RESPONSES TO INTERNET HATE SITES: IS SPEECH TOO FREE IN CYBERSPACE?

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This descriptive study investigates people's responses to incendiary hate sites found on the World Wide Web. Drawing on legal guidelines for other classes of unprotected speech, this study explores the parallels between First Amendment formulas and people's perceptions of hate sites. Additionally, it examines perceptions of harmfulness and persuasiveness. Two hundred sixty-six volunteers in an on-line study each read and evaluated one of 11 white supremacist Web pages. One test indicated that the communicative value of the expression was low, while a second test suggested people perceived an indirect, insidious threat rather than "imminent" lawless action. Viewing short-term effects as the legal harm, white supremacist hate rhetoric is protected speech. If one considers indirect or long-term effects, however, hate speech may reside at the border of First Amendment protection. The results inform the debate regarding protection for Internet hate speech.

Whether it is the dragging death of an African-American behind a pick-up truck in Texas, a gay student's murder in Wyoming, a racially motivated shooting spree at a Los Angeles Jewish community center or a bloody rampage by two high school students enamored of Hitler's fascism, the rising incidence of hate crimes and the groups who appear to encourage them is attracting public interest. The World Wide Web has allowed marginalized extremist groups with messages of hate to have a more visible and accessible public platform. Hate-based Web sites have grown dramatically in recent years. In 1995 at the time of the Oklahoma City bombing, there was only

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one hate site[1] but today, the Simon Wiesenthal Center[2] and the Anti-Defamation League[3] have documented about 2,800 hate sites. The Internet has put the problem of incendiary hate into sharp relief, raising many difficult political, legal and social questions.

Consequently, the American debate regarding censorship of hate speech is moving from traditional forms to newer ones found on-line. In particular, the Internet has become a key organizing tool for hate groups.[4] As scholars have noted, the Internet is a powerful forum of communication with its broad reach, interactivity and multi-media capability to disseminate information.[5] The Web is providing an unprecedented vehicle for forging communities[6] and making communication quicker, easier and cheaper. These features inevitably result in questions about impact, especially when viewed as empowering racists and other extremists. As Robert McChesney points out, "all new communication technologies have unanticipated and unintended effects, and one function of policy-making is to understand them so we may avoid or minimize the undesirable ones."[7] Arguably, the proliferation of hate activity on-line may be one byproduct that deserves to be minimized.

Furthermore, cyberhate regulation is an increasingly noticeable issue for the courts even though prevailing First Amendment dogma maintains that speech may not be penalized merely because its content is racist, sexist or basically abhorrent. Internet policy is a dynamic realm not completely integrated into the American regulatory

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[1]*See* Anti-Defamation League, Special Report: Hate on the World Wide Web 1 (1998).

[2]Simon Wiesenthal Ctr., the New Lexicon of Hate: The Changing Tactics, Language and Symbols of America's Extremists (1998).

[3]Anti-Defamation League, Poisoning the Web: Hatred On-Line (1999).

[4]*See, e.g.,* Kenneth Stern, A Force Upon the Plain: The American Militia Movement and the Politics of Hate (1996).

[5]*See* Barbara Kaye & Norman Medoff, The World Wide Web: A Mass Communication Perspective (1999); Steven Jones, Doing Internet Research (1999).

[6]Community is a contested term that is difficult to define and evokes various meanings. For instance, it can refer to both a symbolic or a physical locale. It can be an object of study and negotiated through communication. However, for the purposes of this study, Fernback's definition of cybercommunity is adopted: "[C]ybercommunities are characterized by common value systems, norms, rules, and the sense of identity, commitment, and association that also characterize various physical communities … ." Jan Fernback, *There is a There There: Notes Toward a Definition of Cybercommunity, in* Cybersociety 203 (Steven Jones ed., 1999). Furthermore, the very existence of community in the richest sense of the word is a controversial claim when applied to the Internet.

[7]Robert McChesney, *The Internet and U.S. Communication Policy-Making in Historical and Critical Perspective*, J. Comm., Winter 1996, at 98.

and legal system. Consequently, many questions remain about how traditional law should apply to this new medium. This article facilitates informed discussion and decision-making with regard to the potential impact of unbridled expression in the form of cyberhate. Legal and communication scientific scholarship is integrated in order to explore and consider the effects of hate speech.

To begin, the article contextualizes the on-line hate movement in a larger academic literature on moral exclusion and provides background and philosophy of four of the more virulent Internet hate groups. Next, the article considers the extent and nature of First Amendment application to electronic media. Specifically, the study probes the legal insights of two constitutional tests that hold potential insight for cyberhate regulation. The article describes and examines people's responses to hate sites and discusses the study's implications for policy-making.

THE CONCEPT OF MORAL EXCLUSION

During the past six decades, the quest to understand the origins and nature of intergroup prejudice and discrimination has become an interdisciplinary endeavor. Despite the breadth of these pursuits, the social psychological concept of moral exclusion[8] is nonetheless able to link related social science and humanities topics such as stereotyping,[9] stigma[10] and marginalization.[11] Thus this article begins by defining the concept. Moral *in*clusion and *ex*clusion are two psychosocial orientations toward individuals or groups that determine whether justice principles and allocation of resources are applicable. Morton Deutsch refers to this as the "scope of justice" continuum.[12] Morally excluded people are "perceived as nonentities, expendable or undeserving; consequently, harming them appears acceptable, appropriate or just."[13] On the other end of the spectrum are morally included people. These individuals are viewed as deserving

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[8]*See* Susan Opotow, *Moral Exclusion and Injustice: An Introduction*, 46 J. SOC. ISSUES 1 (1990).

[9]*See* Neil Macrae et al., *Stereotypes as Energy-Saving Devices: A Peek Inside the Cognitive Toolbox*, 66 J. PERSONALITY & SOC. PSYCHOL. 37 (1994).

[10]*See* Jennifer Crocker at al., *Social Stigma*, *in* 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 504 (Daniel Gilbert et al. eds., 1998).

[11]*See* 1 JUERGEN HABERMAS, THE THEORY OF COMMUNICATION ACTION (Thomas McCarthy ed., 1984).

[12]MORTON DEUTSCH, DISTRIBUTIVE JUSTICE: A SOCIAL PSYCHOLOGICAL PERSPECTIVE (1985); Morton Deutsch, *Psychological Roots of Moral Exclusion*, 46 J. SOC. ISSUES 21 (1990).

[13]Opotow, *supra* note 8, at 1.

of justice and fair treatment, and if they suffer harm, others respond
with remorse and outrage. Moral exclusion occurs in degrees, cover-
ing the gamut from mild (ordinary) to severe (exclusion-specific).
The focus of this study, the white supremacist movement, represents
a severe example of moral exclusion.

Theoretically, moral exclusion can be framed from either an in-
strumental or a relational motive.[14] An instrumental view posits that
people are excluded out of competition for limited resources,[15]
whereas the relational perspective contends that limits to the scope
of justice stem from issues of social identification, for example, sta-
tus, identity and ingroup vs. outgroup dynamics.[16] While both ratio-
nales could apply to the study of cyberhate, the relational model
appears to be more relevant for laying the intellectual groundwork.
In particular, social identity theory[17] is one of the most influential
frameworks used to explain exclusionary behavior. The theory holds
that intergroup prejudice is a universal trait of individuals, resulting
from cognitive and motivational biases that tend to occur when dis-
tinctions are made between "us" and "them."[18] Mere categorization
of people into groups can lead to favoritism toward the ingroup and
discrimination against the outgroup in order to maintain a positive
social identity.[19] People try to achieve positive distinctiveness for
their own group in order to protect and maintain their self-esteem as
group members.[20] As with individual identity, people's attention and
energy can be directed toward establishing and maintaining a posi-
tive *social* identity.[21] Within this paradigm, white supremacists' ra-
cial, religious and sexual-orientation prejudices represent a classic
dichotmization of others as "not us." Such behavior engenders and
encourages the tendency to differentiate one's ingroup, for example,
whites, as superior to the outgroup, for example, ethnic minorities,
and heighten the speaker's ingroup status relative to the outgroup. A

[14]*See* Tom Tyler & Heather Smith, *Social Justice and Social Movements, in* The
Handbook of Social Psychology, *supra* note 10, at 595.

[15]*See* Uriel Foa & Edna Foa, Societal Structures of the Mind 12 (1974);
George Homans, Social Behavior 130–44 (1961).

[16]*See* Social Identity and Intergroup Relations (Henry Tajfel ed., 1982).

[17]*See* Henri Tajfel & John Turner, *The Social Identity Theory of Intergroup Be-
havior*, *in* Psychology of Intergroup Relations 7 (Stephen Worchel & William
Austin eds., 1986).

