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Who Can Say “Nigger”? . . . And Other Considerations

*A leading scholar considers the most touchy and rarely discussed issue
of when one is permitted to use the word “nigger.”*

by *Randall L. Kennedy*

NIGGER IS A KEY WORD in the lexicon of race relations and thus an important term in American politics. Cultural literacy demands knowledge of it. Indeed, nigger is such an important term that to be ignorant of its functions, connotations, effects, and even of the way it might be confused with similar sounding but unrelated words, such as “niggardly,”² is to make oneself vulnerable to all manner of peril — the loss of one’s equilibrium, one’s reputation, one’s job, even one’s life.

To illuminate the significance of nigger, I analyze an array of disputes. The disputes that I shall address arise from questions such as these: What does nigger mean? What should it mean? Is nigger more, or less, hurtful as a racial epithet than competitors such as “kike,” “wop,” “wetback,” “mick,” “chink,” or “gook”? Should certain people (say, blacks) be able to use the term in ways forbidden to others (say, whites)? Under what circumstances should relevant testimony about a person’s use of the term nigger be excluded from the hearing of a jury? Should the law view nigger as a possible provocation that reduces the criminal culpability of a person who responds violently to it? What methods are useful for removing venomous power from words like nigger when they are deployed as weapons of racial insult?

¹Randall Kennedy is a professor at Harvard Law School. This article was originally delivered as a Tanner Lecture on Human Values at Stanford University in 1999. Printed with the permission of the Tanner Lectures on Human Values, a corporation, University of Utah, Salt Lake City, Utah.

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Additional footnotes appear at the end of the article.

Let’s begin with history. Leading etymologists believe that nigger was derived from a Northern English word — “neger” — that was itself derived from “Negro,” the Spanish word for black.³ No one knows precisely how it attained its pejorative, abusive meaning. The linguist Robin Lakoff speculates that nigger became a slur when users of the term became aware that it was a mispronunciation of Negro and decided to continue using the mispronunciation as a signal of contempt — much as individuals sometimes choose to

insult others by deliberately mispronouncing their names.⁴ Precisely when the term became a slur is unknown. We do know, however, that by the

first third of the nineteenth century nigger had already become a familiar and influential insult. In his 1837 treatise on *The Condition of the Colored People of the United States; and the Prejudice Exercised Towards Them*,⁵ Hosea Easton, who described himself as “a colored man,” devoted considerable attention to the nefarious pedagogical purposes to which the term nigger was put by many of his fellow Americans. “Nigger,” he observed, “is an opprobrious term, employed to impose contempt upon [blacks] as an inferior race. . . . The term in itself would be perfectly harmless were it used only to distinguish one class of society from another, but it is not used with that intent; the practical definition is quite different in England to what it is here, for here it flows from the fountain of purpose to injure.”⁶ Easton goes on to observe that often the earliest instruction that white adults gave to white children prominently featured the N-word. “The universality of this kind of instruction,” he wrote, “is well known to the observing.”⁷ White adults reprimanded white children for being worse than niggers, for being igno-

*“Nigger is the all-American trump card,
the nuclear bomb of racial epithets.”*

rant as niggers, for having no more credit than niggers. And white adults disciplined their children by telling them that unless they behaved they would be carried off by “the old nigger” or be made to sit with niggers, or be consigned to the nigger seat which was, of course, a place of shame.⁸

Since at least the early nineteenth century, then (and probably earlier), nigger has served as a way of referring derogatorily, contemptuously, and often menacingly to blacks. Over the years, it has become undoubtedly the best known of the American language’s many racial insults, evolving into the paradigmatic epithet. Precisely because nigger bears this dubious distinction it is often adapted for more generalized use. Hence the coinage of the term “sand nigger” to refer to the Arab⁹ or “timber nigger” to refer to the Native American.¹⁰

Many observers make strong claims on behalf of the special status of nigger as a racial insult. The journalist Farai Chideya describes nigger as “the all-American trump card, the nuclear bomb of racial epithets.”¹¹ The Ninth Circuit Court of Appeals recently concurred in a case that involved the authority of a school district to assign to high school students Mark Twain’s *Huckleberry Finn*. A parent of one of the few black children in the school objected to the assignment on the grounds that nigger appears in that novel 215 times and that the presence of that book in the curriculum distressed black students and prompted white ones to engage in acts of racial harassment. In the course of dismissing the parent’s complaint on First Amendment grounds, the Ninth Circuit described nigger as “the most noxious racial epithet in the contemporary American lexicon.” Elaborating, Judge Stephen Reinhardt asserted that “the word nigger as applied to blacks is uniquely provocative and demeaning and that there is probably no word or phrase that could be directed at any other group that could cause comparable injury.”¹²

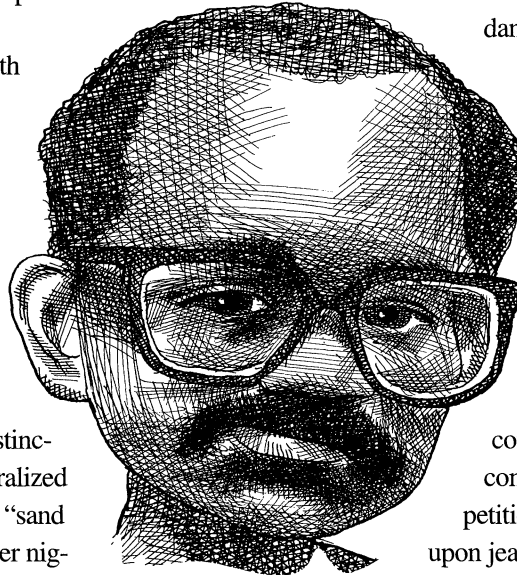
Another assertion of the unique status of nigger was voiced in the midst of the infamous O.J. Simpson murder trial in the most highly publicized discussion of a racial epithet in American history. “Nigger,” prosecutor Christopher Darden

maintained in a heated exchange with defense attorney Johnny Cochran, is the “filthiest, dirtiest, nastiest word in the English language.”¹³

