

# **Report and Recommendations Concerning the November 19 Incident on Ho Plaza**

**Submitted to the Faculty Senate, May 2013**

## **Ad Hoc Committee Members**

(order alphabetical)

**Richard W. Allmendinger<sup>1</sup>, William E. Fry<sup>2</sup>, & Margaret Washington<sup>3</sup>**

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## Introduction

A spirited display of political discourse and disagreement took place on Ho Plaza on November 19, 2012 as competing groups, the Students for Justice in Palestine (SJP) and the Cornell Israeli Public Affairs Committee (CIPAC), both arrived on the plaza to protest, comment on, and show solidarity with factions involved in recent events in Gaza. Cornell University Police (CUP) and event managers were involved. There was disagreement between the CUP and SJP concerning the use of amplified sound. One member of the SJP was threatened with arrest. During the proceedings, a female student was knocked to the ground and there were heated exchanges between faculty members participating on the SJP side of the protest and members of the CUP. The SJP marched to Day Hall after 30-40 minutes and continued their demonstration for 10-15 minutes. The faculty members subsequently submitted written complaints to Cornell University President David Skorton. On December 12, 2013, the Faculty Senate passed a resolution ([attached](#)):

“to form an ad hoc committee to investigate any interference with freedom of expression, academic freedom, and freedom of peaceable assembly during the events of November 19, 2012 on Ho Plaza, including, but not limited to: obtaining statements from relevant administrators, the Cornell Police Chief, Cornell police officers present at Ho Plaza, the heads of the SJP and CIPAC, aggrieved students and faculty, and other witnesses to the events; and obtaining other evidence such as photographs or video recordings of the events.”

The University Faculty Committee and Dean Burns appointed the ad hoc committee and this report is a result of their investigation. None of the committee members appointed was present on Ho Plaza on November 19th.

Prior to the first meeting of the Committee, President Skorton commissioned a report of the incident on Ho Plaza, which was conducted and released by the University Counsel James Mingle and Executive Assistant to the President, Jane Miller. The Faculty Committee had a different and more comprehensive charge and thus our report is more detailed and has taken longer to prepare. Our Committee interviewed eighteen people (fourteen of whom were directly involved in the event) and obtained written statements from three more, all involved in the incident. Our report is based on statements from all faculty involved on both sides of the event, student leaders from both SJP and CIPAC, an event manager directly involved, the student involved in the SJP demonstration who was knocked to the ground, and the majority of CUP officers who were involved in the event. Additionally, we spoke with the chair of the Chair of the Events Management Planning Team and two additional faculty who are experts on academic freedom.

Bear in mind that our interviews were conducted three to six to months after the Ho Plaza events. That different people view the same events through very different lenses is well known. Moreover, with additional time, there may be in some cases, a natural tendency to craft further the narrative to support those differing perspectives. Our Committee had no choice but to take the statements at face value unless explicitly proven false by multiple statements from other participants. Our conclusions and recommendations follow a detailed account of the timing of events.

## Timeline of Events

- Run-up to November 19
  - Most people acknowledge that the SJP began planning their event first, certainly by the 14th of November
    - The SJP first publicized their event via a Facebook posting at 9 am on Friday November 16 (circled in red, below) and by handing out quarter cards on Ho Plaza at noon on Friday, November 16:

Monday, November 19, 2012 12:00pm

Rally on Ho Plaza // Monday 11/19 @ noon  
No complicity with occupation and assault!

As human beings, as Cornell students, as American taxpayers, and in light of the savage assault Israel is currently carrying out on a nearly defenseless Gaza, we demand the following from the Cornell University administration:

...See More

**Cornell University**  
Day Hall, Ithaca, New York 14853  
[View Map](#) · [Get Directions](#)

Posts View Declines

 **Amit Gilutz** created the event.  
Like · Comment · Follow Post · November 16, 2012 at 9:08am

 8 people like this.

