

KILLING THE CANCER AT ITS CELLS: THE TRIAL LAWYERS COLLEGE HATE SPEECH POLICY

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Perhaps you've been in a group where it has happened. Someone, not meaning to hurt or hate, says *it*: *n****r*; or *f*g*, for example.

Maybe the person who says it in playing a role. *I'm in role as my client, and unfortunately he's a racist who says that word on the regular, and I need to figure out how to deal with that when I present him.* Or, *I'm in role as the cop who arrested my client, and I suspect that what's really going on is that the cop is racist, and racists say that word so I'm going to say it in role as the cop.* Or, *I'm in role as the bully that the school allowed to terrorize my gay client, and I'm showing what I think of gays.*

Maybe the person who says it is quoting from a report or an email—as in, we know the word was said and it's going to be in the court record. *This is an employment discrimination case, and my client's coworkers were emailing homophobic jokes with the word "f*g" around the office.* Or, *the bodycam from the arresting officer locks it in—the cop actually called my client the N-word while he was tasing him.* And without any preface to let the group know what's coming, the person just ... says *it*.

Maybe the person who says it is staff. *Look, if you're going to have to say it in your trial, you might as well get comfortable saying it, so just say it!*

They didn't say it with the intent to hurt. They didn't say it in hate. But they said *it* ... and in saying *it*, they didn't think about how it would impact those who hear them say *it*.

Just as with juries, TLC groups are made up of people whose stories include pain, trauma, betrayal. There are people who have personally experienced being targeted with these words of hate and harm. There are people whose loved ones and family members and ancestors have been denied, threatened, terrorized and murdered in association with these words. There are people for whom it's not just a matter of being detachedly offended—for whom hearing these words of hate and harm will take the hearer out of the exercise (or out of the trial), and will take the hearer to a time and a place where that word was used in hate and harm.

The hearer may say nothing in spite of her pain. She's heard the word before, in worse settings than Thunderhead Ranch, and she has been conditioned to pick her battles. *Is this worth it? It's not like he actually called me that word—so even though it hurts me, even though it reminds me of when my own client called me that word, I guess I'll just let this go. No one will do anything about it anyway.* But the fact that the hearer does not speak up does not mean that she is not hurt.

And if the hearer decides to call it out? The response of the person who said that word is predictable. *Look, you know I'm not saying it, like, racist-like. I'm just in a role! We're all friends, right?* Maybe the hearer pushes back; maybe the hearer resigns herself, as she has resigned herself so many times before when she knows it is hopeless to think the speaker could really put himself in her shoes.

And something else happens, each time that a word of hate and harm is spoken. The more that it is said, the more acceptable it becomes to say it. The more normal it becomes. *I want to take away its power*, the speaker says. But why do we want to normalize a word that has been the very last word that thousands of lynching victims heard before their deaths?

Veteran Utah Jazz guard Kyle Korver—a straight white man—spoke eloquently on this issue in his excellent essay, "Privileged," writing:

I'm still in this conversation from the privileged perspective of opting in to it. Which of course means that on the flip side, I could just as easily opt out of it. Every day, I'm given that choice — I'm granted that privilege — based on the color of my skin ... I can condemn every racist heckler I've ever known. But I can also fade into the crowd, and my face can blend in with the faces of those hecklers, any time I want.¹

And when hate speech is used on the Thunderhead in an exercise, without warning, often it is used by someone who has the exact privileges Korver describes. The privilege to *opt in* to the discussion, and the privilege to *opt out*.

But Trial Lawyers College trains us to not *opt out* of considering our brother's or sister's pain. To the contrary, the psychodramatic foundation of TLC teaching methods is training in role reversal. We learn to reverse roles with jurors, with clients, and with witnesses both friendly and hostile. We learn that true role reversal is not manipulative and insincere, but rather is a genuine effort to understand the one with whom we are reversing roles.

If we can reverse roles effectively and sincerely with jurors, and understand how our words may hurt a juror even if not said in hate, there is no reason why we cannot do the same on Thunderhead Ranch. Role reversal serves as the brakes for the well-intended person who absolutely means no harm, and is looking for the best way to explore a role: *do I really "need" to say the N-word in order to show that this individual is a racist? How will*

it affect others in the group if I say it?

More to the point, role reversal also governs the person who just, for whatever reason, wants to say *it* and sees this exercise as an opportunity: *there's a little thrill in saying this word and seeing if I can get away with it unchecked—kind of like daring people to push back, and if no one pushes back, I've shown who's running this room!* Reverse roles, and that thinking can stop.