Asserting that nigger is the superlative racial epithet — the *most* hurtful, the *most* fearsome, the *most* dangerous, the *most* noxious — draws one into the difficult and delicate matter of comparing oppressions, measuring collective injuries, prioritizing victim status. Some observers scoff at this enterprise. Declining to enter a discussion comparing the Holocaust to American slavery, a friend of mine once remarked that he refused to become an accountant of atrocity. One can understand this impulse to avoid comparisons. Sometimes the process of comparison degenerates into divisive competitions between minority groups that insist upon jealously defending claims to victim status. Writing about the cult of victimhood Ian Buruma observes that “sometimes it is as if

everyone wants to compete with the Jewish tragedy, in what an Israeli . . . once called the Olympics of suffering.”¹⁴ Hence Iris Chang describes the Japanese army’s Rape of Nanking, China, during World War II as “The Forgotten Holocaust.”¹⁵ Hence Larry Kramer titles his reportage on the early days of the AIDS crisis “Reports From the Holocaust.”¹⁶ Hence Toni Morrison dedicates *Beloved*, her novel about enslaved African Americans, to the “60 million and more” — a number undoubtedly calculated to play off of 6 million, the number of Jews generally thought to have perished at the hands of the Nazis.¹⁷

It would be possible, I suppose, to avoid comparisons. Instead of saying that the Holocaust was the *worst* atrocity of the twentieth century, one could say simply that the Holocaust was a terrible event. Instead of saying that nigger has been the most socially destructive racial epithet in the American language, one could say that, used derogatorily, nigger is *a* socially destructive epithet — no more or less evil than the wide variety of racial epithets that dot the American language. But neither all epithets nor all atrocities are equal. There is a difference between the massacre that kills 500 as distinct from 5,000 as distinct from 50,000. By the same token, as Judge Reinhardt recognized, in the



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Illustration: John Springs

United States there is a stratification in the stigmatizing power of various racial insults that roughly mirrors the hierarchy of racial groups within the society — a tragic stratification in which the power of nigger complements the superdegraded status of the African American.

“White parents told their children that unless they behaved they would be carried off by ‘the old nigger.’”

The comedian Paul Mooney made this point vividly in a comedy sketch dramatized by Richard Pryor and Chevy Chase on *Saturday Night Live*. Chase interviews Pryor for a job as a janitor and administers to him a word-association test that goes like this:

“White,” says Chase.

“Black,” Pryor replies.

“Bean.

“Pod.”

“Negro.”

“Whitey,” Pryor replies lightly.

“Tarbaby.”

“What did you say,” Pryor asks, puzzled.

“Tarbaby,” Chase repeats, monotone.

“Ofay,” Pryor says sharply.

“Colored.”

“Redneck!”

“Junglebunny!”

“Peckerwood,” Pryor yells.

“Burrhead!”

“Cracker.”

“Spearchucker!”

“White Trash!”

“Junglebunny!”

“Honky!”

“Spade!”

“Honky, Honky!”

“Nigger,” says Chase smugly, aware that, when pushed, he can use that trump card.

“Dead Honky!” Pryor growls resorting to a threat of violence now that he has been outgunned in the verbal game of racial insult.¹⁸

I am not saying that, hurled as an insult, nigger inflicts upon individual targets more distress than other racial epithets. Persons beset by thugs who hate them on a racial basis may well feel equally terrified regardless of whether the

thugs are screaming “kill the honky” or “kill the nigger.” And in any event, I know no way to compare the terror individual victims feel in those circumstances. I am saying, however, that in the aggregate, nigger is and has long been *the* outstanding racial insult on the American social landscape.

Consider, for example, the striking difference in incidence that distinguishes nigger from other racial epithets in reported court opinions.¹⁹ Between 1988 and 1998 plaintiffs cited use of the term “kike” as evidence of anti-Jewish animus in the United States in only five opinions issued by federal courts.²⁰ During the same period, plaintiffs cited usage of “wetback” as evidence of anti-Latino animus in 36 opinions,²¹ cited usage of “chink” or “gook” as evidence of anti-Asian animus in 17 opinions,²² cited usage of “honky” as evidence of anti-white animus in 20 opinions.²³ These cases reveal cruelty, terror, brutality, and heartache.

There exists, though, a striking difference between the volume of cases generated by databanks when the key word punched into the computer is “kike” or “gook” or “wetback” or “honky” and the volume generated when the key word punched in is “nigger.” Between 1988 and 1998, plaintiffs cited usage of nigger as evidence of anti-black prejudice in several hundred opinions.²⁴

“The word nigger to colored people is like a red rag to a bull.”

