these students with civility and respect. The staff members from this department did not ensure a safe and constructive environment for students when they failed to intervene during a student group's assault, harassment and violation of fellow students' rights.

### **Outcome of the Events**

Jewish UCD students, within sight of UCD administrators and on public university property, were harassed, intimidated, and physically threatened. This is an abrogation of university policy and unlawful.

We are deeply concerned about the virulent and hate-filled actions taking place on the UCD campus as a result of students' religion and beliefs. And we are also concerned for the safety and well-being of Jewish students who want to feel free to express their beliefs and attend public university events without fear of harm or intimidation.

As the Chancellor of UC Davis, we know that you too have these same concerns.

As a result, the following are important actions that we urge you to take now in order to protect the physical and emotional safety and civil rights of Jewish (and all) students on your campus:

- University policy must spell out actions that campus police, administrators, and staff are responsible for taking to ensure the safety and civil rights of all students, and we urge that this policy be published widely to the campus community.
- Police, administrators, and staff must be immediately informed about actions they should take and protocols they can access to afford all members of the campus community — including Jewish students — the protections that are afforded to them under University policy and state and federal law.
- Perpetrators of disruptive and threatening behavior must be identified and appropriately disciplined.
- The University Chancellor should use her First Amendment rights to consistently and publicly condemn behavior which targets other students for harassment and intimidation.
- The official status and funding of student groups that engage in behavior which targets other students for harassment and intimidation should be subject to suspension and revocation.

We look forward to hearing from you whether these steps can be taken to ensure that Jewish UCD students – and all UCD students – can enjoy a campus where they feel safe, protected, and able to enjoy their civil rights no matter their identity or beliefs.

Sincerely,

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Cc: UC President Mark Yudof  
UC Regents  
UC Chancellors

UC General Counsel Charles Robinson  
UC Advisory Council on Campus Climate, Culture, and Inclusion (c/o Jesse Bernal)  
UC Davis Counsel Steven Drown  
California Speaker of the Assembly John A. Perez  
California Superintendent of Public Instruction Tom Torlakson  
California State Senator Lois Wolk (Davis)  
California State Assembly Member Mariko Yamada (Davis)  
Congressman John Garamendi (3<sup>rd</sup> District)

Bcc: Members and supporters of the Jewish community