Universities' Response to Offensive and Bias-related Speech and Behaviors

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1. Purpose

Bias-related and offensive behaviors occur with some frequency on college campuses (Bauer-Wolf, 2019) and typically encompass a broad array of behaviors. Such behaviors may include a university community member tweeting an offensive Snapchat video of a student putting black paint on another student's face while using racial epithets, as happened at the University of Oklahoma in 2019 (Morar, 2019); or placing a confederate flag in a residence hall room window as a joke, as happened at Brigham Young University in 2016 (Neugebauer, 2016); or a student organization inviting a controversial speaker to campus who entitled their planned speech "Pray the Gay Away," as happened at Penn State University in 2021 (Hassel, 2021). These behaviors, while not typically constituting violation of law or of universities' codes of conduct, run antithetical to many universities' stated values and may have individual or community impact. As a result, university employees are tasked with preparing for, managing, and responding to such behaviors. This can be especially difficult for behaviors that do not violate the universities' codes of conduct, which typically employ clear procedures to address violations.

In addition, universities often publish and market institutional values meant to convey the culture and climate of their respective university. They typically do so to communicate the type of university culture and climate to which they aspire. For example, Penn State's expressed values are integrity, respect, responsibility, discovery, excellence, and community (Penn State University, n.d.), and the University of Iowa's are creativity, community, excellence, inclusion, and integrity (University of Iowa, n.d.). However, what seems clear is that the expressed values of an institution are typically aspirational. They do not communicate enforceable behavioral expectations of current community members or rules for them to follow. They represent values the university hopes students, faculty, staff and others embody. Universities can prohibit behaviors that violate the universities' codes of conduct or the law, but they typically cannot require community members to be respectful, for example.

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Thus, in an effort to address such incidents and to encourage adherence to community values, many universities created bias response teams in the 1980s, and even more adopted them in recent years (Miller, 2022). Bias response teams (BRTs) were often comprised of staff and faculty who were tasked with providing resources to the impacted parties and referring potential violations of law or university policy to appropriate offices (e.g., Offices of Student Conduct, Human Resources) to be addressed. As Kevin Kruger, president of the National Association of Student Personnel Administrators, indicated in a September 2016 article in the *Chronicle of Higher Education* (Dreid, 2016), "The intent behind a bias response team on campus is to create a pathway or an avenue for student(s) who have experienced some kind of act on campus related to race or identity and to have a way to report that." The problem, however, is that much of what was being reported to BRTs was speech protected by the First Amendment of the United States Constitution.

Further, critics of such teams suggested their mere existence stifled free speech, that creating avenues of reporting for protected behaviors connotes that those behaviors are not protected and students will be disciplined for engaging in them. Most notably, Speech First, a national organization that promotes free speech on college campuses, filed a lawsuit against the University of Michigan (Speech First, 2019). In this lawsuit, Speech First claimed that Michigan acted unconstitutionally by encouraging community members to report incidents of "harassment" and "bullying" to the university's BRT which had the power to refer reports to conduct officials. The case was settled with Michigan agreeing to disband the BRT, replacing it with a Campus Climate Support program that exists entirely to support students impacted by others' actions but holds no referral or disciplinary authority (Speech First, 2019).

Given the free speech criticism and universities' broad stated commitments to their values and to supporting students, university administrators continue to struggle with how to appropriately respond to incidents and the most effective strategies to employ. They encourage community members to report incidents but are challenged by how to both protect and promulgate the value and benefit of free speech while responding to the impact created by offensive and bias-related speech and behaviors. I designed this study to engage with practitioners working at colleges and universities across the nation in an effort to identify promising practices that achieve these aims.

2. Methodology

The purpose of this research study was to explore how universities prepare for, manage, and respond to incidents of bias-related or offensive speech or behaviors. I conducted 10 one-hour focus groups, each consisting of two to four Student Affairs practitioners (29 total practitioners), and one interview of a single practitioner, due to scheduling difficulties. I decided to primarily utilize focus groups to allow for practitioners to engage in discussions with me and one another to explore the effectiveness of various strategies as a group and collectively share insights.

