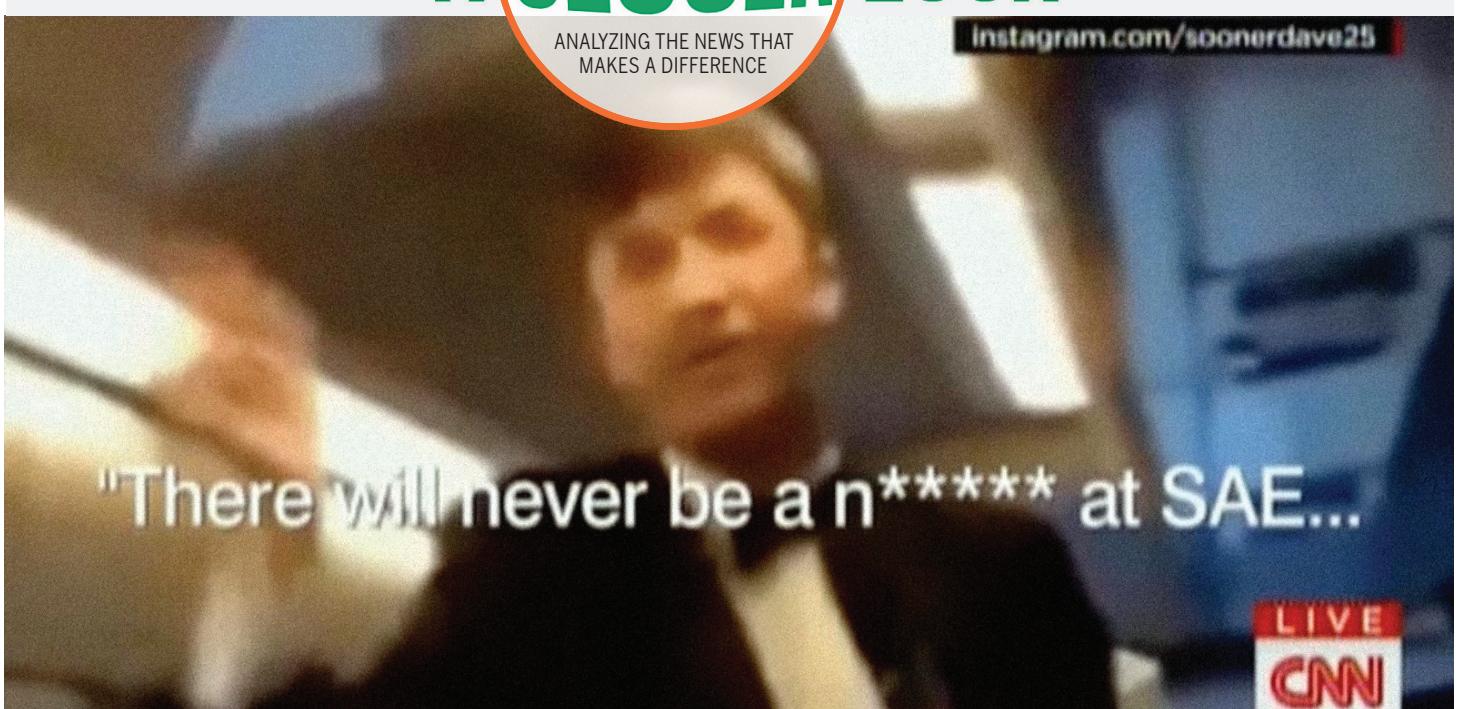




# A CLOSER LOOK

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"There will never be a n\*\*\*\*\* at SAE..."



## Will Quashing Racism Help Jews?

THE UNIVERSITY OF OKLAHOMA'S CONTROVERSIAL RESPONSE TO A CHANT

**I**t was just a few seconds of cellphone video, but it caused an upheaval on campus. The recording showed members of the Sigma Alpha Epsilon fraternity at the University of Oklahoma singing a song.

It went: "There will never be a [n-word] at SAE. You can hang him from a tree, but he'll never sign with me; there will never be a [n-word] at SAE." This brief chant managed to include racial epithets, a lynching reference and a promise to discriminate against black students.

The university's response was rapid. President David Boren issued an angry letter denouncing the fraternity members; within 24 hours, the two students seen singing the song had been expelled, and the university

had closed the local chapter of the fraternity, ordering members out of their dorm. (The national SAE organization also closed its UO chapter, but its actions were independent of the university's.)

### THE FIRST AMENDMENT

UO's actions generated immediate questions about free speech. As law expert Eugene Volokh explained in his section of the *Washington Post* website, public universities like the University of Oklahoma are considered part of state government and they cannot punish students for speech protected by the First Amendment of the Constitution—including racist speech. Volokh pointed out that President Boren's statement implied that he was expelling students

because of their speech.

