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We, the undersigned faculty, call for the immediate cessation of all proceedings against the students involved in protest actions that are currently underway by the OSC. Such proceedings should be suspended until and unless the serious procedural issues that currently mar these proceedings can be fully addressed and rectified. Because it is clear that no fair evaluation can be conducted under these circumstances, we call for the immediate halt to all disciplinary proceedings against student protestors following from the events on December 11th and November 20th of this academic year.

It has become abundantly clear in the last weeks that these proceedings are not only seriously flawed, but that no just outcome can emerge from these procedures in their current form. The problems as we see them pertain to two separate but interlocking issues: the version of the code of student conduct that is currently used and the specific applications of that code in these specific cases. These flawed applications arise from inadequacies in the code itself and from flagrant instances of bad judgment on the part of those conducting the inquiries.

These egregious applications of the code have raised serious questions whether those charged with directing a fair disciplinary review have overreached their mandate and contravened both legal and educational standards to which we, as a community, are bound. The rights to political protest, guaranteed by the University's commitment to free speech and rights of assembly are paramount in this context and must provide the framework within which charges against any of these students are assessed. We note with grave concern the lack of a sufficient effort to balance these concerns with the alleged offenses as well as the failure to develop and apply appropriate measures for assessing these charges.

Our concerns below this pertain both to clear procedural flaws in the existing code and to unjust applications in these cases:

- 1.) **Failure to Afford Due Process:** The first and most glaring procedural flaw is that UC rules regarding student conduct do not afford due process rights that comply with established legal standards. We note that (a) various courts have held that procedural protections are required in the context of administrative disciplinary proceedings and that those decisions have relevance in these cases and (b) where such disciplinary proceedings lead to the conclusion that criminal charges are warranted, or where students suffer other material deprivations, such as suspension, expulsion, or the withholding of the diploma, students clearly ought to be entitled to legal counsel who could review the evidence and present counter-argument where necessary. The Campus Rights Project, the ACLU of Northern California, and many of our own faculty and advisors in law have expressed concern about this legal failing.
- 2.) **Impositions of Sanctions without Adjudication:** We see clear evidence of unjust applications of this flawed policy. In the case of two students, Angela Miller and Zachary Bowin, sanctions were imposed *prior to* the convening of any formal disciplinary review, and thus to any determination of culpability. In such cases, due process procedures were fully abandoned with unjust consequences. Although the OSC has

described these measures as interim restraints, they are, in fact, the equivalent of non-adjudicated punishment.

- 3.) **No Specification of the Evidence Necessary to Ground Charges:** A second procedural flaw, clearly the result of the failure to afford due process protection, is highlighted by the clear miscarriage of justice committed in these two cases: for example, the code does not adequately specify the kinds of evidence and the means of cross-examination on the basis of which any charge may be articulated or adjudicated. Nor does it allow for an advisor to have a meaningful role at the time of hearing. As a result, allegations that certain students are a “threat” to campus life or have engaged in “physical abuse” seriously impugn the reputation of students, and this is especially alarming that the students were given no evidence at the time to support the allegation, and given no opportunity to present counter-evidence or to consult legal experts. Indeed, at no time has a clear evidentiary basis been made available for the allegations against these students. As we all know, such allegations have long-term effects on the capacity of students to finish their education and to gain employment. As a result, such allegations should either be corroborated by standard processes of evidentiary review and disputation, or dropped altogether. As it stands, there is no basis in evidence for these charges, and the rights of students have been fully suspended or denied.

Indeed, no legally acceptable standard of evidence has been established in the OSC adjudication of these cases. The accusation and the punishment seem to come at the same time (recalling the worst scenarios from Kafka). We call upon the OSC to develop standards that would comply with existing legal standards demanding a preponderance of evidence as well as clear and convincing grounds for any further disciplinary actions. We deplore allegations that presume guilt by association, or which single out political viewpoints as grounds for sanctions (recalling the worst scenarios from McCarthyism).

