



# FUND FOR LEADERSHIP EQUITY, ACCESS AND DIVERSITY

## LEAD FUND AUTHORS PROGRAM

*Tongue-Tied: Hate Speech and the First Amendment  
on the University of Wisconsin-La Crosse Campus*



2018 LEAD FUND AUTHOR

Alicia Quiñones

# TABLE OF Contents

03	The Lead Fund Authors Program
04	About the LEAD Fund Author
05	Introduction
07	Literature Review
13	Opposition to Hate Speech Regulation
15	Case Study Methodology
15	Results from Student Survey
21	Conclusion
22	Suggestions Moving Forward
24	Appendix 1: Introductory Message and Survey Questionnaire
34	Appendix 2: Hate Response Team Survey
35	Works Cited

## Hate Speech and the First Amendment on the University of Wisconsin - La Crosse Campus

# The LEAD Fund Authors Program

## Vision, Mission & Values

The LEAD Fund was established to provide thought leadership in promoting inclusive organizations and institutions through research and education on issues related to diversity, social responsibility, human and civil rights. The LEAD Fund is a “Think and Do” tank, which advances new knowledge and tested strategies aimed at eliminating prejudice and discrimination.

Consistent with its Public Education program, the LEAD Fund conducts research on persistent and cutting-edge issues that expand the body of knowledge in diversity, equal opportunity law and social justice policy, and provide effective strategies and best practices to ensure access and opportunity for all. The LEAD Fund Authors Program emphasizes “Diversity in Action” and is committed to promoting undergraduate and graduate research that advances new understandings and tested strategies aimed at expanding organizational or institutional knowledge of access, equity, and diversity. Through this program, the Fund’s goal is to help prepare the next generation of leaders.

The LEAD Fund is a 501 (c) (3) charitable organization. It complements the work of the American Association for Access, Equity and Diversity (AAAED) through programs and activities that address a range of concerns, including affirmative action, equal opportunity, equity, access, civil rights, and diversity and inclusion in education, employment, business and contracting. The scope of the Fund’s activities is both domestic and international. The LEAD Fund places a special emphasis on the emerging demographics in the United States in all of its work.



Founded in 1974, AAAED is the longest-serving organization of professionals in the equal opportunity, affirmative action and diversity professions. AAAED members work in higher education, government and private industry and include members of the legal profession, consultants, policy makers and thought leaders.

LEAD Fund Authors are selected among a diverse pool of applicants who present their work in the form of poster presentations at the American Association for Access, Equity, and Diversity’s (AAAED) annual conference or who submit their papers directly to the Fund. If their research is chosen for publication, LEAD Fund Authors will receive an honorarium.

LEAD Fund Authors’ presentations are intended to disseminate fresh ideas on methods to promote access, equity, and diversity in employment, education and business/contracting. LEAD Fund Authors also have an opportunity to become LEAD Fund Fellows after graduation and to foster relationships with AAAED professionals.





## LEAD FUND AUTHOR OF 2018

### ALICIA QUINONES

#### University of Wisconsin La Crosse'18

### *About the LEAD Fund Author of 2018*

## Alicia Quiñones

Alicia Quiñones is currently a graduate student at the University of Maryland's School of Public Policy studying social policy. As an undergraduate at the University of Wisconsin (UW-L) she received a Bachelor of Science in political science and public administration where she participated in the Ronald E. McNair Post-Baccalaureate Achievement Program. The McNair Program and her mentor Nizam Arain, Director of Equity and Affirmative Action and Title IX Coordinator at UW-L, helped fund and conduct this research concerning hate speech and the First Amendment on the UW-L campus. Previously, Alicia interned with the AAAED where she was given the opportunity to be a LEAD Fund author.

Representatives of the LEAD Fund met Alicia Quinones and her faculty mentor while attending a conference for Campus Hate and Bias Response Team representatives convened by the University of Wisconsin-La Crosse in early 2018. This visit was part of a series of listening sessions that the LEAD Fund organized or attended pursuant to a grant funded by the Lawyers' Committee for Civil Rights Under Law to prepare a toolkit and survey on campus hate and bias. We subsequently invited Ms. Quinones to serve as an intern for the American Association for Access, Equity and Diversity (AAAED) and the LEAD Fund during the summer of 2018. This paper, which she initially presented at the conference in La Crosse, is the culmination of her work on this topic.

The LEAD Fund wishes to thank board member Edna Chun for reviewing and Merle Singer for editing this document.



*(Pictured with Faculty Mentor Nizam Arain, Director of Equity and Affirmative Action, University of Wisconsin-La Crosse)*



# Tongue-Tied: Hate Speech and the First Amendment on the University of Wisconsin-La Crosse Campus

Alicia Quiñones, University of Wisconsin-La Crosse '18 Graduate  
Mentor Nizam Arain, Director of Equity and Affirmative Action, University of Wisconsin-La Crosse

## I. INTRODUCTION

This research project analyzes the written language used by the University of Wisconsin-La Crosse (UWL) to determine whether its rhetoric has either helped curb the recurrence of subsequent hate speech incidents or resulted in the opposite. The goal of this research is to create a better understand the extent to which university policy has been effective and the campus perception towards that effectiveness. Through the use of surveys presented to the student body, this study examines the student body's practical knowledge about the nature of hate speech and the First Amendment right via hypothetical and real-life examples from college campuses. Personal narratives were given by the staff of the Hate and Bias Response Team on campus to understand better how the university handles incidents where hate speech and the First Amendment right intersect, and additionally, where the university policy and procedure draw a line between the two.<sup>1</sup>

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<sup>1</sup> Institutional Review Board approval was received through the University of Wisconsin-La Crosse to obtain student emails used for surveys to conduct this research.

## a. Current University of Wisconsin-La Crosse/System Policy and Procedure

*The University of Wisconsin's Regent Policy Document 14-6: Discrimination, Harassment, and Retaliation, specifically the Institutional Policy and Procedures section, states as follows:*

It is the policy of the Board of Regents of the University of Wisconsin System to maintain an academic and work environment free of discrimination, discriminatory harassment, or retaliation for all students and employees. Discrimination is inconsistent with the efforts of the University of Wisconsin System to foster an environment of respect for the dignity and worth of all members of the university community and to eliminate all manifestations of discrimination within the university. The Board is also committed to the protection of individual rights under the First Amendment (and related principles of academic freedom) and in preserving the widest possible dialogue within its educational environment.

Discrimination or discriminatory harassment that is based upon an individual's characteristics which are protected under institution policy, state law or federal law ("protected status") is prohibited. Harassment is a form of discrimination and is prohibited. In addition, any form of retaliation against students or employees will not be tolerated. Any person who believes they have been subject to this type of prohibited activity should immediately report it to the appropriate institution official or office.<sup>2</sup>

The University of Wisconsin System uses explicit speech codes, which ensure the policy and procedure do not change case by case for each incident involving harassment or discrimination specifically. At the same time, the University of Wisconsin also relies on what are categorized as implicit speech codes, which means situations are still handled on a case-by-case basis; for instance, these codes include "statement" incidents, which include "not only words that are spoken, but also instances where hateful messages are conveyed using sign language, gestures, or similar forms of direct interpersonal communication." The use of implicit speech codes gives the University the ability to react and remedy incidents in a way that seems best considering the context.



<sup>2</sup> University of Wisconsin System. "Discrimination, Harassment, and Retaliation." Board of Regents.

