



Via Email

September 16, 2016

Chancellor Dirks, University of California Berkeley
Executive Dean of the College of Letters and Science Carla Hesse
Chief Counsel Christopher Patti

Re: Suspension of Ethnic Studies 198, Palestine: A Settler Colonial Analysis

Dear Chancellor Dirks,

I write on behalf of Paul Hadweh to express Palestine Legal's serious concerns with respect to University of California Berkeley's ("Cal") decision to suspend the student-led class, "Ethnic Studies 198: Palestine: A Settler Colonial Analysis." All indications suggest you suspended the course in response to political pressure from off-campus Israel advocacy groups.

The course suspension is a violation of students' First Amendment and academic freedom rights, undermines Hadweh's right to an equal educational opportunity, and subverts the University's stated processes for approval of DeCal courses. Accordingly, we demand that you immediately reinstate Ethnic Studies 198, apologize to Hadweh and the 26 enrolled students, and reaffirm your commitment to academic freedom, especially in the face of political pressure.

Our understanding of the relevant facts is as follows:

Mr. Hadweh is a Palestinian-American senior majoring in Peace and Conflict Studies. His interest is to engage in critical theory and historical analysis, and discuss with his peers what a just solution to the Israel/Palestine issue could look like. Towards that end, he took a recommended course in spring 2016 that supports students in becoming Decal facilitators. He designed the course "Palestine: A Settler Colonial Analysis" in close consultation with his faculty advisor. As required, he submitted the Course Proposal Form, and completed every step indicated on the instructions "checklist," including approval from his faculty advisor, the department chair, and the Academic Senate.¹ The course received a course control number on August 22, 2016, and a room assignment on August 26.

¹ See, http://vcue.berkeley.edu/sites/default/files/course_proposal_packet.pdf.

² Ethnic Studies 198 Community Agreements are on file with Palestine Legal.

³ <http://www.algemeiner.com/2016/09/01/campus-watchdog-upcoming-palestine-course-will-increase-antisemitic-atmosphere-at-uc-berkeley/>

⁴ <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>

On September 6, the first day of class, 31 students attended. The students had an introductory discussion about the content of the course and created a list of community agreements focused on respectful engagement with diverse viewpoints.²

The class was limited to 24 students, but Mr. Hadweh took the appropriate steps to expand the limit due to the high level of interest. On the day of its suspension, 26 students were enrolled in the course.

Administrators reportedly were first made aware of the course on August 26, and Cal Assistant Vice Chancellor Dan Mogulof was quoted responding to criticisms of the class in a September 1 article, highlighting Cal's vast efforts to ensure that Jewish students are safe and welcome on campus, and stating that "we are in full support of the Regents recently issued Principles Against Intolerance."³ Full information about exactly who was complaining about the course, and for how long, is not publicly available, however Israeli media reported on September 11, 2016 that Israeli government Minister Gilad Erdan and the Israeli Union of Heads of the Universities had for several days been trying to covertly prevent the course from taking place.⁴

On September 13, the AMCHA Initiative, along with 42 other Israel advocacy organizations, publicly complained to Chancellor Dirks about Hadweh's class, claiming that it violates the Regent's Policy on Course Content by allowing a classroom to be used for "political indoctrination" and "as an instrument for the advance of partisan interest."⁵

Two hours after receiving AMCHA's letter, Dean Carla Hesse informed the faculty advisor and the department chair that she was suspending the course. A statement from Berkeley the same day, which was sent to those who complained to the university, claimed that the student facilitator "did not comply with policies and procedures that govern the review and approval of proposed courses for the DeCal program," and that the course "did not receive a sufficient degree of scrutiny to ensure that the syllabus met Berkeley's academic standards." The statement also expressed "[concern] about a course...that espoused a single political viewpoint and appeared to offer a forum for political organizing..."⁶

Although the statement did not name Hadweh, and instead referred to the "student facilitator," the university was, or should have been, aware that his name was widely available and under international scrutiny. Administrators made no contact with Hadweh to discuss their concerns about the course before publicly alleging that he failed to follow proper procedures and that his course was inappropriate for the university setting. Nor did the university reach out to Hadweh to discuss how he may protect himself and stay focused on his studies while facing

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⁴ <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>

⁵ <http://www.amchainitiative.org/letter-to-uc-berkeley-chancellor-dirks>

⁶ Id.

scrutiny in the international media and harassment. Hadweh only learned of the criticisms of his course in the Israeli media on September 13, and only several hours before the university suspended it. That same morning he began to receive a barrage of harassment emails and contacts from reporters.