[18]*See* Don Operario & Susan Fiske, *Racism Equals Power Plus Prejudice, in*
Confronting Racism 45–47 (Jennifer Eberhardt & Susan Fiske eds., 1998).

[19]*See* Michael Hogg & Dominic Abrams, Social Identifications 51 (1988).

[20]*See* John Turner, *Towards a Cognitive Redefinition of the Social Group, in*
Social Identity and Intergroup Relations, *supra* note 16, at 34.

[21]*See* Jennifer Crocker & Diane Quinn, *Racism and Self Esteem, in* Confronting
Racism, *supra* note 18, at 169.

brief background on white supremacist groups will serve to contextualize the culture of cyberhate.

White Supremacist Groups

The purveyors of white supremacist hate are known under many names, for example, Klansmen, Creators, Neo-Nazis, but this particular hate movement falls under one ideological umbrella. Simply, adherents to this world view contend that whites are intellectually and morally superior to other races.[22] This world view serves as the underpinning for the vast majority of hate groups who represent different variations of the same theme. This rhetoric expresses grave concern over issues pertaining to non-white birthrate and immigration and racial intermarriage. Not surprisingly, this common ideological thread makes the boundaries among hate organizations fluid, with group members often moving from one association to another.[23]

Literature from civil rights organizations assists in differentiating among the larger contemporary hate groups. These organizations, including the Anti-Defamation League, Simon Wiesenthal Center, Center for Democratic Renewal and Web-based sites such as hatewatch.org and civilrights.org, for a number of years have researched, monitored and analyzed hate groups.[24] Using this literature as a guide, the present study will examine four prominent supremacist groups: Ku Klux Klan, Nazi/neo-Nazi, Skinheads and Christian Identity Movement.

Perhaps the oldest and most well-known hate group, the Ku Klux Klan, remains active and violent. As the ADL notes, Klan member-

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[22]*See* MAB SEGREST & LEONARD ZESKIND, QUARANTINES AND DEATH: THE FAR RIGHT'S HOMOPHOBIC AGENDA 23 (1991); SIMON WIESENTHAL CTR., *supra* note 2, at 3.

[23]*See* WARREN KINSELLA, WEB OF HATE: INSIDE CANADA'S FAR RIGHT NETWORK (1994).

[24]The Simon Wiesenthal Center and the Anti-Defamation League are international Jewish human rights organizations committed to monitoring and combating hate. *See* Simon Wiesenthal Center Web site, http://www.wiesenthal.com (last visited Nov. 30, 2000); ADL Web site, http://www.adl.org (last visited Nov. 30, 2000). The CDR was founded originally as the National Anti-Klan Network in 1979, and is now a national, multi-racial non-profit organization in Atlanta, Georgia. Its mission is to counter the hatred and intolerance that white supremacy promotes. CDR Web site, http://www.publiceye.org/cdr (last visited Nov. 30, 2000). HateWatch originated from a Harvard Law School library Web page and evolved into an educational resource and organization that addresses on-line hate. HateWatch Web site, http://hatewatch.org (last visited Nov. 30, 2000). Civilrights.org is a joint project of two groups: the Leadership Conference on Civil Rights and the Leadership Conference Education Fund. The purpose of this site is to be a central repository for information on a variety of civil and human rights issues. Civilrights.org Web site, http://civilrights.org (last visited Nov. 30, 2000).

ship has fluctuated over time, peaking during social and economic discontent.[25] For example, Klan growth blossomed in the post-Civil War South, dislocation in the 1920s and the Civil Rights Movement in the 1960s.[26] Given current cultural values, internal power struggles and fragmentation, the group has lost influence and appeal.[27] Yet it is showing some revitalization through the World Wide Web.[28] Klan sites cover the gamut from subtle to heavy-handed expressions of hate.[29] Some local chapters promote violent extremism that includes threatening, hateful material on their pages.[30] Other groups such as the Klan spin-off, the National Association for the Advancement of White People, appear more mainstream, merely celebrating white heritage.[31]

The second hate group, neo-Nazis, historically refer to Adolf Hitler's Third Reich or more specifically, the members of the National Socialist German Workers Party.[32] According to the Simon Wiesenthal Center, neo-Nazis consider themselves the heirs to Hitler's racial and political program.[33] They use recognizable symbols of the Nazi party such as the swastika.[34] They believe that the white (Aryan) race represents the healthy development of civilization and that all other races are barbaric.[35] Organizers encourage members to engage in acts of harassment or even violence.[36] One of the more prominent groups, National Alliance, uses the Web to market products such as weekly anti-Semitic radio broadcasts, music, magazines and about 600 books.[37]

Third, the Skinheads or Skins are famous for physical acts of violence.[38] They express an avowed hatred of minorities, homosexuals, liberals, leftists and Jews and have an affinity for Nazism.[39] The

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[25]ANTI-DEFAMATION LEAGUE, HIGH-TECH HATE 33 (1997). *See* ANTI-DEFAMATION LEAGUE, *supra* note 1, at 1; ANTI-DEFAMATION LEAGUE, *supra* note 3, at 17.
[26]*See* ANTI-DEFAMATION LEAGUE, *supra* note 3, at 17.
[27]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 5.
[28]*See* ANTI-DEFAMATION LEAGUE, *supra* note 1, at 1.
[29]*See* ANTI-DEFAMATION LEAGUE, *supra* note 3, at 18.
[30]*See* ANTI-DEFAMATION LEAGUE, THE WEB OF HATE 7 (1996).
[31]*See* ANTI-DEFAMATION LEAGUE, *supra* note 3, at 16.
[32]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 7.
[33]*Id.*
[34]*See id.*
[35]*See* SEGREST & ZESKIND, *supra* note 22, at 23.
[36]*See* ANTI-DEFAMATION LEAGUE, YOUNG NAZI KILLERS: THE RISING SKINHEAD DANGER 3 (1993).
[37]*See* ANTI-DEFAMATION LEAGUE, *supra* note 1, at 1.
[38]*See* ANTI-DEFAMATION LEAGUE, *supra* note 36, at 3.
[39]*See id.* at 4.

movement originated in England's working-class neighborhoods.[40] The gang members became identified by their shaved heads, Doc Marten boots and grotesque tattoos.[41] The Skinheads emerged on the periphery of the American punk rock scene in the 1980s.[42] They created their own genre of music called "Oi!" or "White Power."[43] The lyrics tend to fuel violence, construing the world in intergroup terms ("us" vs. "them").[44] The ADL reports that most members range in age from about 13 to 25.[45] The ADL also describes the Skins as historically a loosely linked network of gangs.[46] Recently they have been found to form their own hierarchy.[47] Other established extremist groups regularly court Skinheads, who are known as "front-line" warriors.[48]

The fourth hate group, Christian Identity Movement, casts the racial struggle as pseudo-theological.[49] Here racism is a battle in which the Bible mandates hate as the will of God.[50] The Identity group emerged on the scene during the late 1970s and early 1980s.[51] The group's philosophical underpinnings stemmed from the British movement known as "Anglo-Israelism" that developed in the late 1800s.[52] This school of thought distorted standard Christian interpretations of the Old and New Testament.[53] For example, followers of Identity believe they are saved by race rather than grace.[54] As the ADL explains, Anglo-Israelism argues that England and the United States are the true Israel in which Biblical promises to the "Chosen People" are to be fulfilled.[55] Modern Jews originated from a union between Eve and the Serpent in the Garden of Eden, hence Jews are falsely argued to be descendants of the devil.[56] All nonwhites are re-

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[40]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 8.

[41]*See id.*

[42]*See* CTR. FOR DEMOCRATIC RENEWAL, NEO-NAZI SKINHEADS AND YOUTH INFORMATION PACKET 20 (1990).

[43]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 8.

[44]*See* ANTI-DEFAMATION LEAGUE, *supra* note 36, at 3.

[45]*Id.* at 1.

[46]*Id.*

[47]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 8.

[48]*See* ANTI-DEFAMATION LEAGUE, *supra* note 36, at 1.

[49]*See* ANTI-DEFAMATION LEAGUE, *supra* note 3, at 21.

[50]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 12.

[51]*See* ANTI-DEFAMATION LEAGUE, *supra* note 3, at 21.

[52]*See id.*

[53]*See id.*

[54]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 12.

[55]ANTI-DEFAMATION LEAGUE, *supra* note 1, at 2; ANTI-DEFAMATION LEAGUE, *supra* note 3, at 21.

[56]*See* ANTI-DEFAMATION LEAGUE, *supra* note 3, at 21.

ferred to as "mud people," people without souls, like animals.[57] The movement desires white separatism. Some of the more militant groups advocate violence, hoping to take back "white" territory worldwide.[58]

The vehemence of these groups coupled with the historically delicate issue of the boundaries of American freedom present a particularly sensitive policy challenge which this article addresses.

