

July 19, 2018

VIA E-MAIL & U.S. MAIL

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**RE: Criminal Report #18-1206; Prosecution of Illegal Activity at UCLA**

Dear Mr. Hart,

We write on behalf of the Louis D. Brandeis Center for Human Rights Under Law (“LDB”), a national non-profit legal advocacy organization that works to combat anti-Semitism on college campuses, and StandWithUs (“SWU”), an international, non-profit Israel education organization. On May 17, 2018, an event hosted by the University of California, Los Angeles (“UCLA”) student group Students Supporting Israel (“SSI”), *Indigenous Peoples Unite*, was aggressively disrupted by both UCLA students and outside organizers. We understand that UCLA’s Police Department (“UCPD”) is investigating, and has forwarded **Criminal Report #18-1206** to your office for further investigation and prosecution. At least four student attendees submitted oral reports to the UCPD; additional students and community member attendees submitted written reports via email. We are writing to emphasize the egregiousness of the alleged illegal disruption and to thank your office for taking meaningful and swift steps to investigate.

As you are likely aware, there is strong California precedent to prosecute and convict disruptors who violate criminal law in their attempt to silence speakers on campus. In a similar fact pattern in 2011, a jury convicted ten student members of the Muslim Student Union of a misdemeanor for disrupting former Israeli Ambassador to the United States, Michael Oren, in a coordinated effort at a public event, at the University of California, Irvine (“UC Irvine”).<sup>1</sup> In 2014, the convictions were upheld by a panel of three Orange County Superior Court judges.<sup>2</sup> We believe that the facts in the case before you, Criminal Report #18-1206, merit similar prosecution and would result in similar convictions.

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<sup>1</sup> Lauren Williams, Nicole Santa Cruz, & Mike Anton, *Students guilty of disrupting speech in 'Irvine 11' case*, L.A. TIMES (Sept. 24, 2011), <http://articles.latimes.com/2011/sep/24/local/la-me-irvine-eleven-20110924>.

<sup>2</sup> Matt Coker, *“Irvine 11” Convictions Upheld (For Now)*, L.A. TIMES (Mar. 4, 2014), <https://www.ocweekly.com/irvine-11-convictions-upheld-for-now-6481761/>.

## **Facts of May 17, 2018 UCLA Event Disruption**

The facts of this case have been reported to us as follows: On May 17th, the UCLA student group SSI hosted an event, entitled “Indigenous Peoples Unite.” As described by SSI, the event “provided a platform to three different indigenous communities to share the stories of their people, by providing an overview of their history, struggles, and aspirations. The indigenous groups represented were the Jewish, Kurdish, and Armenian communities, three groups who are often ignored when speaking about indigenous history.”<sup>3</sup>

About 41 minutes into the event, as the Armenian student speaker presented, a disruptor barged into the room, ripped the Armenian flag off the wall, announced “Yo guys this is my F\*\*\*ing flag,” and aggressively threw the Armenian student’s name placard off the table. (*See Appendix I, video #1*, beginning at the 41:18 minute mark.) Immediately thereafter, approximately 25-30 disruptors loudly entered the room singing, chanting, dancing, clapping, and playing music, with megaphones, whistles, Palestinian flags, and signs. In addition to the initial ripping of the Armenian flag off the wall, they ripped the Israeli flag off the wall. When a student asked for its return, struggled to get it back, and put it back up, the disruptors vandalized again. Several of the disruptors were dancing and chanting in the front of the room, blocking the panelists from viewing by the audience. When a staff member of Hillel, the center for Jewish life on campus, attempted to speak into the microphone, disruptors loudly blew whistles so that she could not be heard. Though UCLA police were present (*see Appendix I, video #1*, beginning at the 43:47 minute mark) – at the advance request of SSI, due to social media evidence of an organized and coordinated planned disruption – it took nearly seven minutes for the police officers to remove the disruptors. (*See Appendix 4*, for screenshot of conspiracy to disrupt.)

Once removed from the room itself, the disruptors remained immediately outside, banging on the doors to the room, chanting loudly and making it very difficult for audience members to focus or hear anything being said at the event. When the panelists concluded, only one student asked a question. The attendees then vacated the room quickly, as reported to us, out of fear and intimidation. It took over a dozen police officers, including some who were in riot gear, to both remove the disruptors and assist the event attendees with exiting the room safely.