UCB's Suspension Violates First Amendment and Academic Freedom Principles

Your justification for the suspension of Ethnic Studies 198 – which you said “espouse[d] a single political viewpoint and/or appears to offer a forum for political organizing” – is legally untenable and reveals a major misunderstanding of UC Berkeley’s academic standards, and the law. The ample documentation of a public pressure campaign, combined with your failure to provide a justification that holds water – procedural or otherwise – makes it clear that you suspended Ethnic Studies 198 because Israel advocacy groups disagreed with the course content.

The university’s official statements to the press over the past several days have increasingly relied on the theory that bureaucratic procedures were not properly followed, therefore requiring suspension of the course after it had begun. The university’s shifting procedural explanation has been meticulously addressed by John Wilson of the AAUP’s *Academe Blog*.⁷ The alleged procedural failure is that the ethnic studies department did not deliver the course to Dean Hesse’s desk, giving her proper time to review the course. This argument fails first because the DeCal website could not be more clear in stating that there is no need for Dean Hesse’s review. Second, Dean Hesse clearly had time between August 26 and September 13 to suspend the course, if she could articulate a constitutional reason to do so.

The First Amendment protects the right to free expression from government interference. This right ensures that students and professors are not targeted for expressing disfavored viewpoints. Any attempt by university officials to circumscribe academic content because you disagree with the perspective is impermissible “viewpoint discrimination,” in violation of the First Amendment.⁸

Moreover, several DeCal courses this semester arguably teach “single political viewpoints” and “offer a forum for political organizing.” For example, *Marxism and its Discontents* requires readings by Karl Marx, Lenin and Gramsci -- all Marxists -- with no corresponding readings by Milton Friedman and Adam Smith.⁹ A course on *Human Trafficking Prevention Education* does not appear to offer a pro-trafficking viewpoint.¹⁰

Similarly, several DeCal courses could be said to offer a “forum for political organizing.” For example, the course description of *Helping the Navajo Rebuild with Project Pueblo* states that: “The objective of this course is to provide a venue where you can not only learn about the issues surrounding the Navajo Nation and the Former Bennett Freeze, but where you can

⁷ John K. Wilson, “Berkeley Bans a Palestine Class,” *Academe*, September 14 2016, <https://academeblog.org/2016/09/15/berkeley-bans-a-palestine-class/>

⁸ *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

⁹ <http://www.decal.org/courses/4268>

¹⁰ <http://www.decal.org/courses/4169>

actually do something about it!” (emphasis in the original).¹¹ The course requires that “[STUDENTS] MUST ATTEND THE ONE-WEEK SERVICE TRIP ON JANUARY 6TH-13TH WITH NO EXCEPTIONS” (emphasis in the original).¹² Likewise, a course titled Copwatch: Community-Based Police Accountability, “provides students with opportunities to participate in community organizing throughout the semester.”¹³ The Invisible Forces of Mass Incarceration¹⁴ explores “how we as students can continue to push for change,” and Film Making for Activists “serve[s] as an introduction into the world of creative activism.”¹⁵

Beyond the First Amendment issues implicated here, Cal has betrayed principles of academic freedom, which protect faculty and students from “institutional censorship or discipline.”¹⁶

