Article

Beyond Legal Constraints: Understanding Barriers to Humanizing Responses in the Aftermath of Hate Speech at Private Universities

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Abstract: Supreme Court rulings prevent public institutions from censoring hate speech for content—even if that content has damaging consequences for marginalized students and conflicts with other institutional objectives. This case study examines administrator responses to hate speech and impacts for racial inclusion at a private university unconstrained by First Amendment protections. The findings illustrate that, even in contexts where administrators have both the constitutional leeway to enact stricter speech policies and a deep investment in building an anti-racist community, normative understandings about freedom of expression hamper efforts for racial inclusion and humanizing responses. We propose an "inclusive freedom" approach that leverages norms of academic freedom as a path forward for postsecondary institutions to address harm in the aftermath of hate speech.

Keywords: hate speech; campus racial inclusion; free expression

1. Introduction

Since 2016, colleges and universities in the United States have observed an increase in racist hate speech incidents (i.e., expressive communication used to threaten, demean, abuse, and ultimately provoke hatred against vulnerable minorities) that undermine the physical, emotional, and academic well-being of marginalized student populations [1–3]. The conflicts on college campuses that have intensified since October 7, 2023 have brought a new sense of urgency to how institutions can address harm in the aftermath of hate(ful) incidents on campus [4,5]. Under current interpretations of the First Amendment to the U.S. Constitution, once these incidents take place, it is extremely difficult for public institutions to stop them unless they cross into violence, such as verbal threats to cause physical harm or calls to attack a specific population [6]. However, administrators can engage in anti-racist responses that repair harm and foster inclusion. For example, institutions can help restore a sense of safety by openly acknowledging the harm students suffer and by connecting these incidents to systemic racism and oppression [7].

But these types of anti-racist and humanizing responses are also politically contested. Advocacy organizations like Speech First, for instance, initiate lawsuits and characterize institutional responses that seek to promote racial inclusion, not as addressing the harms of hate speech but as trampling individual liberties and conservative viewpoints [8–10]. In the current context, these external pressures have involved targeted and politicized scrutiny of university leadership [11,12]. While many postsecondary administrators see the value in anti-racist and humanizing responses, the threat of lawsuits and other pressures from the legal environment nevertheless lead them to enact race-evasive responses that fail to address resulting harm and restore students' sense of safety [13,14].

This case study examines administrators' responses to hate speech at a private institution that does not face the same constitutional restrictions or pressures from the legal environment. That is because restrictions under the First Amendment do not apply to

private colleges or universities, though they may choose to follow them. We sought to understand whether a more permissive legal environment would allow for responses that are more aligned with the goals of racial inclusion, such as those that promote community and individual healing in the aftermath of hate speech incidents. Specifically, we draw from sociolegal frameworks [15] that conceptualize how the legal environment shapes organizational actors' responses and an "inclusive freedom" [16] framework that considers elements of an institution's educative mission to address the following research questions:

How do administrators at a private, elite institution respond to on-campus hate speech incidents in the face of varying external legal and political pressures and internal campus dynamics?

How, if at all, do these institutional responses address the negative consequences of hate speech incidents for a racially inclusive campus environment?

Our findings illustrate that, even in contexts where administrators are deeply invested in building an anti-racist community and have the constitutional leeway to enact policies that limit hate speech, normative understandings about individual rights to freedom of expression predominate, at the cost of community-based values grounded in a humanizing, educative mission—a mission that includes fostering and sharing rigorously developed knowledge. We use the concept of "repressive legalism" [13] to elucidate the dynamic at play, as administrators' perceptions of the legal environment (particularly normative understandings aligned with an absolutist-adjacent understanding of the First Amendment) undermine permissible responses that would otherwise promote racial inclusion in the aftermath of hate speech. Findings are relevant to the current moment that engulfs the ever-evolving, contentious struggle concerning free speech on U.S. college campuses. These findings can also help disrupt assumptions about the law that unnecessarily prevent us from re-engaging in one another's humanity in the face of harm and conflict.

2. Contribution to the Literature

This study bridges the scholarship on hate speech and inclusion across the fields of law, education, and sociology. We synthesize this literature to demonstrate how dominant understandings of free speech in society overpower emergent and important understandings about the impacts of hate(ful) speech on learning and health, particularly for minoritized students. This review lays out the stakes for private university administrators, illuminating the possibilities and importance of humanizing speech policies.

2.1. Legal Frames for Understanding Hate Speech

Countless articles in legal and sociolegal studies outline the constitutional principles under the First Amendment that guide institutional action around incidents related to hate speech. This body of literature outlines the dominant interpretations of the First Amendment (as reflected in current precedent) that view hate speech as protected despite the harm it inflicts. These perspectives are grounded in an "absolutist lens" that erases context on historical and persistent power imbalances based on race, gender, sexual orientation, and other critical identities, including intersectional identities [17,18]. Under this perspective, a university campus is a "marketplace of ideas", where "the best antidote to hate speech" is "more speech [17,19]. This absolutist frame prioritizes individual rights to speech over individual or collective rights to a safe environment.

Despite these dominant frames, scholars in critical legal studies outline a contrasting perspective of the First Amendment termed "legal realism". This lens makes explicit the relationship between the law, institutional racism, and the power disparities elided within absolutism. Legal realists foreground values other than speech, like anti-racism, which creates the conditions for equitable lives, relations, and societies [20]. Importantly, from a legal realist perspective, institutions are obligated to invest in proactive strategies to acknowledge, address, and interrupt inequity. While these two lenses represent opposing normative perspectives on speech, interpretations of the First Amendment underlying the current precedent are grounded on an absolutist perspective.

2.2. Harms of Hate Speech on Campus and Institutional Responses

Aligning with the critical realist perspective, scholarship in education, sociology, and psychology highlights the myriad harms of hate speech on students of color that absolutist perspectives often fail to acknowledge or address. For example, in the aftermath of hateful incidents, students of color experience deterioration of cognitive and psychological health [21,22], as well as heightened fear for their personal safety [23,24]. Additionally, students of color suffer higher levels of race-based stress [25], leading to adverse impacts on retention, campus engagement, and their ability to learn and perform academically [26,27]. Hate speech incidents undermine college students of colors' sense of belonging [28–31] and exacerbate feelings of marginalization [32], resulting in a hostile campus racial climate [33].

