
The Threat to Freedom of Speech about Israel: Campus Shout-Downs and the Spirit of the First Amendment

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INTRODUCTION

On February 8, 2010 Michael Oren, Israel's ambassador to the United States, began speaking to a packed hall at UC Irvine. Moments into his remarks, Oren was loudly interrupted by a group of students that spent the remainder of his talk hurling crude and unsubstantiated accusations at him. The disrupters delayed Oren's speech by nearly an hour, significantly foreshortened his remarks, and almost prevented the audience from hearing him at all. Faculty pleas for restraint were ignored. Both the university and the state of California responded vigorously. University administrators suspended individual student disruptors and the organization to which they belonged while the local District Attorney charged, and successfully convicted, the hecklers for interfering with a public meeting. Both the activists' behavior and the response of the authorities have drawn severe criticism from observers, and all sides present themselves as the genuine defenders of free speech and First Amendment principles.

The tactics used by the UC Irvine disrupters represent a paradigmatic example of what has come to be known as the *shout-down*.¹ Shout-downs differ from traditional heckling in that they are neither spontaneous nor an attempt to interact with a speaker. Instead, those engaged in a shout-down deliberately attempt to silence a speaker by speaking over him and preventing an audience from hearing clearly. The event at Irvine was an example of a particularly disruptive "Chicago-style" shout-down, where the disruptors stagger their disruptions to maximize the interference. Similar disruptions have even been used in Congressional committee meetings, as in a recent attempt to silence CIA Director John Brennan during his confirmation hearings.² The number of shout-downs has risen dramatically

over the last decade, and often, universities and other authorities are reluctant to intervene.

The incident at UC Irvine, and the increasing frequency and effectiveness with which protestors attempt to silence invited speakers by shouting over them, requires serious analysis. Similarly, the protestors' insistence that they are merely exercising their own First Amendment rights raises important questions in a country where free speech is both a legal right and a fundamental public value. How are we to balance the interests of an invited speaker and an attentive audience against those of hecklers? Is there a right—either moral or legal—to shout over another speaker? Might we distinguish between different forms of heckling, some which advance the cause of free speech and others that do not? What is the true purpose of the First Amendment and what can its history of interpretation and application on college campuses teach us about shout-downs? Can we identify any features in the recent spike in campus shout-downs that shed light on how we should relate to these incidents?

Section I of this article will analyze the phenomenon of the shout-down in general, and the case of Ambassador Oren at Irvine in particular. It will be argued that the legal case against the Irvine hecklers was justified and that their defense was spurious. Those engaged in shout-downs do not do not enjoy protection under the First Amendment because their actions directly infringe on the interests and rights of others. Furthermore, the Supreme Court's First Amendment jurisprudence emphasizes the importance of an intellectual free market on college campuses, and so the spirit and reasoning of the Court's decisions actually support prosecutions and university sanctions that seek to deter shout-downs. A disturbing trend in recent campus shout-downs, demonstrating that they have been overwhelmingly used against Jewish and Israeli speakers, will be noted. The consistent use of shout-downs to effectively silence one-half of a complex and important public policy debate makes action against shout-downs all the more critical. The rhetoric used by those engaged in shout-downs is often not only inflammatory but overtly anti-Semitic. Such language demonstrates that the current wave of shout-downs is not simply a threat to free discourse but something far more sinister. Substantive sanctions aimed at deterring such shout-downs are thus not only legally justified, but constitute a moral imperative.

Section II of this article presents a brief history of the campus shout-down. Section III provides an overview of the disturbances that occurred during Michael Oren's lecture at UC Irvine. Aiming for deeper insight into the case, Section IV details the legal proceedings instituted against the so-called "Irvine 11" in the Orange County Superior Court, and analyzes the arguments proffered both by the Irvine 11's defense team and by the prosecution. Section V reviews the legality of the prosecution in light of free speech protections, determining that disrupters are not protected by the First Amendment. Section VI discusses the major U.S.

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Supreme Court rulings on Academic Freedom, concluding that open discourse on college campuses is a substantive value that local authorities should work to ensure. Section VII discusses whether the prosecution was justified and concludes that shout-downs constitute a threat to First Amendment values, and that the prosecution of their perpetrators is both legal and deeply ethical.³ Section VIII presents an overall conclusion.

BACKGROUND: A BRIEF HISTORY OF CAMPUS SHOUT-DOWNS

Shout-downs of various kinds have been a feature of American college life for years. In March 1968, Lewis Hershey, Director of the U.S. Selective Service, was prevented from speaking at Howard University when students stormed the stage on which he was speaking.⁴ In April 1974, a concerted effort by over 150 screaming and stomping students prevented Stanford Professor William Shockley from participating in a debate at Yale on the genetic component of intelligence.⁵ And in October of 1983, Defense Secretary Caspar Weinberger barely managed to complete a speech in Harvard's Sanders Theater over constant interruptions of students.⁶

In the mid-1970s and early 1980s, universities began formulating official policies to deal with shout-downs similar to the above-mentioned. In 1975, a special committee of the Yale faculty presented the Woodward Report,⁷ "one of the strongest statements on free expression" in the history of education.⁸ The Report explained that there was no "right to protest within a university building in such a way that any university activity is disrupted," and that "all members of the audience are under an obligation to comply with a general standard of civility... any registration of dissent that materially interferes with the speaker's right to proceed is a punishable offense." These requirements would hold true regardless of the content of an invited speaker's remarks, no matter how offensive.⁹ In 1984, Harvard's President Derek Bok published a similar statement as *Reflections on Free Speech: An Open Letter to the Harvard Community*. In the letter, Bok explained that

those who protest at a speech are often communicating a message. Such communication is entitled to protection but only insofar as it does not infringe unjustifiably on the rights of others. That point arises when heckling and protests interfere with the speaker's ability to communicate and the rights of other members of the audience to listen.¹⁰

Together, the Woodward Report and President Bok's Open Letter represent the response of two of the country's leading universities to shout-downs in the

aftermath of a particularly contentious period on American college campuses. Their consensus clearly defines when free expression becomes coercive disruption and advocates for the use of sanctions in protecting open discourse.

Recently, however, there has been a sharp rise in the number of these incidents, and especially the particularly damaging “Chicago-style” disturbances (see Appendix). The term “Chicago-style Disruption” was coined by protestors seeking to replicate the success of disrupters at the University of Chicago¹¹ who succeeded in quintupling the amount of time it took for former Israeli Prime Minister Ehud Olmert to complete his speech.¹² In a “Chicago-style” disturbance multiple protestors organize before an event to shout confrontational accusations at periodic intervals.¹³ Such serial disturbances represent a sophisticated response to security measures taken to protect speakers. Recognizing that police or security usually remove an individual attempting a shout-down after only a brief interruption, organizations and groups that wish to mount effective shout-downs and silence speakers evolved to incorporate “Chicago-style” tactics. After one heckler is removed, the speaker is allowed no more than a minute before he (herein to be understood as “he” or “she”) is interrupted again. By staggering the interruptions and subsequent removals, the planners of the shout-downs achieve maximum interference by stifling the speaker and preventing members of the audience from grasping the substance of his message. This was precisely the tactic used by disrupters as they sought to break up Ambassador Oren’s lecture at UC Irvine, and its continued use poses a dangerous threat to the marketplace of ideas on American campuses.

