



Via E-mail

June 16, 2017

Dr. Vincent Boudreau
Interim President
The City College of New York
The Howard E. Wille Building, Room 300
160 Convent Avenue
New York, NY 10031

Dear Interim President Boudreau:

I write on behalf of Students for Justice in Palestine (SJP) at City College of New York (CCNY) to raise concerns over incidents that occurred during and after a May 11th on-campus lecture by Israeli consul general Dani Dayan, and your response to that event. I am deeply concerned by reports that members of SJP and their supporters faced discrimination, harassment, and physical attacks during and/or after the event; have been unfairly targeted for blame by outside organizations and your administration; and have yet to receive any support from the university.

I write to remind you of your legal obligations under the First Amendment of the U.S. Constitution as well Title VI of the Civil Rights Act of 1964 and university policies. I urge you to take immediate steps necessary to ensure that SJP members' First Amendment rights to speak out in favor of Palestinian freedom is upheld and that they are protected in doing so without fear of repression, intimidation, or physical threat based on race, color, or religion.

I. Factual summary

The following is my understanding of the relevant facts:

On May 11, roughly twenty members of SJP, the vast majority of whom are Muslim and Arab or South Asian, and their supporters attended an on-campus lecture by Israeli Consul General in New York Dani Dayan. Though Dayan has a history of supporting racist, anti-Palestinian policies,¹ SJP members agreed in advance to listen to Dayan's full lecture and to challenge his ideas during the Question-and-Answer ("Q&A") portion of the event. During the event, members of SJP and their supporters listened to Dayan's full lecture.²

¹ See Fact Sheet, Dani Dayan: Ambassador of Apartheid, Institute for Middle East Understanding, <https://imeu.org/article/dani-dayan-ambassador-for-apartheid>.

²Video of the lecture is on file with Palestine Legal.

During the Q&A period following the lecture, members of SJP and their supporters challenged what they viewed as factually inaccurate statements about Israeli policies made by Dayan during the lecture. For example, one student asked Dayan to address why children are being killed every day in Gaza.

A review of video footage and personal accounts from students who were present indicate that the questions prompted vocal opposition from some attendees of the event, and the subsequent back-and-forth conversations caused tensions to rise in the lecture hall. Dayan's answers to some questions also spurred responses and clarifications from audience members, as is often the case in academic fora, particularly when the subject matter is of a controversial, political nature.

At one point, in response to the commotion caused by frustration with critical questions, Dayan said, "when you get used to terrorism, you don't make a difference between verbal terrorism and actual terrorism," apparently equating the critical questioning and follow-up clarifications by SJP members to violent attacks on civilian populations.

During the Q&A, it appears that Dayan avoided calling on students who looked Muslim, Arab, or South Asian. He did, however, call on Undergraduate Student Government Vice President of Finance Radwa Ahmed to ask the final question, referring to Ahmed dismissively as "the girl in the keffiyeh."

Eventually, Dayan announced the conclusion of the event. SJP members and their supporters began exiting the lecture hall. As the students exited, some engaged in protest chants, including "Free Palestine." One student chanted "Holocaust survivors against Netanyahu" and "Jews for peace!" This student is the Jewish grandson of a Holocaust survivor whose family story inspires him to oppose all forms of oppression, including the oppression of Palestinians. He is not a member of SJP. No member of SJP invoked the Holocaust.

A group of SJP members and their supporters continued to chant in support of Palestinian freedom in the hallway outside the lecture hall where the event had just ended. As one SSI member passed the group of SJP members, he referred to them as "animals." SJP member Ahmed Lamada, believing this to be a racist comment, responded, telling the SSI member to repeat what he said. The SSI member grew physically aggressive, swinging punches in the air, and frightening Lamada and other SJP members.

At one point, the SSI member grabbed SJP member Rohaan Gill by the hood of his sweatshirt. Despite the SSI member's physical aggression, Mr. Gill, Mr. Lamada and others refrained from any physical self-defense, fearing any physical response would escalate the situation and further endanger themselves and others around them. Ultimately, several students had to intervene to ensure that the SSI member did not punch Mr. Lamada, Mr. Gill, or anyone else. These students isolated the SSI member into a hallway corner where he continued to "throw punches" in the air, eventually punching (and damaging) the hallway wall.