For example, the University of Wisconsin-La Crosse explains their strategy when it comes to speech that falls within the “statement” category:

While the First Amendment protects the free expression of ideas that are sometimes offensive, that does not mean the university is powerless to respond. Instead of trying to censor or punish free speech, the Hate Response Team documents and tracks these incidents in order to:



- Assist the victim/target in receiving the appropriate services (if requested)
- Develop programming and training opportunities to address intolerance
- Detect emerging patterns of hateful or biased activity
- Publish aggregated data about these incident rates and trends
- Make recommendations to campus leadership for the prevention of future hate/bias incidents<sup>3</sup>

After assessing the current policy and procedure, I intended to find out what alternatives existed for handling hate speech or statement incidents on other college campuses. The following section provides a theoretical background on both sides of the aisle regarding support for or against hate speech regulation. This information will be used as the basis for my suggestions for the University of Wisconsin-La Crosse’s policy and procedure moving forward.

## II. LITERATURE REVIEW

### a. Theoretical Background

Jeremy Waldron, a New Zealand professor of law and philosophy, explains in his book *The Harm in Hate Speech* that there are certain assurances people within our society should have about the protection of their dignity and how hate speech regulation would help to secure those

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<sup>3</sup> University of Wisconsin-La Crosse. "Campus Climate." Hate Response Team – Campus Climate | UW-La Crosse.



protections; without legislation to protect these basic civil assurances, they are thrown into jeopardy. These assurances include what Waldron describes as the "public good of inclusiveness that our society sponsors and is committed to," as well as the basic social standing that Waldron believes dignity provides to society.<sup>4</sup> This idea of dignity is one that carries throughout the work; Waldron describes dignity as "the fundamentals of basic reputation that entitle them [minority groups] to be treated as equals in the ordinary operations of society."<sup>5</sup> The sort of regulations that Waldron argues the U.S. should consider compares with those seen in other modern democracies across the globe, including, for example, Canada, Denmark, Germany, New Zealand, and the United Kingdom.<sup>6</sup> Waldron's stated intent is not to revise the U.S. constitution, by any means, as he believes this would be as difficult as trying to change gun control laws, but instead, offer the most persuasive argument in favor of these types of regulations.

Waldron uses the idea of *group* libel, as opposed to *individual* libel, an older term, to explain the necessary protection of citizens against public displays — written, drawn, or spoken — that could harm groups of people, mainly minority groups, and upset their reputation and livelihood. Waldron points out that the government may be strong enough to withstand public criticism, but vulnerable groups of minorities should not be expected to protect their identities from defamation of publicized hate speech all on their own. Waldron further argues that by looking at the issue from this perspective, enacting laws that protect vulnerable groups from libel becomes a natural next step in the process of justice within a country.



Beyond the laws, society itself would have to collectively agree that the coinciding pertinent public assurance would also be provided to citizens to prove to one another their "willingness to cooperate in the administration of laws and the humane and trustful enterprise that elementary justice requires."<sup>7</sup>

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<sup>4</sup> James Waldron. "The Harm in Hate Speech," Cambridge, MA: *Harvard University Press*. (2014): 1-245.

<sup>5</sup> Waldron, 5.

<sup>6</sup> Waldron, 8.

<sup>7</sup> Waldron, 103.



Waldron finishes by explaining the viewpoint of those who are critics of hate speech regulation. One of the main arguments against regulations is the belief that they would strip away the American citizen's autonomy and right to freedom of speech, regardless of whether hate speech silences vulnerable groups within public spheres. As Ed Baker would phrase it, not only does regulation restrict a person's autonomy within the public arena, but even a person's identity, as "racist hate speech embodies the speaker's . . . view of the world," and their "manifestation of autonomy," thus their identity.<sup>8</sup>

Dr. Andrew Altman, director of research at the Jean Beer Blumenfeld Center for Ethics and professor at Georgia State University, takes a narrower scope in his article "Liberalism and Campus Hate Speech: A Philosophical Examination" and argues from a liberal perspective in favor of rules prohibiting hate speech involving more specificity with the language used within guidelines. This argument develops a middle ground between those who reject all forms of campus hate speech regulation and those in favor. Furthermore, the article addresses the impact on victims of hate speech and how that impact might inform whether regulation is necessary or sufficient.

Altman opens by using examples from Stanford University and the University of Connecticut to provide an idea of what hate speech regulation looks like on different campuses. At Stanford University, for disciplinary action to apply in the case of hate speech, the scenario must meet three criteria: "The speaker must intend to insult or stigmatize another on the basis of certain characteristics such as race, gender, or sexual orientation; the speech must be addressed directly to those whom it is intended to stigmatize; and the speech must employ epithets or terms that similarly convey 'visceral hate or contempt' for the people at whom it is directed."<sup>9</sup>

Conversely, the University of Connecticut took a broader approach; according to their rules, "every member of the University is obligated to refrain from actions that intimidate, humiliate or demean persons or groups or that undermine their security or self-esteem." Examples of such speech include as follows: "Making inconsiderate jokes; . . . stereotyping the experiences, background, and skills of individuals; . . . imitating stereotypes in speech or mannerisms [and] attributing objections to any of the above actions to 'hypersensitivity' of the targeted individual

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<sup>8</sup> Waldron, 165.

<sup>9</sup> The full text of the Stanford regulations is in Thomas Grey, "Civil Rights v. Civil Liberties: The Case of Discriminatory Verbal Harassment," *Social Philosophy and Policy* 8. (1991): 106-7.

or group.”<sup>10</sup> Altman argues that neither Stanford nor the University of Connecticut takes an approach that is genuinely viewpoint-neutral, and for any liberal argument to be made about hate speech regulation, it must be. That being said, however, Altman argues that an exception must be made in this case to protect specific groups:

Viewpoint-neutrality is not simply a matter of the effects of speech regulation on the liberty of various groups to express their views in the language they prefer. It is also concerned with the kinds of justification that must be offered for speech regulation. The fact is that any plausible justification of hate-speech regulation hinges on the premise that racism, sexism, and homophobia are wrong. Without that premise, there would be no basis for arguing that the viewpoint- neutral proscription of verbal harassment is insufficient to protect the rights of minorities and women. The liberal who favors hate-speech regulations, no matter how narrowly drawn, must, therefore, be prepared to carve out an exception to the principle of viewpoint-neutrality.<sup>11</sup>

Altman uses targeted subordination as core to the kind of wrong hate speech represents, thus justifying hate speech regulation. Racist speech itself is harmful because it operates to make another feel subordinate or of inferior moral standing. Where some would argue that the psychological harm caused by hate speech would justify hate speech regulation, Altman contends that hate speech instead inflicts on victims a “certain kind of wrong” that elicits regulation. The illocutionary act of treating someone as “moral subordinates” is the kind of hate speech that for Altman constitutes as a “speech-act wrong.” Altman states that a liberal republic is not one that seeks to prohibit wrongdoing, but rather seeks to protect the liberties of an individual so that one is “free from authoritative intrusion even to do some things that are wrong.”<sup>12</sup> It is this argument that Altman turns on its head when he states the wrongdoings of subordination in the form of hate speech, or “speech-act wrongs,” are not typical wrongs; they are *principal* wrongs that are rooted in a long history of keeping Westernized society from living up to the ideals and principles we attempt to hold our nation true to. Liberals would agree that the same liberal framework used to create laws

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<sup>10</sup>The University of Connecticut’s original regulations are found in the pamphlet “Protect Campus Pluralism,” published under the auspices of the Department of Student Affairs, the Dean of Students Office, and the Division of Student Affairs and Services. The regulations have since been rescinded in response to a legal challenge and replaced by one similar to those in effect at Stanford. See *University of Connecticut Student Handbook* (Storrs: University of Connecticut, 1990-91), p. 62.