Criteria for inclusion for the study were that participants needed to be currently employed at an institution of higher education in the United States and have some level of responsibility for how their institution prevents, manages, and addresses bias-related incidents. I primarily recruited participants by utilizing two professional listservs likely to involve such practitioners, and then utilized snowball sampling approach to recruit others. Study participants hailed from 27 higher education institutions across the United States. The institutions included small, large, public, private, R1, liberal arts, and religiously and non-religiously affiliated institutions. Interview participants primarily held professional responsibility in at least one of the following functional areas: Student Affairs leadership (*i.e.*, Vice President or Assistant Vice President for Student Affairs); Dean of Students; Student Conduct; and Diversity, Equity, and Inclusion.

I gained Institutional Review Board approval from Penn State University prior to contacting the participants. Each participant completed an informed consent document that communicated: the purpose of the research project, the confidentiality of information they provided and their identities, they could opt out at any time, and the sessions would be recorded. I utilized a semi-structured interview protocol and used Zoom to conduct the focus groups. Zoom allows for both audio and visual communication and recording and has a built-in transcription feature.

I recognized the potential for personal bias. I have worked in Student Affairs in higher education institutions for over 20 years and have had varying responsibilities regarding how universities manage and respond to bias-related speech and behaviors. I entered this project with a sincere desire for learning regarding best and promising practices for how universities navigate this difficult terrain. Further, by recording and transcribing interviews, I worked to directly connect conclusions reached to the specific information provided by participants.

The questions utilized in the focus groups and interviews were designed to examine how higher education professionals prepare for, address, and respond to bias-related incidents and offensive speech and which processes or policies are involved and applied. Further, I inquired as to whether and how universities engaged their communities in dialogue around offensive and difficult topics, both in response to an incident, but also in proactively engaging the community regarding the First Amendment and offensive or bias-related behaviors. The observations, findings, and recommendations in this report emanate directly from the information provided by the study participants.

3. Goals/Objectives

Project goals were to collect the participants' lessons-learned, explore what tactics and strategies have or not been effective or fruitful on their respective campuses and in their respective experiences, and ultimately to distill the information down to a collection of promising practices that practitioners can use to navigate this precarious piece of university life. Specifically, I sought to learn the following:

- the established processes and practices participants and their colleagues use to respond to bias-related or offensive speech or behaviors;
- which administrative units hold responsibility for the response;
- how universities manage matters that do not violate the universities' codes of conduct or the law;
- how restorative responses played a role; and
- whether the universities employed community statements or forums (either before or after incidents) and the relative impact of those.

4. Outcomes

All participants communicated a strong interest in the topic area of this research project and attributed their participation to their interest and commitment to the topic. Consistently, participants reported they grapple with these difficult issues, are consistently seeking best practices, and are adapting to fluctuating legal and regulatory guidance. The experiences among the participants, regardless of their university's size, status, or location, were largely similar.

Participants noted that incidents of offensive and bias-related behaviors have been escalating in recent years and they are feeling increasing pressure to manage them well, but with very little guidance for how to effectively do so. Given the increase in incidents, each participant had many experiences from which to draw when engaging in conversation with me, and consistent themes regarding best practices and approaches emerged. Findings can be categorized into the following areas:

- The value of proactive, frequent, and intentional communication and education strategies with students, faculty and staff, including training and education related to free speech;
- The importance of responding to reports in a timely, thoughtful, coordinated, and educational manner, focusing on providing support to impacted parties and offering education to all involved; and
- The need to have a well thought-out, coordinated plan in place for in-the-moment decision-making and action should incidents arise.

I entered the project philosophically anticipating results would focus on responses to incidents. However, the research results demonstrated the value of proactive work—proper, robust, regular, and comprehensive communication, relationship-building, and planning can help universities establish a culture that reduces disruption and alarm when incidents arise.