Reported court opinions do not offer a perfect reflection of social life in America; they offer merely an opaque reflection that poses real difficulties of interpretation. The social meaning of litigation is ambiguous. It may signal a search for remedying real injury. Or it may signal cynical exploitation of increased intolerance for racism. Bringing a lawsuit may express a sense of empowerment. But declining to bring a lawsuit may do so as well, signaling that a person or group has ways other than cumbersome litigation to settle scores or vindicate rights. That there is more litigation in which the term nigger appears could mean that usage of that term is more prevalent than usage of analogous epithets, that usage is associated with more dramatic injuries, that targets of nigger are more aggrieved, or more willing and able to sue, or that authorities — police, prosecutors, judges, or juries — are more receptive to this group of complaints. One cannot confidently know which of these hypotheses best explains

the salience of nigger in the jurisprudence of racial epithets. What cannot plausibly be doubted, however, is the fact of that salience — a fact which is best understood, I believe, as a sign of the continuing and malevolent primacy of nigger in the lexicon of American racial insult.

Nigger first appears in the reports of the United States Supreme Court in a decision announced in 1871 during the tumultuous era of Reconstruction when African Americans were simultaneously cloaked with new federal civil rights and ruthlessly targeted by reactionaries who abhorred the very idea of racial equality. The case *Blyew v. United States*,²⁵ dealt with the prosecution for murder of two white men who, for racial reasons, hacked to death several members of a black family. According to a witness, one of the codefendants stated that “there would soon be another war about the niggers” and that when it came he “intended to go to killing niggers.”²⁶

In subsequent years, hundreds of cases in federal and state courts have arisen in which nigger figured as a constant refrain in episodes of racially motivated violence, threats, and arson. One with a particularly memorable factual background involved the successful prosecution of Robert Montgomery for violating various federal criminal civil rights statutes.²⁷ In 1988 in Indianapolis, Indiana, a residential treatment center was established for convicted child molesters in an all-white neighborhood known as “The Valley.” From the center’s opening until mid-1991, when all of the residents of the center were white, residents of the Valley evinced no objection to the presence of the felons. In June 1991, however, the center was converted into a shelter for approximately 40 homeless veterans, 25 of whom were black. Soon thereafter trouble erupted as a group of whites, including Montgomery, opposed to the presence of “niggers,” burned a cross and vandalized a car to dramatize their feelings. An all-white cadre of child molesters was tolerable. But because of the presence of blacks a racially integrated cadre of homeless veterans was intolerable. Such is what one finds on the byways lit by the N-word in our federal and state judicial records.²⁸

These and numerous other cases explain why what Langston Hughes observed in 1940 often obtains today.

“The word nigger to colored people,” Hughes averred, “is like a red rag to a bull. Used rightly or wrongly, ironically or seriously, of necessity for the sake of realism, or impishly for

the sake of comedy, it doesn’t matter. Negroes do not like it in any book or play whatsoever, be the book or play ever so sympathetic in its treatment of the basic problems of the race. Even though the book or play is written by a Negro, they still do not like it. The word *nigger*, you see, sums up for us who are colored all the bitter years of insult and struggle in America.”²⁹

Nigger, however, is much more than an insult. In 1925 Carl Van Vechten reported that nigger was “freely used by Negroes among themselves, not only as a term of opprobrium, but also actually as a term of endearment.”³⁰ Since he was a white man, however, Van Vechten’s testimony will be suspect to some. So for purposes of substantiation, let’s turn to the black journalist Roi Ottley, who wrote in 1943 that “the term nigger is used by Negroes quite freely when out of the



earshot of whites.”³¹ Let’s turn as well to the black writer Clarence Major, who discussed nigger in his *Dictionary of Afro-American Slang* published in 1970. “When used by a white person in addressing a black person,” he noted [nigger is usually] offensive and disparaging.” Major quickly added, however, that when “used by black people among themselves, [nigger] is a racial term with undertones of warmth and good will — reflecting . . . a tragicomic sensibility that is aware of black history.”³²

In 1977, in her book *Talkin’ and Testifyin’: The Language of Black America*, Geneva Smitherman observed that blacks attach at least four different meanings to nigger. It may simply identify black folks as in “All the niggahs in the Motor City got rides” (a sentence she translates as “All persons of African descent that live in the city of Detroit have automobiles”). It may express disapproval of a person’s actions, as in “Stop acting like a nigger.” It may designate a person who is “identifying with and sharing the values and experiences of black people: “James Brown is a ‘shonuff nigger.”” Or, finally, according to Smitherman, it may be a term of personal affection or endearment, as in “He my main niggah,” meaning, “He’s my best friend.”³³

A few commentators have expressed appreciation for the linguistic and political complexity of nigger. Jarvis Deberry

maintains that nigger is “beautiful in its multiplicity of functions. I am not aware,” he observes, “of any other word capable of expressing so many contradictory emotions. . . . [I]t might just be the most versatile and most widely applied intensifier in the English language.”³⁴

Many observers, however, condemn any ambiguous or comedic or ironic use of nigger, fearful that any blurring of the lines that define it as an insult will generate needless confusion that will ultimately function to de-stigmatize the term and thus facilitate its acceptability. Writing in the *Los Angeles Times*, Halford H. Fairchild argues that “everyone should refrain from [using the N-word] and provide negative sanctions on its use by others.” What about the fact that many blacks use the term ironically as a term of affection? “The persistent viability of the N-word in the black community,” Fairchild writes, “is a scar from centuries of cultural racism.”³⁵ Articulating the same message, Ron Nelson, an editor of the University of North Carolina’s student newspaper *The Daily Tar Heel*, writes that while “most blacks . . . understand the implications and the racist history of the word nigger, it has somehow dangerously and disturbingly found its way into everyday language. . . .” Castigating blacks’ playful use of the N-word as “self-defeating,” “hypocritical,” and “absurd,” Nelson asserts that that usage “creates an atmosphere of acceptance. . . . After all, if blacks themselves do it, why can’t others?”³⁶

This view is echoed by the Pulitzer Prize-winning journalist E.R. Shipp. In a column for the *New York Daily News* revealingly titled “N-Word Just as Vile When Uttered by Blacks,” Shipp declares that “there needs to be no confusion . . . the N-word has no place in contemporary life or language.”³⁷

Bill Cosby takes a similar position, arguing that black comedians who tell nigger jokes evince a deplorable lack of self-regard or racial pride. He therefore urges his fellow black comedians to stop employing the N-word in their comedy routines. Some have heeded his advice. Even Richard Pryor, whose best album is entitled *That Nigger’s Crazy*, stopped using the N-word (at least for a while).