<sup>11</sup> Andrew Altman, “Liberalism and Campus Hate Speech: A Philosophical Examination.” *Ethics*, 103(2). (1993): 302-317.

<sup>12</sup> Altman, 306.

that eliminate discrimination within the workplace or housing can be applied when creating regulation at universities for subordination in the form of hate/bias incidents.<sup>13</sup>

Altman then enumerates how to target speech-act wrongs through the use of rules that prohibit speech that: “(a) employs slurs and epithets conventionally used to subordinate persons on account of their race, gender, religion, ethnicity, or sexual preference, (b) is addressed to particular persons, and (c) is expressed with the intention of degrading such persons on account of their race, gender, religion, ethnicity, or sexual preference.”<sup>14</sup> In addition, the regulations should also include examples of the speech prohibited as a warning to students. The intent requirement is included as a way to weed out instances where the student did not intend to treat another individual as subordinate and also includes cases where students reclaim words traditionally used to subordinate them, such as African American individuals reclaiming the n word. Altman explains that the term “degrade” is the most accurate in portraying the sentiment of subordinating another.<sup>15</sup>

Altman concludes that the purpose of such regulations would be not to target *ideas* of an individual so long as they do not subordinate another: stating, arguing, claiming, defending, and so on would be without regulation. Altman's conclusion, he argues, is one that “accommodates the liberal concerns underlying viewpoint-neutrality, while regulations that sweep more broadly would not.”<sup>16</sup>

Alice Ma, an attorney in California and author included in the California Law Review, looks at the topic of hate speech regulation in “Campus Hate Speech Codes: Affirmative Action in the Allocation of Speech Rights,” by changing the perspective. She changes the lens to focus on the impact of “the victim, the inequalities in the marketplace of ideas, and the harm to both the individuals and society, and rejects the contention that hate speech regulation violates the First Amendment.”<sup>17</sup> Ma frames her argument in such a way that free speech is not, in reality, free to all considering that not all people have an equal opportunity to speak; thus, the Fourteenth Amendment, Section 1 states that: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any

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<sup>13</sup> Altman, 307.

<sup>14</sup> Altman, 313.

<sup>15</sup> Altman, 310.

<sup>16</sup> Altman, 315.

<sup>17</sup> Alice Ma, “Campus Hate Speech Codes: Affirmative Action in the Allocation of Speech Rights.” *California Law Review*, vol. 83 no. 2 (1995), p. 693-732.

law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Congress has power to enforce this article by appropriate legislation,” in conjunction with the First Amendment, should play a significant role in the creation of any regulation for hate speech. Affirmative action programs offered by universities looking to provide solutions to past discrimination and hate speech codes would do the same in ensuring “present and future equality of speech.”<sup>18</sup> The First Amendment is meant to protect any and all speech, but Ma questions this premise and asks whether the speech of a KKK member that instills fear in the victim is still protectable. Furthermore, is the constitution so narrow and the First Amendment so broad that even hate speech would be classified as protected?<sup>19</sup>

Considering the impact on the target, specifically the personal harm potentially caused by hate speech, the result could be silencing that individual both in the present and future. Ma contends that because whites have not been historically and systematically silenced by racist speech, the framework of the Fourteenth Amendment around hate speech codes would be “asymmetrically” applied.<sup>20</sup> Hence, whites would be prohibited from using hate speech against minorities, but not vice versa. Ma explains that these “strict scrutiny” speech codes may seem abnormal and unaligned with the purpose of hate speech codes in the name of mutual respect, but there are advantages:

However, an asymmetrical hate speech code has several advantages. First, it would circumscribe less speech than its symmetrical counterpart, since only racist speech against minorities would be restricted. Second, an asymmetrical rule would deal adequately with the problem of racist speech by one minority against another, since the permissibility of racist speech would depend on the race or ethnicity of the victim, not of the perpetrator. Finally, asymmetrical hate speech regulations reflect the unique nature of the harm suffered by minority victims of racist speech.<sup>21</sup>

Viewing hate speech codes as a form of affirmative action, Ma argues, is justified due to the amount of speech discrimination that minorities have seen throughout history; this is the cost of “true

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<sup>18</sup> Ma, 696.

<sup>19</sup> Ma, 700.

<sup>20</sup> Ma, 714.

<sup>21</sup> Ma, 714.



equality and true freedom of speech."<sup>22</sup> It is the intention that prohibiting hate speech in the form of affirmative action will increase minority student dialogue and participation within college classrooms.

Considering affirmative action intentions, Ma explains that Justice Powell in the decision of *Regents of the University of California v. Bakke*, a Supreme Court case analyzing the effectiveness of affirmative action programs at the University of California at Davis' Medical School, after a plan to enact a special admission process for minority students, states four critical problems with justice in regard to these types of procedures. First, there is no way to evaluate if the preference made is always benign. Second, these plans run the risk of reinforcing stereotypes that minorities are unable to succeed without particular attention, and this idea hurts minority groups. Third, it is unjust to have the majority bear the weight of "past harms they did not cause."<sup>23</sup> Fourth, findings show that more regulation is needed when it comes to solutions crafted in response to past harms of discrimination to limit the scope of such remedies.<sup>24</sup> Ma contends that the First Amendment should be read in tandem with the Fourteenth Amendment to ensure equality if we want to remedy past discrimination.

### III. Opposition to Hate Speech Regulation

Phil Cox, in "The Disputation of Hate: Speech Codes, Pluralism, and Academic Freedoms," frames his discussion by responding to pro-code advocates questioning why their institutions cannot craft hate speech codes in light of Supreme Court rulings and laws that outlaw speech such as slander, libel, verbal assault, harassment and the use of "fighting words."<sup>25</sup> The analogy made with the law, in this case, is one that Cox rejects, stating that due to the broad net cast by most university policies regarding hate speech, it would be "disingenuous" to defend speech codes under such pretense. Additionally, the analogy of hate-speech regulation and law cannot be made entirely because of the lack of due process within universities' policy and procedure.

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<sup>22</sup> Ma, 715.

<sup>23</sup> Ma, 708.

<sup>24</sup> Ma, 708.

<sup>25</sup> Phil Cox, "The Disputation of Hate: Speech Codes, Pluralism, and Academic Freedoms." *Social Theory and Practice*, 21(1). (1995): 113-144.

Another argument Cox mentions is made by those in favor of hate-speech regulation is that by voluntarily affiliating with a university, a student has then voluntarily agreed to “rules” associated with that university much like agreeing to a smoke-free campus.<sup>26</sup> Essentially, by signing a contract, for example, universities could avoid violating the First Amendment. However, this approach would mean that students could withdraw their agreement at any time, and any disciplinary action taken by the university could be potentially unconstitutional. Cox argues that these counter-arguments, among others, are grounds to argue that speech codes for hate speech are not sufficient.

