



August 12, 2013

Dennis J. Crudele
Interim President
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431
E-mail: president@fau.edu
Via electronic mail

Re: Conditions Placed on Students for Protesting Event

Dear President Crudele:

The South Florida Chapter of the National Lawyers Guild and the Center for Constitutional Rights write to express concern regarding the disciplinary actions taken against five FAU students for activities protected by the First Amendment, arising out of a peaceful protest on campus. All of these students, two of whom already graduated, have signed agreements with the University to resolve their cases. Our concern is rooted in the questionable application of campus rules to these students' actions, in the apparently biased manner in which these disciplinary proceedings were undertaken, and in the unwarranted severity of the agreements' conditions. The University's actions in this matter establish a chilling precedent for student campus speech on controversial issues, especially concerning Palestinian rights.

The disciplinary charges that were brought against the five students relate to an incident on April 19, 2013, at an Owls for Israel campus event. Our understanding of the facts of the incident at issue is as follows: These students, along with others, attended an Owls for Israel event where Col. Bentzi Gruber of the Israeli army was the featured speaker. During a pause a few minutes into the presentation, one student stood up and read three facts concerning war crimes from a fact sheet. This very brief commentary was overlaid by epithets and ethnic slurs against her from non-student members of the audience. Some students silently stood up and walked out of the event at this time. Two students silently held up a banner with the words "War Criminal," and they left the event as well. The duration of the entire incident was no more than one or two minutes. The event continued, lasting approximately another hour and a half, according to the police report filed after campus security was called in to escort the students out.

Subsequently, five of the students that participated in the protest were informed that they were being investigated for their conduct, and investigation conferences took place with the students at the end of April and beginning of May. The students then each received a Notice of Charges, and attended Student Conduct Conferences on June 4, 2013. The charges included: violations of the student conduct code, disruptive conduct, interfering with the free speech and academic freedom of others, and providing false information to school officials. While none of the students have accepted responsibility for these charges and remain convinced that their protest should have been protected free speech, all of them signed agreements imposing

sanctions to avoid potentially worse sanctions and a protracted legal battle with the University, and to enable them to focus on their education. The draconian conditions imposed on some of the students include probationary status, which threatens suspension or expulsion if they violate any school policies, and exclusion from leadership roles in formally recognized student campus organizations. Both sanctions apply for the remainder of their undergraduate studies at the University.

Political speech is at the core of the First Amendment. While all universities are marketplaces of ideas and have a pedagogical obligation to foster freedom of speech on campus, Florida Atlantic University, as a public university, has a legal obligation to comply with the requirements of the First Amendment and other constitutional principles. This means that FAU policies restricting protected First Amendment speech must be content and viewpoint neutral, and must be reasonable time, place, and manner regulations that are narrowly tailored to achieve the University's significant interests.

There are several problems with the policies the University claimed were violated in this case. First, the University's Designated Public Forum Policy, Policy 4.2.2 (on which the disruptive conduct and interference with free speech charges rely) appears to be content and viewpoint-neutral on its face, seeking to ensure that "exercises of free speech and assembly on University grounds" do not "interfere with or infringe on the rights of others." The vagueness and overbreadth of this and related policies, however, make their constitutionality suspect. Disruption and interference are not sufficiently defined, and their meaning is thus not evident to a reasonable student. It is therefore left to the discretion of the University to define those terms as is convenient in a given case, something which courts have recognized often leads to discriminatory and arbitrary enforcement of rules.

Second, FAU is bound by courts' First Amendment analysis of these issues. Courts have addressed the standard for university restrictions on disruptive conduct. It is clear that a campus demonstration, even if it has a disruptive effect, is protected by the First Amendment unless a court finds that the demonstration constituted a "material and substantial interference with the requirement of appropriate discipline in the operation of an educational institution." *Shamloo v. Mississippi State Board of Trustees of Institutions of Higher Learning*, 620 F.2d 516, 522 (5th Cir. 1980).¹

In this situation, the brief commentary by one student, the silent holding of a banner by another two students, and the subsequent symbolic silent walkout by others do not constitute a "material and substantial disruption" by any standard, and are protected speech activities under the First Amendment. They are also consistent with the notion of the university as a marketplace of ideas. If students cannot protest a wrong that they feel passionately about in a university setting, within the bounds of the First Amendment, "free speech" has lost its meaning. FAU's regulations must reflect the constitutional protections that courts have mandated, and their enforcement should not infringe on the rights of the students.

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit, the Federal appellate court whose decisions are binding in Florida, adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

Third, the conditions that the University is placing on the students are overly severe and disproportionate to the alleged offense committed. FAU's discipline in this instance may not be more punitive than for other alleged misconduct *because* the action was political in nature. Nor may the University apply its rules in an arbitrary manner, or in a way that discriminates against some points of view, but not others. Multiple incidents have occurred during the past two academic years indicating that the University has been biased in its application of its policies. Some such incidents are described in a letter from NLG South Florida and CCR affiliated attorneys on May 7, 2013, to former President Saunders, attached hereto.