A BRIEF DESCRIPTION OF THE DISTURBANCES

Ambassador Michael Oren’s 2010 visit to the University of California at the invitation of the University’s law and political science departments seemed straightforward.¹⁴ An award-winning historian of the Mideast who had held positions at Harvard, Yale and Georgetown before he received his diplomatic appointment,¹⁵ Oren was set to speak to a packed auditorium about US-Israel relations. But soon after Oren began his lecture, a member of the local Muslim Student Union (MSU) brought the event to an abrupt halt by standing up and shouting, “Michael Oren, propagating murder is not an expression of free speech!”¹⁶ This interruption was merely the beginning. Altogether, eleven protestors rose, one after another, at regular intervals, causing constant breaks in Oren’s presentation as each disrupter was removed individually from the Student Center by campus policemen.¹⁷

Oren maintained his composure despite repeated interruptions and loudly shouted accusations. These accusations included shouts of “war criminal” and

“accomplice to genocide”¹⁸ that drowned out Oren’s own remarks, and each accusation was followed by sustained applause from surrounding students seeking to maximize the disruption while the police slowly removed the shouting disrupter. The University police had been warned of possible disturbances during Oren’s speech but were not expecting such a coordinated and incessant disruption.¹⁹ After continuous interruptions and multiple appeals for civility from the university faculty members who organized the event, Oren shortened his speech considerably and, due to the significant delay, was unable to stay for the planned questions and answers session. During the first thirty-five minutes of his scheduled speech, Ambassador Oren only managed to speak for two minutes and twenty-one seconds.²⁰ The intensity of the disruption, which was captured in a video recording by one UCI student, can be viewed on the Internet via YouTube.²¹

After their removal by campus police, the eleven main disrupters were arrested and cited for disturbing a public event. Both the University and the local District Attorney announced that they would pursue sanctions, the former by means of suspensions and the latter through criminal charges. In the ensuing media firestorm, the eleven disrupters became known in much of the media as the “Irvine 11.” As soon became clear, all of the Irvine 11 were members of the MSU; eight were students at UCI and the other three were enrolled at the nearby University of California, Riverside.²² The organizational aspect of the disruption affected both investigations, resulting in formal university action against the MSU and additional conspiracy charges against the disruptors.

As was shown in the course of legal proceedings, the attempt to shout down Oren was anything but spontaneous. Many students read prepared statements from index cards that had been given to them in advance. Conclusive evidence of the coordinated nature of the incident surfaced in the e-mail correspondence between MSU members.²³ In the weeks before the speech, MSU President Mohamed Abdelgany sent e-mail messages to MSU members announcing, “We will be staging a University of Chicago-style disruption of the Ambassador’s speech”²⁴ and emphasizing that this was a “planned, calculated response.”²⁵ Wary of punishment, Abdelgany also insisted that the MSU’s protest must appear to reflect the opinions of individuals, not an organization.²⁶

Despite the MSU’s later attempt to present its members’ disruptions as the spontaneous acts of outraged individuals, the incident was clearly the result of a coordinated and premeditated attempt to prevent and disrupt Oren’s talk. Not only did individual MSU students interrupt in coordinated fashion, but each interruption was followed with minutes of raucous applause and jeering from MSU students sitting in groups in the crowd (also a consequence of meticulous MSU planning).²⁷

After the conclusion of their investigations, the UCI administration suspended the MSU for an academic quarter and placed the organization on probation for two

years.²⁸ The Irvine 11 members were also each charged with two misdemeanors. The first, a violation of California Penal Code section 403 which states that

Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, other than an assembly or meeting referred to in Section 302 of the Penal Code or Section 18340 of the Elections Code, is guilty of a misdemeanor.²⁹

On this count, the charge sheet stated that the defendants “did willingly and unlawfully substantially impair the conduct of a public meeting by intentionally committing acts in violation of explicit rules and implicit customs and usages for the governance of the meeting.” The second counts were instituted pursuant to California Penal Code Section 182 which proscribes acting in a conspiracy to commit a crime.³⁰ These charges were based on extensive documentary evidence that the protest was planned and premeditated by a group of students acting in concert.

LEGAL PROCEEDINGS: THE PROSECUTION

In seeking to prove that the Irvine 11 had engaged in a “willful disruption” punishable under California law, Orange County Deputy District Attorney Dan Wagner needed to establish three elements: 1) “that the defendant substantially impaired the conduct of the meeting,” 2) That the defendant did so by “intentionally committing acts in violation of implicit customs or usages or of explicit rules for governance of the meeting,” and 3) That the defendant “knew” or “should have known” about these rules.³¹

The presence of the first element, a “substantial impairment” of a meeting, seems relatively clear-cut. Prosecutors brought extensive testimony and footage from the event establishing that the audience was unable to hear Oren over the shouts of the Irvine 11. Furthermore, the significant delays and the curtailment of the event, which resulted in the cancellation of the question and answer period thereby preventing the audience from engaging with Oren directly, was brought as clear proof of “substantial impairment.”³²

In proving the second element (intentionality and violation of a meeting’s “implicit customs or explicit rules”), Wagner made clear that the standards of conduct for lectures differ widely from that of political rallies (where more substantial and continuous heckling might be customary) and that shout-downs are explicitly prohibited by University policy. Wagner also explained that the defendants ignored several specific warnings from senior UCI officials and administrators demanding that students cease their interruptions. Furthermore,

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Wagner referenced Assistant Dean of Students Edgar Dormitorio's explicit statement before the lecture that "the University would tolerate no disruptions of the event,"³³ arguing that the explicit rules for the conduct of the meeting were firmly set and well-publicized.

As the jury's verdict indicated, the evidence amassed by the prosecution easily established the three elements necessary for a conviction. Wagner and his team succeeded in proving decisively that the MSU students knowingly violated implicit customs and explicit rules set by UCI and event organizers regarding the ambassador's talk and other such lectures. As such, each defendant was found guilty of a misdemeanor pursuant to California Penal Code Section 403.

The prosecution brought further evidence of e-mail communication in which MSU students discussed and rejected a proposed silent protest and other less aggressive methods of protest.³⁴ Instead, the 11 students opted in favor of trying to prevent the Ambassador from speaking through a shout-down comprised of repeated interruptions. As these emails made explicit, the goal of the protests was to prevent Oren from speaking. The MSU's president wrote, "we will not allow a platform for him to spread his lies on our campus... and that Michael Oren and any other Israeli politician knows that we will not allow them to come here to our campuses."³⁵ The e-mail exchange also revealed that the MSU members took steps to cover up their organization's involvement in, and the pre-planned nature of, the disruptions.³⁶ In seeking to do so, there is a clear implication that the students knew their activity was counter to well-established customs and explicitly prohibited by the University. Most importantly, this correspondence was presented to establish the "conspiracy" necessary to prosecute the defendants under California Penal Code Section 182.

THE DEFENSE

The Irvine 11 were represented by six lawyers: Dan Stormer, Dan Mayfield, Reem Salahi, Jacqueline Goodman, Lisa Holder, and Tarek Shawky. While this created confusion as to who represented whom and which strategy each defendant was pursuing, the defense's global strategy was to argue that the MSU students' protest followed the norms of other college protests and that they were being targeted "selectively"³⁷ and "unfairly singled out"³⁸ in an attempt to chill criticism of Israel by Muslim American students.³⁹ In fact, argued the defense attorneys, the behavior of the Irvine 11 was not substantially different from other protests that commonly take place on campuses and were thus not in violation of the meeting's rules and customs.

In response to the criminal charges, the defense attorneys also argued that the disruption caused by the students was less extreme than prosecutors alleged. They

dispute the precise number of minutes for which the disrupters spoke and argued that they should only be held accountable for the period of time during which they shouted—and not for the applause and extended break that followed each interruption.⁴⁰ In doing so, they sought to establish that the disruption was not, in fact, “substantial.”