The Supreme Court has long-recognized that the university is “peculiarly the ‘marketplace of ideas,’” which must encourage critical thought and questioning of social and political orthodoxy, and is charged with producing future leaders acculturated in the norms of a pluralistic, democratic country.¹⁷ In taking such precipitous action, Cal has sent the anti-democratic message to its faculty and students that censorship – rather than engagement, reflection or critique – is an appropriate response when political orthodoxy is challenged. The Supreme Court warned against such self-defeating academic censorship, which previously arose during the McCarthy-era:

The essentiality of freedom in the community of American universities is almost self-evident... To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.¹⁸

Furthermore, UC’s Policy on Academic Freedom states that “principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.” The policy places the authority to apply professional standards related to teaching with “the faculty as a body,” represented by the Academic Senate. Importantly, the UC Policy recognizes that academic freedom rights apply to faculty in addition “to the full protections of the Constitution of the United States and of the Constitution of the State of California.” By summarily overriding the faculty expertise in this case, you have violated these principles.

¹¹ <http://www.decal.org/courses/4188>

¹² *Id.*

¹³ <http://www.decal.org/courses/4158>

¹⁴ <http://www.decal.org/courses/4177>

¹⁵ <http://www.decal.org/courses/4133>

¹⁶ See American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure.

¹⁷ *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967); *Grutter v. Bollinger*, 539 U.S. 306, 324325 (2003).

¹⁸ *Keyishian*, 385 U.S. at 684.

The claim that Ethnic Studies 198 is “political indoctrination” is absurd, and smacks of McCarthyism. Notably, an almost identical outcry by the same Israel advocacy groups during the spring of 2015 about another student-led course on Israel/Palestine resulted in an investigation and report from UC Riverside’s Chief Compliance Officer and Associate Vice Chancellor, which concluded:

this student-facilitated course involves a politically controversial topic about which conscientious stakeholders in the broader community . . . disagree and express concerns . . . At the end of the day the existence of objections and concerns about [the course] . . . constitutes an insufficient basis to second-guess academic judgment.¹⁹

Though universities should – and do – expose students to a robust variety of viewpoints, that variety should reflect scholarly judgments that are based on pedagogical and curricular value, not political considerations, as is evident here. Otherwise, administrators, who are more vulnerable to external political pressures, would be in the position of evaluating programs under narrow partisan or political criteria.

While a course exploring the history of Israel’s occupation of Palestinians in the context of other settler-colonial regimes may spark complaints by some who oppose the course content, such complaints can never justify a course’s suspension. Courses may not be censored based on how much controversy they may provoke. Other DeCal courses – and classes at Cal – clearly, frequently teach certain “singular” perspectives. No biology classes, to our knowledge, teach creation. To our knowledge, this is the first time Cal has suspended a class in such a manner.

Finally, at a time when Islamophobic and anti-Arab sentiment is on the rise in the United States, Cal’s treatment of Paul is particularly alarming. The fact that you applied an unconstitutional viewpoint based restriction to a Palestinian-American student who wanted to study Palestinian history, while applying no similar scrutiny to other courses with similarly one-sided perspectives, raises serious concern about racial and national origin discrimination.

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¹⁹See, Bill Kidder – Chief Compliance Officer and Associate Vice Chancellor, “UCR Review of the Spring 2015 “Palestinian Voices” Student-Led Course,” available at, <http://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/57d9e36bbebafb63eb5ebcb7/1473897336385/Palestinian+Voices+Course+UCR+review+memo+June+3+2015+FINAL+with+appendices.pdf>

There is no justification for the suspension of Ethnic Studies 198: As a university committed to free speech and academic freedom, we expect that UC Berkeley will live up to obligations under Title VI, the California and U.S. Constitution.

To ameliorate the harm done, we request that you take the following immediate steps:

1. Reinstate Ethnic Studies 198.
2. Apologize, in writing, to Paul Hadweh and the enrolled students.

We are committed to using all of the resources at our disposal to ensure the rights of UC Berkeley students. We request a prompt response to this letter by September 21, 2016.

Sincerely,

Liz Jackson

Staff Attorney

Palestine Legal

Cooperating Counsel

Center for Constitutional Rights