Furthermore, there are many other avenues that would better curb such speech — for example, devoting “resources and effort to finding ways of positively fostering and promoting tolerance, civility, and diversity, rather than negatively seeking ways to punish speech judged offensive.”<sup>27</sup>

S. Cagle Juhan, Judicial Law Clerk at Western District of Virginia and author for the Virginia Law Review, agrees that there are better avenues to addressing hate speech on college campuses. In “Free Speech, Hate Speech, and The Hostile Speech Environment,” he crafts an argument around the premise that regulating hate speech creates a hostile speech environment that proves hate speech codes unconstitutional. Juhan states that there are three elements for the hostile speech environment cause of action. First, one must prove that their speech is protected, considering that hate speech itself is generally protected by the First Amendment.<sup>28</sup> This would not include any speech that was accompanied by a threat or other regulated conduct such as physical assault. Second, state action taken in connection with the university must either “regulate, chill or suppress the claimant’s protected speech,” and/or manifest in a way that proves hostile to such speech.<sup>29</sup> Last, much to the same intent as Title VII hostile work environment doctrine, the resulting chilling effect toward the speaker must be “sufficiently severe or pervasive,” creating an environment that is “objectively abusive towards that speech.”<sup>30</sup> Juhan argues regulation of hate speech would create a chilling effect that would drastically change the open and free dialogue that preceded hate speech regulation on college campuses.

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<sup>26</sup> Cox, 118.

<sup>27</sup> Cox, 138.

<sup>28</sup> S. Cagle, Juhan. Free Speech, Hate Speech, and the Hostile Speech Environment. *Virginia Law Review*, 98(7). (2012): 1577-1619.

<sup>29</sup> Juhan, 1600.

<sup>30</sup> Juhan, 1601.

## IV. Case Study Methodology/Research Design

My case study consisted of 5000 surveys sent to the student body, to which I received 455 responses. The questions ranged from real-life to hypothetical scenarios on college campuses around the nation, including the UWL campus (See Appendix 1). Additionally, I gave the students a list of phrases used by students on campuses around the country. The survey then asked students to determine whether the speech found in these scenarios was considered hate speech, whether they believed it was protected by the First Amendment, whether the University should respond to the incident, and whether the event was punishable by the University. Other questions asked students whether they believed the response from the university was an appropriate one, and if yes or no, why.

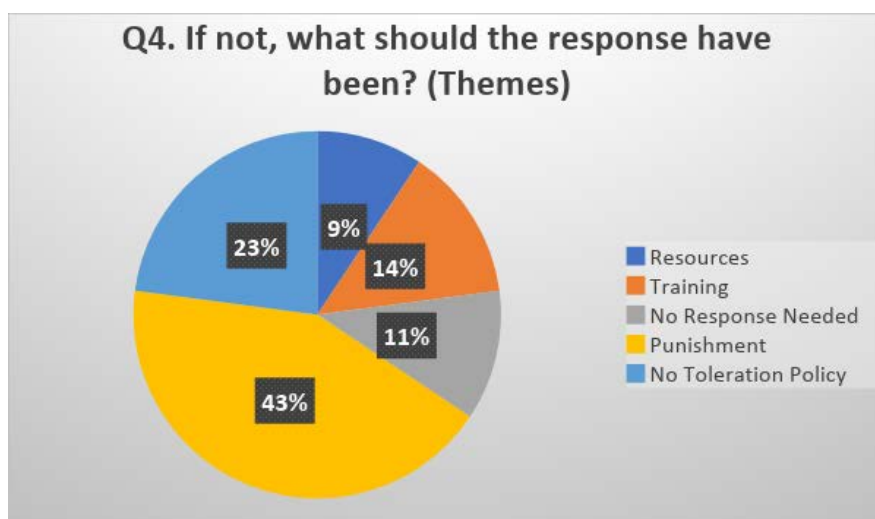
In a separate survey sent to the Hate Response Team here on UWL campus, I asked a series of questions about the policy and procedure the team uses to respond to incidents of this nature (See Appendix 2). For this study, I did not find enough significance within the results of this survey to use it within the broader research. This exclusion was due to the immense amount of consistency among the team members' answers. Their answers proved a strict devotion to University policy and procedure crafted to handle each conflict. If the opposite had been true and the team had been inconsistent in their approach to each incident, that would have been of significance to this project, but this was not the case. For point of reference, I have provided the questions given to the team in Appendix 2.

## V. Results from Student Survey

I hypothesized that the UWL policy would prove effective in its purpose of curbing alleged hate speech incidents based on the data from student surveys and coding of policy and procedure from the University of Wisconsin-La Crosse. However, the students' perspectives of that effectiveness were not as positive as hypothesized.

Question 4 of the student body survey is a situation involving a picture drawn on a dorm room whiteboard with "#BlackLivesDontMatter" written on it; included within the question is the response sent by the University of Wisconsin-La Crosse Chancellor, Joe Gow. (See Question 4, Appendix 1). I then asked four different questions based on the content:

- *After seeing the photo and reading the response, do you think this is an appropriate response to this particular incident? Yes/No.*
  - Yes: 69.8% (275 responses)
  - No: 30.2% (119 responses)
- If not, what should the response have been? Please explain in no more than 2 sentences.<sup>31</sup>



I received 116 written responses total and broke them down by common themes, resulting in 96 written submissions that fell within one of those themes. The following are the 96 responses split into the different response categories. (Note that percentages represent how many answers fell within the themes and are not in relation to the total amount of responses from students.) The largest response received, 43%, was composed primarily of students asking for punishment for the perpetrator (note that the perpetrator in this incident was not found) but did not include suggestions for what kind of punishment. Following are some of the suggestions that the students did include:

*“Explain punishments for hateful behavior (suspension/expulsion) and make the events mandatory rather than suggested.”*

*“The entire dorm where it was found should have had to attend these meetings as well as any other students who wished to attend.”*

<sup>31</sup> Appendix 1. Question 4. Sub question.

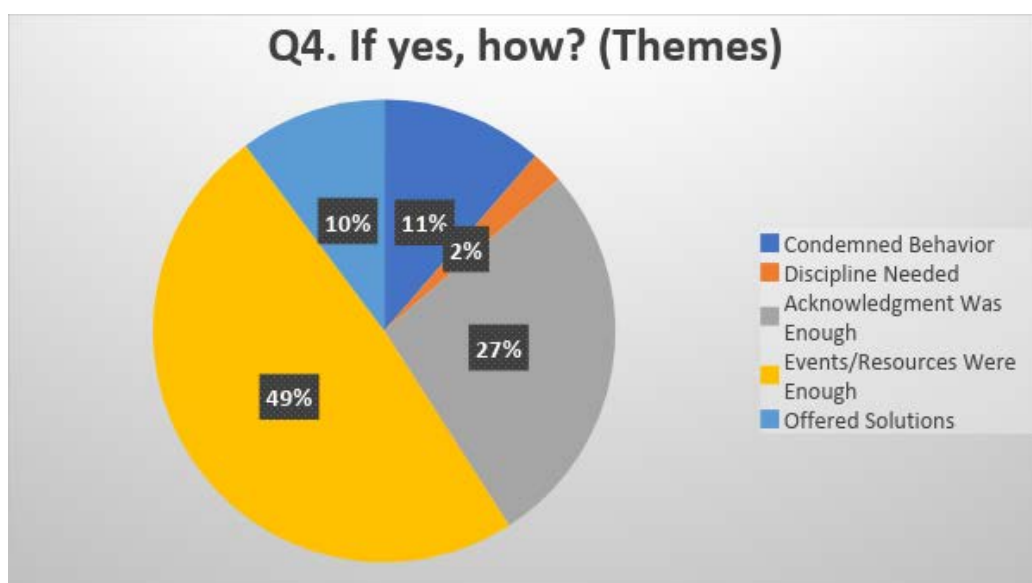


The following are other themes found: “No toleration policy” (23%): Students called for the University to create a no-tolerance policy in regard to incidents such as this one that would explicitly condemn such behavior with the result of disciplinary action. “Training” (14%): Students believed that the training was not going to target potential perpetrators, but instead those who already agreed the incident was wrong; additionally, students called for mandatory training geared toward all students so that potential perpetrators would receive the necessary education. “No response needed” (11%): Students wrote that the University did not need to respond to this incident and their doing so was unsolicited. “Resources” (9%):

Students wrote that the resources provided were not sufficient for dealing with the issue or asked that more resources be provided for students in regard to racist comments on campus.