But beyond the disagreement of fact, the defense also argued that the prosecution’s interpretation and application of “explicit rules or implicit customs” did not conform to statutory or constitutional requirements. According to the defense, the standard of rules and customs to be applied should be “objective.”⁴¹ By this, the defense meant that the conduct of the disrupters should be evaluated in the context of other political demonstrations, as opposed to being subjected to the UCI’s specific rules and customs regarding a particular lecture or public meeting. Indeed, if Ambassador Oren’s lecture were to have been considered like a public political rally where a speaker speaks on a megaphone before tens of thousands of spectators, then the disrupters’ loud shouts would likely have been seen as within a forum’s “explicit rules and implicit customs.”

In other words, the defense attorneys argued that a university’s explicitly and repeatedly expressed rules for a lecture by a diplomat could not themselves constitute the standard for what sort of conduct constituted a prosecutable disruption. Instead, such standards must be understood in light of the expectations for conduct at all campus “political protests.” As the lecture was a public meeting with a political figure,⁴² the defense argued that the organized disruptions were in keeping with customs for on-campus political demonstrations and did not therefore exceed First Amendment protection in “substantially impairing the conduct of the public meeting.” As such, the loud interruptions at the university forum were merely a way of expressing disagreement and should thus not be understood as a legally punishable disruption.

In response to the second charge of the prosecution, that of conspiracy, the defense made every effort both to conceal the correspondence between the MSU members and to minimize its relevance. In the immediate aftermath of the disruption, the defendants and other members of the MSU received a message from the MSU leadership urging them not to share MSU emails or correspondence relating to preparations for the Oren event.⁴³ And over the course of the legal proceedings, the defendants sought unsuccessfully to keep the MSU’s correspondence out of court on procedural grounds.⁴⁴

However, in the face of the prosecution’s substantial documentary evidence of the defendants’ planning,⁴⁵ the defendants’ case against the conspiracy charges became largely dependent on their defense against disruption charges. Because the students were merely exercising their “First Amendment right to demonstrate in a peaceful and lawful manner,”⁴⁶ the MSU maintained that any correspondence between them was not aimed at committing an unlawful act. Indeed if the

disruptions themselves did not violate the law then the defendants' claim that, "at no point does any of the testimony or preparatory e-mails present or contemplate a plan to violate the law"⁴⁷ would be accurate. If the defendants' actions did not constitute an illegal disruption of a public meeting, then their preparations for those actions did not constitute a conspiracy to commit a crime.

Additionally, both in and out of court, the defense waged a public campaign to label the prosecution as biased and bigoted. The defense filed frivolous motions attempting to force the DA's recusal and accusing prosecutors of conflict of interests and anti-Muslim bias. In doing so, the defense argued that the language used in internal memos reflected animus and that the DA's decision to file criminal charges itself constituted a "bad faith use of litigation tactics."⁴⁸ Although the presiding judge found no evidence of bias and no reason to remove the DA's office from the case,⁴⁹ the motions had the effect of reinforcing the defendants' rhetorical strategy of presenting their prosecution as a politically and ethnically motivated witch-hunt.⁵⁰

Superficially, by arguing that the defendants' actions were no different from other college protestors, the defense team sought to establish that the Irvine 11 were not truly in violation of the meeting's rules and customs. But the defense team also prodded the sensitive subjects of race and religion in an attempt to elicit sympathy and win points in the court of public opinion. The defense's repeated reference to these hot-button issues clearly represented an attempt to divert attention from the defendants' liability and cow the prosecutors into dropping the charges.

THE VERDICT

Efforts to have the case thrown out as a racist prosecution of activity protected by freedom of speech failed. Ten out of the eleven defendants were found guilty of both disrupting a public meeting pursuant to California Penal Code Section 403 and conspiracy to commit a crime under California Penal Code Section 182. Each student was sentenced to three years' probation, fifty-six hours of community service, and \$270 USD in fines. In a deal, the charges against the eleventh defendant were dropped after he proved the completion of forty hours of community service.⁵¹ The convictions of the remaining ten are now under appeal in the California Superior Court in Orange County.⁵²

The MSU students' shout-down of Ambassador Oren and the trial court's decision raise serious questions about the First Amendment from both legal and moral perspectives, many of which will no doubt be addressed on appeal. Some, particularly the students' attorneys, argue that the prosecution was itself a constitutional violation of the defendants' free speech rights, and many more argue that the prosecution was extreme and unwise. However, in the following

two sections it will be argued that the sanctions against the Irvine 11 were not simply legally justifiable, but morally mandated.

ANALYZING THE VERDICT

In January 2013, the lawyers for the convicted defendants filed an appeal with the California Superior Court arguing that the statute under which they were convicted was “unconstitutionally vague.” According to their court brief, “a prospective protester reviewing the title and text of (Penal Code) Section 403, its legislative history, and cases construing it would obtain no useful guidance about the kinds of meetings covered by and exempted from the statute.”⁵³ In essence, the defense’s appeal amounts to a rehashing of the debate over whether the defendants’ shouting down an invited lecturer, despite the pleas of the senior university administration, constitutes a violation of “explicit rules or implicit customs,” and if so, whether the rules and customs are restrictive to the point where prosecuting their violators infringes on the First Amendment.

The next two sections will demonstrate that the prosecution of the Irvine 11 was a) clearly in compliance with University of California’s own regulations (and thus both subject to sanction by the university and prosecutable as a violation of “explicit rules”), and b) that prosecution of the Irvine 11 for disruption of a public event is well-grounded in precedent and serves as an appropriate example of compliance with First Amendment principles. The third section will assert a more controversial point: that the decision to prosecute the Irvine 11 was not only legal and constitutional, but also wise and justifiable. Given recent history and the state of college campus discourse, the decision to prosecute was a necessary defense of First Amendment principles and a strong stand in favor of intellectual diversity.

DID IRVINE 11 VIOLATE UNIVERSITY STANDARDS FOR FREEDOM OF EXPRESSION?

Recognizing that free expression at UCI (and any campus) requires a basic level of decorum so that students and faculty might teach and speak freely, the University developed a “Speech and Advocacy Policy” that calls for “tolerance, civility, and mutual respect for diversity of ethnicity, race, and religion.”⁵⁴ The same policy explicitly allows administration to set time, place, and manner rules for holding of assemblies, and further prohibits any conduct that interferes with the freedom of expression of others, explaining that even expressive activities “must not... interfere with the University’s obligation to protect rights of all to teach, study, conduct business, and fully exchange ideas.” The rules make good sense; without adherence

to these rules and the spirit that underlies them, campus discourse suffers. Speakers and assemblies can be shouted down—and shut down—by those opposed to the meeting’s speakers or message.