- 4.) **Inadequate Protection of the Right to Protest:** No explanation of the Student Code of Conduct was made public and available to students in advance of the protest actions of November 20th or December 11th. On December 11th, the students were clearly protesting with the explicit understanding that they had the permission from the University to express their views publicly in a protest action. If and when that permission was rescinded, it should have been directly communicated to those participating in the protest actions. The failure to communicate policy and the retractable conditions of permission in this instance foregrounds the need for structured and stable lines of communication between administration and students on such matters. It also calls attention to the arbitrary power of the administration to grant rights of protest and to withdraw them when these rights should be more securely and consistently protected by the clearly communicated policies of the university. Indeed, the tradition of civil disobedience belongs squarely to both traditions of academic freedom and freedom of speech. Since students had reason to assume that they were operating under an administrative ratification of those very rights, they had no intention to trespass, but understood themselves as exercising rights of protest fundamental to free speech at the university.
- 5.) **Failure by OSC to Follow its Own Procedures:** We call attention to the fact that the OSC neither honors its own timelines nor holds itself accountable to its own procedures, which implies that certain rogue judgments, preemptive punishments, and “rehabilitative” methods are being pursued without any warrant in university code or existing law. We deplore the practice of preemptive punishment that works through a sham “educational” model, as is evident in the recent settlement offers that couple suspension with an “essay assignment” that requires students to perform a political self-criticism, indeed, to take a prescribed political point of view, such as the appropriate limits of the freedoms guaranteed to journalists (as was done to Josh Wolf, the journalist who covered the Wheeler Hall events from within the building and with the explicit

approval of his dean). This disciplinary action not only makes use of a fully discredited educational model (one that is better described as “inculcation” and does not even reserve that respect for diverse viewpoints that defines the fundament of liberal education) that we, as educators, find fully deplorable and would never accept as part of any educational institution worth the name. As a result, any finding on the basis of such a flawed conduct should be invalidated, and would be invalidated in the course of any legal review. We ask that the administration cease these practices immediately.

Hence, because the disciplinary procedures have proven to be pervasively flawed for all the reasons cited above, we call for the suspension of all charges against the student protesting on December 11th as well as those protesting on November 20th. In addition, we ask that the Student Code of Conduct be revised with the participation of educators and legal advisors to bring the code into conformity with legal standards of due process for students, and establish clear and legitimate evidentiary bases for any allegations. These rights are severely compromised by the procedural flaws and evidence of overreach and misconduct on the part of those conducting the reviews. We maintain that the current disciplinary procedures are so badly flawed that they should be abandoned at this time. Because no sanctions should be imposed until a review has been successfully concluded on the basis of a just application of legally sound policy, and we have neither a sound policy nor a just application at this time, we call for the cessation of all disciplinary proceedings. Of utmost importance to any such policy revision will be the commitment of the university to rights of free speech, which include rights to peaceful protest. If these rights are arbitrarily suspended or abandoned without reflection or if they are restricted without clear justification and communication, we will have dishonored the tradition of free and open expression that has distinguished this campus for decades. Let us not accept a situation where arbitrary power makes a mockery of those fundamental and enduring rights that we are surely bound to honor and protect.

Original Faculty Signatories:

Judith Butler, *Maxine Elliot Professor of Rhetoric and Comparative Literature*

Shannon Jackson, *Professor, Theater, Dance and Performance Studies, and Rhetoric*

Saba Mahmood, *Associate Professor, Anthropology*

Alice Merner Agogino, *Roscoe and Elizabeth Hughes Professor of Mechanical Engineering*

Daniel Perlstein, *Associate Professor, Education*

Katherine Sherwood, *Professor, Art Practice and Disability Studies*

Gillian Hart, *Professor, Geography*

Richard B. Norgaard, *Professor, Energy and Resources*

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Ananya Roy, *Professor, City and Regional Planning*

Greg Levine, *Associate Professor, History of Art*

Peter Glazer, *Associate Professor, Theater, Dance and Performance Studies*

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Faculty Signatories:

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