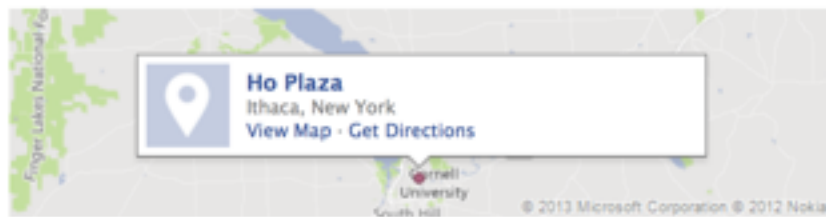
- Cornell event managers were aware of the SJP event and tried to contact the SJP leaders by 2:48 pm on Friday, November 16.
- The SJP leadership did not respond to the contact made by the event managers; they believe(d) that not only was there no necessity to register or inform the University of the event (based on their reading of the Campus Code), but are morally opposed to the UUP process for outdoor demonstrations.
- According to CIPAC leadership, their “Operation Pillar of Defense” was launched on Wednesday November 14 though the nature of the activity that they were planning at the time is unclear. The CIPAC event, was announced via a Facebook event on Saturday, November 17th at 10:10 pm, though it may have been announced earlier via a list serve:

Monday, November 19, 2012 12:00pm until 1:00pm

Come to Ho Plaza on Monday to show your solidarity with Israel and desire for peace. We, at Cornell, stand up for Israel's right to defend itself from terror. Please wear BLUE and WHITE and spread the word!

Israel has engaged in Operation Pillar of Defense to protect Israeli civilians from terror. In the days prior, Hamas launched over 150 rockets at Israeli communities affecting well over 1 million people, including many children. This was an escalation of the relentless attacks from Gaza. Though Israel withdrew from Gaza in 2005, there has been no end to the attacks on the civilian population in Israel.

The United States Congress unanimously supported Israel's right to defend itself from terror. Senate Resolution 599 expressed "vigorous support and unwavering commitment to the welfare, security, and survival of the State of Israel as a Jewish and democratic state with secure borders, and recognizing and strongly supporting its right to act in self-defense to protect its citizens against acts of terrorism."



Cornell Israel Public Affairs Committee (CIPAC) created the event.

Like · Comment · Follow Post · November 17, 2012 at 10:10pm

5 people like this.

- The CIPAC University Use of Property (UUP) form was filed at 2:52 pm on Friday, November 16th. This was more than two hours after the SJP advertised their events via quarter cards on Ho Plaza and four minutes after a Cornell events manager tried to contact the SJP regarding their planned rally (but received no response).
- Certainly by Saturday, November 17, CIPAC was aware that the SJP was planning a rally on Ho Plaza for November 19th.
  - One person associated with the CIPAC rally, who sent emails to the [isa-l@cornell.edu](mailto:isa-l@cornell.edu) email list serve, told the Committee that the CIPAC rally was explicitly a preemptive counter-protest to the previously planned SJP rally.
  - CIPAC student leadership subsequently disputed this notion, saying that they wanted to have a rally before Thanksgiving break, which effectively limited the possible dates and times of a CIPAC rally to Monday November 19th. Though CIPAC leadership stated to the Committee that they were not sure exactly where the SJP rally was to be held, the discussion on their Facebook page suggests that they knew it was going to be held at the same time and place as the CIPAC rally.
- The Use of University Property (UUP) process
  - Almost all university officials involved regard the UUP as a permit. The one exception with whom the Committee spoke is Associate Dean of Students for Student Activities and Chair of the Events Management Planning Team (EMPT) Catherine Holmes who regards it as a notification or registration only. Nonetheless, the form requires “approval” by various University offices including Risk Management and the Cornell Police.
  - University regulations that apply to the UUP process state that a lead time of three weeks is required.
  - The Event Managers’ Steering Group meets weekly on Thursday to consider UUP requests.
  - Reportedly, they process ~3,000 UUP requests per year and a significant majority are received with less than the three week minimum. Regardless of when they are received, the Event Managers’ Steering Group makes every effort to process all UUP applications.
  - CIPAC obtained their permit on Friday, just three days prior to the event and after the weekly Event Managers’ Steering Committee meet-

ing. Our Committee discovered no evidence that unusual steps were taken to issue a UUP to CIPAC on short notice. The EMPT chair told the committee that UUP requests were hardly ever denied.