As the rules call for civility and prohibit interference, eleven disrupters shouting “mass murderer” and “accomplice to genocide”⁵⁵ at Ambassador Oren clearly violated both the spirit and letter of the University’s regulations. But the violation of the University’s regulations becomes all the more obvious when the specific circumstances of the MSU’s shout-down are taken into account. Prior to the event, senior university administrators approached leaders of the MSU and specifically warned them not to engage in their planned shout-down.⁵⁶ Later, at the event itself, UCI Professor Mark Petracca, one of the lecture’s organizers, opened the meeting by explaining that Ambassador Oren would take questions and answers and that he encouraged “spirited discussion” with the “highest expectation for civility and respect.” But after multiple interruptions, both Professor Petracca and University Chancellor David Drake expressed their embarrassment and repeatedly requested that the protestors obey the University’s rules allowing Oren to speak. Both emphasized that heckling to prevent speech was not a form of expression and that those who continued to do so would be punished for violation of the university’s policies.⁵⁷

The context of the disruptions makes clear that the Irvine 11 knowingly and deliberately flouted reasonable time and place requirements issued by senior university authorities, and in doing so violated the University’s regulations. University officials therefore seem fully justified in leveling sanctions against students who explicitly disobeyed regulations aimed at preserving free expression. Such actions even seem necessary if the University is to retain its deterrent power in preventing future such incidents and maintaining its ability to invite speakers with whom its students disagree strongly. As is reflected in the long history of American universities’ relationship with protest and speech, clear messages and forceful actions are necessary for the preservation of free expression.⁵⁸

As discussed at greater length above, the MSU students’ clear violations of the university’s regulations—and standards of behavior for a public lecture—had legal consequences as well. California’s Penal Code explicitly states, “Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character ... is guilty of a misdemeanor.” And in *In Re Kay*, criminal disturbances of lawful meetings were given more precise definition. Actions that through their form (rather than their content) “substantially impair the conduct of the meeting” through “intentionally” acting “in violation of implicit customs” or “explicit rules for governance of the meeting, of which he knew, or as a reasonable man should have known” are subject to criminal punishment. Given the university’s clear regulations and the specific nature of the warnings from senior university officials, the case for a deliberate violation of the lecture’s “explicit

rules and the implicit customs” seems unassailable. However, there are some voices that nevertheless question the constitutionality of the University’s regulations and California laws pursuant to which the protestors were prosecuted.

DO UNIVERSITY REGULATIONS AND CALIFORNIA PENAL CODE SECTION 403 INFRINGE ON FIRST AMENDMENT RIGHTS?

At a court hearing in May 2011, Dan Stormer, an attorney for one of the defendants, condemned the charges as an “absolute affront to the Constitution.”⁵⁹ Over the course of the trial, and in the court of public opinion, Stormer and the defendants’ supporters made this point repeatedly. In their narrative, the prosecution was vindictive and the California law as applied by the District Attorney was an infringement of the students’ First Amendment rights. After all, the students simply spoke out, and are not all spoken words protected by the Constitution? How could students be prosecuted for simply raising their voices?

Most commentators believe this argument to be a legal red herring, and that the defendants’ appeal has poor odds for success. UC Berkeley Law School Professor Jesse Choper (ret.) expressed the overwhelming consensus of constitutional law scholars: “I think it is quite clearly accepted that there is no First Amendment right to shout down the speech of another, especially in an organized talk.”⁶⁰

Similarly, UCI School of Law Dean Erwin Chemerinsky explained that “[f]reedom of speech, on campuses and elsewhere, is rendered meaningless if speakers can be shouted down by those who disagree,” adding that “there must be rules to regulate the time, place and manner of such expression to preserve order and even make sure speech can occur.”⁶¹ Chemerinsky emphasized that this was an obvious and acknowledged feature of university life, “a person who comes into my classroom and shouts so that I cannot teach surely can be punished without offending the First Amendment.”⁶² Such a basic example clarifies how, by stifling speech, the shout-down does not enjoy First Amendment protection.

Importantly, Chemerinsky’s “time, place and manner rules” must ensure the possibility of open disagreement and expression of multiple viewpoints. Indeed, if a government institution wishes to curb speech in certain environments (for instance, to ensure that demonstrations do not directly infringe on the rights of others) it must also allow alternative avenues for speech. This is certainly the case for university programs, including Dr. Oren’s lecture. Chemerinsky explains: “You have the right—if you disagree with me—to go out and to perform your protest. But you don’t get the right to come in when I’m talking and shout me down. Otherwise people can always silence a speaker by a heckler’s veto, and Babel results.”⁶³

Professor Eugene Volokh of UCLA School of Law, a renowned expert on the doctrine of free speech, confirms this analysis. He explains that California Penal

Code Section 403, “rightly makes it a crime to interfere with people’s rights to speak, and listeners’ rights to listen,” and that attempts to stifle another’s speech—even with words—cannot be considered constitutionally protected free speech.⁶⁴ Volokh emphasizes that alternative avenues of protest were open to the anti-Oren demonstrators, leaving ample room for expression and speech that did *not* infringe on the rights of others. After all, the MSU students could have held a demonstration outside the lecture or leveled their accusations during the question-and-answer session. A protesting group that raises placards, stages a walkout, or even holds theatrical demonstrations outdoors is protected by the First Amendment, but once that group interferes with audience’s rights to speak and listeners’ rights to listen, that group is, according to Volokh, outside the protection of the First Amendment and stands in violation of a California law.⁶⁵

The consensus of these scholars is based on solid legal precedent. After all, even constitutionally guaranteed freedoms such as speech are subject to limitation and definition in order to ensure that the rights and freedoms of others are preserved as well. Thus, as famously stated by Justice Oliver Wendell Holmes in the US Supreme Court case of *Schenck v. United States*, “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic....”⁶⁶ The right to free speech is not absolute; speech, quite intuitively, may be limited out of concern for the safety of others.

Similarly, speech-limiting laws designed to prevent incidental harm and inconvenience to others are also constitutionally permitted. Thus, in *Cox v. Louisiana*, the Supreme Court ruled that protestors surely don’t have the right to “insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech.”⁶⁷ And as the Court explained in *Ward v. Rock Against Racism*, governments can place time, manner and place restrictions on free speech as long as these restrictions are content-neutral and narrowly tailored to serve a significant government interest, and as long as they leave open alternative avenues for speech.⁶⁸

Intuitively, the government’s interest in protecting the speech rights of others seems at least as compelling as protecting commuters from inconvenience. It thus seems that regulations intended to protect meetings and audiences by preventing disruptive shouting ought to pass First Amendment scrutiny as well. Indeed, this is precisely what the California Supreme Court ruled in *In Re Kay*, when it chose to construe Section 403 of California’s Penal Code (that which criminalizes the willful disturbance or break-up of a lawful meeting) as referring to actions that violate “implicit customs or usages or of explicit rules” that “substantially impair” the conduct of a meeting. As the California statute was intended and used to protect a legitimate government interest (the speech and assembly rights of others), was content neutral (it would not have mattered what the protestors had shouted), and allowed alternative avenues for speech (objectors may have

protested anywhere that did not physically disrupt the speech), the statute and prosecution of the “Irvine 11” clearly passes constitutional muster.

But constitutional jurisprudence does not only affirm the permissibility of such laws protecting public meetings. The spirit and logic behind many Supreme Court cases actually implies a far stronger lesson. Successive courts have recognized the unique importance of freedom of inquiry and expression on college campuses and have filled their opinions with strong language affirming the necessity of intellectually open campuses. An examination of the U.S. Supreme Court’s writings on academic freedom indicates that the state has a strong interest in maintaining college campuses’ tradition of open dialogue and unfettered debate. As I shall demonstrate in the next section, the decision of the Orange County’s District Attorney’s office to prosecute was not only legal, but in accordance with strong public interests and core state values.

ALTHOUGH LEGAL, WAS THE PROSECTUTION JUSTIFIED IN THE SPIRIT OF THE FIRST AMENDMENT?