Volokh wasn't alone; many legal experts offered the same opinion.

At first, the local chapter of the American Civil Liberties Union seemed to ratify the actions of the university. They released several statements that applauded the administration's concern about racism, calling on the community and school to continue working against hatred while using "due process." After the students were expelled, the local legal director issued a statement warning that any "disciplinary actions" should not be "viewed as magic bullets to cure" racism. He did not note any free speech issues.

After two more days of media attention (including questions from Ami about ambi-

guities in the ACLU's position), the ACLU of Oklahoma finally issued a statement acknowledging that "it is difficult to imagine a situation in which a court would side with the university on this matter."

Still, there were at least some individual scholars who believed that the university's action was legal. Prof. Daria Roithmayr from the University of Southern California Gould School of Law was one. She claimed that the environment of fear that the chant had created for black students constituted the disruption of normal functioning of the school, justifying the expulsions.

### WHAT ABOUT THE JEWS?

As we have been reporting for some time, campus atmosphere towards Jewish students has been frightening, particularly during events like campaigns for divestment or the recent Israeli Apartheid Week.

Some of the most publicized recent anti-Semitic actions have taken place in the University of California system. At UC-Davis, where a divestment resolution targeting Israel was recently passed, swastikas and other anti-Semitic graffiti were painted on a Jewish fraternity house, and student representatives called for the destruction of Israel. At UCLA, as we've also reported, a Jewish student's candidacy for a position on a students' association board was questioned because she was Jewish.

After media attention and outrage eventually ensued, the following harsh measures were taken: Anti-Semitism was condemned.

The UCLA Undergraduate Student Association Council (USAC) issued such a statement. Student groups at Berkeley did,

too. UC President Janet Napolitano and UC Board of Regents Chairman Bruce D. Varner added their own statements of condemnation.

Notably, there were not condemnations of any specific people, nor did the USAC expel the students who had questioned the Jewish student's candidacy. The only specific condemnations, in fact, came from the anti-Israel group Jewish Voice for Peace (JVP), which condemned language in the USAC statement that called unfair criticism of Israel anti-Semitic.

Would steps like those taken by UO against racists help Jewish students if applied against anti-Semites? Or would that backfire, if pro-Palestinian students falsely claimed that Jews were harassing them?

### WELL, WHAT ABOUT THEM?

Would Prof. Roithmayr's free-speech loophole be applicable in cases involving Israeli-Palestinian issues on campus? When asked by *Ami*, she was non-committal:

"So I can't say anything much about the campus dynamics of pro-Palestinian or pro-Israeli groups. Much of the argument depends on the facts of the particular case; it's hard to make generalizations about the back-and-forth between pro-Palestinian and pro-Israeli groups from a case such as this one."

The question is whether the speech creates a material and substantial disruption of the ordinary educational mission."

It's clear that those more stringent on the free-speech issues are not going to agree that speech alone should get anti-Semites expelled or reprimanded in public colleges. Prof. Volokh made that point in an article explicitly, by using this case as an example of what shouldn't happen:

"Right now, for instance, Jewish students who have to deal with their classmates' holding anti-Semitic views and expressing them to each other may rightly assume that such speech is protected by the First Amendment, and the university can't expel the anti-Semites."

"But if it becomes acceptable for a univer-

sity to expel people who express racist views about black people, why wouldn't many Jewish students call for the expulsion of students who express (even just to each other) anti-Semitic views? Indeed, many students might think that they would be chumps for failing to demand such expulsions. After all, they've been taught that hateful speech victimizes them by creating a 'hostile educational environment' that can be remedied by expelling bigoted students."

Ryan Kiesel, ACLU of Oklahoma's executive director, told *Ami* that when there are free speech issues, universities need to counter racist statements through statements of condemnation and other actions. He pointed to UO's establishment of a position of vice-president for diversity.

Still, even Prof. Volokh seemingly agrees that an explicit attempt (as opposed to the implication of the racist chant) to discriminate against Jews—like in the UCLA case—could be punished by the university. As he explains, "A university may demand that groups to which it provides various benefits not discriminate in admissions."

Furthermore, while the UO case did not involve direct threats of violence against anyone—although lynching was mentioned—Jewish students have found themselves threatened with physical violence. That, too, is not protected speech.

Tammi Rossman-Benjamin, the director of the AMCHA Initiative, told *Ami* that legal action for harassment of Jewish students is difficult to initiate; anti-Semites are often protected by the First Amendment. Pro-Palestinian groups have already been trying to violate the First Amendment rights of Jewish groups by shutting down events held by Jewish students.

To her, what's most important about the University of Oklahoma case is the responsiveness that the university had: "It's the extent to which they care about it, are outraged by it and want to do something about it."

Unfortunately, it appears that that kind of caring and outrage has not been in evidence when Jewish students are targeted. ●



Swastika at  
UC Davis