- Use of Amplified Sound
  - The CUP and event manager with whom the Committee spoke emphasize that the use of amplified sound was the key reason for which a UUP was necessary.
  - Amplified sound is not mentioned in the Code of Conduct. It is, however, mentioned on the [Dean of Students "Registration of Events" web page](#) and is one of the items on the UUP form, itself.
  - The CIPAC UUP specified the use of amplified sound.
  - The CUP and event manager with whom the Committee spoke stated that the SJP was within its rights to gather on Ho Plaza, either as a counter protest or as a primary protest, *without* the use of amplified sound.
  - One CUP officer who is a member of the EMPT stated that, had the SJP been the *only* group on Ho plaza on November 19, they would have been allowed to proceed with their rally using amplified sound, even though they did not obtain a UUP. This is in conformity with the Code of Conduct but counter to the policy referenced on the Dean of Students web page referenced above. This statement was in response to an explicit, hypothetical scenario rather than as a general policy statement.
- Events on November 19th
  - For a public event of any size, the University monitors all events via event managers and the CUP.
    - Event managers are usually non-academic Cornell Staff who come from a variety of different offices. An event manager is a voluntary position and they appear to have little formal training. They are managed and organized through V.P. Susan Murphy's office.
    - The November 19 rallies had two event managers and 5-8 CUP officers assigned to it. Some of the CUP officers were summoned by officers already on the scene.
  - The Main Rally

- CIPAC arrived on Ho Plaza first and began to set up their sound system. An event manager and at least one CUP officer were at the Plaza before SJP arrived
- SJP organized on the Arts Quad and marched to Ho plaza. Estimates put the SJP rally at about 75 people, more than were there for CIPAC.
- The SJP had a megaphone, which was, by all reports, less effective than the CIPAC sound system though initially CIPAC had trouble getting their system to work.
- Relatively early on, the CIPAC leadership did request that the CUP remove the SJP participants from the Plaza because they (CIPAC) had filed a UUP for the space and SJP had not.
- After SJP began their demonstration, they were initially approached by one of the event managers and a CUP officer and asked to stop using amplified sound because they did not have a permit (i.e., a UUP) for it. The SJP leader with the megaphone responded that the Campus Code permitted assembly without a permit, ignored subsequent requests, and continued addressing the crowd.
- The event manager and CUP officer withdrew. The event manager reported calling an administrative assistant in Day Hall and was told that a UUP was required for use of amplified sound on Ho Plaza.
- The CUP officers received incorrect information from one of the event managers that the SJP leader was “not affiliated with Cornell.” The SJP leader is, in fact, a Cornell graduate student.
- The CUP returned to engage with the SJP leader. By now, the group was about 30 minutes into the demonstration. Because of the incorrect information CUP received, it appears that the tenor of the interaction became much more hostile. Instead of an appearance before the Judicial Administrator, the SJP leader was now threatened with arrest for trespassing on Cornell property because he was “not affiliated with Cornell.”
- A female graduate student associated with the SJP rally was knocked to the ground; she stated that a CUP officer pushed her from behind. Another SJP member stated that this occurred when the CUP tried to “lunge” at the SJP speaker.

- A CUP officer stated that a SJP female demonstrator charged at him three times. On the third time, he “redirected” her away from him into the crowd. This was corroborated by another police officer. We cannot tell whether this incident and the previous one are the same or different.
- As the SJP leader was threatened with arrest, and because the SJP had planned to continue their march in any event, they left the Plaza and eventually circled back to in front of Day Hall where they concluded their demonstration.
- CUP closed Campus Road and East Avenue, according to a CUP officer, to enable the SJP to march safely to Day Hall.
- The CIPAC rally continued on Ho Plaza for about 15 minutes with their members singing songs before breaking up.
- All of the CUP officers with whom the Committee spoke stated that the situation was very tense and that there was a very real possibility that violence between the two groups could break out at any time.
- Everyone else — student leaders from both groups, the faculty involved, and event manager — stated that, while the event was loud and emotions ran high, there was never any threat of violence.
- Actual physical scuffles only occurred when the CUP and event manager returned for a second time with the intent to remove, from Ho Plaza, the person mistakenly identified as “not affiliated with Cornell.”
- CUP interaction with Faculty
  - Both experts in academic freedom with whom the Committee spoke affirmed that academic freedom is generally interpreted today to include, explicitly, faculty participation in rallies and demonstrations, even outside of their area of expertise. “It can be seen as part of the duties of a professor to engage in this type of dialogue”.
  - Three Cornell faculty members supporting the SJP had heated interactions with two plainclothes investigators with the CUP during the Ho Plaza demonstrations.
  - The CUP investigators stated that there were two motivations for attempting to engage the faculty members: (a) they hoped to enlist



the faculty members' help as "agents of the University" in communicating with the SJP leadership who was ignoring the CUP and the event manager; and (b) one investigator purportedly observed one of the faculty members push aside a CIPAC student demonstrator who had positioned themselves in the faculty member's line of view.