Although there is wide consensus among legal scholars that UCI’s regulations and the DA’s prosecution of the disrupters was constitutional, there is substantial disagreement as to whether the DA’s decision to pursue the case was wise. One hundred members of the UCI faculty signed an open letter expressing “deep distress” at the decision to prosecute, and warning that it would lead to divisiveness “detrimental” to the community’s healing process.⁶⁹ Similarly, in public interviews, Dean Chemerinsky insisted that “there was no need for criminal prosecution” and that university sanctions were sufficient.⁷⁰ And in her article in *The Cornell Policy Review*, *The Irvine 11: Let’s Not Make Martyrs Out of Ruffians*, Anne-Marie D. Dao argues that prosecution’s results were counterproductive, ultimately raising the profile and stature of the disrupters. However, maintaining an open intellectual discourse on university campuses is not simply a matter for university authorities, but a matter of strong public interest. Local prosecutors therefore have a responsibility to deter and combat the danger posed by the accelerating trend of shout-downs in precisely the manner adopted by the Orange County District Attorney.

Even a cursory look at the US Supreme Court’s First Amendment jurisprudence reveals the public value assigned to *substantive* free speech in the academic context. The Supreme Court has discussed free speech on college campuses a number of times, usually in the context of preserving academic freedom by protecting expression and ideas from government interference. In *Sweezy v. New Hampshire*, one of the earliest cases to apply the First Amendment specifically to campus conduct, University of New Hampshire guest lecturer Paul Sweezy refused to cooperate with New Hampshire’s “loyalty program.”⁷¹ Consistent

with the prevalent McCarthyism of the day, the government of New Hampshire pursued programs meant to identify and purge “subversive persons”⁷² from areas of public influence. In the process, the state Attorney General demanded to know about the content of Sweezy’s lecture at the University of New Hampshire. But the US Supreme Court, led by Chief Justice Earl Warren, concluded that the “unquestionable...invasion of petitioner’s liberties” was unjustified.⁷³

However, Warren did not simply limit his opinion to an affirmation of individual liberties. He wrote at length about the importance of academic freedom, noting that, “to impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.” He warned that the university must protect and preserve its students’ ability “to inquire, to study, and to evaluate, and to gain new maturity and understanding” because “otherwise our civilization will stagnate and die.”⁷⁴ For Warren, uninhibited academic discussion was vital for the further development of a prosperous civilization, and ought to be protected by the state.⁷⁵ Justice Warren’s fear of an “imposed [a] straight jacket” silencing intellectual leaders seems eerily embodied in the disrupters’ attempt to silence Ambassador Oren,⁷⁶ and so the spirit of the First Amendment embodied in his words weighs heavily in favor of the DA’s decision to prosecute.

In his concurring opinion, Supreme Court Justice Felix Frankfurter also paid particular attention to academic freedom. He concluded that universities must retain essential freedoms in order maintain an “atmosphere that is most conducive to speculation, experimentation, and creation.”⁷⁷ In Justice Frankfurter’s opinion, academic freedom was thus not simply a product of the individual rights of faculty, but based on the need for an atmosphere conducive to constructive and open education. If this atmosphere is an essential First Amendment value, then efforts by hecklers to transform a forum for intellectual dialogue into a meaningless cacophony call out for state intervention to protect this atmosphere.

Ten years after the *Sweezy* decision, another ‘loyalty program’ appeared, resulting in an even more precise presentation of academic freedom. In *Keyishian v. Board of Regents*,⁷⁸ Harry Keyishian and other faculty members were dismissed from the State University of New York for refusing to sign non-subversive/non-Communist affidavits. The Court ruled that New York State laws prohibiting state employees (including faculty at the State University) from belonging to certain organizations were unconstitutional. In his majority opinion, Justice William Brennan reiterated that academic freedom is a “special concern of the First Amendment [because the First Amendment] does not tolerate laws that cast a pall of orthodoxy over the classroom.”⁷⁹ For Brennan, the First Amendment not only aims to preserve individual rights to speak or an atmosphere of untrammelled discussion, but it is specifically intended to prevent intellectual uniformity and conformity. Brennan understood the First Amendment as reflective of a deep

aversion to intellectual orthodoxy, and as recognizing a particular value to diversity of views in educational settings.

To support his ruling, Justice Brennan explained precisely what it was that made orthodoxies so dangerous, especially in academia:

The classroom is peculiarly the ‘marketplace of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, [rather] than through any kind of authoritative selection.’⁸⁰

Justice Brennan understood that the First Amendment in general, and free speech protection on college campuses in particular, was about much more than the rights of individuals. The First Amendment was about the creation of the context and circumstances that might best produce truth. An atmosphere where multiple voices can be heard and evaluated is the environment where truths are most likely to be stated and recognized.

Like Warren and Frankfurter, Brennan saw the open intellectual atmosphere created by the First Amendment as a public value essential to the survival of the nation. Ensuring a true market of ideas was civilization’s best way of determining and preserving truth. Thus freedom of expression is not simply a passive right that the government must refrain from violating, but a public value that state actors should take an active role in promoting. And as an unimpeded educational atmosphere characterized by the free exchange of ideas from all viewpoints is itself a positive constitutional value, then the state cannot simply adopt a passive role. Rather, the state has a duty to actively protect that atmosphere, sometime even with a criminal prosecution. The Irvine 11’s organized disruption—and the precedent that it sets—represents a threat to the atmosphere that a substantive understanding of the First Amendment was intended to create. State action to preserve this atmosphere thus represents highest allegiance to the values of the Founders.

CONCLUSION

The Irvine 11’s treatment of Ambassador Oren serves as a paradigm for the increasingly alarming trend of campus shout-downs. The shout-down and the prosecution that followed raise important questions about free speech and the government’s role in preserving an atmosphere of open discourse. As shown in the Appendix below, the frequency of shout-downs, especially on campuses, has increased in recent years. Participants in these shout-downs have been overwhelmingly associated with the fringe left and Muslim student groups. A disproportionate number of their targets have been speakers and artists connected

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to the state of Israel, and some view the trend as a parochial concern. But as the issues at stake touch on the very meaning of free speech, shout-downs should be a matter of concern for all of those who are committed to the substantive values represented in the First Amendment.

This article demonstrates that the actions of the Irvine 11 represented a clear violation of UCI's standards, customs and policies. By deliberately violating the "implicit rules and explicit customs" of university lectures and "substantially impairing" the meeting, the Irvine 11 leapt over the line between protected free speech and willful disruption, criminalized by the California Penal Code. The determined, premeditated and coordinated effort by the MSU to silence Dr. Oren was plainly disruption, not a form of expression. Furthermore, legal precedent and the history of First Amendment interpretation clearly support the constitutionality of the section of the Penal Code under which the Irvine 11 were prosecuted. Finally, the spirit of the First Amendment actually weighs in favor of the DA's decision to prosecute the Irvine 11 in the interest of deterring future shout-downs. Indeed, the Warren Court's Free Speech jurisprudence projects a substantive understanding of the First Amendment, especially in the university setting, that emphasizes the importance of an educational atmosphere remaining open to the free exchange of ideas and competing viewpoints.⁸¹

Going forward, universities must ask themselves whether they wish to nurture an educational environment of open dialogue and unfettered debate, or whether they will allow the loudest, most disruptive, and most intimidating groups to dominate a discussion. Administrators must be proactive in anticipating disruptions and educating their students toward an understanding of both the legal scope and the deeper values of the First Amendment. University discipline, which is often applied quietly and privately, has clearly not sufficed to stem the alarming increase in campus shout-downs. As free speech is a core public value and universities serve as incubators for the nation's future, the public and its representatives have a stake in establishing deterrence and protecting First Amendment principles. As in Orange County, local officials should seek to use state laws to punish disrupters and educate the public about the meaning of free speech. Such action is not only constitutionally permitted, but inspired and driven by the values of the Constitution itself.