5. Proactive Communication

The majority of participants remarked that proactive, ongoing, and intentional communication and education with the University community was a significant factor in establishing a campus culture that enables the community to weather incidents of offensive and bias-related behaviors. They shared it was abundantly clear that institutionalized communication—that was part of the university ethos, not only conducted in response to an incident—was essential and necessary. Examples ranged from dedicated educational sessions at new student orientation, to broadly disseminated messages from university leadership. It is clear that regular and intentional communication served to inculcate a culture of awareness, knowledge, and tolerance essential to preserving an environment that recognizes and values free speech while encouraging a higher ethic of care and standard of communication. Specific strategies follow.

5.1 Scheduled Communication Sessions

Regularly inviting pockets of the university community into dialogue regarding free speech and offensive behaviors proved to have significant impact at several of the participants' campuses in both increasing awareness related to free speech and related university policies, but also, and importantly, in decreasing impact of behaviors when they occurred. For some participants, this begins with new student orientation. They found utilizing orientation to introduce the First Amendment and the likelihood of being confronted by offensive behaviors or speech during students' tenure at the university to be an effective way to get ahead of incidents that may occur. An Assistant Vice President for Student Affairs from a midsized public school in the Midwest remarked, "Engaging students in pre-orientation modules and right when they come on to campus helps to create a certain expectation for what they may experience here."

An Associate Vice President for Student Affairs from a midsized public institution in the Midwest reported,

> "So, we have infused a conversation into our one day in-person orientation program, where we talk about the First Amendment and those things, and that has dramatically decreased the number of reports we've gotten, because I think it's helped people realize, 'Okay, this is what's going to happen, and this is how I can navigate it.'"

The administrator indicated they utilized that time to inform students they would be confronted with ideas and actions of others during their time at the university that they would likely find offensive, but that the university believes in the value of free speech and in the growth that can come from being exposed to ideas different than their own, even if offensive.

A Dean of Students from a midsized private university in the Southeast communicated that they invite student leaders from a variety of student organizations into monthly sessions with university leadership along with "key personnel from student affairs, parking and transportation services, and even some of our academic and athletics folks to establish the climate before a big issue arises." A Vice President for Student Affairs from a large public university in the Southwest engages in a series of "civility" conversations with their campus community. These conversations involve the administrator and their colleagues talking with students in small group settings about what "civility" means, discussing how community members hope to interact with one another, the role of free speech, and what appropriate responses to offensive behaviors may be.

In another example, a Dean of Students at a small private college in the Midwest communicated that they host conversations each month, both formally and informally, to discuss the bias response process on campus. The Dean found it helpful to host these in spaces that are familiar and comfortable to students and to be prepared to share information like number and types of reports and related processes to the extent possible, but to leave ample space for community discussion and dialogue. Attendance varies at these sessions, but the consistent feedback from students and student leaders, especially, is that the sessions have served to establish better understanding of free speech and its tenets as well as a culture of openness and dialogue that reduces alarm when incidents do arise. Similarly, a few participants encouraged working with residence life and academic colleges to host proactive community building circles on floors and in classrooms. An Associate Dean of Students at a large public institution in the Midwest indicated, "Circles have incredible value not just after an incident occurs but in initiating and engaging in conversations around difficult topics, given students tools and language." The circles typically take the shape of introducing a topic of interest to the community related to bias or free speech, and then engaging the attendees in dialogue and conversation.

Further, it is important that administrators be intentional about reaching out to student organizations across campus to offer to join organizational meetings to discuss these topics and address them proactively. Administrators found it beneficial to attend their regularly scheduled meetings to share information and to engage in dialogue. A Dean of Students from a small private college in the Southeast remarked, "We've found that waiting to engage in conversation until after an incident happens seems hollow, and students express confusion and disappointment regarding why it took the university so long."

Overall, participants agreed regular outreach with the campus community should be utilized to communicate the university's values and its aspiration that all community members adhere to them; the university's commitment to free speech; that, during their time at the university, students will encounter behaviors that are offensive but that are allowable; and that they have agency in how they respond to such behaviors and there are resources available to address perceived and actual harms.