LAW OF HATE EXPRESSION

Since the early days of the 20th century, First Amendment scholars have grappled with determining how much protection speech should receive.[59] Given that the Internet is a unique medium, a central legal concern is whether current laws can accommodate the Internet.[60] Specifically, it is unclear how regulations for the Internet should fit the contours of established First Amendment doctrine.[61] The Internet can combine elements of print (newspapers and magazines), broadcast (television and radio) and face-to-face interaction. Moreover, unlike users of previous media, those on the Internet have the power to reach a mass audience[62] but in this case the audience must be more active in seeking information, as cyberspace is less intrusive than other mass media.[63] The other dilemma concerns whether content-based restrictions found in other technological me-

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[57]*See* SIMON WIESENTHAL CTR., *supra* note 2, at 12.

[58]*See* ANTI-DEFAMATION LEAGUE, *supra* note 1, at 2.

[59]*See* Laura Leets & Howard Giles, *Words as Weapons: When Do They Wound? Investigations of Harmful Speech*, 24 HUM. COMM. RES. 260 (1997) [hereinafter *Words as Weapons];* Laura Leets & Howard Giles, *Harmful Speech in Intergroup Encounters: An Organizational Framework for Communication Research, in* 22 COMM. Y.B. 91 (1999). Classic reasons for supporting virtually unlimited free speech include the marketplace of ideas theory, suggesting that false speech will serve to accentuate the superiority of speech that contains truth; the safety valve theory, suggesting that free speech helps to achieve a stable society by providing the cathartic opportunity to those who are displeased with society and the facilitation of the political process theory, suggesting that the political process may benefit from learning the nature of citizens' grievances. *See* KENT R. MIDDLETON ET AL., THE LAW OF PUBLIC COMMUNICATION 23–29 (5th ed. 2000).

[60]*See* Praveen Goyal, *Congress Fumbles With the Internet:* Reno v. ACLU, *117 S. Ct. 2329*, 21 HARV. J.L. & PUB. POL'Y 637 (1998).

[61]*See* Sean Petrie, *Indecent Proposals: How Each Branch of the Federal Government Overstepped Its Institutional Authority in the Development of Internet Obscenity Law*, 49 STAN. L. REV. 637 (1997).

[62]*See* Charles Clark, *Regulating the Internet: Can the Use of Cyberspace be Governed?*, 5 CQ RESEARCHER 563 (1995); Shari Steele, *Taking a Byte Out of the First Amendment: How Free is Speech in Cyberspace?*, HUM. RTS., Spring 1996, at 14.

[63]*See* Reno v. ACLU, 521 U.S. 844, 869–70 (1997).

dia may be permissible for the Internet. For example, the FCC ruled that indecency was unsuitable for broadcast media because of ease of access, invasiveness and spectrum scarcity,[64] yet other media are not subjected to this form of content regulation.[65]

In 1996 the United States Congress passed the Communications Decency Act.[66] The CDA regulated indecent or obscene material for adults on the Internet, applying First Amendment jurisprudence from broadcast and obscenity cases.[67] The Supreme Court declared two sections of the Act unconstitutional in *Reno v. ACLU*.[68] Congress and the Court disagreed on the medium-specific constitutional speech standard suitable for the World Wide Web. Congress argued that the Internet should be regulated in the same manner as television or radio, but the Court decided not to apply that doctrinal framework. Instead the Court viewed the Internet as communication deserving full protection. Praveen Goyal predicts that Internet regulation will stem from case-specific decisions rather than by general Court standards to which legislators can look for guidance in formulating regulation.[69]

In most countries hate speech, especially that which incites racial hatred, does not receive the same constitutional protection as it does in the United States.[70] France, Germany, Sweden and Canada have national laws that criminalize racist hate messages.[71] Hate sites are subject to prosecution and usually removed.[72] Many countries have admonished and criticized the United States and its Internet service providers for permitting cyberhate.[73] Additionally, as Samuel Cacas highlights,[74] human rights activists worldwide argue that the United States should be bound by the International Convention on the Elimination of All Forms of Racial Discrimination, to which the United States is a signatory.[75] ICEDR makes hate expression a crime under

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[64]*See* FCC v. Pacifica Found., 438 U.S. 726 (1978).

[65]*See* Sable Communications of Cal., Inc. v. FCC, 492 U.S. 115 (1989).

[66]Pub. L. No. 104–104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 223 (Supp. II 1996)).

[67]*Id.*

[68]Reno v. ACLU, 521 U.S. 844 (1997).

[69]Goyal, *supra* note 60.

[70]*See* Louis Henkin, *Group Defamation and International Law*, in GROUP DEFAMATION AND FREEDOM OF SPEECH 123 (Monroe Freedman & Eric Freedman eds., 1995).

[71]*See* David Kretzmer, *Free Speech and Racism,* 8 CARDOZO L. REV. 445 (1987).

[72]*See* Samuel Cacas, *Countering Cyberhate: More Regulation or More Speech?*, HUM. RTS., Summer 1998, at 21.

[73]*See id.*

[74]*Id.*

[75]International Convention on the Elimination of All Forms of Racial Discrimination, March 1966, 660 U.N.T.S. 9464. The United States signed the convention on Sept. 28, 1966, but has not ratified it.

international law. For better or worse, American standards seem to determine what is internationally acceptable, as it is easy for anyone to post a Web page in the United States.[76] By default America seems to set the "civility" standard.[77]

Issues of Internet regulation naturally lead to the question of whether it is even possible. Cyberspace does not have geographical boundaries so it is difficult to determine where violations of the law should be prosecuted.[78] There are enforcement conflicts not only between different countries' legal jurisdictions but also among federal, state and local governments in the United States.[79] Although Americans place a high premium on free expression, Andrew Brown argues that without much effort most people can find Internet material that they would want to censor.[80] Because people vary regarding the objects of their disapproval, Brown concludes that either ideas offend almost all community standards or none, leaving policy choices that range between freedom and conformity.[81]

The job of reconciling free expression and conflicting interests belongs to the courts. Throughout the 20th century, United States jurisprudence has supported free speech over its restriction. The United States Supreme Court does not permit regulation of expression in such a way as to favor one viewpoint over another.[82] There are exceptions, however. The Court has allowed content-based regulation of speech when: (1) it creates a clear and present danger of imminent lawless action,[83] (2) it constitutes fighting words,[84] (3) the speech is obscene,[85] (4) the speech constitutes defamation,[86] (5) the speech violates regulations against false or deceptive advertising[87] and (6) the government can demonstrate a compelling interest in regulating speech.[88] Even if a regulation falls within one of the above

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[76]*See* Andrew Brown, *The Limits of Freedom*, NEW STATESMAN, Feb. 12, 1999, at 48.

[77]*See id.*

[78]*See* Steele, *supra* note 62, at 14.

[79]*See* Clark, *supra* note 62, at 563.

[80]Brown, *supra* note 76, at 48.

[81]*Id.*

[82]R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) ("The First Amendment generally prevents government from proscribing speech … or even expressive conduct … because of disapproval of the ideas expressed") (citations omitted).

[83]Brandenburg v. Ohio, 395 U.S. 444 (1969).

[84]Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

[85]Miller v. California, 413 U.S. 15 (1973).

[86]N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964).

[87]Cent'l Hudson Gas & Electric Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557 (1980).

[88]United States v. O'Brien, 391 U.S. 367 (1968).

categories, the court will not necessarily find it valid; it might still be voided for vagueness or overbreadth.[89]

Several of these unprotected speech categories have served as unsuccessful vehicles to impose legal action against hate speech. For example, through the tradition of group libel, hate speech has been argued to injure the status and prospects of group members.[90] In two court cases decided with this premise, *Irving v. J.L. Marsh, Inc*.[91] and *Bradshaw v. Swagerty*,[92] the courts ruled that the words did not fit into any of the recognized categories of defamation per se. Another means by which legal intervention has been solicited is by categorizing hate speech as fighting words, but key court decisions dealing with a campus speech code[93] and a cross burning[94] held hate expression, per se, to be constitutionally protected. However, the Supreme Court has set forth a distinction between hate-based points of view and hate crimes. In *Wisconsin v. Mitchell* the Court ruled that the government can regulate and punish violent conduct against members of specifically enumerated groups.[95] This decision provided a foundation for a wide range of hate crime statutes. Currently, the government can restrict conduct but not speech.

Reactions to the Supreme Court precedents for hate speech may be framed as a tension between free speech and equality.[96] Both sides condemn hate speech and acknowledge a commitment to freedom of expression. So-called First Amendment absolutists favor protecting speech, whereas critical legal scholars favor equality or the elimination of racism by restricting speech.[97] The latter group of scholars argues that American legal remedies are not able fully to realize the harmful nature and effects stemming from hate speech. Those scholars argue that words can injure and exclude.[98] Indeed, recent research has confirmed that the effects of hate speech can be not only injurious but also traumatic, with responses mirroring a three-stage

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[89]*See* KATHLEEN M. SULLIVAN & GERALD GUNTHER, FIRST AMENDMENT LAW 320–33 (1999).

