

STATEMENT OF MICHAEL LACEY AND JIM LARKIN
October 19, 2016

Today we have filed in the Sacramento County, California, Superior Court a motion seeking the dismissal of charges brought by California Attorney General and U.S. Senate candidate Kamala Harris for which we were jailed for four days, before being released at a bond hearing last week. A court summarily rejected efforts by the AG to prevent our release.

Harris has alleged that over a three year period Backpage.com, a classified advertising website we sold nearly two years ago which publishes tens of millions of posts annually, published ads authored and posted by nine users of the website, which the state says were for prostitution. There is no allegation we had anything to do with creating or posting these ads, or knew anything about them. The state alleges that since the website collected a total of \$79.60 for the ads, this makes us pimping conspirators under California law.

The response to our arrest from the Internet speech and privacy community was not slow in coming. Writing in *Bloomberg.com*, Noah Feldman, the Felix Frankfurter Professor of Law at Harvard Law School, said that, by bringing this case, “Kamala Harris has seriously breached the constitutional wall meant to protect the free press”. Professor Feldman characterized the criminal complaint against us as “a fairly astonishing document”.

Professor Eric Goldman of Santa Clara University College of Law and the *Technology & Marketing Blog* asked the obvious question about “the timing of this prosecution”. “If prosecutors think accepting paid classified ads from prostitutes is pimping, why didn’t they prosecute Craigslist (or its executives) for pimping nearly a decade ago? The crime of pimping has been on the books, and available to prosecutors, the entire time. Why is it being invoked only now?” Goldman then answered his own question: “Kamala Harris is seeking higher office and this prosecution generated a new press event highlighting one of her key messages”.

On the day she authorized the complaint for our arrest in this case Kamala Harris knew she had no legal authority to bring a prosecution, because she had previously said so herself. On July 23, 2013, Harris and other state attorneys general sent a letter to members of Congress asking that Section 230 of the Communications Decency Act, which flatly bars state criminal charges against online publishers of third-party created content, be amended so that she and others could prosecute Backpage. She said that the CDA “prevents state and local law enforcement from prosecuting” online service providers like Backpage for state crimes. Displaying a laudable appreciation of the chilling effect on Internet speech if 2400 elected state and local prosecutors were allowed to institute prosecutions against online forums for speech they neither created nor posted, the Congress declined to change the law or authorize state criminal jurisdiction.

Of course, knowing the law was of modest comfort as we were being booked into the Sacramento County jail and paraded in front of the press in orange jump suits last week on a charge Ms. Harris knew she had no legal authority to bring when she brought it. We never set out when we published our first newspaper over 40 years ago to become the first American journalists to claim the rueful distinction of having been jailed both for editorials we wrote and advertising we published.

In 2007 we were arrested in Phoenix by agents of Sheriff Joe Arpaio for having published a story in the *Phoenix New Times* criticizing Arpaio for misusing a Grand Jury to harass *New Times* and its readers. We sued Arpaio in federal court under the Civil Rights Act and settled the case against the Sheriff and his handpicked Special Prosecutor for nearly \$4 million.

The law protecting free speech and classified advertising on the Internet is largely a product of cases Backpage has fought and won over the last decade in federal courts in New Jersey, Massachusetts, Washington, Tennessee, Illinois and Missouri.

When the legislatures of three of those states passed laws that would have made online hosts of classified ads criminally liable for the content of third-party posts, we sued and the federal

courts struck down those criminal statutes because they violated the First Amendment and Section 230 of the CDA. Then we collected our attorneys' fees from all three states.

In a sealed federal Grand Jury proceeding in the Pacific Northwest seeking to treat Backpage like a criminal enterprise rather than a website protected by the First Amendment, the federal court quashed several subpoenas and effectively shut down the Grand Jury. In that case, and in all of the others we have litigated and won concerning Backpage.com, the government at least operated on the settled legal principle that, when freedom of expression is threatened, it is never okay to consider the First Amendment implications after, not before, hauling people off to jail. We got to assert our rights in court and hold government to the rule of law before anyone started slapping handcuffs on us.

Make no mistake; Kamala Harris has won all that she was looking to win when she had us arrested. Like Sherriff Arpaio, she issued her sanctimonious public statement, controlled her media cycle and got her "perp walk" on the evening news. Arpaio didn't pay a dime of the civil damages we won against him. The taxpayers of Maricopa County did. And if the polls are any indication, Harris will be warmly ensconced in the United States Senate by the time her blatant violations of the First Amendment and federal law are finally adjudicated. She won't pay. The taxpayers of California will.

And, as Kamala Harris knows, it probably won't even make the evening news.