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Related lessons-learned and successful practices include universities engaging in the following:

- Ensuring that the conversations and outreach are not only directed to underrepresented or minoritized groups. It is important that the opportunity for dialogue and the resulting conversations are open for all and that these groups are not the only ones involved in the discussion. In fact, participants noted the importance of engaging visible student organizations who have broad impact (e.g., Athletics, fraternities and sororities, ROTC). "Ensuring that groups with a long-reach are engaged is essential in establishing the community dialogue we want," noted a Student Conduct administrator from a large public university in the West.
- Partnering with the university's general counsel in the communication efforts. While the legal piece should not take front-and-center, it is an appropriate piece, and can be appropriately communicated and represented. Participants found it helpful to directly communicate the legal parameters of the First Amendment, including what is and is not protected speech, highlighting the difference between hate speech and prohibited speech.

5.2 Education and Training of Staff and Faculty

In addition, participants noted the importance of training university personnel and other non-student populations on similar topics. This should include training offered to student affairs staff and faculty and instructors. An Associate Dean of Students at a large public university in the Midwest communicated that their university hosts monthly educational sessions for their student affairs staff, and training on the First Amendment and related issues is presented at least once per semester. "By engaging our staff and ensuring they understand the associated issues related to the First Amendment, we have a team of ambassadors saying the same thing in the university community," remarked the administrator. Further, a few participants reported it was beneficial to engage student organization faculty and staff advisors in similar conversations. "Never underestimate the impact that those working with your student organizations have regarding how students respond to triggering issues," remarked a Dean of Students at a small private college in the Midwest.

Relatedly, participants strongly encouraged engaging with faculty and academic departments in similar dialogue. "Our experience has been that faculty hold strong views and aren't shy about sharing them with students, so communicating ahead of time with them and offering opportunities for dialogue and discussion has been incredibly important," said a Senior Associate Dean of Students at a large public university in the East.

Overall, by engaging the community ahead of time and with regularity, campus communities were not as severely disrupted or surprised when offensive behaviors occurred or controversial speakers were announced. A Vice President for Student Affairs from a large public school in the Southwest discussed their specific experience. Following a controversial speaker's appearance on their campus, they challenged their staff to engage in a series of conversations regarding free speech, the Code of Conduct, and university responses with various university populations, including faculty, staff, and student groups. As a result, when another controversial speaker was announced, "The community sentiment was more understanding of why the university was allowing the speaker and centered more on supporting those impacted by the speaker's presence."

5.3 Community Statements and Use of President's Voice

Several participants remarked on the use and relative value of community statements. Community statements were defined as written statements a university disseminates broadly either before or after an incident occurs. Participants' experiences varied widely related to whether they used such statements and who typically authored them (they may be authored by different administrators or student leaders). While several participants indicated their universities utilize statements with some regularity, the utility of such statements was broadly criticized. An Assistant Vice President at a midsize private school in the Southeast indicated they believe university leadership often felt pressured to issue statements by those impacted by events but questioned their efficacy. Similarly, a Dean of Students from a midsize university in the Southeast commented, "The more statements you make, the more watered down they become, and they mean nothing."

A clear exception to this sentiment, though, was related to whether the statements were issued by the president of the university and, importantly, if they were made sparingly. "Visible leadership and communication by the president in setting the tone related to free speech has been a game-changer," remarked a Dean of Students from a midsized public institution in the Midwest. They elaborated that such statements serve to set a tone for the university, and, given that they emanated from the president's office, critics had no one to whom to direct their arguments but the university itself. Thus, lower-level administrators, who often were the professionals approving speakers, managing disruptions, or otherwise responding to specific incidents, were somewhat shielded from criticism and thus felt more empowered to do their work. Participants noted this was even more true when such statements were made in advance of any issue, not in response to it.

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Participants identified some important, related areas to ensure presidential statements have their intended impact:

- Statements issued by the president should be infrequent and intentional, typically not responsive to specific incidents.
- The president's website and publicly facing materials should mirror the information contained in the statements in order to communicate a consistent commitment to the messages conveyed in the statements.
- The president's communication in other venues should mirror the information and the sentiment of the statements. For example, at a small private school in the Midwest, the president has disseminated statements communicating the university's commitment to free speech and their desire that all adhere to the university's values. The president reflects those sentiments by allowing controversial speakers who may provoke alarm or offense but otherwise adhere to the university's expectations, and by attending alternative events that are planned to counter the speaker's intent and promulgate the university's stated values.