[90]*See* Monroe Freedman & Eric Freedman, *Preface to* GROUP DEFAMATION AND FREEDOM OF SPEECH, *supra* note 70, at ix (1995).

[91]360 N.E.2d 983 (Ill. App. 1977).

[92]563 P.2d 511 (Kan. 1977).

[93]Doe v. Univ. of Mich., 721 F. Supp. 852 (E.D. Mich. 1989).

[94]R.A.V. v. City of St. Paul, 505 U.S. 377 (1992).

[95]508 U.S. 476 (1993).

[96]*See* JAMES WEINSTEIN, HATE SPEECH, PORNOGRAPHY, AND THE RADICAL ATTACK ON FREE SPEECH DOCTRINE (1999).

[97]*See* MARI MATSUDA ET AL., WORDS THAT WOUND (1993); LAURA LEDERER & RICHARD DELGADO, THE PRICE WE PAY: THE CASE AGAINST RACIST SPEECH, HATE PROPAGANDA AND PORNOGRAPHY (1995).

[98]*Id.*

sequence found within other tragic events.[99] Yet empirical attempts to illustrate direct or causal links between racist utterances and harmful effects indicate that mediating factors would complicate policy-making in this area.[100]

Nonetheless, research generally affirms that through language people can establish, maintain, legitimize and change the status quo or essentially construct a social reality.[101] Not only can the groundwork for exclusion be prepared via language, but often it is the primary means by which psychological distancing or moral exclusion occurs.[102] Many scholars, for example, critical, postmodern and feminist, have noted both the oppressive and emancipatory potential of communication. Along these lines, Alexander Tsesis has provided three compelling historical case studies of Jews, Native Americans and African-Americans that illustrate how hate speech poses harm when it is systematically developed, and thereby becomes part of culturally acceptable dialogue.[103]

Not surprisingly, hate rhetoric frequently has been likened to pornography. Critical race theorists[104] and anti-pornography feminist scholars[105] claim both these forms of expression constitute subordination, discrimination and defamation to entire groups—women and minorities. For example, Catharine MacKinnon argues that pornography and hate messages actually enact the abuse they purport to merely suggest.[106] Hence she argues a strong link between words and the actions they advocate and furthermore makes pornography and hate speech de facto equivalents.[107] So although First Amendment debates usually have viewed hate speech as more analogous to offen-

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[99]*See* Laura Leets, *Experiencing Hate Speech: Perceptions and Responses to Anti-Semitism and Anti-Gay Speech*, J. SOC. ISSUES (forthcoming 2001).

[100]*See* Laura Leets, A Cultural Perspective on Racist Speech Harm, Address at 49th International Communication Association, San Francisco (May, 1999) (transcript available from author); *Words as Weapons*, *supra* note 59.

[101]*See* PETER BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE 33–34, 95 (1966); Howard Giles & John Wiemann, *Language, Social Comparison and Power*, *in* HANDBOOK OF COMMUNICATION SCIENCE 350 (Charles Berger & Steven Chaffee eds., 1985).

[102]*See* Laura Leets, *Interrupting the Cycle of Moral Exclusion: A Communication Contribution to Social Justice Research*, J. APPLIED SOC. PSYCHOL. (forthcoming 2001).

[103]Alexander Tsesis, *The Empirical Shortcomings of First Amendment Jurisprudence: A Historical Perspective on the Power of Hate Speech*, 40 SANTA CLARA L. REV. 729 (2000).

[104]*See* MATSUDA ET AL., *supra* note 97.

[105]*See, e.g.,* CATHARINE MACKINNON, ONLY WORDS (1993).

[106]*Id.* at 25.

[107]*Id.*

sive political speech than to obscenity, there are those who have made a case for the reverse. Perhaps some aspects of cyberhate, like some types of sexually explicit material, may not deserve constitutional protection because of their low social value.[108] Furthermore, hate speech promulgated over the Internet is simultaneously face-to-face interaction and mass-mediated communication and thus may have a greater likelihood of being a catalyst for violence.[109]

In terms of contemporary free speech doctrine, several different constitutional tests assist the courts in determining how competing concerns will prevail. Given the present context, two appear potentially relevant for cyberhate, the *Miller*[110] and *Brandenburg*[111] tests, with the latter providing the likelier basis for legal intervention.[112] The *Miller* test deals specifically with obscenity, and is not directly applicable to hate sites found on the World Wide Web. However, the rationale for the *Miller* three-pronged analysis holds potential implications for the Internet. For a work to be declared obscene under the *Miller* criteria, the first requirement is that "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to prurient interest.[113] Second, the materials must depict or describe, in a "patently offensive" way, sexual conduct specifically defined by applicable state law;[114] and third, the work, taken as a whole, must lack serious literary, artistic, political or scientific value.[115] All three criteria must be met for a work to be ruled obscene and therefore not protected.[116]

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[108]Of course, obscenity and pornography are not equivalent legal concepts and thus pornography does not automatically fall outside the bounds of First Amendment protection in the same way as does obscenity. Still, for the general spirit and purpose of this argument it is useful to think of their similarities.

[109]*See* Clark, *supra* note 62.

[110]Miller v. California, 413 U.S. 15 (1973).

[111]Brandenburg v. Ohio, 395 U.S. 444 (1969).

[112]Presumably hate speech is similar in nature to "fighting words" and hence the fighting-words exception may appear to be a particularly suitable vehicle to impose legal action against on-line hate. In fact, the U.S. Supreme Court suggested that hate expression may be a kind of "fighting words." R.A.V. v. City of St. Paul, 505 U.S. 381, 382 (1992). However, the Court has rarely recognized this exception because the statutes written to punish fighting words tend to use overbroad terms that can be applied to protected speech. *Id*. at 386–87. Moreover, hate speech, almost by definition, may require that it be intentionally directed at an individual (one-to-one expression) in order to count as fighting words and thus be outside the scope of First Amendment protection. *See* Cohen v. California, 403 U.S. 15, 20 (1971). These conditions are often unmet with regard to on-line hate expression.

[113]413 U.S. at 24.

[114]*See id*. at 24–25.

[115]*See id*. at 25.

[116]*See id*.

As an extension of the idea that hate speech may be analogous to obscenity, this study will examine people's responses to hate sites and will explore the degree to which they find such sites objectionable. The Supreme Court applies the *Miller* test neither to non-sexual material such as hate expression nor to pornography that does not meet the *Miller* test of obscenity. Despite the attempts of critics to equate hate speech and pornography, the Supreme Court has not done so and is unlikely to do so at any time in the near future. Even if the *Miller* test were applied, the idea of a *Miller* "community" to establish "standards" for judging whether material is obscene is not viable, given the cosmopolitan nature of the Internet. It is virtually impossible to quantify an Internet community.[117] Representative sampling procedures, at least for the moment, are not available for this medium. Hence, the purpose of introducing the *Miller* test is not for policy considerations or statutory formulation. Rather, the *Miller* test serves as a point of departure for examining the degree to which people object to cyberhate as well as the connection between hate Web pages and the notion of establishing a whole work's literary, artistic or scientific value. Public opinion is useful to stimulate meaningful dialogue about reevaluation of traditional constitutional analysis regarding hate speech over the Internet. To this end, the following research questions are derived from the *Miller* test.

> RQ1: To what extent do people perceive literary, artistic, political or scientific value in hate pages? To what extent do people accept and tolerate these pages? How do people interpret the community's acceptance and tolerance of these pages?

In order to regulate speech in the United States, courts have typically adhered to harm-based notions such as the provocation of fights,[118] incitement of "imminent lawless action"[119] and interference with some "compelling government interest," usually intended to protect citizenry from harm.[120] In particular, the *Brandenburg* test in some contexts may be directly transferable to on-line hate expression. It originated from the clear-and-present-danger test[121] stating that advocacy of lawlessness was protected so long as there

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[117]*See* United States v. Thomas, 74 F.3d 701 (6th Cir. 1996) (holding that community standards of the receiving community were satisfactory to meet the *Miller* test for an Internet case), *cert. denied,* 519 U.S. 820 (1996).

[118]*See* Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

[119]*See* Brandenburg v. Ohio, 395 U.S. 447 (1969).

[120]*See* Sable Communications of Cal., Inc. v. FCC, 492 U.S. 115 (1989).