Cosby’s prestige and popularity, however, has been insufficient to stop, much less roll back, the continued usage of nigger by large numbers of black Americans. Indeed, over the past quarter century, largely in conjunction with the dissemination of the hip-hop culture, the term nigger has grown in usage and popularity. What is truly compelling about nig-

ger, Professor Todd Boyd observes, is that many blacks “have chosen to adopt a nuanced form of the word as a vital aspect of their own cultural identity.”³⁸ One aspect of the nuance is linguistic. The blacks to whom Boyd refers have changed nigger to “nigga” or “niggaz.” More fundamentally, they have continued the tradition that redefines nigger from a term of abuse to a term of affection. What many gays and lesbians have done with “queer” and “dyke” is what many African Americans have done with nigger — transformed it from a sign of shame to be avoided if possible into a sign of pride to be worn assertively.³⁹ That is why the opinionated basketball star Charles Barkley called himself a “90s nigga,” why one of the most important groups in the recent history of American popular music titled itself NWA — “Niggas With Attitude,” why nigger suffuses the raps of Ice Cube, Ice T, Tupac Shakur, Dr. Dre, and Snoop Doggy Dog, and why its presence is large in all episodes of *Def Comedy Jam*.

“The coach of the Central Michigan University basketball team went around the room referring by name to players as either niggers or half-niggers. The niggers were the players who were doing their job well. The half-niggers were the ones who needed to work harder.”

Some maintain that use of the N-word by blacks is a testament to the power of white racism to insinuate itself within black minds. There is something to this argument. It is undoubtedly true that in some instances blacks’ use of nigger is indicative of an antiblack, self-hating animus. My first awareness of the term arose in an all-black setting — my household in Columbia, South Carolina — in which older relatives routinely disparaged what they perceived as the racial traits of Negroes — vices such as tardiness, dishonesty, and ignorance. The phrase that crystallized this disparagement is a phrase still very much in evidence in the psyches of all too many Americans, including black Americans. The phrase is this: “Niggers ain’t shit.”

But antiblack prejudice is an implausible explanation for why many assertive, self-aware, politically progressive African Americans continue to use nigger in the ways to which Shipp and Cosby object. These are African Americans who maintain that they use nigger not in subjection to racial subordination but in triumphant defiance to it, a defiance that includes saying what one pleases regardless

of how it strikes the sensibilities of E.R. Shipp, Bill Cosby, Tipper Gore, L. Delores Tucker, William Bennett, or any other would-be arbiters of taste and respectability.

Cosby, Shipp, and others contend that nigger should have no place in contemporary American language. Does it mean that the title of this article, or perhaps the article itself, should have no place? Or, does it mean that people should follow the lead of educators such as John Wallace who recommends that high schools exclude from their curriculums such books as *Huckleberry Finn* and *To Kill a Mockingbird* because they contain the N-word?⁴⁰ If so, one can only shudder to think

of the bowdlerization that might await Richard Wright's *Black Boy*, Ralph Ellison's *Invisible Man*, Malcolm X's *Autobiography*, Dick Gregory's *Nigger!* or H. Rap Brown's *Die! Nigger Die!*

In 1936 the bureaucrat in charge of black schools in Washington, D.C., recommended barring from the schools a magazine that printed the N-word in its pages. What was that magazine? None other than *Opportunity*, the organ of the National Urban League, and for years one of the leading platforms for the publication of serious literature by black American writers.⁴¹

What Shipp and others who wish to eradicate nigger fail adequately to recognize is the term's linguistic richness and the extraordinary extent to which it has insinuated itself — for bad but also for good — across the wide expanse of the American cultural landscape. To eliminate nigger from the American language would require erasing too much from too many valuable pages, including those found in such classics of Afro-American literature as Richard Wright's *Native Son* and Malcolm X's *Autobiography*.

But perhaps some of those who want to deprive nigger of a place in contemporary American culture mean something considerably more limited. Perhaps they mean simply that they want the term confined to the past, that they want people to know what the term meant historically — and thus are willing to permit its use for that narrow purpose — but that they also want people to shun its use otherwise. They want, in other words, for the N-word to be limited to a place in the museum of language, while denying it viability as part of our living and evolving speech. Proponents of this view favor

exhibiting nigger as a linguistic fossil but absolutely nothing more.

I would oppose both positions, though the latter is a less terrible alternative than the former. I say this partly out of concern about the dangers of overweening public or private power. But I say this also because I enjoy, and sometimes admire, a considerable portion of the cultural work in which nigger is embedded. Much of this work — novels, plays, jokes, songs — would have to be bowdlerized if not censored altogether in order to achieve the aim of depriving nigger of an existence in contemporary American life. I find

pleasure in the routines of satirists like Chris Rock and others who deploy the N-word in ways that some critics of nigger find mightily upsetting. I savor these performances and think that without them our culture would be significantly diminished without attaining benefits that would warrant the sacrifice.