Institutional efforts to mediate this harm have fallen short. Studies drawing on document and discourse analysis find that public statements are commonly race-evasive [7,34, 35], using neutral language that avoids concepts of race and racism [36], thereby ignoring existing racial power imbalances and inequities [37,38]. Moreover, while university statements include mentions of remorse, administrators fail to acknowledge the systemic and institutional issues that foster racial hostility on campus [36,39,40] and do not sufficiently address institutional responsibility [35]. Students see these statements as performative, lacking concrete action, and not leading to meaningful change [34]. As such, institutional responses undermine the racialized experiences of students of color [7,37,38], perpetuate campus racism [41], and reinforce the taken-for-granted structure of White supremacy in higher education [34].

Studies point to various reasons for these race-evasive responses. In some cases, the threat of litigation by advocacy organizations and oversight by a conservative legislature repress institutional responses that would otherwise promote inclusion [13]. In other cases, administrators may not believe that hate speech perpetrators are entirely in the wrong. For example, while some administrators describe hate speech as "campus violence" [42], with administrators of color in particular in favor of regulating it [43], more commonly, faculty and administrators advocate for unregulated expression [44]. A study of 37 university stakeholders at various institutions, including faculty, staff, and administrators, found that most held the dominant perspective that free speech should not be regulated [45], choosing to align with court precedent and absolutist understandings of First Amendment rights. As such, they would be less likely to condemn hateful speech in the aftermath of its occurrence. In other cases, institutions stand in the way of more humanizing and healing responses to hateful speech. For example, anti-racist student affairs professionals shared how they took it upon themselves to support Black students experiencing racial violence on campus in the absence of official responses [46].

Despite pressures from the legal environment and tendencies towards absolutist interpretations of free speech, administrators can help create inclusive environments where hate speech is not tolerated [47], through both reactive and proactive strategies that address campus hate speech. In the aftermath of incidents, administrative action should involve engaging the campus community to allow for healing and restore trust and safety, especially for targeted student groups [35]. In fact, students have called for leadership to advance educational initiatives and curricula that focus on improving understandings of social oppression for campus communities, including the extended and violent history of White supremacy in the U.S. and its relationship to higher education and hate speech [7]. These campus initiatives should not rely on student labor [36] or place the responsibility on students to restore inclusive spaces [48], which can leave students feeling taxed and depleted in the aftermath [7].

2.3. Anti-Racist and Humanizing Institutional Responses to Hate Speech

Instead, in trying to shape more inclusive responses in the wake of hateful incidents, administrators must rely on a conception of racial inclusion that is transformative, anti-racist, and attentive to historic and ongoing racial power inequities. For this study, we propose a conception of anti-racist responses and racial inclusion that is grounded in

literature in higher education, critical sociology, and legal studies. From campus climate literature, we understand that racial inclusion demands institutional acknowledgement of its role in historic and ongoing racial injustice, as well as a commitment to policies and practices that attend to the emotional and physical safety of minoritized students [29,49]. Sociological literature shapes our thinking that racial inclusion requires universities to go beyond individually focused, performative diversity efforts [50,51], to make visible and undo persistent racialized power inequities [52,53], and to create the conditions for transformative and humanizing campus spaces for minoritized community members [54].

We further draw on work on humanizing pedagogy [55], a mode of learning in which history, the present, and student experience are called upon, and projects of praxis (i.e., action, practice) in which storying a new human, apart from the dominant Western man, is the collective work of those who seek liberation [56,57]. Anti-racist and humanizing responses to hate speech incidents name the phenomenon behind the incident (e.g., racism, White supremacy, Islamophobia, anti-Palestinian sentiment; antisemitism), challenge these dominant structures and narrative, and provide spaces for facilitated dialogue [58] where "racialized vulnerability and violence are minimized for students of color, and where productive racialized vulnerability is nurtured for White students" [54]. Importantly, these approaches are grounded in notions of collective and community safety over individual rights. We view them as anti-racist and humanizing, as they represent active efforts undertaken by those in power to address and undo ongoing and historic racial inequities, resulting in material and epistemic transformation. For minoritized students who are recruited to and welcomed at traditionally White institutions and then exposed to violent speech whereby their humanity is erased, intentional racially inclusive practices are crucial for rehumanizing and healing. This process of rehumanizing involves practices that intentionally shift power to the collective, bringing together campus community members, and addressing harm through contextualization and connection.

3. Conceptual Frameworks

We interpret our data through two distinct frameworks. The first, inclusive freedom [16], guides our conceptualization of proactive and reactive institutional responses to hate speech as those grounded in an educative mission that reflects community-based values and relational trust building. The second, a cultural analysis of the law [15] attends to how the legal environment shapes administrators' understandings and responses. Next, we elucidate each framework in more detail.

Ben-Porath's [16] concept of inclusive freedom advances interrelated principles and practices to guide universities in balancing open expression and inclusion, two values that are often pitted against each other in debates about campus speech. Ben-Porath [16] rejects the commonly held view that inclusion and speech work in opposition, building a case for collective, community-based inclusion efforts grounded in free speech practices that leverage the educational project of advancing intellectual growth and democracy. We distill three components advanced in Ben-Porath's book *Free Speech on Campus* [16] into a framework of inclusive freedom that includes the following components: (a) the need to foster an environment of "dignitary safety" where all campus members share "the sense of being an equal member of the community and of being invited to contribute to a discussion as a valued participant" (p. 62), while avoiding "dignitary harm" (i.e., proclaiming certain groups of people as less valuable or less capable than others, or "generally less than fully equal" (p. 58)), (b) the requirement that all campus community members remain open to having their beliefs challenged, and (c) the collective responsibility of the campus community to create the conditions for both uncensored speech and authentic inclusion in the unique educational context of higher education.

The first component reflects deep, empathetic thinking about how unregulated words and expression, such as hate speech, can "undermine the dignity" ([16] p. 54) of community members, manifesting in fears about physical safety and emotional well-being, impoverishing the learning environment, and foreclosing opportunities to engage in the

learning outlined in components two and three. Specifically, Ben-Porath [16] is concerned about harms perpetrated against minoritized students "as they try to make their way into the academic context from which their ancestors or predecessors were barred" (p. 64). The second component, informed by First Amendment principles about speech, posits that students come to campus to learn, and that this learning demands having their perspectives challenged and stretched. Importantly, Ben-Porath [16] contends that dignitary harms are not assuaged by limits on speech, and calls for "an ongoing, clear commitment by college leadership and members to create and sustain an environment conducive to open expression" through a "nuanced, responsive, and relational approach", which can "accomplish what a hundred regulations cannot" (p. 28). Without regulations, component three concerns the collective responsibility of the community to foster these conditions of "dignitary safety" via facilitated (unfettered) speech-based teaching and learning.