[121]*See* Schenck v. United States, 249 U.S. 47 (1919).

was no imminent illegal action.[122] The test was designed to protect unpopular points of view from government controls. Justice Holmes made a direct link between the words and action. Liability occurs only when the speaker knows the audience will act (imminence)[123] and intends that it should do so (intent).[124] The clear-and-present-danger test was further refined in *Brandenburg* when the Court required the government to meet three different criteria to regulate speech: (1) the speaker intends to produce imminent lawless action, (2) the speaker promotes "imminent" lawless action and (3) imminent lawless action must be "likely" to occur.[125] The *Brandenburg* line of cases has focused mainly on revolutionary political rhetoric and mass protests, distinguishing between abstract advocacy of violence and actual face-to-face incitement.[126]

A high degree of free speech for political protest makes sense, but does the calculus change when the speech moves from earshot to mediated communication consumed by mega-audiences? As Cass Sunstein argues, incendiary speech advocating illegal violence may not produce lawlessness in the average listener or viewer, but if even one or two out of thousands of listeners are provoked to act, can society regard this as imminent violence?[127] At the heart of the *Brandenburg* test is a definition of the word "imminent." Imminence, a relative term, was not defined by the Court.[128] All the relevant factors are open to consideration, including the context, the medium, the speaker and the audience.[129] However, the Court has traditionally viewed this in terms of short-term effects. As noted previously, both historical evidence[130] and social science research[131] recognize that a significant harm from hate speech develops gradually

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[122]*See id.* at 52.

[123]*See id.*

[124]*Id.*

[125]Brandenburg v. Ohio, 395 U.S. 447 (1969).

[126]*See* Amy Dilworth, *Murder in the Abstract: The First Amendment and the Misappropriation of* Brandenburg, 6 WM. & MARY BILL RTS. J. 565 (1998).

[127]Cass Sunstein, *Is Violent Speech a Right?*, AM. PROSPECT, Summer 1995, at 34. The answer appears to be negative, at least with respect to broadcast media. In cases of direct imitative violence, for example, suicide or rape, brought under a negligence cause of action, courts tend not to hold media producers or distributors responsible for the behavior of a few individuals predisposed to violence. *See* Laura Brill, *The First Amendment and the Power of Suggestion: Protecting "Negligent" Speakers in Cases of Imitative Harm*, 94 COLUM. L. REV. 984 (1994).

[128]*See* Dilworth, *supra* note 126, at 565.

[129]*See id.*

[130]*See* Tsesis, *supra* note 103.

[131]*See, e.g,* Laura Leets & Peggy Bowers, *Loud and Angry Voices: The Insidious Influence*, 66 COMM. MONOGRAPHS 325 (1999).

and is most problematic when it becomes part of the cultural norm.[132] When moral exclusion sprouts, it usually leads to persecution and violence.[133] Hate speech has the ability both to cultivate an oppressive climate and directly to elicit violent behavior.[134]

Applied to the Internet, then, the *Brandenburg* test appears to protect most inflammatory speech as a legitimate type of hyperbole. Arguably, though, under this same standard certain forms of hate speech that advocate present and/or future violence may be reconsidered as exceptions to free speech. Speech used to incite people to violent, bigoted actions against an excluded group is not benign. Recently, pro-life activists were held liable for threatening abortion providers with violence and even death. The jury decided that listing people's names, addresses and car-license numbers and placing "X's" in front of murdered doctors' pictures constituted true threats of violence.[135] Moreover, another man has been charged with a civil rights violation for maintaining a Web site that threatened a housing activist by placing an animated picture of her office exploding and by carrying a picture of her with the label "race traitor" and the statement: "Traitors like this should beware, for in our day, they will be hung from the neck from the nearest tree or a lamp post."[136] Although these cases are being argued in terms of threat[137] and not incitement, they are closely related.

Borrowing from the *Brandenburg* test, the following research questions are posed:

> RQ2: What is the perceived mental state behind a hate site? Do people perceive the intent as reckless disregard? Malice? How does the use of disclaimers factor into this perception of intent and harm? What is the perceived possibility of anticipated lawlessness as a result of the page? Does perceived harm change for overt as opposed to camouflaged threats?

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[132]*See id.;* Tsesis, *supra* note 103.

[133]*See* Leets, *supra* note 102; Tsesis, *supra* note 103.

[134]*See* Leets, *supra* note 102; Leets & Bowers, *supra* note 131; Tsesis, *supra* note 103.

[135]Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists, 41 F. Supp. 2d 1130 (D. Or. 1999).

[136]*See Man Charged Over Hate Site in Unprecedented Federal Case*, ATLANTA J. & CONST., Jan. 18, 2000, at A5.

[137]*See* Watts v. United States, 394 U.S. 705 (1969).

In addition, this study will examine individuals' perceptions of the messages' persuasiveness and societal and personal harm. Previous research has focused on the effects of ethnic epithets[138] as well as anti-Semitic and anti-gay rhetoric,[139] but no work has examined the perceived effects of white supremacist groups' incendiary hate messages carried over the Internet. When analyzing these perceptions, however, bear in mind that people tend to evaluate the effects of communication, for example, advertising, violence as more likely to influence others than themselves. This phenomenon is known as the third person effect.[140] It is unclear whether people are making an accurate assessment, are overestimating the effects on others or are underestimating the effect on themselves. Thus, questions regarding the third-person effect also will be included in this study.

RQ3: How harmful to themselves and society do people perceive hate sites to be? How persuasive to themselves and others do they assess the messages to be?

METHOD

This section of the article will describe the respondents, procedure, stimulus material and questionnaire used in the study.

Respondents

The respondents were 266 volunteers (118 males and 147 females) recruited from university (N=47) and nonuniversity populations (N=219). They ranged in age from 18 to 54 with a median age of 25. Based on their self-reported ethnic identity, 73% were Caucasian, 3% African-American, 5% Hispanic, 9% Asian American, 3.4% mixed heritage and 5.6% were classified as other. Non-white respondents viewed their ethnic identity as important (*M*=5.15, *SD*= 1.94, on a seven-point scale where seven represented the highest score), whereas white respondents rated it as moderately important (*M*=3.77, *SD*=1.70). In terms of religious background, 35% were Protestant, 23% Catholic, 3% Jewish, 2% Muslim, 2% Buddhist, 2%

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[138]*See Words as Weapons*, *supra* note 59; Leets at al., *Attributing Harm to Racist Speech*, 20 J. MULTILINGUAL & MULTICULTURAL DEV. 209 (1999); Leets, *supra* note 102.

[139]*See* Leets, *supra* note 102.

[140]*See* W. Phillips Davison, *The Third-Person Effect in Communication*, 47 PUB. OPINION Q. 1 (1983).

Mormon, 10% other and 22% had no affiliation. All those who re-
ported a faith rated it as important (*M*=5.25, *SD*=1.74). Nearly
two-thirds of the participants (63%) had no experience with a hate
crime, while the rest had some (37%).

Procedure

The Internet presents a unique problem for sampling. There is not
a centralized registry of all users who are spread over the world.
Without using a sampling frame from which randomly to select out
of the entire population, Internet surveys are inevitably
nonrepresentative. Hence, the sample participants are self-selected,
which reduces the generalizability of the data. While sampling prob-
lems eventually may decrease as more people are linked to the
Internet and use of representative sampling procedures can become
more widespread, current sampling methodology is limited. That
said, a Web-based survey still can provide useful data, especially for
exploratory analyses such as the present study.

Thus, a convenient sample of adult subjects 18 years of age and
older was recruited through university classes and a market re-
search firm's database containing more than 50,000 names. All
nonuniversity students were randomly selected from the database
and received $10 each for their participation. The study was pre-
sented as research examining "on-line expression." Participants re-
ceived the author's URL. This Web page included an informed
consent link containing an advisory that some of the Web pages
may be considered controversial social commentary, for example,
"offensive, may result in emotional discomfort." After providing
consent through a click-wrap agreement, further access to the sur-
vey required a password, which led to an instruction page. At the
end of this page, the subject clicked a start button and a Javascript
randomly assigned the subject to one of 11 hate sites (see Table 1),
which originated from the author's URL rather than the original
Web site. The original material from the sites was modified such
that participants could read it in approximately 10 minutes. Some
Web pages had additional links within them, and subjects read all
the links before proceeding to the questionnaire by clicking on a
survey button found on the bottom of the window frame.
Formage-scripts automatically recorded respondents' answers and
compiled them into a single datafile. Collection of IP addresses en-
sured that people participated only once. Before the data were ana-
lyzed, all IP addresses were separated from answers to keep the
results anonymous.