To prohibit students from holding leadership roles in student groups simply because they engaged in a short peaceful protest of a controversial speaker is also antithetical to the University's mission to educate students, and erases any pedagogical value the disciplinary process might seek. The ability to play leadership roles in student organizations is an important part of a University education that prepares future national and world leaders. To take that away limits students' ability to benefit fully from their university experience.

Finally, the University's disciplinary actions must be considered against the backdrop of nationwide campaigns by organizations that attempt to silence college campus activism critical of Israeli policies and supportive of Palestinian rights. It is apparent that FAU is under significant pressure from such a campaign, which has explicitly asked that students active with Students for Justice in Palestine (SJP), including at least one of the students involved here, be punished for their speech activities.² Indeed, this disciplinary action against these students has the appearance of being motivated by FAU's evident desire to respond to outside pressures. This is not an acceptable motivation to impose disciplinary measures, and it heightens the appearance that the University acted in an arbitrary, discriminatory and capricious manner, based on the students' political views.

Rather than bowing to the pressure by disciplining students' constitutionally protected speech activities, the University should be protecting the rights of students expressing these viewpoints on campus. Over the last couple years, we understand that students involved with SJP have received death threats, have been publicly and unfairly maligned for their views, and have been threatened with legal and disciplinary actions. Many have expressed fear and anxiety about engaging in speech on an issue they feel deeply about because of these overwhelming pressures on them. This disciplinary action has added significantly to that anxiety, as the students have spent months dealing with the process.

Moreover, the University's imposition of these conditions on their involvement in campus life is inexcusably compounding the chilling effect on one side of the debate about Israel and Palestine on campus. The University's actions inevitably will put these students under extra

² See the following article in the South Florida Sun-Sentinel: http://articles.sun-sentinel.com/2013-06-10/news/fl-fau-diversity-website-20130610_1_semitism-anti-semitism-president-mary-jane-saunders.

YouTube videos referenced in the article include the following:

<http://www.youtube.com/watch?v=OR2ob0ewHq4>

<http://www.youtube.com/watch?v=VkFsXA9MZdE>

scrutiny for their speech activities, and scare them and others into relative silence because of their political message, and because of the opposition to it from outside organizations.

In light of the foregoing considerations, we strongly urge you to acknowledge publicly that there has been no determination of responsibility against the five students, that the University recognizes that political speech advocating for Palestinian rights is not anti-Semitic, and that students have a constitutional right to engage in speech activities protected by the First Amendment.

We will continue to closely monitor the situation to ensure that FAU does not continue to unfairly scrutinize and punish these students and other FAU campus activists for their outspoken views on an important human rights issue.

Please do not hesitate to contact Dante Trevisani, dante.trevisani@gmail.com, to further discuss this matter.

Sincerely,



Dante Trevisani, President, South Florida Chapter of the National Lawyers Guild



Baher Azmy, Legal Director, Center for Constitutional Rights



Abed A. Ayoub, Director of Policy and Legal Affairs, American-Arab Anti-Discrimination Committee (ADC)

Enclosure: Letter from Mara Shlackman and Liz Jackson re: April 19, 2013 Incident at “Owls for Israel” Event

cc: Joanna Ellwood, Assistant Dean of Students (jellwood@fau.edu)
Audra K. Lazarus, Associate General Counsel (audra.lazarus@fau.edu)
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May 7, 2013

Mary Jane Saunders
President
Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431

Re: April 19, 2013 Incident at "Owls for Israel" Event

Dear President Saunders:

The South Florida Chapter of the National Lawyers Guild, in consultation with Liz Jackson, Cooperating Counsel, Center for Constitutional Rights, writes on behalf of Noor Fawzy, Rebeca Sosa, and Renata Glebocki, to express concern over the University's investigation of these three students for Student Code of Conduct violations for activities within the ambit of the First Amendment, and for the apparently disparate treatment accorded to pro-Israel and pro-Palestinian activities on campus. The University conducted investigation conferences on April 29, 2013, and the investigation's conclusions are pending. We would like to raise a few important issues for your consideration as you conclude this investigation.

The following is our understanding of the facts of the incident at issue. On April 19, 2013, these three students attended an "Owls for Israel" event where Col. Bentzi Gruber of the Israeli Defense Forces was the featured speaker. During a break in the presentation, Ms. Fawzy stood up at her seat and read three facts concerning war crimes from a fact sheet. This very brief commentary was interrupted by epithets and ethnic slurs from elderly, non-student members of the audience. Rather than protecting Ms. Fawzy from these threatening outbursts, campus police asked Ms. Fawzy to leave, which she did. Ms. Sosa and Ms. Glebocki silently stood up and walked out of the event as well, and some other students did the same. Other students present held up a banner with the words, "War Criminal," and they left the event as well.