APPENDIX: SHOUT-DOWNS IN CHRONOLOGICAL ORDER

- 1. General Lewis Hershey**
Former head of the U.S. Selective Service (Conscription to Military Service) System
Howard University, Washington, D.C.
March 21, 1968

When General Lewis Hershey tried to give a speech, students of the Black Power Committee jumped onto the stage and shouted, “America is the Black man’s battleground!”

<http://library.csuohio.edu/research/portals/blackpower/stanford.pdf>

2. **Asher Ben-Natan**
Israeli Ambassador to Germany
University of Hamburg, Hamburg, Germany
June 12, 1969

The Israeli Ambassador in Germany was forced to leave the podium when student protesters stormed the stage during his speech. When he first addressed the group comprised of members of the New Left, Fatah supporters, Arabs, Germans, and some Israelis, Ben-Natan was greeted with boos and hisses from an audience that continued to grow. This event resembled one that Ben-Natan had experienced just two days earlier at the University of Frankfurt, where protesters shouted insults at him throughout his entire speech.

http://www.liveleak.com/view?i=c26_1308595618

3. **Benjamin Netanyahu**
Then-Former Prime Minister of Israel
University of California, Berkeley
November 28, 2000

Hundreds of protesters blocked the entrance to the Berkeley Community Theatre where Benjamin Netanyahu was scheduled to speak. They shouted, “no free speech for war criminals!” The event had to be canceled after protesters broke through police barricades. As a result, Netanyahu’s planned appearances for the next few days in San Mateo and San Rafael were also canceled.

<http://www.netanyahu.org/berprotprevs.html>

4. **Benjamin Netanyahu**
Then-Former Prime Minister of Israel
Concordia University, Montreal, Quebec
September 9, 2002

Netanyahu intended to give a speech about the Middle East conflict but never reached the campus. This was due to the fact that over a thousand protesters behaved violently, making it too dangerous for Netanyahu to make an appearance. The students shattered a plate-glass window, threw objects at the police, and trashed one of the University’s buildings.

<http://www.danielpipes.org/465/the-war-on-campus>

5. **Daniel Pipes**

American writer and political blogger focusing on the Middle East

York University, Toronto, Ontario

January 28, 2003

Pipes' talk was first cancelled because of anti-Israel sentiment and then, due to public pressure, rescheduled. Security precautions were taken and the location of Pipes' speech had to be moved when 150 pro-Palestinian protesters gathered outside York University's Tait McKenzie Centre and harassed people attending the speech.

http://www.sullivan-county.com/id4/pipes_s.htm

6. **Ann Coulter**

Right-wing American lawyer, author, and commentator

University of Connecticut, Storrs, Connecticut

December 7, 2005

Nearly 100 students gathered inside the student union building in protest of Coulter's planned speech at the University of Connecticut. Coulter had to stop her speech after only fifteen minutes because of loud boos and jeers from the crowd.

<http://sweetness-light.com/archive/coulter-shouted-down-the-ap-rejoices>

7. **Nonie Darwish**

Egyptian-American human rights activist and founder of Arabs for Israel

Brown University, Rhode Island

November 19, 2006

Nonie Darwish was invited to tell her story about growing up in Egypt and Gaza and to explain why she has become a strong supporter of Israel. The Hillel on campus and Brown's Women's Center planned to co-sponsor the event. However, after Muslim students argued that Darwish was too controversial, the Brown Women's Center backed out of sponsoring the event, which caused Hillel to pull out as well. Thereafter, the event was canceled.

<http://www.keshertalk.com/archives/2006/11/hilleldarwish.php>

8. **Daniel Pipes**

American writer and political blogger focusing on the Middle East

University of California, Irvine

January 31, 2007

Fifteen minutes into his lecture, Pipes was interrupted by a choreographed chant from several dozen anti-Israel students. They ended up being escorted out by the campus police.

<http://www.danielpipes.org/blog/2007/02/my-disrupted-talk-at-the-university-of>

9. David Horowitz

American-Jewish conservative writer and policy advocate

Emory University, Atlanta, Georgia

October 24, 2007

David Horowitz was delivering a lecture about the threats of militant Islam at Emory University. A half-hour into the event, police had to escort him offstage due to the aggressive crowd. During his short-lived lecture, the protesters shouted boos and “Heil Hitler.” When Horowitz was escorted off stage, the crowd started chanting, “This is what a democracy looks like.”

<http://sweetness-light.com/archive/protesters-shout-down-david-horowitz-at-emory>

10. Daniel Pipes

American writer and political blogger focusing on the Middle East

University of California, Berkeley

February 10, 2009

A crowd of 550 people fit into the hall where Pipes spoke, with many spectators left outside. About 150 students were radical pro-Palestinians from the Muslim Student Association and Students for Justice in Palestine. They continually shouted insults and disrupted the speech until the campus police escorted them out.

<http://archive.frontpagemag.com/readArticle.aspx?ARTID=14156>

11. Tom Tancredo

Former Congressman from the U.S. House of Representatives

University of North Carolina at Chapel Hill, North Carolina

April 14, 2009

Tancredo was invited to share his views opposing the DREAM Act, a proposed piece of Congressional legislation aimed at helping children of illegal immigrants. Protesters forced Tancredo to cut his speech short. One student broke a glass window with a rock. Other protesters shouted profanities at Tancredo during his speech to the accompaniment of jeers from the audience.

<http://www.indyweek.com/indyweek/at-unc-student-protesters-crash-tom-tancredos-party/Content?oid=1214989>

12. Ehud Olmert

Former Prime Minister of Israel

University of Chicago

October 15, 2009

Olmert was continually disrupted during his speech at the University of Chicago. Protesters shouted at him, one at a time, accusing him war crimes and other allegations. Other protesters cheered after each interruption until the person

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causing the commotion was escorted out. This event has become the prototype for “Chicago-style” disruptions such as those discussed in the article.

<http://www.youtube.com/watch?v=wgN0ZZTe5AU>

13. Dore Gold

Former Israeli Ambassador to the UN

Brandeis University, Waltham, Massachusetts

November 6, 2009

After the release of the Goldstone Report, Israeli Ambassador Dore Gold and Richard Goldstone (the lead author of a UN investigative report on Israel's 2008 operation against Hamas in Gaza) agreed to a joint discussion at Brandeis University. However the debate was interrupted when a member of the audience attempted to heckle and disrupt Gold. The moderator was able to restore order and reminded the audience that both men had a right to free speech. Gold then noted that the United States fought a war 70 years earlier to ensure that the right to free speech remained protected. The debate then resumed until a Palestinian student—with placards attached to her body—attempted to disrupt the question-and-answer session. The moderator was once again able to restore order and ensure that the session continued. It should be noted that the Goldstone Report has been widely condemned by American and Israeli observers and Goldstone himself has recanted on its most damning conclusions.

<http://www.youtube.com/watch?v=DxLa9f1Md34>

14. David Petraeus

Former Director of the CIA and former Commander of US forces in Afghanistan

Georgetown University, Washington, D.C.

January 21, 2010

About ten student protesters stood and shouted out arguments, one by one, during General Petraeus' speech. After several interruptions, the audience was warned that protesters would be escorted out without warning. The students continued to interrupt and were escorted out after each disturbance.

<http://www.infowars.com/general-petraeus-address-preempted-by-student-protest/>

15. Benny Morris

Israeli history professor at Ben-Gurion University

Cambridge University, England

February 7, 2010

The Israel Society at Cambridge University cancelled a lecture by Benny Morris when protesters accused him of ‘Islamophobia.’ The Islamic Society, other students,

and two staff members sent a letter to the Student Union saying the speech should be canceled because Morris' views on Islam are "abhorrent" and "offensive."
<http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=167972>

16. **Michael Oren**
Then-Israeli Ambassador to the United States
University of California, Irvine
February 8, 2010

See sections I and II *supra* for a full description.