TABLE 1. HATE SITES TAKEN FROM THE WORLD WIDE WEB

White Supremacists	
Unaffiliated Sites	
1.	14 words (http://www.14words.com/)
2.	Nigger ghetto gazette (http://www.whitepride.net/jokes/)
Ku Klux Klan	
3.	Knights of the Ku Klux Klan Corporate Headquarters (http://www.kukluxklan.org/)
4.	Ku Klux Klan page (www.k-k-k.com)
5.	American Knights (www.americanknights.com/home.html)
6.	NAAWP (http://www.naawp.net/)
Neo-Nazism (contemporary Nazis)	
7.	Nazi party (http://www.anu.org/)
Skinhead	
8.	Bootgrl88ASIAtraliamate (http://www.yoderanium.com/webhome/aBootgrl88)
9.	The Oi! Boys (wysiwyg://main.3/http://www.execpc.com/~odinthor/)
Christian Identity Movement	
10.	The World Church of the Creator (http://www.creator.org)
11.	Straight Edge White Power Skins (http://www.wcotc.com/rahowa)

Stimulus Material

A list of about 1,000 hate Web sites was compiled primarily through two organizations that actively monitor hate groups on the Internet: the Simon Wiesenthal Center and HateWatch. Both groups catalog hate sites and make them available to the public, one through a CDROM and the other by on-line access.[141] In addition, four graduate students spent two weeks using search engines to identify other hate pages. The impermanence of Web sites is well recognized, with old sites disappearing and new ones emerging regularly.[142]

While the hate movement on the Internet incorporates many groups and individuals, the study is limited to white supremacist groups, who contend whites are intellectually and morally superior to other races. In order to access the variety and increase the measurement precision of the white supremacist organizations, the sampling frame was stratified into five subcategories: unaffiliated sites, Ku Klux Klan, Neo-Nazi, Skinhead and Christian Identity Movement. The representative sampling occurred in two phases. The first phase used stratified sampling for each category, with two

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[141]Simon Wiesenthal Center, *Digital Hate 2000—Interactive Report on the Internet* (1998) http://www.wiesenthal.com.

[142]*See* CYBERSOCIETY (Steven Jones ed., 1995).

selections made per category. Not surprisingly, two of the randomly selected Web sites no longer existed on-line. A second round of general random sampling from the entire list was such that in the final selection, four sites were chosen from the Ku Klux Klan group, two sites originated from each of the unaffiliated, Skinhead and Christian Identity Movement pages and one site was selected from the Neo-Nazi group (see Table 1). Copies of the 11 Web sites for the most part retained material from the original Web pages to strengthen external validity.[143] Some Web sites were shortened to reduce potential confounding effects for length. The content of the pages was not omitted or changed. Editing usually entailed reducing the number of links.

Questionnaire

The questionnaire included 38 closed-ended items, each rated on a seven-point scale, where one represented the lowest score ("not at all"), four the midpoint and seven the highest ("definitely"). The measures fell into five general sections.

The first section used five items adapted from the *Miller* test. Of these, one question asked people to estimate the value of the Web site: "Do you believe the expression has serious value? (e.g., literary, artistic, political or scientific)." Two questions sought people's opinion about community tolerance and the level of acceptance reflected in the Web page they read: "To what extent is your community willing to tolerate the information found on this page?" and "To what extent is the content of this page acceptable to your community?" Another two measures questioned participants' personal tolerance and acceptance: "To what extent are you willing to tolerate the content found on this page? (e.g., you may disagree but believe the person has a right to express his or her opinion)" and "To what extent is the content of this page acceptable to you?"

In the second section, the *Brandenburg* test informed eight items. One four-part question examined the page's perceived intent: "How do you perceive the intent of the person who made this Web page? (malice, reckless disregard, humor and satire)." A five-part item explored the perceived function of the Web page: "What do you believe is the function of the Web page you read? (entertainment, information, persuasion, intimidation, personal expression)." Another four

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[143]Stanford University's General Counsel's Office addressed concerns about copyright violations. Two lawyers who specialize in intellectual property concluded that the stimulus material fell within the realm of "fair use."

questions assessed perceived advocacy for lawless action ("Do you find the expression you read was 'advocacy' for lawless action?"), imminence of acts of violence ("How likely do you think such commentary could someday, somewhere be responsible for acts of violence?") and perceived direct and indirect threats ("Did you perceive direct threats in this page?"; "Did you perceive 'camouflaged' [hidden or indirect] threats?"). Two additional questions addressed the impact of disclaimers in terms of their effectiveness for minimizing lawless action: "Do you believe the disclaimer lessens the impact of the message?" and "Do you perceive the disclaimer as a serious attempt to dissuade readers from lawless action?"

In the third section, operationalization of the Web page's perceived harm used three questions; two focused on personal and societal harm while the third asked whether the page should be protected under the First Amendment: "Do you believe Web pages like the one you read is harmful for *society-at-large*?," "To what extent were *you* upset (if at all) by the Web page you read?" and "Should the content of this Web page be protected under the First Amendment?"

In the fourth section, questions examined the persuasiveness of the pages. Two were based on the third-person effect, examining perceived persuasiveness on others and oneself: "How persuasive was the Web page to *you*?" and "Do you think others would be persuaded?" A third and fourth question assessed agreement with the content of the Web page and opinion change based on the message content: "Do you agree with the content of this Web page?" and "How did you respond to the content of the message?" (changed my opinion, no change, reinforced my opinion).

Finally, in the fifth section, the questionnaire included a standard set of demographic questions, for example, gender, age, ethnicity, as well as two items that served as manipulation checks for Web page intensity: "Would you consider the Web page you read a 'hate site'?" and "How hateful would you rate this Web page?"

RESULTS

A summary of the results of the three research questions appears in Table 2. All responses ranged on a seven-point continuum, with the midpoint representing a neutral category between the extremes. The numerical midpoint served as a comparison point to determine direction (agree or disagree) and intensity (low or high).

For the most part, the Web pages selected for the study were viewed as hate pages. A one-way ANOVA revealed a significant dif-

TABLE 2. MEANS AND STANDARD DEVIATIONS FROM THE QUESTIONNAIRE ITEMS

Variables	M	SD
Miller Test		
Personal acceptance	1.79	1.43
Personal tolerance	3.38	2.12
Community acceptance	1.84	1.34
Community tolerance	2.74	1.60
Value of expression	2.45	1.76
Brandenburg Test		
Advocacy for lawless action	3.76	1.93
Responsibility for acts of violence	5.12	1.75
Direct threats	3.58	2.10
Camouflaged (indirect) threats	4.81	1.97
Intent		
malice (ill will)	5.39	1.73
reckless disregard	5.20	1.83
humor	2.46	1.99
satire	2.48	1.96
Function		
entertainment	2.19	1.83
information	3.86	2.21
persuasion	5.20	2.03
intimidation	4.59	2.04
personal expression	5.64	1.73
Harm		
Individual harm	4.26	1.12
Societal harm	4.86	1.89
Protected by First Amendment	5.00	1.00
Persuasiveness		
Persuasiveness to you	1.57	1.21
Persuasiveness to others	3.45	1.71
Agreement with content	1.38	0.98

Note: Variables were measured on a 7-point scale where 1 reflected the lowest possible score and 7 reflected the highest score.

ference among the groups (F[10, 228]=4.40, η^2=.16, $p <$ .001). In particular, Scheffé post hoc tests indicated that out of the 11 white supremacist pages, only the N.A.A.W.P.'s Web page (M=3.60) was not viewed as a hate site. Participants viewed it as being less offensive than all other Web pages (M=5.85). This is not surprising, as the N.A.A.W.P. is often described as a "Klan without robes." The group is known for trying to appear mainstream and moderating its hate rhetoric. Likewise, another one-way ANOVA revealed a significant difference across groups for perceived intensity (F[10, 228]=3.14,

$\eta^2 = .12$, $p < .001$). Scheffé post hoc tests revealed again that the N.A.A.W.P. Web site ($M = 4.06$) was not as hateful as the other sites ($M = 5.65$). Hence, the N.A.A.W.P. hate site was omitted from any further analyses that combined the Web pages.

RQ1: Miller *Test*

Beginning with the *Miller* test, people assessed the value of the white supremacist Web pages and found them lacking in serious literary, artistic, political and scientific worth ($M = 2.45$, $SD = 1.76$). Two operationalizations, acceptance and tolerance, indicated the community standards condition. Generally, people expressed minimal acceptance and low tolerance for hate sites. Specifically, t-tests demonstrated no significant differences between individual and perceived community acceptance ($M = 1.79$ vs. $M = 1.84$; $t[247] = .80$, ns), but a significant difference emerged between individual and community tolerance ($M = 3.38$ vs. $M = 2.74$; $t[245] = -6.68$, d = .34, $p < .001$). Individuals reported they had more tolerance for the Web content than others in their community. Scholars who have investigated message effects to self and others have documented differential processing based on a self-serving bias.[144] For example, positive attributes such as tolerance would be perceived as greater in oneself than in others.