6. Responding When an Incident Occurs

Most participants indicated that they have modified their bias-response practices in the wake of the Speech First lawsuit against the University of Michigan to clearly delineate between response to harm done and punitive action when behavior potentially violates the universities' codes of conduct. It also became clear that responding to every incident reported in which an impacted party or community could be identified, in whatever way appropriate, was important. A failure to respond, even to one incident, communicated an institutional lack of awareness, care, or priority to the university community (especially to critics). Thus, administrators stressed the importance of responding—even if only to acknowledge the report and offer resources to those impacted by the reported behaviors.

A Director of Student Conduct at a large public university in the Midwest shared,

> "We respond in some fashion to every report we receive. I mean, if it doesn't meet the context or the threshold for conduct, we're always going to have an educational conversation…We ask, 'What resources and services can we provide those who have been impacted by bias or a bias incident? What can we do to repair the harm?'"

6.1 One Size Does Not Fit All

Integral to response were efforts to engage the impacted party or parties and tailor the response to those persons or communities. A Dean of Students at a midsize public university in the Midwest indicated, "Where our processes sometimes vary is the level of disruption, and how much collateral damage needs to be managed. Meaning, do we need to call a floor meeting to help process the disruption…or issue a campus wide email?" The administrator shared an incident in which a racial epithet was scribbled on the white board of a student in a residence hall. The behavior was very visible to the floormates of the hall but had not impacted the university community more broadly. The person responsible had not been identified, but the floor residents were impacted. Thus, the administrator worked with residence life staff to engage in a discussion with the residents of the floor, giving them an opportunity to express the impact of the behavior, their responses, and ways in which they can collectively create a better sense of community. The university also was able to inform them of resources available to them and educate regarding the relevant processes at play. An Assistant Vice President at a large public university in the Midwest shared another example. When they learn that behavior may be targeted at an individual student and they can identify the person who engaged in the behavior, they often offer to engage the two, completely voluntarily, in a facilitated dialogue, allowing each to question and express intent and impact, while providing resources and support to all involved.

6.2 Coordination is Key

An important piece of these efforts is ensuring that offices across the university are coordinated in their approach, response, and reaction. Even if a university has a formalized bias response team, it does not have to be the team that responds to every incident. Often, it can and should be an office that may be connected to the harmed parties or may be better received by the impacted parties. A Dean of Students from a midsized private university in the Southeast said, "We work to see if someone is already connected with this student or group. Would they respond better to someone they know than a stranger calling from an office they don't know?"

A few participants noted the importance of proactively developing a response network so students do not perceive that only one office is paying attention, but that many offices across campus are working together to support students experiencing difficult situations and to create the desired culture on campus. A Dean of Students from a midsized public university in the Midwest said, "The hope is to create a culture in which a person can truly go to lots of folks, including those whose job it is…and feel like people care about them." Regardless of who responds, though, it is essential that impacted parties know the staff are responding on behalf of the university and that the response is relatively consistent with how other offices would have responded, which again requires planning and coordination.

6.3 Outreach to the Respondent

While most participants communicated a clear understanding that even the impression of a punitive approach could not be utilized unless the exhibited behavior potentially violated the university's code of conduct, there was a strong commitment to reaching out to the responsible student (aka "respondent") to offer an educational conversation and to discuss impact. A Dean of Students from a large public school in the South remarked, "We attempt to reach out [to the respondent] and just ask if they want to come in to be made aware of the report. We make it very clear that it is a conversation only, and that no punitive disciplinary action will be taken." The administrator indicated they ensure the outreach is not done by the conduct office and that they are clear in their written and oral communications that engagement with the university to discuss the matter is strictly voluntary. Similarly, a Dean of Students from a small private college in the Midwest remarked, "I have a conversation about how your words and actions impact other people," without ever discussing potential university consequences. Many participants noted the educational value of such conversations, as reflected by the remarks of a Dean of Students at a large public university in the West:

> "Education is not equal to punishment, and students should be aware of the impact, intended or not, of their decisions and behavior, without fear of disciplinary consequences. So, we are intentional about who hosts those conversations, and we put a wall between them and the conduct office."