17. **Danny Ayalon**
Then-Deputy Foreign Minister of Israel
Oxford University, England
February 9, 2010

Israel's Deputy Foreign Minister, Danny Ayalon, experienced several long interruptions while attempting to give his speech at Oxford University. One student shouted insults for several minutes such as "racist" and "war criminal" while waving a Palestinian flag. Ayalon was eventually escorted out by campus security. Another student stood and read excerpts from the Goldstone Report and a Lebanese student yelled anti-Israel slogans. Oxford's campus security was unable to calm the crowd. Towards the end of the speech, one student apologized on behalf of the disruptive students and received thunderous applause.
<http://www.ynetnews.com/articles/0,7340,L-3846746,00.html>

18. **Ann Coulter**
Right-wing American lawyer, author, and commentator
University of Ottawa
March 23, 2010

Coulter was silenced by hundreds of student protesters at the University of Ottawa. They threatened violence if Coulter was allowed to speak and sent out notices on Facebook saying, for example, "bring rocks, bring sticks, you gotta hurt Ann Coulter tonight, don't let her speak." The University canceled the event because it concluded that it was too dangerous to continue.
<http://www.lifesitenews.com/news/archive/ldn/2010/mar/10032409>

19. **Karl Rove**
Senior Advisor and Deputy Chief of Staff to former President George W. Bush
Saban Theatre, Beverly Hills, California
March 29, 2010

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Rove was delivering a talk at a book-signing for “Courage and Consequences: My Life as a Conservative in the Fight.” Hecklers called him a “war criminal,” among other things. While Rove was trying to discuss his publication with readers that had paid as much as \$40 USD to hear his lecture, he was shouted down and eventually forced to leave the stage. Audience members were unable to get their books signed.

http://articles.cnn.com/2010-03-30/politics/rove.protest_1_rove-senior-adviser-and-deputy-anti-war?_s=PM:POLITICS

20. Talya Lador-Fresher

Israel's Deputy Ambassador to Britain

University of Manchester, Manchester, England

April 28, 2010

Israel's Deputy Ambassador to the UK, Talya Lador-Fresher, was forced to delay her speech for several weeks because pro-Palestinian protesters threatened violence. Upon finally delivering her lecture and attempting to leave the lecture hall, she was physically accosted by protesters. The security detail had to push the diplomat back into the hall, and decided to escort the ambassador off campus in a police vehicle. The protesters surrounded the car, jumped on the hood, and attempted to break the windshield.

<http://www.ynetnews.com/articles/0,7340,L-3882700,00.html>

21. Lars Vilks

Swedish cartoonist known for his drawings of the Prophet Muhammad

Uppsala University, Uppsala, Sweden

May 11, 2010

Lars Vilks had drawn a cartoon that depicted Muhammad as a dog and later gave a lecture about free speech. During the presentation, a student darted to the front of the room and head-butted Vilks. Police had to use batons and pepper spray to hold off the crowd shouting “Allahu Akbar.”

http://www.huffingtonpost.com/2010/05/11/lars-vilks-muhammad-carto_n_572464.html

22. Bentzi Gruber

IDF Colonel (Ret.)

University of Denver, Denver, Colorado

May 11, 2010

Anti-Israel protestors shouted insults at Israel Defense Forces Colonel Bentzi Gruber when he was giving a presentation at the University of Denver.

http://www.adl.org/PresRele/IslME_62/5758_62.htm

23. Benjamin Netanyahu
Then-Former Prime Minister of Israel
New Orleans, Louisiana
November 9, 2010

Netanyahu was giving a speech to the Jewish Federations of North America. On the same day, the government announced that Israel had approved construction of hundreds of new housing units in Jerusalem. Five Jewish and Israeli protestors from the Young Leadership Institute of Jewish Voice for Peace shouted interruptions during the speech. Following each interruption, the disrupter was escorted out by the New Orleans Parish Sheriff's deputies and then was handed over to the police.
http://www.qassam.ps/news-3749-Protesters_shout_down_Netanyahu_in_New_Orleans.html

24. Christie Blatchford
Canadian newspaper columnist, journalist, and broadcaster
University of Waterloo, Waterloo, Ontario, Canada
November 12, 2010

Blatchford was invited by the campus bookstore to discuss her book, titled "Helpless: Caledonia's Nightmare of Fear and Anarchy, and How the Law Failed All of Us." Addressing Native Canadians, her book generated much controversy. The University had to reschedule her appearance due to safety issues caused by intimidation by students. Blatchford has also written about the role of Canadian troops in Afghanistan.
<http://christiangovernance.ca/news/university-of-waterloo-apologizes-to-christie-blatchford-over-banned-speech>

25. Ishmael Khaldi
Israel Foreign Ministry's most senior Muslim diplomat
Edinburgh University, Scotland
February 2011

Vice-consul Ishmael Khaldi was surrounded by a student mob while trying to deliver his lecture. He had to be protected by a ring of security guards while the protesters shouted insults, called him a Nazi, gave him the middle finger, and effectively "shut him down."
<http://www.thejc.com/news/uk-news/44967/university-act-after-israeli-diplomat-mob-riot>

26. Benjamin Anthony
Former IDF soldier, Founder of Our Soldiers Speak
Hampshire College, Amherst, Massachusetts
February 3, 2011

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Sgt. Benjamin Anthony, on a speaking tour with his group “Our Soldiers Speak,” gave a speech at the Hampshire College Student Center about his experiences in the Israeli army. During the lecture, members of Students for Justice in Palestine began to blow whistles and shout “From the River to the Sea, Palestine Will Be Free,” “Zionist Racist,” “Murderer,” and other mockery all recorded on video which can be viewed on YouTube. Repeated disruptions altered the course of the event, shortened the speaker’s time, and triggered verbal and some physical altercations between Jewish and Arab members of the young audience.

<http://tofindtheprinciples.co.il/2011/02/sound-and-fury-at-Hampshire-college>

27. Carleton University Students Association (CUSA) meeting
Carleton University, Ottawa, Canada
February 17, 2011

At a CUSA meeting, Students Against Israel Apartheid (SAIA) began yelling after a decision not to vote on a SAIA motion demonizing Israel. A Carleton student, Emile Scheffel, described what he saw: “That’s when SAIA exploded. The council took a five-minute recess, but people didn’t feel comfortable leaving the room.”

<http://oncampus.macleans.ca/education/2011/02/18/cusa-meeting-explodes-over-anti-israel-motion/>

28. Reverend John Hagee
Cornerstone Church, San Antonio, Texas
May 15, 2011

Reverend John Hagee devoted an entire service to promoting solidarity with Israel. Once news of this sermon spread, Palestinian supporters arrived at Hagee’s megachurch and dispersed themselves in the audience. They stood one after another, shouting protests during Hagee’s speech until they were escorted out. One person also dropped fliers from a balcony, depicting dead Palestinian children.

<http://www.theblaze.com/stories/protesters-interrupt-tx-church-service-to-shout-anti-israel-slogans/>

29. Israel Philharmonic Orchestra
Royal Albert Hall, London
September 1, 2011

A live broadcast of the Israel Philharmonic Orchestra on BBC Radio 3 had to be taken off the air after protestors in the audience began shouting. The Palestinian Solidarity Campaign had instructed people to boycott the concert. “About thirty people sang, shouted, and they had to be removed by the security staff.”