RQ2: Brandenburg *Test*

Taken together, the underlying intent of the white supremacist Web sites was viewed as one of malice ($M = 5.39$, $SD = 1.73$) and reckless disregard ($M = 5.20$, $SD = 1.83$), satisfying the first condition of the *Brandenburg* test. People assessed the function of these Web pages as an expressive ($M = 5.64$, $SD = 1.73$) or a cathartic opportunity to communicate beliefs, to persuade ($M = 5.20$, $SD = 2.03$) and to intimidate ($M = 4.59$, $SD = 2.04$). Yet, people did not perceive actual "advocacy" ($M = 3.76$, $SD = 1.93$) for lawless action, negating the second condition that requires lawless action to be promoted. Participants perceived no real imminent threat. Interestingly, this may stem from the fact that the potential harm was perceived as more camouflaged ($M = 4.81$, $SD = 1.97$) than overt ($M = 3.58$, $SD = 2.10$). In

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[144]*See, e.g.*, Jeremy Cohen & Robert Davis, *Third-person Effects and the Differential Impact in Negative Political Advertising*, 68 JOURNALISM Q. 680 (1991); Julie Duck et al., *Me, Us, and Them: Political Identification and the Third-Person Effect in the 1993 Australian Federal Election*, 25 EUR. J. SOC. PSYCHOL. 195 (1995).

particular, participants noted strong hidden threats in the World Church of the Creator (M=6.00, SD=1.22) Web page. Additionally, the data support the third condition of the *Brandenburg* test, with participants perceiving a likely incitement to lawless activity, that is, violence, as a result of the Web pages (M=5.12, SD=1.75).

Finally, the study examined the ability of disclaimers to reduce imminent illegal action. Seventy-four percent of the sample respondents were unsure whether they had read a disclaimer on the Web pages. Of the 26% who trusted their recall, one-fourth recalled incorrectly. The small remaining sample respondents who accurately recalled whether there was a disclaimer did not perceive it to lessen the impact of the message or to be a serious attempt to dissuade readers from lawless action (M=1.85, SD=1.32). The mere inability of people to recall the presence of disclaimers further suggests the impotence of this mechanism.

RQ3: Perceived Harm and Persuasiveness

People evaluated the hate pages to be moderately harmful to themselves (M=4.26, SD=1.12) and society at large (M=4.86, SD=1.89). They indicated the white supremacist Web pages should be protected by the First Amendment (M=5.00, SD=1.00). Exploratory analyses examined whether previous experience with hate crime influenced participants' attributions of harm. Those who reported very high experience (a seven on a seven-point scale) or very low (a one on a seven-point scale) were split into high (N=30) and low (N=111) groups. There were no significant differences. Yet, there were significant differences between whites (N=183) and nonwhites (N=61) in that nonwhite participants perceived more social harm from the Web pages (M=4.65 vs. M=5.36; t[240]=-2.56, d=.40, p < .001) and rated the content as less worthy of First Amendment protection (M=5.10 vs. M=4.36; t[242]=2.59, d=.39, p < .001).

The respondents did not find the hate pages persuasive. As expected, a t-test (t[248]=17.25, d=1.29, p < .001) demonstrated that people expected the message to have a greater effect on others (M=3.45) than on themselves (M=1.57). The results can reflect a third-person effect, in which people overestimate the influence of communication on others. Furthermore, the respondents reported that the message did not change their opinions and they indicated virtually no agreement (M=1.38, SD=.98) with the content of the Web pages. Thus, an alternative to the third-person hypothesis is that people sought to portray others as being more susceptible to

these messages, thereby making themselves morally superior—in effect, merely a self-enhancement strategy.

DISCUSSION

This descriptive analysis elucidates people's perceptions of white supremacist hate sites and identifies possible message effects. While most people find the beliefs of white supremacist groups morally repugnant, the First Amendment currently shields on-line extremism. Given the dynamic state of Internet regulation, the possibility of some legal response appears to remain open. Although specific legislative policy proposals are outside the scope of this study, the results of the study encourage a reevaluation of the constitutional parameters that protect hate speech by differentiating between short- and long-term message effects. The study drew two legal analogies: one applying the *Miller* test to cyberhate and the other using the *Brandenburg* test to evaluate white supremacist pages. Regardless of whether the courts ever will recognize these applications, the study results can contribute to the dialogue surrounding the evolving landscape of telecommunications regulation.

The issue of cyberhate regulation depends on where it falls in the hierarchy of protected expression and on the constitutional test used to decide its potential restriction. One of the two constitutional standards this study examined was the *Miller* test. Obviously, in this context the provision for appeal to prurient interest was not germane. Rather, perceptions of the social value of the work and community standard (for patent offensiveness) clauses have some bearing. In terms of worth, the Web pages were rated as a whole, not in limited parts, as lacking in "serious literary, artistic, political or scientific value." With respect to community standards, it is important to acknowledge that controversy abounds in obscenity cases[145] regarding (1) how to sample community standards (aggregate of individual opinions vs. perceptions of community opinions) and (2) how to operationalize standards (acceptance vs. tolerance). This study examined all four possibilities and the results converged, with one exception: people perceived their personal tolerance threshold to be a little higher than that of the hypothetical community. This finding is

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[145]*See* Daniel Linz et al., *Discrepancies Between the Legal Code and Community Standards for Sex and Violence: An Empirical Challenge to Traditional Assumptions in Obscenity Law*, 29 L. & SOC'Y REV. 127 (1995).

consistent with previous obscenity research.[146] In spite of the perceived difference, the tolerance level was still low for both personal and community perceptions (under 3.5 on a seven-point scale). Regardless of the community-standard measure, lay people's perceptions seem to indicate that the hate pages go beyond the customary limits of civility. Yet, if one holds cyberhate to the Court's standard for obscenity, that of being informed by community values, then white supremacist Web pages may be considered outside First Amendment protection. The question of whether the test of community standards should cross-apply is beyond the intent and scope of this article.

Participants deemed two out of the three *Brandenburg* conditions as relevant for hate Web pages. People indicated the "intent" of the sites was to encourage lawless action and they viewed such action as likely to occur, yet they did not perceive "imminent" lawless action. The respondents saw indirect, not direct, threats emerging from the Web sites. If by imminent is meant "immediate," the *Brandenburg* test is not applicable to hate Web pages. As noted earlier, imminence is a relative term and may not mean immediate in all cases. Thus, a crucial determinant is whether room exists to apply the *Brandenburg* test over a longer length of time.[147]

Linked to this concern for temporal ambiguity is the potential for indirect speech acts to incite lawless action. According to John Searle, an indirect speech act refers to utterances in which sentence meaning and the speaker's meaning are not necessarily identical.[148] In other words, indirect speech acts convey multiple speaker meanings, which lessen the speaker's accountability. The speaker can deny one meaning in favor of another. David Crump refers to indirect exhortation to lawless activity as "camouflaged" incitement.[149] He argues that the courts need to reconsider multiple evidentiary factors so that they will not miss indirect statements that everyone else easily deciphers as incitements to violence: "If the threat is communicated in a code that the court can crack the court should not ignore the real message."[150] For example, participants in this study rated the indirect threats from the World Church of the Creator Web

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[146]*See, e.g.,* Daniel Linz et al., *Estimating Community Standards: The Use of Social Science Evidence in an Obscenity Prosecution*, 55 PUB. OPINION Q. 80 (1991).

[147]*See* David Crump, *Camouflaged Incitement: Freedom of Speech, Communicative Torts, and the Borderland of the* Brandenburg *Test*, 29 GA. L. REV. 1, 18 (1994).

[148]John Searle, *Indirect Speech Acts*, *in* SYNTAX AND SEMANTICS 3: SPEECH ACTS 59 (Peter Cole & Jerry Morgan eds., 1975).

[149]Crump, *supra* note 147, at 28.

[150]*Id.* at 55.

page as very high ($M=6.00$). Is it coincidental that a former WCOTC member recently shot 11 Asian Americans, African-Americans and Jews, killing two, before committing suicide?[151] Or that two brothers associated with WCOTC were charged with murdering a gay couple and fire-bombing three Sacramento synagogues?[152] While WCOTC leader Matthew Hale does not endorse this lawlessness, neither does he condemn it. Family members filing lawsuits on behalf of the victims seem to believe Hale and WCOTC rhetoric were responsible for the shooting spree.[153] As Crump would argue, the potential harm from the WCOTC rhetoric is highly predictable.