We are staunchly committed to free speech for all, including the right to reasonably protest. However, denying the right of a speaker to speak and of listeners to listen violates the free speech principles of the First Amendment of the U.S. Constitution. *See, e.g., Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976). Those involved in this disruption – which reportedly included members of the student group Students for Justice in Palestine (SJP), other students, individuals affiliated with a group called SWANA-LA and other individuals unaffiliated with the university – restricted the speech of the Armenian, Kurdish, and Jewish panelists, and restricted the audience members’ right to listen. In so doing, these disruptors endangered our civic community, which relies upon the free exchange of ideas, violated numerous provisions of the UCLA Student Code of Conduct, and more relevantly violated various provisions of the California Penal Code.

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<sup>3</sup> Students Supporting Israel at UCLA, FACEBOOK (May 21, 2018), <https://www.facebook.com/SSIUCLA/posts/1658634887518033> (Pinned Post).

## California Penal Code Violations

The student and outside disruptors, [redacted] identified in *Appendix 2*, potentially violated various provisions of the California Penal Code, including but not limited to: § 403 – disturbance of an assembly or meeting; § 415 – disturbing the peace; § 182 - criminal conspiracy to do the aforementioned; § 242 – battery; § 664 – unsuccessful attempt to commit battery; and § 594 – vandalism.

### *§ 403 - Disturbance of an Assembly or Meeting*

Like the 2010 UC Irvine disruptors mentioned above, 10 of whom were convicted of a § 403 violation, the disruptors in this case could be similarly charged. Under § 403, “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.” To establish a violation of § 403, “it must be shown that defendant substantially impaired the conduct of the meeting by intentionally committing acts in violation of implicit customs or usages or of explicit rules for governance of the meeting, of which he knew, or as a reasonable man should have known; and in applying such standards, a major consideration is the nature of the meeting involved.” Cal. Penal Code § 403 (Deering).

By storming into the panel event, the disruptors - undeniably - intentionally violated implicit customs of panel events, in which the audience listens to the speakers and asks questions at appropriate times. This custom is common knowledge and certainly would be understood by a “reasonable person,” especially the college student protesters, since these types of events occur often on campuses. Further, the disruptors’ chanting and blowing whistles after storming into the relatively small classroom substantially impaired the functioning of the meeting by having the objective impact of the speakers not being able to be heard. Indeed, impairing the ability of the meeting to function was the stated objective of the protesters. After the disruption, disruptor [name redacted] posted on Facebook, *see Appendix 3*, that, “Yes, we disrupted the hell out of this nonsense event. Yes, we made sure to be as disturbing... as possible.” The extent of the disruption is further evidenced by the Armenian speaker attempting to continue presenting after the disruptors’ antics had begun, but being unable to do so because he could not be heard by the audience. It can further be evidenced by the Hillel staff member attempting to calm down the disruptors by speaking into the microphone, but being silenced by loud whistle blowing and dancing. Lastly, SSI board members reportedly told the disruptors – to no avail – to cease their disruptive conduct and instead join the meeting as participants in the dialogue that the panel was intended to facilitate. Eventually, a version of this warning and request was repeated by the campus police officers present. The disruptors failed to heed the warnings. Thus, it appears that all the required elements of a § 403 violation are met.

### *§ 415 – Disturbing the Peace*

The disruptors also potentially violated § 415, disturbing the peace, for “maliciously and willfully disturb[ing] another person by loud and unreasonable noise. . .” In referring to “loud noise,” § 415 encompasses communications made in a loud manner where the communication is not intended as a communication but is merely a guise to disturb persons. *In re Brown*, 9 Cal. 3d 612 (1973). In this incident, the use of speakers to play music, loud chanting, and blowing whistles demonstrates the disruptors’ noise was not intended as communication but rather mainly to disturb the panelists and attendees.

### *§ 182 - Criminal Conspiracy*

As in the UC Irvine case, the disruptors appear to have also committed a § 182, criminal conspiracy. Specifically, the disruptors could be prosecuted for conspiracy to commit a §§ 403 or 415 violation. “The gist of conspiracy to commit a crime” is the unlawful agreement to commit any crime accompanied by an overt act in furtherance of such agreement. It is not necessary that two persons meet together and enter into an explicit or formal agreement to commit the crime, or that the conspiracy be expressed in words. Cal. Penal Code § 182 (Deering). “If there be concert of action, all parties working together understandingly with single design for accomplishment of common purpose,” it is sufficient to constitute a conspiracy. *Marino v. United States*, 91 F.2d 691 (9th Cir. 1937).

Demonstrated by their coordinated entrance into the panel event and disruptive activities, the disruptors engaged in a litany of overt acts in furtherance of the conspiracy to disturb the assembly and disturb the peace. Additionally, evidence of an explicit agreement may exist as exemplified by a UCLA SJP member, [name redacted], calling for others to protest and shut down the SSI panel in an “Arts & Activism Alliance” group message. *See Appendix 4*. Thus, the disruptors likely violated § 182.