And of course, the other first principle of TLC teaching is that we are always “working on the horse.” Gerry’s exhortation does not come with a qualification. He doesn’t ask us to work on the horse just in the areas that are comfortable to us; he doesn’t ask us to put limits on self-exploration so that we can route around our own accountability. *But I'm not a racist, I should be able to say the word, and now I'm mad that you're calling me out?* “Working on the horse” means we examine why we’re offended that someone else is offended by our use of a word associated with terror and murder.

For these reasons, in March 2019, the Board of Directors of Trial Lawyers College unanimously approved a new policy governing the use of hate speech at TLC events:

Trial Lawyers College, a private organization whose members commit to fight for equality and justice, seeks to “foster and nourish an open atmosphere of caring for people” that reflects TLC’s Mission Statement in word and in spirit.

In an intimate and trust-based community such as ours, the corrosive effect of hate speech is too great for hate speech to be countenanced. Therefore TLC prohibits conduct (oral, written, graphic or physical) that targets any person or group of persons because of their race, age, creed, religion, national origin, physical abilities, gender, or sexual orientation; and conduct that has the purpose or the reasonably foreseeable effect of creating an offensive, demeaning, intimidating, or hostile environment for that person or group of persons.

If students or staff believe that hate speech must be presented in the context of a teaching exercise or personal psychodrama (for example, because hate speech was used against or by a client, or against a student), TLC strongly urges the speaker to provide a preface of the word or words to be used and the reason therefor. TLC also trains and strongly urges staff to be mindful of the impact of hate speech on the hearer, even in a teaching exercise, and to process with the group any exercise that includes the overt use of hate speech.

This policy will be read aloud to the group at the opening session of all TLC events. At Staff Training in May 2019, staff were trained in this policy, and in how to respond—and how to take care of the whole group, including both the speaker and the hearers—if a group member uses hate speech in the course of a teaching exercise. This training is now part of the Staff Training curriculum, going forward.

But what if the N-word (or other hate speech) really was used—what if there will be evidence, at trial, that includes these words? What if my client is the one charged with a hate crime, and the evidence will be that he used those words? What if I want to reenact, in my opening statement, a scene in which the villain really did use that word against my client?

Milton Grimes encourages us to think carefully about whether we really “need” to use the N-word, or other hate speech, before a jury: even if the word is going to be part of the trial record, even if it’s our client who said it, should the jury hear it from *our* voice? From *our* mouths? There is not a one-size-fits-all answer to this question—but there is a strong admonition to not just assume that if the word will be part of the trial record, then we therefore “need” to say it. Don’t assume; instead, have the courage and empathy to explore whether the jury should hear our voices saying that word, versus letting the jury hear it only in the voice of the prosecutor or insurance defense lawyer, or the villain on the witness stand.

And if, after that courageous and empathetic exploration, we conclude that we do “need” to say it, we have to let our jury know this may happen and listen to how that may affect those hearers. In the same way, in Trial Lawyers College small groups, if the speaker believes he or she does “need” to use hate speech, there needs to be a preface. *Before I start trying this piece of my opening statement, I want the group to know that there is hate speech in this case, and I am thinking of quoting it in my reenactment. I won't do it if I don't have the group's permission ... how do you all feel about it?*

If we can do this with jurors, with sincerity and without a desire to manipulate, then we can do it with fellow Warriors in groups. It’s about role reversal; it’s about working on our horses; and it’s about basic decency to our fellow Warriors.

Milton Grimes’ wise words summarize the Board’s goal in enacting this policy:

Even when said in a friendly tone by a fellow Warrior, we have to face what it is: hostile, hateful, murderous words and nothing else compares.

Eradicating racism requires that we start at its cells. Kill it at its cells. We don't want this little cancer in the body of the TLC family. Look at the word as a speck of cancer that will fester and grow and grow and grow and take your life. Let's stop accepting, let's stop tolerating the smallest of the cancers. A lot of people say “we're only saying this in the reference to what someone else says,” but even a little speck of cancer that's too minuscule to see will grow. This word can hurt someone when used in an example, in any shape or form. We don't need to hurt each other.

It's not too much to ask that we don't introduce that sound of hate onto this Ranch. ☹

ENDNOTE

1. See Kyle Korver, “Privileged,” April 8, 2019 edition of *The Players' Tribune*.