Rock, however, is black. What about whites deploying nigger? For many persons, nigger takes on a completely different complexion when uttered by someone who is black in contrast to someone who is white.⁴² Some whites “still wonder why



black people can say nigger and they can't," the comedian Chris Rock notes. “Believe it or not,” he continues, “it’s a very common question. I hear it all the time.”⁴³ That is not surprising. After all, Rock’s signature act is one in which he declares: “I love black people, but I hate niggers.” It is the part of his act that received the loudest applause from the mostly black audience that served as the backdrop to his filmed concert *Bring on the Pain*. In a subsequent album, Rock adds a skit in which a white man comes up to him after the show and expresses his admiration for Rock’s performance, especially his satire on the N-word.⁴⁴ After assuring Rock that he is not racist, the white guy actually uses the N-word himself. The next thing one hears is the white man getting punched. Rock apparently intends for the lesson of that punch to be that blacks can properly use nigger, at least in certain circumstances, while whites cannot.

Another person who strongly supports this notion is the filmmaker Spike Lee. Lee complains, for example, that the white filmmaker Quentin Tarantino has acted wrongly in using nigger in his films, especially the movies *Pulp Fiction*

and *Jackie Brown*. When someone noted that Lee himself deploys the N-word extensively in some of his films, Lee responded by saying that “as an African American, I have more right to use that word.”⁴⁵ Lee’s belief corresponds to a popular intuition that blacks can permissibly talk about blacks in ways that nonblacks cannot.⁴⁶

“Spike Lee says that ‘as an African American, I have more right to use that word.’”

This racial distinction, however, like all racial distinctions, ought to raise eyebrows. It ought not be authorized without a compelling justification of the sort that I have yet to hear. The intuition animating this racial distinction largely stems from the sense that when blacks use nigger they are generally using it in some positive fashion and that when whites use the term they are generally using it in some negative fashion.⁴⁷ Even if this intuition is empirically sound, however, we ought nonetheless to eschew policies or decisions made on the basis of racial proxies unless compelled by an emergency to do so. We ought to reject racial distinction-making on that basis in order to inculcate a habit for seeing people more carefully as distinctive, particular, sovereign individuals as opposed to predetermined agents or subjects of this or that racial group.⁴⁸ Presumptions can be effective shortcuts. Sometimes we should use them. But given our racial situation and the situation that we should attain, we should be wary of indulging in racial presumptions unless we are forced to do so by compelling reasons. There is no compelling justification for presuming that black usage of nigger is permissible while white usage is objectionable. The most fervent opponents of nigger agree with this point. They then go on to contend that public opinion should make nigger out of bounds to *everyone* in *every* setting. But the prospect of a wholesale eradication of nigger — with or without the aid of state power — poses a threat to valuable artistic and political expression. I therefore suggest proceeding in a different direction. I suggest that people presumptively frown upon the deployment of nigger regardless of the race of the speaker because the N-word is still so often associated with ugly, unjustified, racial disparagement. But I also suggest that everyone be offered an opportunity to rebut this presumption, even in those cases in which whites are the speakers and blacks the objects of the language in question.

Consider the following case.⁴⁹

In 1991 Central Michigan University hired Keith Dambrot to be its varsity men’s basketball coach. At the same time, the university gave him the title of assistant professor. Presumably, his subject was basketball. On January 20, 1993, the University of Miami of Ohio played Central Michigan University in a basketball game. At halftime, the coach tried to focus and inspire his players, 11 blacks and three whites. Before proceeding, Coach Dambrot asked his players for permission to use with them a term that they often used with one another — the N-word. They nodded assent, at which point Coach Dambrot said, as he recalls it: “We need to be tougher, harder-nosed, and play harder. . . . We need to have more niggers on the team.”⁵⁰ He then referred admiringly to one white member of the team as a nigger and went around the room referring by name to players as either nigger or half-nigger. The niggers were the players who were doing their jobs well. The half-niggers or non-niggers were the ones who needed to work harder. Coach Dambrot later explained that he used the term nigger “for instructional purposes with the permission of my African-American players, and I used the term in the sense in which it is used by my African-American players . . . to connote a person who is fearless, mentally strong, and tough.”⁵¹

“There is no compelling justification for presuming that black usage of nigger is permissible while white usage is objectionable.”

Despite the halftime talk, Central Michigan lost the game. But that was just the beginning of Coach Dambrot’s problems.

Somehow word spread on campus about Coach Dambrot’s locker room speech. He must have become aware of this and that some observers might take offense because he requested the university’s athletic director to talk about the incident with the members of the team. None of them indicated that they objected to what the coach had said. Nonetheless, the athletic director told Dambrot that, regardless of intentions or context, the use of nigger was “extremely inappropriate.”⁵² The director then warned the coach that if he used that term again he would be fired.

Soon thereafter a student who had previously quit the basketball team complained about the coach’s language to the university’s affirmative action officer. This person, a white

woman, demanded that the coach be punished. She insisted that a formal reprimand be placed in his personnel file, that he be suspended without pay for five days, and that during the suspension he arrange for a sensitivity trainer to visit the team to explain why the use of nigger and like terms is always inappropriate. She also required that attendance for this sensitivity training session be mandatory, that Coach Dambrot “help assure that the team is not hostile to the training,” and that the coach “convey his support of this training session to the players and the staff.”⁵³

The coach did not resist, hoping that the incident would blow over quietly. His hopes, however, were dashed. Publicity triggered two demonstrations at which 80 to 100 protested against the coach’s purported “racism.” The president of the university responded by announcing that the coach had been disciplined and by declaring that “the term [nigger] is inappropriate under any circumstances,” and that he was “deeply sorry about the hurt, anger, [and] embarrassment its use had caused individuals as well as the entire university community.”⁵⁴ By that time, however, critics of the university, including state legislators, were voicing demands for harsher punishments that were soon forthcoming.