While the University's Designated Public Forum Policy, Policy 4.2.2, appears to be a content and viewpoint-neutral policy on its face that seeks to ensure that "exercises of free speech and assembly on University grounds" must not "interfere with or infringe on the rights of others," the University may not apply its rules in a manner that discriminates against some points of view, but not others. Multiple incidents have occurred during the past academic year indicating that the

University has not been even-handed in its application of its policies. Hillel-affiliated students and staff disrupted an outdoor vigil - a memorial to children killed in Gaza during Operation Cast Lead - in the designated Free Speech lawn of the Boca Raton campus on February 7, 2013. The student union director, Larry Faerman, and campus police were present, and did nothing to stop the disruption. Similarly, at another event during Gaza Awareness Week, on February 6, 2013, a Free Gaza Movement lecture took place inside a meeting room at the Student Union, and Tom Trento, a local radio talk show host, attempted to gain entry to film the event. While Cpl. Littleton of the FAU Police prevented Trento's entry into the room where the event was taking place, an extended dialogue between Trento and Littleton took place adjacent to the entrance to the meeting room, and could be heard by those inside. Trento was never asked to leave the building. This interaction was captured in a YouTube video posted by Trento:

<http://www.youtube.com/watch?v=Z-uz-7e3mDc&feature=youtu.be>

Two additional incidents are noteworthy as to the University's handling of infringement by other students on the freedom of expression of students expressing a pro-Palestinian point of view. On January 31, 2013, Ms. Fawzy observed a member of the Alpha Epsilon Pi fraternity, Alex Grynsztein, remove approved flyers for Gaza Awareness Week events that were posted on the Breezeway. This incident was reported to Katie Burke, Assistant Director of Leadership, Education, and Development, and Ms. Burke never followed up with Ms. Fawzy regarding this incident. Another incident occurred on September 12, 2012, during Club Fest, a campus event during which numerous campus organizations set up tables to inform students about their organizations and recruit members. The president of Owls for Israel, Noah Tenenbaum, placed himself at the table of Students for Justice in Palestine, while SJP members were temporarily away from the table, and was handing out literature for his own organization and criticizing the literature of SJP. This incident was observed by Tahiatul Zannat, FAU's Director of Multicultural Programming, who advised Ms. Fawzy of it. Ms. Burke did not witness this incident, but was present at Club Fest, and after being informed of the incident, she verbally admonished other members of Owls for Israel, who were sitting at OFI's table, not to engage in such actions (Mr. Tenenbaum was no longer present at the time Ms. Burke was informed of the incident). However, Ms. Burke failed to respond to a follow-up e-mail from Ms. Fawzy seeking further investigation of the incident.

Political speech is at the core of the First Amendment. While all universities are marketplaces of ideas and have an ethical obligation to foster freedom of speech on campus, Florida Atlantic University, as a public university, has a legal obligation to comply with the requirements of the First Amendment and other constitutional requirements. The brief commentary by Ms. Fawzy and the subsequent symbolic silent walkout by her fellow students are consistent with the notion of the university as a marketplace of ideas, and do not rise to the level of a disruption. A pending investigation such as is taking place can have a chilling effect on one side of the debate about Israel and Palestine on campus.

This investigation must be considered against the backdrop of campaigns by organizations, including the Anti-Defamation League among many others, that attempt to silence college campus activism critical of Israel and supportive of Palestinian rights. In light of such campaigns, universities have a heightened duty to protect the rights of students expressing these viewpoints on campus. Moreover, since some of the students expressing these viewpoints are of Arab or Muslim

backgrounds, a university's failure to protect their freedom of speech can give rise to a climate of fear among students with these backgrounds. Moreover, the failure to protect freedom of speech can constitute a failure to uphold the University's legal obligation to prevent discrimination against students based on race, ethnicity, or national origin, including religious groups when such discrimination is based on their actual or perceived shared ethnic characteristics.

In light of the foregoing considerations, we request that you promptly conclude your investigation without imposing discipline on the students. We will continue to monitor the situation to ensure that FAU meets its obligations to protect First Amendment rights and protect students against unlawful discrimination.

Please do not hesitate to contact the undersigned to further discuss this matter

Sincerely,



Mara Shlackman

Vice President, South Florida Chapter of the National Lawyers Guild

Liz Jackson

Cooperating Counsel, Center for Constitutional Rights

cc: Joanna Ellwood, Assistant Dean of Students (jellwood@fau.edu)
Audra K. Lazarus, Associate General Counsel (audra.lazarus@fau.edu)
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