Additionally, in our analysis, we draw from Edelman and Suchman's [15] cultural analysis of law, which focuses on organizational actors' interpretive processes as they respond to the legal environment. From this cultural framing, the legal environment is relevant to organizations in three unique but related ways: (1) as a facilitative system that contributes to institutional efforts to evade litigation that could be costly, either materially or reputationally; (2) as a regulatory arena, in which laws or policies exert a more active, coercive pressure on administrators; and (3) as a constitutive setting, which can operate through taken-for-granted assumptions about what is possible. The pressures from the various facets of the legal environment can take place via a set of related mechanisms, including normative understandings that are grounded in internalized values or social norms and cognitive effects shaped by the taken-for-granted perceptions and assumptions ([15], p. 496; [59]).

In this study, we employ this cultural analysis of law to conceptualize how normative understandings about freedom of expression, hate speech, and appropriate responses within the regulatory and constitutive facets of the legal environment influence policies and responses at a private institution. As our findings show, normative "absolutist" understandings of speech, alongside external pressures, shape administrators' decisions to remain committed to unfettered expression. In this way, the regulatory and constitutive facets hold weight with administrators, despite their legal latitude as a private institution to impose restrictions on speech as a means of curtailing harm and fostering inclusion. We further identify how organizational actors integrate these normative and cognitive understandings into a formal organizational policy via a revised free expression policy that then serves as a regulatory and constitutive field on campus.

4. Research Design and Methods

We report findings from a single-case study [60] conducted at American University in Washington, D.C. (hereinafter "AU"), an institution publicly committed to racial inclusion and whose private status means that it does not face the same constitutional restrictions or pressures from the legal environment regarding speech. In Section 5, we provide more details about AU and its suitability as a case for this study. Case study methodology is well suited to address our "how" questions related to a contemporary event over which the research team has little control. Our case study is descriptive [60] in that we seek to describe the phenomena within its real-world context. Additionally, our case study is explanatory [60], as we seek to explain how a condition came to be (i.e., how and why administrators at a private institution simultaneously invested in anti-racist practices and defaulted to normative absolutist perspectives on speech that curtailed campus racial inclusion).

The case (i.e., phenomenon of interest) we examined is how administrators at a private institution navigate external pressures and internal campus dynamics in their response(s) to hate speech incidents and how these responses relate to racial inclusion. We bounded our case [61] to one site (i.e., a private research institution) with documented incidents of hate speech, as well as strong institutional commitments to racial inclusion. We further bounded our case by time (from August 2022 to May 2023), in the aftermath of an increase in campus

hate incidents nationwide and on AU's campus. This also occurred during the launch of AU's update to its Free Expression Policy, a process designed to attend to both issues of speech and inclusion on campus. Our primary data sources include virtual interviews with 13 faculty and administrators as well as two in-person observations. We also examined secondary data sources [60], including a revised Free Expression policy, public statements and announcements, AU's plan for Inclusive Excellence, news articles, social media posts, and recordings of public forums.

4.1. Participants, Observations, and Documentary Data

We purposefully selected [62] faculty and administrators who were involved in responses to hate speech; whose roles on campus or scholarship related to issues of speech, expression, or inclusion; and/or who were members of the Free Expression work group. Our 13 participants included eight administrators and five faculty members. Of the eight administrators, five were women and three were men from different self-identified racial groups (four Black and four White). Of the five faculty members, one was a woman and four were men, four self-identified as Black and one as White, and four held tenure while one was on the tenure track. Administrator and faculty participants had been at the university from less than two years to more than 10 years, with the majority (12 out of 13) employed at the university for more than three years.

The first author conducted all interviews during the 2022–2023 school year, with most taking place between September and December of 2022. Interviews lasted on average between 60 and 90 min and followed an open-ended, semi-structured interview protocol [63]. We asked participants questions about their roles on campus, how they responded to or shaped institutional responses to hate speech incidents, including, when applicable, as a member of the work group to revise the campus free expression policy. We also asked participants about their preferred responses to hate speech, and their perspective on campus racial climate and inclusion. We assigned pseudonyms to all participants for confidentiality and removed all other identifying information. While the findings differentiate most of the participants' roles (e.g., faculty, administrator) and race, the need to protect their confidentiality prevents us from providing more detailed information.

We collected observational data at two campus gatherings designed to build campus community through relational dialogue about issues of expression and inclusion at AU. The first author conducted both in-person observations; one took place in the fall of 2022, and another took place in the spring of 2023. Observations and field notes focused on (a) the role of attendees (student, administrator, faculty, staff) without individuals' names, (b) the topic(s) of discussion, with detailed attention to characterization of topics related to speech and inclusion, (c) the considerations guiding possible responses to incidents related to hate speech that arose from local or national events, and (d) the dynamics among participants, including how positionality (e.g., race/ethnicity, gender, role on campus) may have influenced participation. We collected documentary data on an ongoing basis and included evidence from May 2017 to May 2023. To gain a richer understanding of the institutional context, we also considered perspectives from six students at the University, one woman and five men across racial and ethnic identities (White, Black, Latino, South Asian), who agreed to speak with us in response to various rounds of outreach.

4.2. Data Analysis

We conducted our analysis of data iteratively. We began with a set of deductive codes [64] shaped by our frameworks. For example, we organized participants' understandings of expression along a continuum bookended by the legal realist position and absolutist perspectives. In coding participants' perspectives on administrative responses (and desired responses) to hate speech incidents, we used Edelman and Suchman's [15] cultural analysis framework, including normative understandings (e.g., what participants thought was "just") and cognitive understandings (e.g., what participants saw as "natural" or "plausible") as guides. We drew on inclusive freedom [16] to develop codes around

consequences of hate speech and underlying norms that related to racial inclusion (e.g., evidence of dignitary harm/safety). Additionally, we added inductive codes (e.g., expression carries rights with responsibilities; considered regulation of certain speech; lack of community trust) that emerged from the data [65] by reading through transcripts and reflective memos [63] written by the first author and supplemented by other authors. To further shape this codebook, the first three authors began by coding interviews separately and meeting to compare applied and emergent codes [66]. Through these meetings, we refined codes and our understandings of the data. Once we finalized the codebook, we divided transcripts and double-coded each. The second and third authors each coded interviews, with the first author taking either the first or second coding pass on each of the transcripts.