- The faculty members stated that they were demonstrating on behalf of the SJP, exercising their right to free speech, and had no intention of helping the CUP.
- A faculty member reported being pushed by a CUP officer. Other faculty members felt intimidated and threatened by the CUP officers.
- The CUP investigators requested the faculty members' identification. One faculty member complied verbally initially, but neither would furnish their ID cards. Police insisted that they had to show their ID on demand because Cornell is private property. It appears that the interaction became more heated at this point with one investigator suggesting that the faculty could face disciplinary action for failing to comply.
- The CUP investigators feel it is within their right to request ID as all Cornell ID cards state on the back that "This card ... must be carried at all times and is to be shown for identification upon request."

### **University Faculty Senate Ad Hoc Committee Recommendations**

The Ad Hoc Committee appointed by the Senate to investigate events of November 19, 2012 as they pertain to freedom of expression, academic freedom and freedom of peaceful assembly, recommends the following:

1. The phrase on campus ID cards reading "...is to be shown for identification upon request" should be eliminated or clarified. The criterion for CUP requests to show identification should be the same as for any police officer in any public setting: ID can only be requested with legitimate suspicion of unlawful activity. Just because Cornell can write a different standard because the campus is judged private property does not mean that it should do so in all instances. On November 19, CUP request for ID from the Cornell faculty at the rally significantly and unnecessarily escalated tension, regardless of the intent of the CUP investigators involved.
2. The faculty's right to freedom of expression, peaceful assembly and academic freedom should take priority over their responsibility to acts as

“agents of the University.” Specifically, the right of faculty to participate in peaceful demonstrations on campus is to be affirmed and observed and public safety officers need to be aware of that fact. We realize that this priority may not apply to those members who also serve in administrative positions.

3. The right to ad hoc assembly for the purpose of free speech and expression, without the necessity of filing a UUP notification, should be preserved and protected. Groups should be allowed to assemble, march, and speak in the open areas of the campus, so long as they do not infringe upon the primary educational mission of the University and so long as they respect the right to free speech of competing groups (if any). In that sense, the wording of the Campus Code should be clarified to remove any ambiguity, including the use of amplified sound.
4. The Committee could not reach unanimity on the question of whether a permit or notification should be necessary for the use of amplified sound. All Committee members agree that public concerts and extremely loud events that draw large crowds (e.g., Slope Day) should require a permit to use amplified sound. Everyone also agrees that a permit should not be required when a single group or ad hoc protest/demonstration wishes to use amplified sound at a reasonable decibel level on Ho Plaza between noon and 1 pm. The lack of consensus arises with regard to the case where two groups both want to use amplified sound on Ho Plaza at the same time. Here, we offer two options that reflect the divergent views of the committee (and also the divergent opinions of the two experts on academic freedom consulted by the committee):
  - A. Where two groups wish to use the same outdoor space at the same time for competing purposes, little is gained by drowning each other out with amplified sound. The group that notified the University of their intent to use amplified sound first via the UUP process should be the only group allowed to use amplified sound. This does not prevent the second group from assembling adjacent to the first group, simply that they should not infringe the first group’s right to be heard. This is in accord with the sections of the Campus Code dealing with the rights of visiting speakers.
  - B. Any prohibition on use of amplified sound, at a reasonable decibel level, in connection with rallies, protests, and demonstrations infringes on the right to free expression even if the sole purpose of a counter-protest is to drown out and prevent the original protest from being heard.

5. The Committee recognizes that event managers and CUP have an important role in preserving the peace at campus events, rallies, and demonstrations. Given the significance and sensitivity of that role, event managers should have more complete training. Event managers should be familiar with the rules and regulations governing events they are asked to supervise and should be familiar with the particular protocol for those events. The fact that an event manager had to call Day Hall for instruction reveals a lack of knowledge about handling situations such as that which developed on November 19. In particular, both event managers and CUP officers should have explicit training, beyond what is currently done, regarding free speech, peaceful assembly, and academic freedom on campus, including faculty participation in public demonstrations. In addition to preserving the peace, an explicit charge to event managers and CUP should be to protect rights guaranteed in the First Amendment.