### *§ 242 – Battery*

Some of the protesters also potentially committed battery through a physical struggle after the protesters refused to return the ripped down Israeli flag. § 242 defines battery “as any willful and unlawful use of force...on the person of another.” Any minimal amount of physical contact may constitute battery, irrespective of whether the contact is violent, severe, causes injury, causes pain, or leaves any mark. Further, a person does not need to have an intent to injure to commit a battery, they only need to intend to engage in unwanted touching of another. *People v. Mansfield*, 200 Cal. App. 3d 82 (1988). As long as an alleged batterer is neither threatened nor subject to an attempt to inflict physical harm, no conduct or words are sufficient to justify committing a battery.

When an SSI board member requested the return of the organization’s ripped down flag, the protesters refused. This resulted in a physical struggle in which the protester made unwanted physical contact with the SSI board member. After the board member regained the flag and hung it back up, the protesters again ripped it down, leading to a similar physical altercation. The SSI board member did not threaten nor attempt to injure the protesters; he simply asked for the return

of his organization's property. Instead of complying with the request, the protesters chose to initiate unwanted physical contact with the SSI board member—thus meeting the elements of § 242 battery.

#### *§ 664 – Unsuccessful Attempt to Commit Battery*

Even if a § 242 violation is not found, the protesters involved in the physical altercation surrounding the torn-down Israeli flag could potentially be prosecuted for a § 664 unsuccessful attempt to commit a § 242 battery. The two elements of an unsuccessful attempt to commit a battery are (1) the intent to commit a battery, and (2) a direct, ineffectual act towards the commission of the battery. *People v. Petros*, 25 Cal. App. 236 (Dist. Ct. App. 1914). As stated above, intent to commit a battery need only show the intent to engage in unwanted physical touching with another.

Through the affirmative choice to make undesired physical contact with the SSI board member who requested the return of the flag, the protestor satisfied the requisite intent to commit a battery. The second element of an unsuccessful attempt to commit battery can be satisfied without the need to prove that the physical contact actually occurred, due to its lower evidentiary burden requiring evidence of merely an ineffective act towards the battery. At a minimum, video evidence and testimony clearly show that in the struggle for the return of the flag, some of the protesters made attempts to physically contact the SSI board member. Thus, the elements of a § 664 unsuccessful attempt to commit a § 242 battery are likely satisfied.

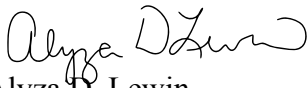
#### *§ 594 - Vandalism*

At least one of the disruptors potentially violated § 594. By aggressively ripping the Armenian flag off the wall and throwing the Armenian student's name placard off the panel table, UCLA student [name redacted], who publicly admitted to the conduct (*see Appendix 5*), could be prosecuted for § 594 vandalism. § 594's definition of vandalism encompasses conduct in which someone damages the personal property of another. § 594 vandalism is a general intent crime, meaning it is unnecessary that a person intend to damage the personal property. Rather, all that is required is that a person intend the action that causes the damage. *People v. Moore*, 19 Cal. App. 5th 889 (2018).

In this case, the Armenian panelist's name placard was damaged when [name redacted] ripped it off the table and threw it behind him. It is irrelevant whether [name redacted] meant to damage the flag or the placard through his conduct; it only matters that he intentionally did the act—which he clearly did through reaching out, grabbing, and throwing down the placard. (*See Appendix 1, Video #1*, 41:18 minute mark). The low value of the items is not disqualifying under § 594, which provision (b)(2) applies to real property worth less than \$400. Thus, [name redacted] likely violated § 594.

In conclusion, we are available to discuss our above analysis of potential criminal violations in Criminal Report #18-1206, and can be reached at the contact information listed below. Thank you in advance for your thorough consideration of this matter and your commitment to securing justice.

Sincerely,

  
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## **Appendix 1: Links to Videos of Disruption**

**Video #1:** Full video of the Students Supporting Israel event, including the entire disruption and police removal of the disruptors. The first disruptor appears at the 41:18 mark, and you can see police appear at the side door at around the 43:47 mark. *Available at* <https://www.youtube.com/watch?v=og3HesFT2ks>.

**Video #2:** A shorter video, beginning at the start of the disruption and gets right to the heart of the incident, but cuts off after 2:23. *Available at* <https://www.youtube.com/watch?v=dXAcv9bCykA&t=37s>.

[Appendices 2 – 5 Redacted]