After coding all transcripts, we continued our analytical process by simultaneously thinking broadly and in fine-grained detail. We used Dedoose coding software to create qualitative matrices [64], reading all responses within each category of our codebook (e.g., responses to hate speech, preferred responses to hate speech, understandings of hateful incidents) to develop a comprehensive picture of participants' views. In the matrices, we included prompts to distill codes even further, while at the same time, we coded our codebook, drawing out higher level themes that could encompass what we were seeing at the fine-grain level. The first author revisited observation field notes, and the other authors revisited documentary data during this stage to look for supporting or disproving data and provide robust contextual information for evidence [60]. We also shared our findings with participants to confirm resonance with their experiences [67].

4.3. Authors' Perspectives on the Research Study

As scholars and practitioners in academia, we understand the importance of our positionality to this study. We are a research team of five women, of whom one identifies as White, one as Pilipina, and one as Arab-American, and two identify as Latina. One of the authors is a legal scholar; one has 15 years across the P-20 spectrum as an educator, advocate, and policy analyst; and three of the authors have over 15 years of professional experience in student affairs and administrative roles. Collectively, we have research expertise that spans across fields of law, policy, Ethnic Studies, psychology, and K-12 and postsecondary education. Our respective experiences and expertise as practitioners and scholars robustly informed how we approached and understood the data and findings. For example, as women, we have grappled with power dynamics in our professional roles, and as Women of Color, we have experienced racial discrimination and racialized hate speech throughout our time in higher education.

To remain embedded in the research, we met on a weekly basis and held member and peer debriefings [67,68]. During the course of this project, we experienced waves of violence and threats to safety that impacted each of us. In these moments, we paused [69], to hold each other, to "recalibrate", to remind ourselves about the direction of our work, to whom and to what we hold ourselves accountable. As Patel [69] bestowed, "educational research should pause far more frequently in its seemingly unrelenting quest for data and publications" (p. 5). Our writing and lives are shaped by theories of anti-racism and anti-colonial struggle; as such, we endeavor to engage this as praxis throughout our collective project(s). We are particularly grateful, in this moment, to have the opportunity to plant this scholarship on hate speech and racial inclusion amongst other seeds of liberatory and humanizing efforts in education.

5. Institutional Context

This section details AU's efforts to promote racial inclusion initiatives, as well as numerous, notable hate speech incidents that occurred on campus before and during the time of data collection. AU is a historically White and selective private university, not constitutionally bound by First Amendment principles. Widely considered to be a "liberal-leaning institution", AU is unique in that it is geographically situated outside of a traditional

state context (D.C.)—giving it distance from political influence that other universities have with their respective state governments. Still, AU's proximity to the nation's capital cultivates a campus environment that is conducive to on-campus political engagement amongst students and off-campus political influence. These environmental factors can attract a range of students to AU, contributing to a more "globalized" student body as a predominantly White institution. Over the years, AU has experienced high-profile hate speech incidents that have prompted university administrators to enact policies, practices, and other initiatives that attend to institutional historical inequities and, more recently, to cultural shifts toward achieving racial justice. Still, these incidents reveal ongoing tensions that AU struggles to reconcile with: pursuing anti-racist efforts to promote campus racial inclusion while, at the same time, issuing conservative responses that appear to favor unfettered free speech.

5.1. Public Commitments to Racial Inclusion

AU has made several public commitments to develop and support an anti-racist campus community, both before and during the time of data collection. For example, AU's Faculty Senate developed "AU Experience" (AUx)—a two semester, first-year core requirement that would cover college transition, identity development, and systemic racism. Additionally, AU launched a new Diversity and Inclusion website and announced the faculty appointment of Dr. Ibram X. Kendi, who led efforts in establishing the Anti-Racist Research and Policy Center [70,71]. In January 2018, AU President Sylvia Burwell unveiled a "Plan for Inclusive Excellence" (adapted from the Association of American Colleges and Universities' initiative for inclusive excellence) that highlighted five outcomes for inclusion in learning, campus climate, policies and procedures, access and equity, and research.

5.2. Incidents of Hate Speech

AU's pursuit to incorporate an anti-racist approach to campus racial inclusion developed amidst repeated incidents of racialized hate speech, some occurring through online discussion forums or campus residence halls [72–74]. Perhaps the most widely publicized hate incident was one that targeted the first Black female student government president, Taylor Dumpson. In May 2017, Dumpson was subjected to bananas hung by nooses accompanied by racist threats and name-calling, internet doxing, and other forms of online harassment led by The Daily Stormer—a media publication known to espouse White Supremacist and Neo-Nazi beliefs [75,76]. AU publicly acknowledged the harassment as acts of "bigotry" and reiterated AU's "commit[ment] to principles of diversity, inclusion, common courtesy, and human dignity…" [77]. An administration-hosted town hall was met with student protest [78] and was followed by a student-led town hall, where Dumpson called for "stricter punishments for perpetrators of hate crimes" [79]. Notably, in a separate memo, then-AU President Neil Kerwin referenced the incident targeting Taylor Dumpson as a "hate crime" [80].

Another high-profile incident occurred in September 2017, when images of Confederate flags adorned with cotton stalks were discovered in various campus buildings following Dr. Ibram X. Kendi's presentation on the Anti-Racist Research and Policy Center. AU responded by releasing a statement notifying the campus of the "bias incident" and positioned itself against "attempts designed to harm and create fear" [81]. Administrators also organized a town hall—where students expressed continued dissatisfaction with administrative responses [82]—that was followed the next month (October 2017) by a rally organized by AU Student Government and the Anti-Racist Research and Policy Center that called for AU to release the results of their campus climate survey.

In addition to these examples of racialized hateful incidents, AU has contended with other events and circumstances that have tested the tensions involving free speech and hate speech. In April 2016, the Young Americans for Liberty invited former Breitbart editor Milo Yiannopoulos to speak on campus, despite some students' protests [83,84]. Three years

later (April 2019), a video recording of a White student saying the n-word in response to a "dare" went viral [85]. More recently, in the beginning of the 2022–2023 academic year, AU unveiled its updated policy on "Free Expression and Expressive Conduct" [86], which coincided with a swastika carved onto the bathroom ceiling of a residence hall during the Jewish high holidays for the second year in a row [87]. And in February 2023, a message that read "Black people suck" was found on a library white board [88]. Notably, these incidents, which took place during data collection, were also coupled with significant administrative turnover, namely the departure of AU Vice President of Enrollment and Inclusive Excellence in March 2023 [89,90]. Additionally, after we completed data collection, AU President Sylvia Burwell announced that the 2024–2025 academic year would be her final year as president [91].