I continued with questions about whether the institutional messaging from Chancellor Gow’s email (Appendix 1, Question 4) affected students’ response to the incident and how.

- Did the institutional messaging affect your response in any way? Yes/No.
  - Yes: 15.8% (57 responses)
  - No: 84.2% (304 responses)
  - If yes, how? Please explain in no more than 2 sentences. (97 total responses, 88 within categorized themes):<sup>32</sup>

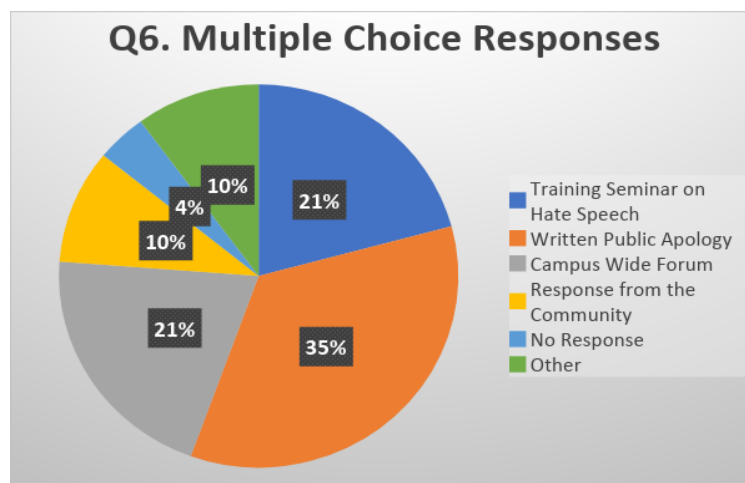


<sup>32</sup> Appendix 1. Question 4. Sub question.

It was essential to understand what some students believed the University was doing correctly to inform University responses moving forward. The most substantial response “Events/Resources Were Enough” (49%): Students wrote that the three-part teach-in was enough to address the incident. The second largest, “Acknowledgement Was Enough” (27%): Students wrote that the email acknowledging the incident was an effective response to the incident and that no further action was necessary. “Condemned Behavior” (12%): Students wrote that the response from the Chancellor sufficiently condemned the behavior of the student. “Offered Solutions” (10%): Students wrote that the University offered solutions to the incident through the teach-ins, and that was enough to address the incident. “Discipline Needed” (2%): Students wrote that there was discipline needed for the perpetrator.

Appendix 1, Question 6 includes an example of a banner made and hung by students on the University Wisconsin-La Crosse campus. [Hansen, N. (2016, September 07). Sexist banner near UW-L stirs backlash.] The message reads, “Free cream pies w/ valid freshman ID.”<sup>33</sup>

- Based on the content of the banner, is this hate speech? Yes/No.
  - Yes: 46.8% (165 responses)
  - No: 53.2% (190 responses)
- Is it speech protected by the First Amendment? Yes/No.
  - Yes: 70.4% (250 responses)
  - No: 29.6% (105 responses)
- Based on the content of the banner, choose one of the following possible University responses to this incident:

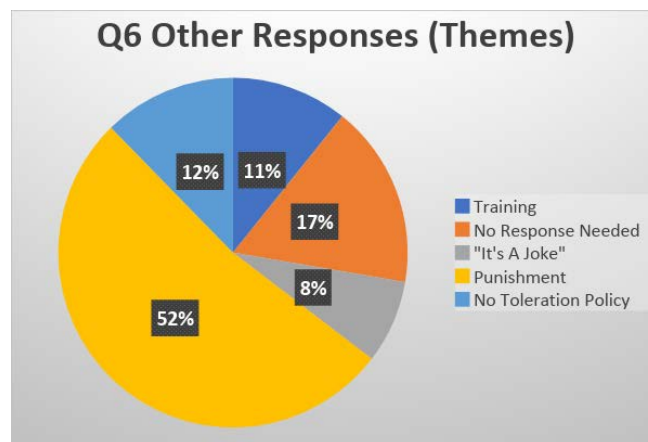


<sup>33</sup> Appendix 1. Question 6.

<sup>34</sup>The students (35%) called for a “Written Public Apology” from the students who hung the banner. However, this option is not one the University can require of students; it would have to be done voluntarily. The next two largest responses were “Training Seminar on Hate Speech” (21%) and “Campus-Wide Forum” (21%).

In addition to asking students what response they thought would be most appropriate, I asked them to write in other alternatives and broke those submissions down by themes (71 total responses, 65 within categorized themes):

In addition to asking students what response they thought would be most appropriate, I asked them to write in other alternatives and broke those submissions down by themes (71 total responses, 65 within categorized themes):



<sup>35</sup>In addition to questions that asked students to write in their idea of what an appropriate response would be to these incidents, I provided several phrases used on UWL campus and others and asked four separate questions:

- Is the content hate speech?
- Is it protected by the First Amendment?
- Should the University respond?
- Is it punishable?

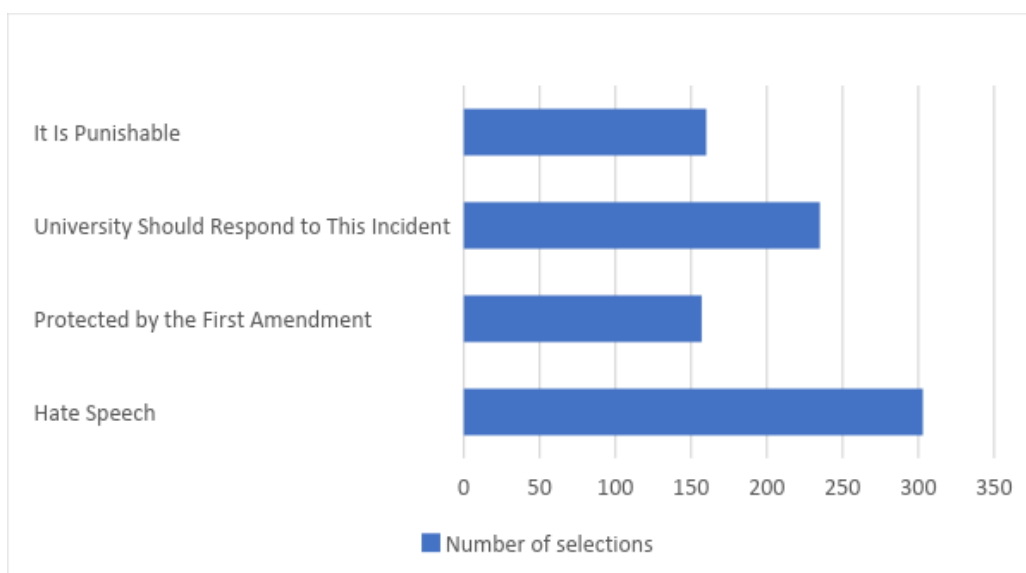
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<sup>34</sup> Appendix 1. Question 6. Sub question.