On April 12, 1993, the university administration fired Coach Dambrot on the grounds that “public reaction to the incident [had] created an environment that makes it impossible for the university to conduct a viable basketball program under [his] leadership.”⁵⁵

He responded by suing the university in federal court, claiming that his discharge constituted a violation of his First Amendment rights. Members of the basketball team sued the university as well, claiming that the university speech code violated their First Amendment rights.

The students prevailed. A federal district court, affirmed by a court of appeals, invalidated Central Michigan’s speech code on the grounds that it violated the First Amendment. The coach, however, did not prevail. The district court, affirmed by the court of appeals, ruled that the university’s termination of Dambrot was permissible. As an employee of

a public institution, he was directly protected by the First Amendment. As interpreted by the Supreme Court, however, the First Amendment does not insulate from employer sanction all speech that is uttered by public employees. Speech that touches upon a matter of public concern is protected. Therefore, if the coach had been talking to his team at halftime about racist uses of the term nigger or about the NCAA’s scandalous exploitation of athletes, his comments

would probably have been deemed to be protected by the First Amendment. But in the view of the court of appeals, Dambrot’s speech did not touch upon a matter of public concern. Thus there existed no federal constitutional bar to the university’s firing Dambrot for reasons that stemmed from his locker room exhortation.

Here I am not so much interested in the courts’ conclusion that the university had the authority to fire the coach — a legal conclusion that seems to me to have been correct. Rather, I am interested in the judgment that the university officials exercised pursuant to that authority. That judgment, or more accurately misjudgment, casts a revealing light on our society’s continuously grappling with nigger and the cultural dynamics that surround it.

The initial response by the athletic director ordering the coach to desist from using nigger seems to me to have been proper. On the one hand, it recognized the unjustifiable risk that the coach’s words might be hurtful to his players or the wider community. True, the coach did ask for the players’ permission to use the N-word and the players apparently gave it. But a disapproving player might understandably be hesitant to express disapproval of a coach’s request in a locker room at halftime when the team is losing and when other players are signaling their approval. Moreover, the players are merely students — young people needing and presumably desiring guidance from wiser elders. If the deployment of the N-word is an evil activity, the mere permission of the players, even if genuine, could not make it innocent. As I have indicated, I don’t believe that every deployment of the word nigger is evil. Sometimes it can be used humorously — see the comedy routines of *Def Comedy Jam* — and



sometimes it can be used as a tool of antiracist education. (See its use in the protest fiction of Richard Wright.) In this case, however, using the N-word was in no sense essential to what the coach was attempting to accomplish. As Judge Keith rightly noted in his opinion for the court of appeals, "The point of [the coach's] speech was not related to his use of the N-word but to his desire to have his players play harder"⁵⁶ — an aim that could have been easily and effectively advanced by some other means less susceptible to misunderstanding and hurt feelings. In short, Coach Dambrot was imprudent in his choice of motivational strategy and the athletic director was correct in giving him firm instructions on the matter.

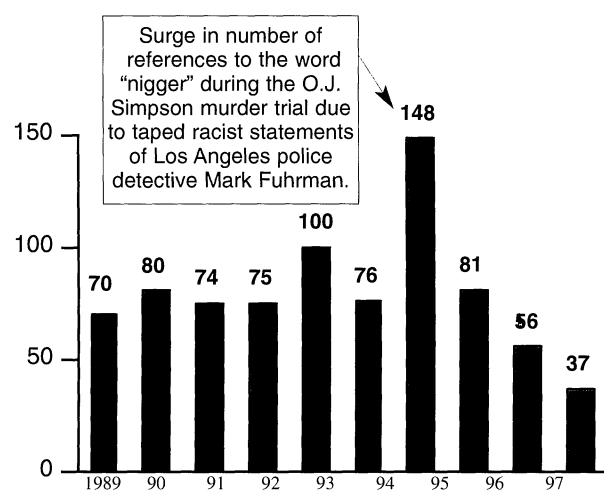
"A word is not a crystal, transparent and unchanged. It is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

—Oliver Wendell Holmes

Subsequent actions taken by university officials, however, were mistaken. First, the one-dimensional character of the sensitivity training that the affirmative action officer envisioned (namely a session that would brook no debate over the propriety of nigger), requiring mandatory attendance, and directing the coach to pacify his players' possible resistance to the sensitivity training and to convey his support for it is reflective of just the sort of overreaching, overzealous, overconfident coercive conduct by educational officials that has, unfortunately, tarnished the reputation of multiculturalist reformism. Second, prior to firing Coach Dambrot, university officials appear to have made little effort to clarify the controversy, to indicate that this was a situation in which underlying realities were considerably more ambiguous than surface appearances. The fact is that this coach, imprudent though he may have been, was clearly employing nigger according to a usage embraced by his players — a usage in which the term was a compliment, not an insult.⁵⁷ Sometimes it may be wise, albeit tragic, for a university administration to sacrifice a deserving employee to mollify public anger that might otherwise pose a threat to a university's future. In this case, though, the authorities at Central Michigan University capitulated too quickly to the formulaic rage of affronted blacks, the ill-considered sentimentality of well-meaning whites, and their own crass opportunism.