5.3. External Pressures

While these incidents and others were contentious and documented by the campus newspaper [92], they also drew criticism from the ideological right for the university's efforts for racial inclusion. For example, in January 2022, University of Michigan–Flint professor emeritus Mark Perry filed a Title VI complaint against the AUx course [93]. Course organizers had created Black affinity sections of the course which, according to one Black female student at a campus event we observed, were designed to relieve Black students of the labor and burden of teaching White students about the realities of racism. Perry alleged AUx's Black affinity sections were "racially exclusive" and discriminatory to non-Black students and thus, violated Title VI of the Civil Rights Act of 1964 [93]. In addition, the nonprofit organization Foundation for Individual Rights and Expression (FIRE) has sent several letters to AU regarding AU's potential violations of free speech.

6. Findings

Our analysis of this case reveals three interrelated themes that paint a nuanced picture of how, even in private institutional contexts where administrators are committed to building an anti-racist, humanizing community and have the constitutional leeway to restrict speech, their normative understandings about freedom of expression and the pressures of the constitutive facet of the legal environment ultimately lead to a regulatory policy that hampers efforts for campus racial inclusion. Our first theme demonstrates that administrators at AU understood the dignitary harm produced by hateful incidents on campus and were committed to humanizing efforts for racial inclusion through programs and practices that advance a holistic, community-wide approach to building dignitary safety while challenging intellectual safety. The second theme shows that, although administrators were committed to humanizing efforts and understood their legal latitude in restricting speech, they defaulted to absolutist normative understandings about First Amendment protections while revising an important institution-wide speech policy. Our third theme demonstrates how this regulatory policy prioritizing individual rights over communal ones conflicted with proactive efforts for dignitary safety in ways that sidelined humanizing and healing potential.

6.1. Understandings of "Dignitary Harm" and Advancing Community-Based Efforts for "Dignitary Safety"

Participants acknowledged the "dignitary harm" [16] of hate incidents and how they threatened or curtailed "dignitary safety" [16] on campus. They noted that both the hateful events and the institutional responses to hate speech affected "the sense of belonging and trust amongst staff, Black faculty and staff, staff of color, faculty, and alumni". This contributed to a type of "institutional trauma" that affected members of the community beyond those immediately attacked. As Linda, a Black administrator, explained, "Because it had happened to someone that they share an identity with, or it had happened to someone that they know, they then take on that vicarious trauma. It now becomes a part of their experience". Linda said that while AU has not been in the headlines as much in

the last few years, she noticed "unhealed harm between Black students, students of the African diaspora, and students who identify as Jewish". Cameron, a White administrator, concurred, commenting, "I see it as like concentric circles of harm that people feel that impact even if they weren't necessarily the direct target". Linda concluded, "If I were a student on this campus, I would feel scared". These comments reflect an administrative understanding of how hate speech creates dignitary harm for all community members and how speech policy mediates campus inclusion.

Many administrators noted AU's commitment to work towards healing from this dignitary harm and referenced numerous proactive, education-based, speech-driven efforts to foster dignitary safety, prioritize community, and engage across ideological difference to challenge "intellectual safety" [16]. Marcus, a Black administrator, shared how the values of care and dialogue inform proactive efforts:

"The university really does listen to students, faculty, and staff, and they try to make changes really quickly...I think the ability to have discourse and conversation and try to have dialogue spaces to really seek understanding, ... that's something that's done really well. I'll say that we're definitely a university that cares about our students, and really tries to do our best in very difficult situations".

It is critical to note that Marcus was not alone in commenting on the deep care that AU administrators hold for the community. Care and humanizing intention inform each of these interventions, which rely on relational speech as the mechanism for attending to harm, most drawing from frameworks that prioritize the healing of the collective or community over the individual.

Most participants mentioned AU's first-year experience course, AUx, which binds itself to the educational purpose of the institution, as a required course for all first year and transfer students. Though under development before the hate speech attack on Taylor Dumpson, participants shared how hate incidents have shaped the curriculum, with an emphasis on making visible and curtailing anti-Blackness, as well as a recent similar focus on antisemitism. Both of these topics appear in the second semester of the course focused on systems of oppression. Molly, a White administrator, commented that AUx includes "values of the institution that we are putting forth in our curriculum", while Peyton, a White administrator, reflected that AUx would also be an opportunity to engage students with the free expression policy. They can discuss: "How are we trying to build our voices? What are some of the powers in that and what are some of the challenges? How do we make decisions about using our voice? How do we learn with each other?" The AUx classroom, thus, provides an additional opportunity for facilitated dialogue across differences to create the conditions to challenge intellectual safety while aiming to protect dignitary safety. AU administrators opened up affinity sections for the AUx course to create "safe spaces" for Black students in particular. This effort ignited the wrath of Mark Perry, a conservative agitator, who submitted a Title VI complaint to the Office of Civil Rights within the Department of Education [83]. AU complied by opening up all sections to any student but persisted in naming sections "Black affinity".

Two more nascent proactive responses, also rooted in community and dialogue, include the launch of a series of "community circle" campus conversations, as well as the school's introduction of restorative practices as a (possible) alternative to the conduct process. Peyton described community circle events as "related to [the university's] free expression and inclusion work, though [with] broader community-building goals at their core". The digital flyer on AU's website invited all campus members to come together to address the question of "What Kind of Place Is This?" The first of these sessions in the 2022–2023 school year took place just a few weeks after the swastika appeared in the campus bathroom, while another was held in early spring. These morning events included a catered breakfast and an invocation led by high-and mid-level administrators gesturing to Indigenous relational and restorative practices. Then, groups of 8–18 students, staff, faculty members, and administrators sat in circles, with talking pieces, and took part in a facilitated conversation about campus issues relating to inclusion, speech, and equity.

Cameron reflected on the goal of community circles, saying, "If you don't feel like you're a part of a community, you don't really have a problem creating harm, whereas if you feel like you have some investment here, it's just a little bit harder to harm people". Bringing people together in this way is intended to create dignitary safety and heal dignitary harm.