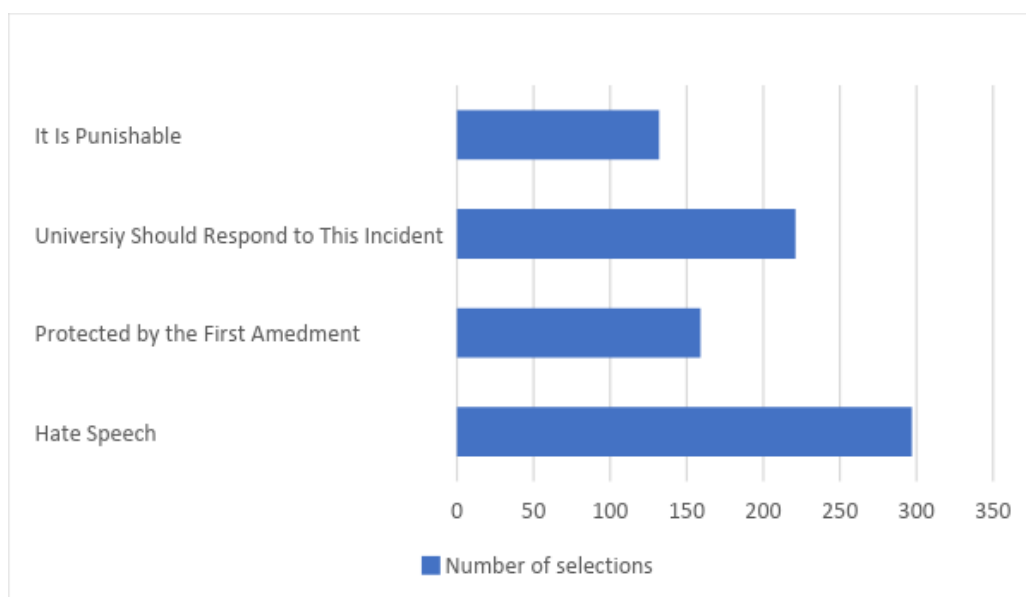
<sup>35</sup> Appendix 1. Question 6. Sub question.

Following are the results:

### **“#BlackLivesDontMatter”<sup>36</sup>**



### **“Go home to where you came from”<sup>37</sup>**



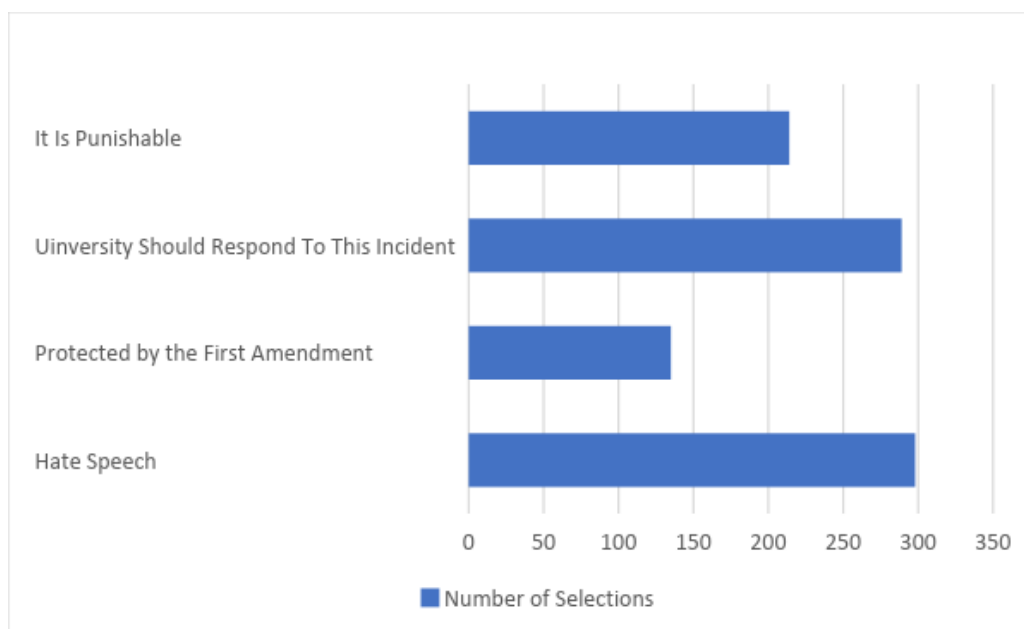
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<sup>36</sup> Appendix 1. Question 12.

<sup>37</sup> Appendix 1. Question 11.



## “Swastikas are written or printed on fliers around campus”<sup>38</sup>



## VI. Conclusion

As it stands now, the University of Wisconsin System Regent policy and Hate Response Team procedure when it comes to “statement” incidents are effective in providing implicit speech codes that deal with incidents on a case-by-case basis. It is crucial to mention that the responses received from students showed no statistical differences between the answers from white students and students of color. The only statistical difference was between men and women on campus; this statistical difference was seen in every question aforementioned. The responses from the student survey case study have demonstrated that a substantial number of students, both white students and students of color, who believe that the response and action taken by the University should be more explicit — explicit meaning some form of punishment or no-tolerance policy that does not change from case to case such as those situations in questions 2, 3, 4, and 6 in Appendix 1 — are appropriate for the University (see Results Section).<sup>39</sup> The firm stance of students in their belief that the University should create a set punishment or no-tolerance policy for these “statement” incidents could be helpful knowledge for the University in crafting “statement” incident policy and procedure.

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<sup>38</sup> Appendix 1. Question 17.

<sup>39</sup> Appendix 1.

## VII. Suggestions Moving Forward

Based on the theoretical background provided by the scholars within the literature review and the student survey case study, it is my suggestion that the University of Wisconsin-La Crosse uses Ma's Fourteenth Amendment argument. The University would then craft implicit speech code policy that treats hate speech or statement incidents and their coinciding procedure as an act of affirmative action. It is with this thinking that the University could remedy the past discrimination towards historically oppressed groups. Unlike Ma, however, I would argue that this approach should be applied symmetrically or uniformly to all students on campus instead of asymmetrically only to students who are *not* a part of a minority group. The potential for such a policy to apply uniformly to the student body is based on the above finding in which students, regardless of their ethnic or racial background, found the incidents and phrases presented in the survey to be egregious and therefore appropriate for the University to regulate.

Using Altman's process in creating hate speech regulation, the University would stand to condemn speech that "(a) employs slurs and epithets conventionally used to subordinate persons on account of their race, gender, religion, ethnicity, or sexual preference; (b) is addressed to particular persons; and (c) is expressed with the intention of degrading such persons on account of their race, gender, religion, ethnicity, or sexual preference."<sup>40</sup> Such an approach would rest on the premise that Altman introduces in his work: A student's social dignity should be upheld and protected by institutions who have the power to do so, thus universities.<sup>41</sup>

In addition, the regulation should include examples of the speech prohibited as a warning to students. The results from questions 12, 13, and 18 in Appendix 1 and the analysis in the Results section make it clear that there are some phrases for which students indeed do draw a line between what is considered hate speech and therefore elicits a response from the University and what is protected by the First Amendment. This overwhelming agreement by students should be used to indicate what phrases and words would be examples to the students.