Crump provides an eight-factor analysis in order to identify camouflaged incitement while still balancing free expression rights.[154] He argues that *Brandenburg* allows the law to speak to present cases in a way that permits refinement in future cases.[155] The results from this study elucidate several of these factors, but two deserve further attention: speaker's intent and the inclusion of disclaimers. The participants clearly perceived the white supremacist organizations as exhibiting actual malice and a reckless indifference to the likelihood that violence may result from their messages. The underlying intent points to indirect incitement even though a specific individual's name does not appear. Furthermore, participants did not perceive disclaimers, which are explicit statements countering a site's encouragement to act, as being effective in discouraging violence. Four of the 11 sites, that is, Ku Klux Klan, American Knights, Skinhead and Christian Identity Movement, included disclaimers that were so labeled and positioned on the first Web page. The majority of the respondents could not recall if the pages they had just read had disclaimers. The poor recall data are consistent with the perception of disclaimers as ineffectual. Furthermore, Crump warns that even a disclaimer can be couched as an incitement and should not always be accepted at face value.[156] For example, the WCOTC Web page has a disclaimer but its members increasingly have been linked with violence. So just because a disclaimer appears on the Web page, one should not assume it to be a sincere attempt at counteracting incitement.

Based on the participants' evaluation of the hate sites, application of the *Miller* test indicates that public opinion of the communicative

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[151]*See* Jared Sandberg, *Spinning a Web of Hate*, NEWSWEEK, July 19, 1999, at 28.
[152]*See* Eric Bailey, *Brothers Charged in Slaying of Gay Couple; Suspects also in Fires at Sacramento Synagogues*, L.A. TIMES, July 20, 1999, at A3.
[153]*Id.*
[154]Crump, *supra* note 147, at 16–20.
[155]*Id.* at 31.
[156]*Id.*

value is low while the *Brandenburg* test shows people did not perceive "imminent" lawless action. However, participants did perceive an indirect, insidious influence, a provocative insight in its own right. Participants considered the Web pages to be protected speech even though they perceived the pages to be moderately harmful to themselves and society at large. Non-white participants found the Web pages a little more harmful to society and less worthy of First Amendment protection than did whites. Nonetheless, all means were congruent to previous experimental research[157] that examined perceived harm of racist speech, falling within a range below six and above four on a seven-point scale. Consequently, the data seem to suggest that people are willing to dismiss hate sites as an unpleasant byproduct of free speech that citizens must tolerate.

Although hate sites use sophisticated persuasive techniques,[158] people reported that the hate pages they read had minimal or no influence on them but some sway on others. Richard Perloff suggests that people overestimate the perceived effect on others because of the beliefs they have about the ability of the media to influence attitudes and behavior, but that the estimates of perceived effect on themselves reflect the actual persuasive effect of the messages.[159] Of course, people can also deny or underestimate the effect on themselves. While historically there are always some members of society who are uneasy about new mass media, the persuasive effects of cyberhate are probably most appropriately directed to the perceptions, attitudes and behaviors of young children and adolescents. Arguably, research conducted on television and film violence can serve as an entry point for discussing the possible effects of hate rhetoric on the Internet. Scholars acknowledge there are many environmental and personal factors mitigating the media's influence on viewers[160] and generally conclude exposure to media violence will affect some people, under some circumstances, some of the time.[161] Yet, the congruence of diverse scientific literature

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[157]*See Words as Weapons, supra* note 59; Leets, *supra* note 102.

[158]*See* Megan McDonald, *Cyberhate: Extending Persuasive Techniques of Low Credibility Sources to the World Wide Web*, *in* ADVERTISING AND THE WORLD WIDE WEB 149 (David Schumann & Esther Thorson eds., 1999).

[159]Richard Perloff, *Third-Person Effect Research 1983–1993: A Review and Synthesis*, 5 INT'L J. PUB. OPINION RES. 167 (1993).

[160]*See* George Comstock & Victor Strausburger, *Deceptive Appearances: Television Violence and Aggressive Behavior*, 11 J. ADOLESCENT HEALTH CARE 31 (1990); Haejung Paik & George Comstock, *The Effects of Television Violence on Antisocial Behavior: A Meta-Analysis*, 21 COMM. RES. 516 (1994).

[161]*See, e.g.*, Edward Donnerstein et al., *The Mass Media and Youth Aggression*, *in* REASON TO HOPE: A PSYCHOSOCIAL PERSPECTIVE ON VIOLENCE AND YOUTH 219 (Leonard Eron at al. eds., 1995).

supports the proposition that television can teach and incite antisocial behavior in young children and adolescents. While television effects can reasonably, at least on some levels, be extrapolated to the Internet, it is important to remember the Supreme Court does not consider the Internet intrusive in the same way it does television. A person must actively search for information in order to be exposed.[162] Although flawed, filtering software programs are available for parents to screen out objectionable material.[163] The persuasive influence of cyberhate on children and adolescents will be an important area for future research.

The descriptive results of this study may lend support to both those who favor, and those who oppose, hate speech regulation. On one level, the data show that the content of the hate Web pages was perceived to be in keeping with the Court bounds for First Amendment protection. Similar to other studies that focus on short-term message effects of hate speech,[164] it is difficult to demonstrate with certainty the linkage between hate expression and violence or harm. Yet the participants acknowledged an indirect effect that, on the other hand, may suggest hate speech effects are more slow-acting and thus imperceptible in the short term.[165] Current legal remedies such as the *Brandenburg* test may be missing the real harm of racist indoctrination, which may not be immediately apparent or verifiable. For instance, hate expressions tend to encourage a set of beliefs that develop gradually and that often can lie dormant until conditions are ripe for a climate of moral exclusion and subsequent crimes against humanity.[166] As noted previously, communication is the primary means by which psychological distancing occurs.[167] Arguably, it may be the long-term, not short-term, effects of hate expression that are potentially more far reaching.[168] Based on this premise, some hate rhetoric espoused on white supremacist Web pages may exist on the borderline of First Amendment protection and pose a potential danger that merits monitoring or even safeguards for protection. As Tsesis notes, it is not the abstract viewpoints that are problematic. Rather, it is the expressions intending to elicit persecution or oppres-

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[162]*See, e.g.,* Steele, *supra* note 62.

[163]*See* Roberta Furger, *Internet Filters: The Smut Stops Here*, PC WORLD, Oct. 1997, at 78.

[164]*See* Leets, *supra* note 102; *Words as Weapons, supra* note 59.

[165]*See* Leets & Bowers, *supra* note 131.

[166]*See* Leets, *supra* note 102; Tsesis, *supra* note 103.

[167]*See* Leets, *supra* note 102.

[168]*See* MATSUDA ET AL., *supra* note 97; Leets & Bowers, *supra* note 131; MacKinnon, *supra* note 105; Tsesis, *supra* note 103.

sion that often begin with dehumanizing rhetoric. While more research is needed on the long-term effects of hate speech, very limited restrictions on some hate expression may be worth considering rather than merely opting for a blanket adoption of First Amendment doctrine.

This study is not without limitations. The data represent self-reported responses, which are susceptible to social desirability biases, especially given the sensitive nature of the topic. While the respondents were mainly nonuniversity students, the sample was not precisely representative of Internet demographics. Yet, reliable statistics concerning Internet users are difficult to find. As Lori Kendall points out, many organizations post Web demographic information on-line but reserve survey details and most current information for paying customers.[169] Based on Jupiter Communications' on-line user demographics survey,[170] however, the sample should have been broadened to include 15% more nonwhites and 15% more senior adults (51 years of age and older). Previous research[171] has shown that personal and community standards are influenced by extracommunity factors such as sex, age, race and religiosity. Hence overrepresentation of any one population segment leads to a skewed understanding of community standards. That said, the sample was relatively satisfactory. In contrast, external validity strengths should also be noted. The stimulus material represented actual, not hypothetical, Web sites and examined multiple pages to increase external validity.

The growth of the Internet leads to concerns about its potential impact, including the focus of this article, cyberhate. Specifically, white supremacist Web pages take hyperbole and incivility to a degree rarely found in other media. The central question of whether hate sites fall under constitutional protection appears blurred. Although the law is not a perfect instrument of social regulation, and censorship can be a slippery slide to disaster in a constitutional democracy, the lack of perceived short-term effects found in this study and others suggest that hate speech does not warrant restriction. However, the possibility of long-term effects points to the fact that current legal remedies may not be able to deal fully with the harmful

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[169]Lori Kendall, *Recontextualizing "Cyberspace" Methodological Considerations for On-Line Research*, in CYBERSOCIETY, *supra* note 142, at 57.

[170]2 JUPITER COMMUNICATIONS, ATTITUDES, BEHAVIORS, AND DEMOGRAPHICS OF THE ON-LINE USER (1999).

[171]*See, e.g.*, Margaret Herrman & Diane Bordner, *Attitudes Toward Pornography in a Southern Community*, 21 CRIMINOLOGY 349 (1983).

nature and effects stemming from hate speech. Clearly, the public and legislators are seeking broader and tougher laws against hate crimes. It seems likely to many people outside the courts that certain forms of hate messages do precede violent hate crimes. There is opportunity, however, for a bright line that both prevents widespread dissemination of bigotry as well as protects free speech. It merely remains for the Court to achieve the difficult task of finding it.