<http://www.guardian.co.uk/world/video/2011/sep/02/israel-philharmonic-proms-protest-video>

30. Barack Obama
Obama Rally, New Hampshire
November 22, 2011

Obama began speaking in a rally to his supporters when Occupy Wall Street began to shout “Mic Check.” First they demanded that the President listen to them. Next they began shouting that thousands of their associates had been arrested for being “peaceful protestors.” Obama tried to listen to the scrambled incoherent shouting which eventually weakened. At approximately that time, Obama supporters began shouting “fired up, ready to go.” At which time the two sides began a shouting match.

<http://www.youtube.com/watch?v=ABdv9pcGfksh><http://www.guardian.co.uk/world/video/2011/sep/02/israel-philharmonic-proms-protest-video>

31. Chris Christie
Governor of New Jersey
Romney Campaign Rally, Iowa
December 8, 2011

A large group of Occupy Wall Street Protestors began shouting “put people first” among other slogans during a Romney event. One person would yell first and the rest would all yell after him. The agitators disrupted and delayed Christie’s speech for a few minutes. Eventually an audience member told Christie to “take a break” and he did.

<http://www.youtube.com/watch?v=hdP-mbswSc0>

32. Nonie Darwish
Egyptian-American human rights activist and founder of Arabs for Israel
University of New Mexico, Albuquerque
February 23, 2012

A group of 8–10 students interrupted Darwish, shouting “Nonie Darwish speaks for Israeli apartheid and genocide at the hands of the IDF!” Several audience members then got up out of their chairs, engaged in verbal and mild physical altercations with the students, and eventually forced the protestors to exit the room.

<http://www.israelnationalnews.com/News/News.aspx/153193#.T8THUFL9VU0>

33. Shakespeare’s Globe
Modern reconstruction of Globe theatre
London, England
May 29, 2012

Protestors unfurled banners and waved Palestinian flags at the Globe Theatre during a Hebrew-language performance of *The Merchant of Venice*. Although this

was a purely cultural performance with no political content, security needed to escort several protestors out of the theater.

<http://www.bbc.co.uk/news/entertainment-arts-18242422>

34. Kathleen Sebelius

U.S. Secretary of Health and Human Services

Georgetown University, Washington D.C.

May 18, 2012

Sebelius delivered the commencement address to the graduates of Georgetown University's Public Policy Institute. Secretary Sebelius has come under recent fire from Catholic groups for her support of the Obama administration's decision to require employers to provide coverage for contraceptives to employees. Just minutes into her speech, Sebelius was interrupted by a heckler shouting, "Abortion is murder!" The Archdiocese of Washington also called Georgetown's invitation to Sebelius "shocking." University President John J. DeGioia defended the invitation as an opportunity for free expression of ideas.

<http://www.foxnews.com/politics/2012/05/18/sebelius-heckled-applauded-at-during-georgetown-speech/>

35. Maikel Nabil Sanad

Truman Institute Hebrew University, Jerusalem, Israel

December 23, 2012

Sanad is an Egyptian blogger and dentist who was imprisoned for 11 months during the Arab Spring for refusal to serve in the Egyptian Army. He gave a speech in the Truman auditorium of the Hebrew University discussing the future of Egyptian politics and supporting Israel's right to exist. Arab and Muslim students subsequently began to shout him down, yelling "Shame on you," "Egyptian Revolution hates you," and "This is Palestine." This led to a stir in the audience and the event could not continue until two women and one man were forcibly removed from the auditorium by security. Other hecklers left voluntarily while yelling epithets.

<http://www.jpost.com/videoarticles/video/article.aspx?ID=297054>

36. Alon Roth-Snir

Israeli Deputy Ambassador to the UK

Essex University, UK

February 20, 2013

Israeli Deputy Ambassador to Great Britain, Alon Roth-Snir, was scheduled to speak at the invitation of the Middle East Club. Before he began his speech, 30 students besieged the lecture hall and began to chant "criminal apartheid state," thus preventing him from getting a word in. To continue the speech, the university

moved Roth-Snir and some students to another lecture hall. The protestors banged on the doors and windows, threatening to break in. Fearing a riot, University authorities decided to end the lecture.

<http://electronicintifada.net/blogs/asa-winstanley/protesters-prevent-israeli-deputy-ambassador-uk-addressing-selected-essex>

37. John Brennan, Director of the CIA
Senate Intelligence Committee Confirmation Hearings
Washington D.C.
February 7, 2013

Members of the radical women's anti-war group Code Pink repeatedly interrupted the Senate confirmation hearing for John Brennan. They yelled about Drone Strikes and accused Mr. Brennan of being a war criminal. Each protestor was escorted out by Capitol Hill Security and the senators were forced to take a recess due to the repeated outbursts.

<http://www.youtube.com/watch?v=hdP-mbswSc0>

38. Yossi Reshef
University of Witwatersrand
Johannesburg, South Africa
March 12, 2013

Israeli-born pianist Yossi Reshef was interrupted and his concert in Johannesburg prematurely ended after 60 anti-Israel protestors broke into the concert hall. Members of the Palestine Solidarity Committee and the Muslim Students Association broke into the hall, blowing whistles, hollering and storming the stage. Dr. Reshef, who is of Israeli descent and now resides in Berlin, was visiting the University during the same time as "Israel Apartheid Week," which protestors claimed made them angry.

<http://www.artsjournal.com/slippeddisc/2013/03/just-in-piano-recital-sabotaged-by-anti-zionist-mob-in-south-africa.html>

39. NY Commissioner of Police, Raymond W Kelly
Brown University, Providence
Rhode Island
October 29, 2013

New York Commissioner of Police Raymond W. Kelly was recently invited to speak at the Brown university campus. Kelly has a distinguished 50-year career in academia, the military and the police. Raucous demonstrators responded with loud shouting, persistent interruption, and coordinated chants, making it impossible for Kelly's lecture to continue. Disruptive members of the audience disregarded faculty members and deans, for the event to proceed in a civil and respectful manner. After

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suffering through 20 minutes of verbal abuse, Brown University President Christina H. Paxson responded, “Conduct of the disruptive members of the audience is indefensible and an affront both to civil democratic society and to the University’s core values of dialogue and the free exchange of views” she said in her statement. http://www.nytimes.com/2013/10/30/nyregion/protests-halt-kellys-speech-at-brown-university.html?_r=0

NOTES

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1. The term *shout-down*, or its adaptations, will be used interchangeably with *shut-down*, and its adaptations, depending on the prevailing character of the disturbance.
 2. Felicia Sonmez, *Code Pink Protests Bring Brennan Hearing to Halt*, Wash. Post, February 7, 2013, <http://www.washingtonpost.com/blogs/post-politics/wp/2013/02/07/brennan-hearing-comes-to-halt-amid-code-pink-protests/>
 3. A chronological overview of shout-downs during the past 50 years will be included as an appendix. This appendix demonstrates the increased prevalence of shout-downs and their disproportionate use by anti-Israel activists.
 4. Dwayne Ashley et al., “I’ll Find a Way to Make One,” 256 (2009).
 5. Jonathan L. Weker, *Yale Suspends 11 for Halting Debate For Alleged Role in Shouting Down Shockley*, Harvard Crimson, May 13, 1974, <http://www.thecrimson.com/article/1974/5/13/yale-suspends-11-for-halting-debate/#>
 6. Derek Bok, *Reflections on Free Speech; an Open Letter to the Harvard Community*, Harvard University Gazette, Sep., 21, 1984, http://isites.harvard.edu/fs/docs/icb.topic847338.files/FS_Bok_Reflections_1984.pdf,
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