Finally, I would also recommend that the University provide mandatory classes for "statement" incidents that occur within resident halls on campus, especially when the student responsible for

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<sup>40</sup>Waldron, J. (2014). *The Harm in Hate Speech*. Cambridge, MA: Harvard University Press.

<sup>41</sup> Altman, 313.

the incident has not been identified. The results within the student survey show that students consistently call for punishment for the perpetrator or a no-tolerance policy at percentages larger than other responses from the University. Mandatory classes to educate students on acceptable language use on and around campus is a middle ground between punishment and a no-tolerance policy and an effective way to hit all groups of students. Those students who believe a “speech-act wrong” occurred and those who do not can receive the same message that incidents of this nature go against the values of the University.<sup>42</sup> This approach would foster speech that falls within stating, arguing, claiming, defending, and so on instead of statements that are considered the kind of *principle* wrong that Altman defines.

There is no catch-all solution to issues that involve hate speech on college campuses, as made apparent by the arguments from Juhan and Cox. According to this case study, an effort by the university to craft approaches that explicitly outline what is *not* appropriate speech on UWL campus and how the University plans to remedy those incidents is precisely what the student body requested to see in the future.

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<sup>42</sup> Altman, 307.

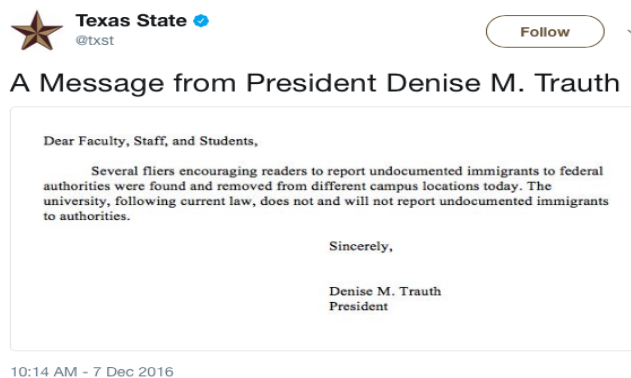
## Appendix 1: Introductory Message and Survey Questionnaire

**Introductory message:** As a precautionary reminder, the content of this survey contains explicit and potentially triggering racist and sexist slurs, imagery, and symbols. Please note that this is a voluntary survey, so you have the right to choose not to participate. The results will be used in an undergraduate research project about the nature of hate speech and the First Amendment right on college campuses, mainly the University of Wisconsin-La Crosse. Your name is confidential, but the survey will ask for your gender and race/ethnicity for statistical demographic purposes. All answers are subject to be used in the final research paper. This project is a scholarly one, so I ask that you take it seriously and answer honestly. Thank you for your participation.

The following are hypothetical and real-life scenarios; please read them and respond accordingly. (Note: Hypothetical scenarios may bear a resemblance to real-life situations.)

1. Below is a response from the Texas State President Denise M Trauth explaining why certain fliers had been removed from campus.

The message reads, "Dear Faculty, Staff, and Students, Several fliers encouraging readers to report undocumented immigrants to the federal authorities were found and removed from different campus locations today. The university, following current law, does not and will not report undocumented immigrants to authorities. Sincerely, Denise M. Trauth President".



***Based on the content, are the fliers hate speech? Yes/No.***

***Are they protected by the First Amendment? Yes/No.***

**In regard to the University at hand,**

***Should the University respond to this incident? Yes/No.***

***Is it punishable? Yes/No.***



2. Below is a message written on an off-campus house at the University of Wisconsin-La Crosse.  
(Chancellor Joe Gow, email communication, Nov. 9, 2016)

The message reads, "Go Home N\*\*\*\*\*s".



*Based on the content, is this hate speech?* Yes/No.

*Is it speech protected by the First Amendment?* Yes/No.

In regard to the University at hand,

*Should the University respond to this incident?* Yes/No.

*Is it punishable?* Yes/No.

3. Below is an example of language used on Lindenwood University campus.

The message reads, "HEY Maria, Trump won so here's a little preview of what is to come #wall"



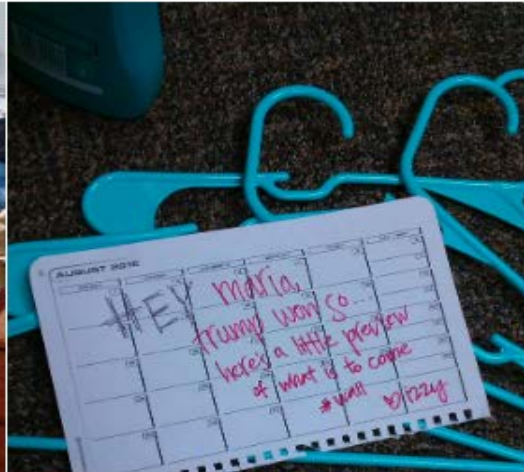
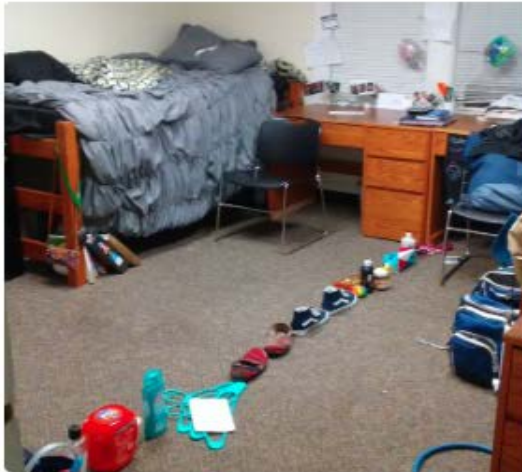
**María Sanchez**

@TRmariasanchez

Follow



I walked into my room and my heart aches with pain.



10:47 PM - 9 Nov 2016 from St Charles, MO

*Based on the content, is this hate speech? Yes/No.*

*Is it protected by the First Amendment? Yes/No.*

In regard to the University at hand,

*Should the University respond to this incident? Yes/No.*

*Is it punishable? Yes/No.*

4. Below is an example of a University of Wisconsin-La Crosse administrative response to a drawing reported on campus (Chancellor Joe Gow, email communication, Feb. 2, 2016):

\*Picture as presented in University email; the drawing reads, "#BlackLivesdon't matter":



This drawing in one of the University of Wisconsin-La Crosse's residence halls was reported using the campus' hate/bias system. The image resulted in a teach-in on racism at the university last spring.

"Dear Students and Colleagues:

There is no denying that our campus continues to be a place where hate and bias incidents occur with disturbing frequency. I urge you to visit our Campus Climate website and read the report compiled by our Hate Response Team to fully appreciate how extensive these reprehensible behaviors are:

<https://www.uwlax.edu/Campus-Climate/End-of-year-reports/>

And because statistics can only provide a part of the picture, I am attaching a photograph of an unbelievably ugly drawing that was found recently on display in one of our residence halls. I am deeply sorry to have to share such a hateful and disgusting image with you, but I think it's important that all the members of our community are fully aware of what is happening on our campus.