In discussing the launch of the restorative practices work, Linda distinguished between restorative justice, a reactionary tool to repair harm, and restorative practices, which are inclusive of all "the ways that we can [repair harm] proactively without waiting for something to happen within our community. When I speak of restorative practices", she explained, "I'm speaking of the ways that we can engage and build community-strengthened relationships". Peyton contextualized how AU leaders brought restorative practices to campus: "I think people realized, as community members continued to express that the harm that they felt wasn't resolved . . . I think there were enough folks in leadership who heard that that was insufficient and felt like something needed to happen". Restorative practices are voluntary, requiring consent from participants, to protect "the integrity of the process", Linda explained. Cameron sees restorative practices as attendant to what post-hate incident town halls were not achieving, providing a space for community members to collectively determine accountability. Importantly, CW, a Black administrator, talked about restorative practices when asked how he envisions fostering an inclusive campus, demonstrating how speech is being leveraged to drive inclusion. He mentioned "infusing restorative practices" in dialogues beginning at student orientation, continuing through AUx, and in "ongoing conversations through residence hall learning initiatives".

Administrators recognize that hate incidents are happening on campus because of bias. As such, they draw on their role as a place of learning and a student home to design facilitated dialogue guided by historical and sociological scholarship on structural oppression, as well as individual and collective experiences informed by social location. In this work, they are asking community members to work together to intentionally shape the AU community, to (re)build a campus rife with dignitary safety, through reflection on each other's individual experiences informed by research and humanity.

6.2. Relenting to Constitutive Pressures and Absolutist Normative Understandings in a "First Amendment Adjacent" Speech Policy

In the wake of hate speech incidents, administrators acknowledged feeling somewhat challenged in their reactive responses due to external pressures from alumni, media, and free speech advocates. These external pressures illuminate the constitutive facet of the legal environment [11] that exert passive pressure on administrators. This passive pressure contributed to reactive responses that one White faculty member framed as "crisis management", when what was needed was "crisis leadership". Ruby, a high-level administrator, addressed external pressures like "parents and alumni who certainly have very strong opinions about these issues, who deeply care about the institution, and who are concerned about its reputational damage". Linda, a Black administrator, echoed these concerns, observing that when "there's pressure from parents or [the incident] may involve litigation. That's when we activate". While not all participants agreed that media pressures influenced institutional responses, Marshall, a White faculty member, shared, "I think from the point of view of the university as a whole, I think they're very susceptible to pressure from the media".

In describing responses, participants used words like "boilerplate", "palliative", and "statement fatigue". These responses, according to some participants, "circle the wagons" relying on public relations personnel to let students know that "this is not who we are", that an investigation is underway, and where to find available resources. Molly, a White administrator, revealed how administrative deference to legal considerations and external pressures created tensions for those whose personal perspectives were not entirely aligned with a more bureaucratic response. She noted: "I know a lot of upper administrators, and I know how deeply they care about students. But I also know that there is this need to protect the institution". Molly continued, "It often feels they care more about the communication

strategy than actually listening to what students need in the moment". The external pressures participants referenced often result in administrators acting in ways that protect the institution as an individual entity, in conflict with efforts to define the institution as a cohesive collective.

Moreover, in navigating these pressures, administrators relied on institutional documents, such as the university's free expression policy, which many participants viewed as contributing to challenges in preventing dignitary harm after hateful incidents. "There was an increase in incidents and a deficient policy response", explained Cameron, a White administrator. In the aftermath of hateful incidents, CW, a Black administrator, shared that legal counsel would prompt, "'What does your policy say?' We have to make sure we're not acting arbitrarily so then someone could come in and say, 'You're acting based on your identities and not based on a universal set of predetermined rules'". To address these challenges, beginning in 2021, the university revised its free expression policy with the help of a working group that included faculty, staff, and administrators who met virtually for a year, with oversight from the university's legal department.

Nearly all participants who worked directly with the policy described the work as an effort to balance much revered speech rights for individuals with respect for community values of inclusion. Ruby spoke of the aspirational nature of some members of the group, to weave "responsibility" and other "institutional values" into the policy. This could demonstrate that "the work of DEI and free speech actually don't collide, that they could complement each other, but you have to create the right conditions for it". Peyton expressed that the existing policy "wasn't addressing how we understand free expression and diversity, equity, and inclusion to operate together". Cameron concurred, "Instead of just being like a list of, 'Here's 12 things you can and can't do,' we really tried to get at some of the why, how it relates to our institutional values, how our values should inform what we all can expect of each other". These two perspectives reflect the desire to confect a policy that equally esteems speech and inclusion.

In revisiting this policy, participants, some members of the Free Expression work group, expressed a clear understanding of AU's ability, as a private institution, to regulate expression on campus. Marcus, a Black administrator, said, "We have the ability to say that if you do this, we have zero tolerance, when a public university might not be able to say that". Peyton concurred, noting, "We're not bound to constitutional principles in the same way as public institutions, and that was something that we talked a lot about in the working group. How do we want to define this for ourselves?" Curtis, a Black faculty member, noted, "Free speech is not truly an academic value" and that a private institution like AU has the latitude to "condemn" hate speech and say, "'This is an aspect of speech that we do not support.'"

Nevertheless, within the work group and beyond, absolutist normative perspectives about the value of speech abounded, overwhelming understandings of a more permissive approach for regulating speech. CW explained that the work group was trying to "toe the line", being clear that they do not "affirm hate speech". At the same time, he explained, "We also wanted to be respective of people's constitutional rights as a place where we can act freely to express ourselves in a way that is commensurate to the constitution". Participants talked about the benefits of unfettered dialogue across differences as a powerful mechanism for education and democracy. However, these perceptions did not appear to attend to racialized or hierarchical power inequity on campus. For instance, Marshall suggested students need to engage in dialogue to develop "inner resilience" for their futures, which would best be fostered at AU through a "First Amendment adjacent" approach. This "First Amendment adjacent" approach meant that the "antidote to hate speech is more speech", a stance that does not address power imbalances. Some participants, both on the work group and not, expressed concern about the perceived silencing of conservative students, who "feel like they're walking on eggshells" because of their "disfavored views" on AU's liberal campus. As such, these participants expressed their desire to bolster individual speech

protections in the name of an inclusion that prioritized conservative perspectives which, while not dominant on AU's campus hold power in broader society.