## RESOLUTION ON INVESTIGATION CONCERNING FREEDOM OF EXPRESSION

WHEREAS, members of the Cornell community have the right to free expression, academic freedom, and freedom of peaceable assembly, as recognized by the Cornell Campus Code of Conduct;

WHEREAS, the Campus Code of Conduct, Article III.B.1, states: “All protection and regulation of expressive conduct should be content-neutral. A group’s persuasion or point of view should have no bearing on the grant of permission or the conditions regulating that group’s expressive conduct.”

WHEREAS, the Campus Code of Conduct, Article III.B.3, states: “Because outdoor picketing, marches, rallies, and other demonstrations generally pose no threat of long-lasting exclusive use of University grounds or property, there appears to be no need for a mandatory permit procedure for such outdoor activities”;

WHEREAS, any administratively imposed requirements of a mandatory permit procedure (such as a Use of University Property Form/UUP) for outdoor picketing, marches, rallies, and other demonstrations, including rallies in Ho Plaza, are in conflict with the Campus Code of Conduct, Article III.B.3;

WHEREAS, on November 19, 2012, the Cornell police attempted to stop or restrain the rally by the Students for Justice in Palestine (SJP) on Ho Plaza, while allowing the Cornell Israel Public Affairs Committee (CIPAC) to carry out its rally on Ho Plaza;

WHEREAS, the Cornell police, in attempting to stop or restrain the SJP rally, reportedly engaged in intimidating and physically aggressive conduct, including: pushing one faculty member and interrogating at least two others and threatening them with judicial action for failing to show identification; and intimidating at least two students, including throwing one to the ground and threatening to arrest a student;

THEREFORE BE IT RESOLVED that the Faculty Senate charges the Dean of the Faculty and the University Faculty Committee to form an *ad hoc* committee to investigate any interference with freedom of expression, academic freedom, and freedom of peaceable assembly during the events of November 19, 2012 on Ho Plaza, including, but not limited to: obtaining statements from relevant administrators, the Cornell Police Chief, Cornell police officers present at Ho Plaza, the heads of the SJP and CIPAC, aggrieved students and faculty, and other witnesses to the events; and obtaining other evidence such as photographs or video recordings of the events;

BE IT FURTHER RESOLVED that the *ad hoc* investigating committee shall report back to the Faculty Senate with a written account including the committee’s findings concerning any interference with freedom of expression, academic freedom, and freedom of peaceable assembly on November 19, 2012; and the committee’s recommendations to ensure that freedom of expression, academic freedom, and freedom of peaceable assembly be upheld at Cornell, including, but not limited to: rescinding administrative policies that are inconsistent with the campus code's presumption that permits are not required for outdoor events involving freedom of expression, academic freedom, and freedom of peaceable assembly; disciplining any police engaged in misconduct during the events of November 19, 2012 on Ho Plaza; and educating and training Cornell police concerning their obligations to respect and protect freedom of expression, academic freedom, and freedom of peaceable assembly on campus.

Eric Cheyfitz (English)  
Joanie Mackowski (English)  
Vicki Meyers-Wallen (Vet School)  
Richard Miller (Philosophy)  
Wendy Wolford (Development Sociology)  
Shawkat Toorawa (Near Eastern Studies)

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WHEREAS, any administratively imposed requirements of a mandatory permit procedure (such as a Use of University Property Form/UUP) for outdoor picketing, marches, rallies, and other demonstrations, including rallies in Ho Plaza, are in conflict with the Campus Code of Conduct, Article III.B.3; and

WHEREAS, on November 19, 2012, conflict reportedly occurred on Ho Plaza between members of the Cornell police department, observers, and participants in rallies by the Students for Justice in Palestine (SJP) and the Cornell Israel Public Affairs Committee (CIPAC); and

WHEREAS, University President David Skorton is already investigating the events of November 19, 2012;

THEREFORE BE IT RESOLVED that the Faculty Senate requests the President to issue (by February 1) a public written report of his findings concerning whether the rights of free expression, academic freedom or freedom of assembly were violated.