The following day, May 12, you sent a campus-wide statement addressing the "extremely heated argument" that broke-out at the lecture, noting that you are faced with the task of deciding what was "in bounds and what was not." In your statement, you also said:

As a community, we need to confront speakers with whom we disagree with argument or indifference, protest or boycott—but never allow them to say that we failed of our charge to allow free speech. Bad ideas should whither in the light of reason, and it is our duty to cast that light, but not disqualify the forum.

Your statement failed to note that SJP members listened to Dayan’s entire lecture, challenging his ideas through questions during the Q&A session. Your statement also failed to note the physical aggression and verbal discrimination/harassment members of SJP experienced by at least one member of SSI. Your statement also did not note that Dayan had equated questions by members of SJP with terrorism.

On May 17, the Anti-Defamation League of New York issued a condemnation of your May 12 statement, claiming that it unfairly portrayed Dayan as a “provocative ideologue.”³

On May 18, you convened a meeting of students who were present at the May 11 event. Members of your administration were present at the meeting, as were students from SSI. Faculty from Hillel and CCNY Chabad were present. SJP was not officially notified or invited to the meeting, but individual members of SJP and non-member supporters who were at the Dayan event were present. Because SJP had not been officially invited, the SJP members were present in their individual capacities. Unlike the SSI students, the SJP members had no faculty representation at this meeting.

The following day, May 19, the Zionist Organization of America (ZOA) wrote to you inaccurately characterizing SJP’s actions at the May 11 event as a “disruption,” and claiming their actions violated CCNY’s community standards and Henderson Rules. ZOA called on you to investigate and discipline SJP members and to issue an apology to Dayan.⁴

Also on May 19, you sent a second campus-wide email. This email indicated that you had reviewed video footage of the May 11 event and concluded that an investigation into the May 11 event would be conducted, and disciplinary action could be taken. The email also included an apology to Dayan.

II. CCNY must protect SJP members’ right to dissent and to advocate for Palestinian rights

Universities’ increased scrutiny of speech critical of Israel in response to political pressure harms all campus community members, especially those who are interested in exploring critical issues regarding Palestinian freedom. Such one-sided scrutiny constitutes viewpoint discrimination, in violation of the First Amendment, and emboldens those who oppose

³ Letter, ADL calls on CCNY Interim President to Amend Statement, May 17, 2017, <http://newyork.adl.org/adl-calls-on-ccny-interim-president-to-amend-statement>.

⁴ ZOA’s letter to Interim President Boudreau is available at <http://zoa.org/wp-content/uploads/2017/05/letter-to-CCNY-Interim-President-Vincent-Boudreau-5-19-17.pdf>.

Palestinian rights to take increasingly aggressive positions to shut down and censor voices critical of Israeli government policies.⁵

The Supreme Court has long held that speech on public issues, like Palestinian rights, “occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”⁶ The Court has also recognized that universities are “peculiarly the ‘marketplace of ideas,’” which must encourage critical thought and questioning of social and political orthodoxy, and are charged with producing future leaders acculturated in the norms of a pluralistic, democratic country.⁷ One-sided scrutiny and censorship of speech related to Palestinian rights threatens to shut down robust debate on one of the most urgent foreign policy, human rights and political issues of our time, and undermines the pivotal role universities play in our society.

Despite Dayan’s record of racist, anti-Palestinian viewpoints and support for policies that members of SJP equate to ethnic cleansing, members of SJP and their supporters who attended the lecture listened to Mr. Dayan deliver his full lecture, asked questions during the Q&A, and exited the lecture hall chanting “Free Palestine” after Dayan announced the conclusion of the event.

Members of SJP and their supporters had every right to voice objections to Israeli policies, to voice support for Palestinian rights during the Q&A session, and to engage in political chants after the event concluded. The fact that their questions provoked heated political argument does not constitute “disruption” by SJP members. Indeed, the SSI organizers, event moderators and some of their supporters in attendance were themselves acting in a confrontational and disruptive manner. For example, it was an event moderator’s objection to comments made by an SJP member that provoked Dayan to liken the SJP questioning to terrorism.