These absolutist normative understandings about speech were also shaped by the legal training of some of the members in the group. One work group member, a trained lawyer, explained, "In law school, you get so much drilled into you about the First Amendment that sometimes it is hard to say, 'Let's put some more restrictions in place.'" They continued, "I think it's a worthy question whether or not the First Amendment is really the best standard. It is the standard of the country, but is it the best way for all of us to engage with each other?" This statement makes apparent how normative absolutist perspectives dominated policy design—and created concern for some participants. "I think our policy leaves more room for harm than I wish it had to", Cameron said, in summing up her thoughts. "However, I personally was never able to come up with a way, and no one in the committee suggested a good enough solution, to write into a policy something that would produce less harm on our campus". Many work group members rhetorically supported inclusion on par with speech, and one group member vocally challenged taken-for-granted individual-based notions of free speech protections and offered other possible responses grounded in a shared normative understanding of community values. Despite this, participants ultimately integrated an absolutist perspective into formal university policy.

6.3. Absolutist Approaches Sideline Efforts for Dignitary Safety and Community Healing

As a way to build dignitary safety [16], several work group members fought for and celebrated the presence of the inclusive values statement that accompanies the free expression policy. The values statement notes, "Each member of this community balances their right to free inquiry with their responsibility to be open to listening and learning, to respect the rights of others, and to acknowledge each person's human dignity".

However, even as the values statement centers responsibility and mentions human dignity, as some participants noted, both are framed within the context of individual rights. This individual-rights framing represents an absolutist approach to speech that can sideline efforts for dignitary safety because it removes considerations of context and power that are integral for building inclusive communities. Peyton, a White administrator, lamented the individual rights grounding of the statement, asking, "What would it mean to center the rights of the community to have an environment in which everyone can feel included and a sense of belonging?" Peyton highlights here how the absolutist, individual approach pushes out a sense of belonging for all campus community members. That results in a campus climate where there is an imbalance between racial inclusion and free expression, with, as Curtis said, free speech being "the highest value, and values of diversity/inclusion are clearly some steps below that". Significantly, one Black administrator directly tied dignitary harm experienced by minoritized students to permissive speech policies informed by normative absolutist perspectives. "The Black and Brown students", said CW, "see free speech as carte blanche to harm their identities".

In fact, Brown and Black students in particular are looking to leadership to proactively create dignitary safety for the(ir) community, which involves the type of proactive efforts that AU is engaged in but may also require more restrictions around expression. Work group members, for example, debated mechanisms for limiting speech, like speaker review boards and lists of words that could not be used on campus. Curtis thought that "any college professor, any trained university administrator" could support in reviewing and approving invited speakers. "Is it censorship?" he asked, "Absolutely. Social communities cannot exist without censorship. . .People in communities have a right to keep some things out". At the end, however, these restrictions were not included in the policy.

Moreover, some participants described proactive, community-based efforts as under-marketed, which meant that community circle events were not well attended. The fall event, for example, was held on a Friday when classes were cancelled for a long weekend. One community circle participant, who was also interviewed for this study, noted that, in their circle, there were only three students. "In some circles there were no students", they

noted. "If an event is advertised as 'We want to come together and talk about how to make the AU community feel a certain way', we need greater participation than 10 students". Those who were there, as noted by one event organizer, were "the usual suspects" carrying the work of inclusion. Some participants worried that the voluntary and siloed status of these events, even while meaningful, allowed the larger community to evade responsibility for doing the work of inclusion. Linda, a Black administrator, described that "you cannot look to one office or person to do this work... Everybody is responsible for creating this community of care, belonging, and inclusion". In other words, building dignitary safety demands leadership, and is foundationally community work.

Additionally, some participants shared how even the mandatory AUx course did not realize its potential to foster ongoing community dialogue because it focuses only on the first-year experience rather than all four years of college or other campus community members. Molly, a White administrator, reflected on the course's limited reach: "It feels like a lot of the attention goes to first-year students, because they are more of an easy audience, but it should be for our sophomores, juniors, and seniors, and also our graduate students as well", pointing to the need for a larger group of those in the campus community to be involved in the ongoing shaping of dignitary safety and campus healing. AUx courses, moreover, are predominantly taught by first-year advisors instead of faculty. One participant, an administrator who teaches the course as an adjunct, expressed that they felt no connection to course design, again demonstrating how people's roles and experiences in the community are not shaping course design. All of these spaces hold potential to host rigorous, relational dialogue, which could contribute to the important healing needed on AU's campus but require intentional structures that call on the community to collectively and continually build dignitary safety for minoritized students.

7. Discussion and Implications

In this study, we sought to understand how administrators at a private institution navigate external pressures and internal campus dynamics in their response(s) to hate speech incidents and how these responses relate to racial inclusion policy. Our first theme demonstrates that administrators understood the dignitary harm and institutional trauma present on their campus and responded by investing in educational, speech-driven policies and practices to work towards healing this harm and expanding dignitary safety. Our second theme shows that, despite their legal latitude to curb hate speech more directly, administrators integrated regulatory pressures and absolutist normative understandings about expression that decontextualize historic and ongoing racial power inequities into a campus-wide speech policy. The third theme reveals how privileging individual rights to speech over collectively constructed healing, can sideline dignitary safety.

We draw on the concept of *repressive legalism* [13] to illuminate how AU administrators' cognitive understandings about freedom of expression foreclose proactive efforts for racial inclusion. Repressive legalism describes a phenomenon in which pressures from the sociolegal environment shape organizational actors' perceptions and result in institutional responses that unnecessarily suppress racial inclusion efforts [13]. In this case, despite understanding the legal leeway to regulate speech, participants defaulted to absolutist normative understandings about expression that they then integrated into a campus-wide speech policy. The decision to prioritize individual rights and ground the Free Expression Policy in normative understandings of the First Amendment runs contrary to the community-prioritized approaches underpinning other university proactive efforts. The presence of an overarching, First Amendment adjacent, capital "P" policy that frames speech through an ahistorical, decontextualized perspective—evasive of the reality of the anti-Black world—eclipses the liberatory and humanizing potential of efforts dependent on dialogue and trust.