Thus far I have turned repeatedly to lawyerly texts — mainly opinions written by federal and state judges — for examples of the problem under investigation. Judicial opinions, however, can sometimes do more than provide facts as grist for analysis; they can also provide illumination. That is certainly true with respect to our grappings with what nigger means. Three of the leading jurists of this century — Roger Traynor, Benjamin Cardozo, and Oliver Wendell Holmes Jr. — wrote opinions that stress a point that is absolutely essential for the proper resolution of the definitional problems under consideration. That point is that the meaning of words, all words, including nigger, are contingent, changeable, context-specific. "The meaning of particular words," Traynor wrote, "varies with the . . . verbal context and surrounding circumstances and purposes in view of the linguistic education and experiences of their users and their hearers or readers."⁵⁸ "The law," Cardozo maintained in a sentence that Coach Dambrot would have appreciated, "has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal."⁵⁹ Holmes, though, is the one who puts the point most memorably and who should be listened to most closely as fights over the future of nigger unfold in years to come. "A word," Holmes wrote, "is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."⁶⁰ JBHE

The Declining Use of the Word "Nigger" in News Stories in *The New York Times*



Source: JBHE analysis of the LEXIS/NEXIS database.

Notes to Randall Kennedy's "Who Can Say Nigger?"

² In January 1999 a white official in Washington, D.C., resigned his post when black coworkers complained about his use of the term "niggardly." They wrongly believed that the word, which means miserly, is related to the word "nigger." The mayor of the District of Columbia initially accepted the resignation but later, after much criticism in the press, offered the official another post. See Michael Janofsky, "About-Face in Washington Furore on Misunderstood Word," *Washington Post*, February 4, 1999.

³ See J.A. Simpson and E.S.C. Weiner III, eds., *The Oxford English Dictionary*, Second Edition (1989); H.L. Mencken (abridged with annotations and new material by Raven I. McDavid Jr. with the assistance of David W. Maurer), *The American Language: An Inquiry Into the Development of English in the United States*, 383-384 (1979).

⁴ Robin Lakoff, "The N-Word: Still There, Still Ugly," *Newsday*, September 28, 1995.

⁵ See Hosea Easton, *A Treatise on the Intellectual Character and Civil and Political Condition of the Colored People of the United States, and the Prejudice Exercised Towards Them* (1837).

⁶ *Id.* at 40.

⁷ *Id.*

⁸ *Id.* at 41.

⁹ *Hussein v. Oshkosh Motor Truck Co.*, 816 F. 2d. 348 (CA 7 1987).

¹⁰ *DuFlambeau v. Stop Treaty Abuse*, 991 F. 2d 1249 (CA 7 1993).

¹¹ See *The Color of Our Future* (1999).

¹² See *Monteiro v. Tempe Union High School District*, 158 F. 3d 1022 (CA 9 1998).

¹³ Quote in Margaret M. Russell, "Representing Race: Beyond 'Sellouts' and 'Race Cards': Black Attorneys and the Straitjacket of Legal Practice," 95 *Michigan Law Review* 765 (1997).

¹⁴ See Ian Buruma, "Joys of Victimhood," *New York Review*, April 8, 1999.

¹⁵ See Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (1997).

¹⁶ See Larry Kramer, *Reports From the Holocaust: The Making of an AIDS Activist* (1989).

¹⁷ See Toni Morrison, *Beloved* (1987). See also Stanley Crouch, reviewing *Beloved* in *The New Republic*, October 19, 1987.

¹⁸ See Joseph Boskin, *Rebellious Laughter* 161-162 (1997); Mel Watkins, *On the Real Side: A History of African-American Comedy* (1999).

¹⁹ In April 1999 I used the LEXIS database to determine the extent to which "nigger" and kindred terms were used in court opinions. I requested the citations for all cases in which these terms appeared and then read the cases.

²⁰ See, e.g., *In re Peia*, 1997 U.S. Dist. Lexis 16853 (D.C. Ct. 1997); *Goldberg v. City of Philadelphia*, 1994 U.S. Dist. Lexis 8969 (D.C. E.D. Pa. 1994). Several other cases in which the term kike appears involves alleged acts of bigotry abroad. See, e.g., *Korablina v. INS*, 158 F. 3d 1038 (CA 9 1998).

²¹ See, e.g., *United States v. Makowski*, 120 F. 3d 1078 (CA 9 1997); *Vigil v. City of Las Cruces*, 119 F. 3d 871 (CA 10 1997); *United States v. Reese*, 2 F. 3d 870 (CA 9 1993).

²² See, e.g., *United States v. Piche*, 981 F. 2d 706 (CA 4 1992); *Nguyen v. Venson Toyota*, 1997 U.S. Dist. Lexis 4073 (E.D. La. 1997); *Chua v. St. Paul Fed. Bank*, 1996 U.S. Dist. Lexis 7874 (N.D. Ill. 1996).

²³ See, e.g., *Huckabay v. Moore*, 142 F. 3d 233 (CA 5 1998); *United States v. Thomas*, 1993 U.S. App. Lexis 30976 CA 9 1993); *Conrad v. P.T.O. Servs.*, 1996 U.S. Dist. Lexis 4441 (D.C. N.D. Ill. 1996).