Investigating SJP members for potential punishment for voicing their opinions would constitute viewpoint discrimination in violation of the First Amendment. There is considerable evidence in the public record of a pressure campaign by Israel advocacy organizations demanding that CCNY suppress student speech critical of Israel and favorable to Palestinian rights. This pressure campaign mirrors a similar campaign that led to a CUNY-wide independent investigation into SJP activism in 2016. The resulting report issued after that investigation cleared SJP of wrongdoing, and noted that “[p]olitical speech is often provocative and challenging, but that is why it is vital to university life.”⁸

University leaders must guarantee the conditions necessary for free debate on campus, and must assure students and faculty alike that expression on matters of public concern is not only tolerated, but invited. Debate, disagreement, and free expression, including protests,

⁵ Palestine Legal and the Center for Constitutional Rights has documented the suppression of Palestine advocacy on college campuses and elsewhere, often at the behest of Israel advocacy groups. Our report, *The Palestine Exception to Free Speech* is available at <http://palestinelegal.org/the-palestine-exception>.

⁶ *Connick v. Myers*, 461 U.S. 138 (1983).

⁷ *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).

⁸ Barbara Jones and Paul Shechthman, Report to Chancellor Milliken on Allegations of Anti-Semitism, Sept. 26, 2016, <http://www2.cuny.edu/wp-content/uploads/sites/4/page-assets/news/newswire/assets/CUNYReport.pdf>.

demonstrations, and other expressive activities, embody the highest values of a free university and a democratic society. CCNY must take appropriate measures to ensure that SJP members' rights to dissent will be protected, and that those who interfere with that right will be held accountable.

III. CCNY has a legal obligation to protect students from harassment and discrimination

Muslim, Arab, and South Asian SJP members experienced racially, ethnically and religiously charged attacks during and after the Dayan event. CCNY is required under its own policies⁹ and under Title VI of the Civil Rights Act of 1964 to protect students from harassment, intimidation, and discrimination based on their race, color, national origin, and religion.¹⁰

Here, Dayan accused Arab and South Asian students, and those he perceived to be Muslim, of terrorism. Further, after the event, a member of SSI referred to a group of Muslim, Arab, and South Asian SJP members as “animals” and nearly punched two of them, making them fear for their physical safety. Several members of SJP have since expressed that they do not feel safe on their college campus, a sentiment that will interfere with their ability to access educational opportunities.

The evidence suggests that CCNY has taken no steps to protect Muslim, Arab and South Asian SJP members from such discrimination. On the contrary, CCNY has compounded the harm by launching an investigation into whether the very students who faced discrimination at the May 11th event violated university rules for voicing dissenting views.

IV. Conclusion

We expect that you will take appropriate steps to ensure that members of SJP enjoy the right to speak out without fear of harassment and intimidation based on race, color, national origin, religion, or political viewpoint. The university should, at a minimum:

- 1) Ensure any investigation into the May 11th incident is independent and transparent. The investigation must focus on possible wrongdoing by members of SSI and Dayan, including the following:
 - Whether organizers of the May 11 event interfered with SJP members' right to ask questions during the Q&A session, including by allowing Mr. Dayan to call on people in a discriminatory manner;
 - Whether Mr. Dayan's statement equating SJP members' comments to terrorism and the SSI member's reference to SJP members as “animals” violated school policy; and

⁹ CUNY Manual of General Policy, Policy 6.02, Policy on Equal Opportunity and Non-Discrimination, http://policy.cuny.edu/manual_of_general_policy/article_vi/policy_6.02/text/#Navigation_Location.

¹⁰ As you know, Title VI prohibits discrimination on the basis of religion when the actions are based on a group's actual or perceived shared ancestry or ethnic characteristics.

- Whether a member of SSI physically attacked one member of SJP and attempted to attack additional members of SJP, in violation of school policies, and why the university failed to adequately address this behavior and offer protection for members of SJP who faced assault and/or attempted assault.
- 2) Publicly affirm the right of all students, and members of SJP in particular, to advocate for Palestinian rights.

I will follow up with your office to discuss concerns raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rahul Saksena', with a long horizontal flourish extending to the right.

Rahul Saksena
Staff Attorney, Palestine Legal