Furthermore, the new policy unfurled amidst residual mistrust between and amongst administrators, students, faculty, and staff. Administrators' decision to integrate historically decontextualized First Amendment free speech norms into its speech policy creates a

new regulatory environment that can exacerbate mistrust from marginalized community members. Through their proactive programmatic efforts, campus community members continue to strive for transformative change to campus inclusion, but their efforts to date have been less fruitful than they hope, possibly influenced by their First-Amendment-adjacent speech policy.

These findings have a number of implications for theory, policy, and practice. Findings have implications for theoretical perspectives, such as that of Ben-Porath's (2017) [16] concept of inclusive freedom, which seek to guide universities in balancing open expression and inclusion. Ben-Porath's conceptualization of inclusive freedom relies on normative First Amendment ideas about free speech while simultaneously highlighting the unique responsibilities of universities as places of learning. She argues that faculty and students "require the freedom to inquire, question, and probe established views and new visions without fear of retribution or silencing" (p. 31). In order to do this, she continues, "free speech protections are necessary" so that "researchers and their students are [able] to make the kind of contributions that society expects them to make, and for which they came to campus in the first place" (p. 31). We concur that universities are unique, that they should foster learning, generate new knowledge, and prepare citizens. This study, however, demonstrates the limits of grounding those efforts in individualistic principles of free expression, particularly in places where the community has the legal leeway to rely on higher standards of intellectual engagement and the desire to foster inclusion (We acknowledge crucial critical perspectives and diverse epistemes [57,94–96], which trouble the notion of "a" public, "a public", or "a public good", as well as how those perspectives inform recent challenges specific to academic freedom [97], though still stand by the principles of academic freedom as a stronger commitment to intellectual growth and the project of higher education than commitment to the principles of First Amendment speech protections and their attendant potential for harm).

This study demonstrates the challenges of fostering an inclusive learning environment and establishing healthy learning communities when advancing policies that prioritize individual rights. As such, we propose a distinct set of norms connected to academic freedom that administrators at private institutions, not bound by the constraints of the First Amendment, can draw on instead. Academic freedom describes the moral, legal, and academic principles that allow university faculty (and in some instances students) to engage in research, teaching, and extramural (i.e., outside the institution) speech without fear of reprisal [98]. Academic freedom distinguishes itself from free speech because of its connection to professional expertise; academic freedom comes with responsibilities—to serve "the" public good—and depends on the peer review of professional colleagues. These collectively designed supported principles of academic freedom can help empower administrators at private institutions to draw boundaries around hate that are grounded in peer-reviewed-and-rejected theories of White supremacy and that hold the potential to promote anti-racist and humanizing responses to incidents of hate speech.

As Bérubé and Ruth [99] note about academic freedom through the title of their book, *It's Not Free Speech*, academic freedom calls for speech regulated by intellectual rigor. Like Curtis at AU, Stanley Fish argues, "Freedom of speech is not an academic value. Accuracy of speech is an academic value" ([100], n.p.). Private universities have the power to exclude from their campuses—not just their classrooms—"the zombie afterlife of ideas that should have died a natural death, whether, in the form of neo-Nazism worldwide or the neo-Confederate enclaves in the United States" ([99], p. 190).

In practice, institutions should measure and monitor campus climate specific to racial inclusion. AU made these sorts of metrics part of their plan for Inclusive Excellence and found that they were falling short a few years ago. During the time of our data analysis, they had not yet publicly shared the newest data. In addition, while proactive efforts like the community circles hold potential, students who have experienced dignitary harm need to be assured that broader campus policies are equally attentive to their safety. Unfettered speech is different from facilitated speech. Because proactive responses to hate speech

are being introduced to a campus community still fractured/unhealed by repeated hate speech incidents—where dignitary harm festers—amidst an increasingly polarized political landscape, the result is entrenched mistrust and diminished feelings of safety for many community members.

These pitfalls or challenges would be more easily surmounted or surpassed in a context where trust was strong. Without that feeling of trust, the institution may unintentionally be promoting the speech of some groups—those willing to speak hate. This trust could be built more substantially if administrators embedded a commitment to inclusion throughout their initiatives and demonstratively—not just rhetorically—placed the value of inclusion at the same level as the value of speech. Importantly, though, AU leadership should continue to create these spaces for community dialogue, institutionalizing an ongoing process that foregrounds collective learning and campus health.

AU's commitment to facilitated dialogue holds promise for balancing open expression and racial inclusion. Dialogue across difference requires strong facilitation [101] and follow-through. Continuing to support events like the community circles is one way to engage in further conversation to define community values and collectively build dignitary safety, though this will require calling more than the "usual suspects" to the conversation. There were strong recommendations made by students during the second event, including the protection of affinity spaces where, as a Black female student, you are not required to explain racism. While AU has already faced challenges in this area related to their AUx course, they have the opportunity to support affinity groups and clubs.

Finally, students want institutional responses to hateful incidents to acknowledge these incidents' place in the trajectory of historic and ongoing racial violence, with specific attention to their institution's campus [7]. In the context of private institutions, like AU, where leadership is outwardly and financially invested in developing an anti-racist campus climate, acknowledgement of structural inequity is crucial in developing dignitary safety. Students can also be invited to participate in policy making and event monitoring on campus, as student monitors do at some private institutions when a controversial speaker is invited [16]. Importantly, this labor must be met with shared decision-making and compensation, as students, particularly students of color, are often asked to carry the burden of racial inclusion work [101,102].

Author Contributions: Conceptualization, L.M.G.; methodology, L.M.G., E.M.B.E., N.C.N., N.K. and J.P.; software, N.K. and E.M.B.E.; formal analysis, E.M.B.E., N.C.N., N.K. and L.M.G.; investigation, E.M.B.E. and L.M.G.; resources, J.P., N.K. and N.C.N.; data curation, E.M.B.E., J.P., N.C.N. and N.K.; writing—original draft preparation, E.M.B.E., N.C.N., L.M.G. and N.K.; writing—review and editing, L.M.G. and J.P.; supervision, L.M.G., E.M.B.E. and J.P.; project administration, E.M.B.E.; funding acquisition, L.M.G. All authors have read and agreed to the published version of the manuscript.

Institutional Review Board Statement: The study was conducted in accordance with the Declaration of Helsinki, and approved by the Institutional Review Board of The University of Texas at Austin (STUDY00001803, approved 12/23/21).

Informed Consent Statement: Informed consent was obtained from all subjects involved in the study.

Data Availability Statement: Data are contained within the article.

Conflicts of Interest: The authors declare no conflicts of interest.

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