Often, these conversations also involve an offer for restorative dialogue, whereby the administrator would facilitate a conversation between the respondent and those impacted, discussing intentions, impact, and pathways forward. Of course, these would always be voluntary conversations when incidents did not violate policy, but participants have found many respondents react favorably to such offers and the resulting conversations are impactful for all involved. "Some of the most educational conversations I have been a part of have been between students who had no idea the impact of their behavior and students who were willing to communicate their experience," said a Dean of Students at a small private institution in the Midwest. Participants, broadly, communicated the importance of allowing students to use their voices and to learn whatever they can from these incidents.

6.4 Proactive Planning

Given the inevitability of community members engaging in bias-related or offensive behaviors, it is essential that university personnel plan for such incidents to arise. While no situation is the same, the majority of participants communicated the benefit of engaging in robust planning ahead of time and of documenting and communicating procedures so that incidents are addressed appropriately and quickly when they do arise. Examples of such planning include the creation of a type of "critical incident response team."

A Dean of Students at a midsize public university in the Midwest said,

> "When a situation grows 'arms and legs,' or seems to be, I pull together a group that we call our critical incident response team…we talk about what's happening, what we're seeing, and we strategize a broader response. Sometimes it's been as simple as a communication…or a floor meeting."

Participants shared this type of team is typically comprised of a variety of professionals including various units of Student Affairs, Police, General Counsel, Communications, and others, and is utilized to respond to an incident that is currently happening, or one that is being planned.

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A participant from a small public institution in the East said, "When we become alerted to a student organization hosting a controversial speaker, we assemble our team. We discuss who is taking point in communication with the organization, what issues may arise, who may likely be impacted, and what the university communication plan will be." In such cases, participants stressed the importance of teams connecting directly with leaders of the student organizations hosting the controversial speakers and setting expectations for event management. Topics of the conversation should include date, time, and location of the event; ticketing; marketing; necessary security; how potential disruption will be managed and the specific roles the organization and the university have; and how decisions will be made in the moment.

One Associate Dean of Students from a large public university in the Midwest discussed a "heckler's panel" they assemble during an event. The heckler's panel is comprised of university staff and is utilized when an event is particularly controversial. The panel works closely with the hosting organization to plan for and address disruptions, with the goal of allowing the event to happen as planned. They employ a three-step process, with the first being to warn those causing disruption, the second to issue a sterner warning that may result in non-compliant disruptors being asked to leave or being escorted out of the venue, and the third being to potentially shut down the event due to safety or other concerns. To be successful, this approach requires significant communication and relationship-building with the responsible organization ahead of time but is incredibly beneficial for in-the-moment response.

Teams can be utilized for spontaneous events as well. For example, several participants had experience with controversial pastors or religious groups who come on to campus and provoke significant campus response. The speakers associated with these groups often make offensive comments regarding women or students identifying as LGBTQ about the clothing they are wearing, their sexuality, and their moral choices. Prepared teams can be assembled quickly and can interact with such groups and the crowds that gather, in the moment, to help the event go without incident, respond to students who are aggrieved or offended, and help university authorities make appropriate decisions.

7. Conclusion

University students will engage in a number of experiences during their college careers, and not all of them will be comfortable. Students will experience and encounter speech and behaviors in and out of the classroom that run contrary to their moral ethos or may cause them offense. However, such speech is often protected and is an unavoidable and, at times, important part of the student's educational journey.

The task of university educators, then, is to help prepare the university community for such incidents; to clarify and communicate the university's commitments to free speech, to their core values, and to supporting students who are impacted by offensive behaviors; to effectively address situations in the moment; and to respond to incidents consistently and with an educational and restorative focus. It is my hope that practitioners who engage fully and intentionally in each of these arenas utilizing the tactics contained herein will be able to help their university communities better weather these difficult, impactful, and resource-intensive situations, ultimately enabling and encouraging education, growth, and development.

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