Our Hate Response Team and Campus Climate Office have organized a series of opportunities for us all to come together as a community to confront the realities of our current environment and talk about how we can improve our campus climate in the future. I hope you'll be able to participate in the following three sessions:

- 1) A Teach-In regarding Anti-Black Racism that will be held today (Friday, February 19th) from 11 a.m. to 1 p.m. in the Eagle Hall Basement
- 2) Part One of a Hate/Bias Open Forum that will be held Monday, March 7<sup>th</sup>, from noon to 1 p.m. in the Hall of Nations in Centennial Hall
- 3) Part Two of a Hate/Bias Open Forum that will be held Tuesday, March 8<sup>th</sup>, from noon to 1 p.m. in the Hall of Nations in Centennial Hall

If you care about the future of our university, I urge you to come join in these critical events. We cannot make progress without you.

Sincerely,

Joe

Joe Gow, Chancellor

University of Wisconsin-La Crosse"

***After seeing the photo and reading the response, do you think this is an appropriate response to this particular incident? Yes/No.***

***If not, what should the response have been?*** Please explain in no more than 2 sentences:

***Did the institutional messaging affect your response in any way?*** Yes/No.

***If yes, how?*** Please explain in no more than 2 sentences:

5. In 2015, the University of Wisconsin-La Crosse dealt with a confederate flag spotted on a private contractor's truck on campus. The flag was removed after a phone call to the Director of Facilities.

The Provost sent an email to the students, faculty and staff stating, "As indicated in an earlier email from UWL's Vice Chancellor of Student Affairs, Dr. Paula Knudson, UWL is hosting a teach-in on the confederate flag on Friday..." (Provost Betsy Morgan, email communication, Nov. 13, 2015)

***Based on this situation, was a teach-in an appropriate response from the University?*** Yes/No.

***If not, what is an appropriate response and why?*** Please explain in no more than 2 sentences:

***Did the institutional messaging affect your response in any way?*** Yes/No.

***If yes, how?*** Please explain in no more than 2 sentences:

6. Below is an example of a banner made and hung by students on the University Wisconsin-La Crosse campus. [Hansen, N. (2016, September 07). Sexist banner near UW-L stirs backlash.] The message reads, “Free cream pies w/ valid freshman ID.”



*Based on the content of the banner, is this hate speech? Yes/No.*

*Is it speech protected by the First Amendment? Yes/No.*

*Based on the content of the banner, choose one of the following possible University responses to this incident:*

- ☐ Training seminar on hate speech
- ☐ Written public apology
- ☐ Campus wide forum
- ☐ Response from community instead
- ☐ No response to the incident of any kind. If not, why? (No more than 2 sentences.)
- ☐ Other (No more than a sentence):

7. Sigma Nu chapter at Old Dominion University was suspended in 2015 after hanging banners that read "Rowdy and fun hope your baby girl is ready for a good time . . .", "Freshman daughter drop off," "Go ahead and drop off Mom . . ."



*Based on the content of the banner, is this hate speech? Yes/No.*

*Is it speech protected by the First Amendment? Yes/No.*

*Was suspension of the fraternity an appropriate response by the University? Yes/No.*

*If not, choose one of the following responses:*

- ☐ Training seminar on hate speech
- ☐ Written apology
- ☐ Campus wide forum
- ☐ Response from community instead
- ☐ No response to the incident of any kind. If not, why not? (No more than 2 sentences.)
- ☐ Other (No more than a sentence):



8. Feb. of last year, a University of Wisconsin-La Crosse police dispatcher was terminated after telling "a student of Asian descent that the student's people should go back to where they came from"; this was said in wake of Trump's rhetoric toward immigrants.[Hansen, N. 2017, March 17. Chancellor Joe Gow: UW-La Crosse erred in firing police dispatcher. *La Crosse Tribune*.]

*Based on what you know about this situation now and previously, was termination an appropriate response by the University?*

-If not, choose one from the following responses:

- ☐ Suspension
- ☐ Public letter of apology
- ☐ Reassignment of position
- ☐ Reinstatement to previous position
- ☐ No response to the incident of any kind. If, not why? (No more than 2 sentences)
- ☐ Other (No more than a sentence):

<p>Below is a list of phrases and symbols. After reading each, please check the box next to any or all of the choices that, in your opinion, apply:</p>	
<p>9. "Build a wall"</p>	<p><input type="checkbox"/> Hate speech</p> <p><input type="checkbox"/> Protected by the First Amendment</p> <p><input type="checkbox"/> University should respond to this incident</p> <p><input type="checkbox"/> It is punishable</p>
<p>10. "The age of white guilt is over"</p>	<p><input type="checkbox"/> Hate speech</p> <p><input type="checkbox"/> Protected by the First Amendment</p> <p><input type="checkbox"/> University should respond to this incident</p> <p><input type="checkbox"/> It is punishable</p>
<p>11. "Go home to where you came from"</p>	<p><input type="checkbox"/> Hate speech</p> <p><input type="checkbox"/> Protected by the First Amendment</p> <p><input type="checkbox"/> University should respond to this incident</p> <p><input type="checkbox"/> It is punishable</p>
<p>12. "#BlackLivesDontMatter"</p>	<p><input type="checkbox"/> Hate speech</p> <p><input type="checkbox"/> Protected by the First Amendment</p> <p><input type="checkbox"/> University should respond to this incident</p> <p><input type="checkbox"/> It is punishable</p>

13. "All Lives Matter"	<input type="checkbox"/> Hate speech <input type="checkbox"/> Protected by the First Amendment <input type="checkbox"/> University should respond to this incident <input type="checkbox"/> It is punishable
14. "White students, you are not alone; be proud of your heritage"	<input type="checkbox"/> Hate speech <input type="checkbox"/> Protected by the First Amendment <input type="checkbox"/> University should respond to this incident <input type="checkbox"/> It is punishable
15. "Trump grabbed her by the pu**y, so I can too"	<input type="checkbox"/> Hate speech <input type="checkbox"/> Protected by the First Amendment <input type="checkbox"/> University should respond to this incident <input type="checkbox"/> It is punishable
16. "Stop illegal immigration"	<input type="checkbox"/> Hate speech <input type="checkbox"/> Protected by the First Amendment <input type="checkbox"/> University should respond to this incident <input type="checkbox"/> It is punishable
17. Swastikas are drawn or printed on fliers around campus	<input type="checkbox"/> Hate speech <input type="checkbox"/> Protected by the First Amendment <input type="checkbox"/> University should respond to this incident <input type="checkbox"/> It is punishable

## Appendix 2: Hate Response Team Survey

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1. How does your team define hate speech here on campus?
2. If there isn't an agreed upon definition, why do you think that might be?
3. Has the University attempted to define hate speech?
4. Based on your knowledge of University protocol when it comes to "statement" incidents on and off campus, do you believe the University relies more on implicit or explicit definitions?
5. What are the punishments applicable to students if they are involved in a hate/bias incident involving a "statement"? Beyond punishments, what other approaches are taken with hate/bias incidents involving a "statement" — either with the students directly responsible or with the campus as a whole?
6. Are you familiar with the term "chilling effect"? Are there steps taken by your team to make sure that the "chilling effect" does not occur?
7. What protocol do you have to follow when dealing with "statement" incidents?
8. If there is not a strict protocol, why might that be? Do you think there should be a strict protocol for these incidents?
9. If there is a strict protocol, how did your team develop it?
10. How do the End of the Year Reports improve your team protocol in regard to "statement" incidents, each year?

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