²⁴ See, e.g., *Gant v. Wallingford Bd. of Education*, 69 F. 3d 669 (CA 2 1995); *United States v. Sowa*, 34 F. 3d 447 (CA 7 1994); *United States v.*

Ramey, 24 F. 3d 602 (CA 4 1994); *United States v. Juvenile Male J.H.H.*, 22 F. 3d 821 (CA 8 1994); *United States v. McInnis*, 976 F. 2d 1226 (CA 9 1992).

²⁵ 80 U.S. 585 (1871). See also Robert D. Goldstein, "Blyew: Variations on a Jurisdictional Theme," 41 *Stanford Law Review* 469 (1988).

²⁶ 80 U.S. at 589.

²⁷ *United States v. Montgomery*, 23 F. 3d 1130 (CA 7 1994).

²⁸ Nigger was also present at the terrible tragedy in Littleton, Colorado, at the Columbine High School, the site of a terrible mass killing. According to witnesses, a black student, Isaiah Shoels, was referred to as a "nigger" right before he was murdered by a gun-wielding racist. See, e.g., Sam Howe Verhovek, "Terror in Littleton," *New York Times*, April 22, 1999; Arianna Huffington, "Behind the Facade of Littleton's Paradise," *Sacramento Bee*, April 30, 1999.

²⁹ See Langston Hughes, *The Big Sea* (1940).

³⁰ See Carl Van Vechten, *Nigger Heaven* (1925).

³¹ See Roi Ottley, *New World A-Coming: Inside Black America*, 1943.

³² See Clarence Major, *Dictionary of Afro-American Slang* 85 (1970).

³³ Geneva Smitherman, *Talkin' and Testifyin': The Language of Black America* (1977). Today, most serious lexicographers continue to evince a recognition that nigger has meanings beyond the limits of the racist slur, though doing so sometimes attracts protests from those who want the term to be defined simply as a racial insult.

³⁴ Jarvis Deberry, "Keeping a Hateful Word Inside a Dictionary," *The [New Orleans] Times-Picayune*, June 23, 1998.

³⁵ See Halford H. Fairchild, "N Word Should be Odious From Anyone,"

Los Angeles Times, September 16, 1987.

³⁶ "The Word 'Nigga' is Only for Slaves and Sambos," *Journal of Blacks in Higher Education*, Autumn 1998.

³⁷ See E.R. Shipp, "N Word Just as Vile When Uttered by Blacks," *New York Daily News*, January 21, 1998. See also Mary A. Mitchell, "N Word OK for Blacks but Not for Whites?" *Chicago Sun Times*, December 28, 1997: "The word is so vile and loathsome, so dehumanizing and so steeped in racial hatred and disrespect that it can never be used — by whites or blacks — without betraying its roots." "It is self-loathing that gives this racial slur breath. That makes blacks the only race that has adopted the insults of its oppressors and embraced those insults as its own."

³⁸ See Todd Boyd, *Am I Black Enough For You? Popular Culture from the Hood and Beyond* 31 (1997).

³⁹ For another example of this phenomenon, see Inga Muscio, *Cunt: A Declaration of Independence* (1998).

⁴⁰ Wallace is a leading figure in the campaign to remove *Huckleberry Finn* from high school curriculums. His most publicized episode of attempted suppression occurred, ironically, at the Mark Twain Intermediate School in Fairfax, Virginia. Wallace has produced an edition of *Huckleberry Finn* in which the words nigger and hell are removed. It should be noted, though, that Wallace's opposition to reading unexpurgated editions of *Huckleberry Finn* extends only to primary and secondary schooling. He approves of assigning it at the collegiate level. See James S. Leonard, Thomas A. Tenney, and Thadious M. Davis, *Satire or Evasion? Black Perspectives on Huckleberry Finn* 274 (1992). Of special note in this valuable compilation is John H. Wallace, "The Case Against Huck Finn, a frightening exhibition of what can happen to thought in the absence of any sense of irony."

⁴¹ See Mencken, *supra* note 3, at 382. The Harvard University library catalogue notes the presence of over a hundred items featuring nigger in the title. The list includes Joseph Conrad's *The Nigger of the "Narcissus,"* Carl Van Vechten's *Nigger Heaven*, Thomas Carlyle's *Occasional Discourses on the Nigger Question*, Flannery O'Connor's *The Artificial*

Nigger and Other Tales, and Cecil Brown's *The Life and Loves of Mr. Jiveass Nigger*.

⁴²See, e.g., Stan Simpson, "In Defining the N-Word, Let Meaning Be Very Clear," *Hartford Courant*, November 3, 1997: "What would happen if a white friend were to come up to me and say [as does my black brother], 'Hey, Nigger! How are you doing?' Well, excuse my ebonics, but we be fightin'."

⁴³See Chris Rock, *Rock This* 20 (1997).

⁴⁴See, or rather, listen to, Chris Rock, "Niggers vs. Black People," *Roll With the New* (1997).

⁴⁵See Kevin Merida, "Spike Lee, Holding Court: the Director Talks Movies, Hollywood, Basketball, and, Oh, Yes, Controversy," *Washington Post*, May 1, 1998.

⁴⁶See Chris Rock, *Rock This*, 20 (1997): "Any black person can say 'nigger' and get away with it. . . . It's like calling your kid an idiot. Only you can call your kid that. Someone else calls your kid an idiot, there's a fight."; Larry G. Meeks, "Ethnically Speaking: Boy Should Know That Using Demeaning Names to Describe Own Race is Wrong," *The Detroit News*, June 4, 1997: "Almost every group has names that are only considered appropriate use by its members"; Michael Eric Dyson, "Nigger Gotta Stop," *The Source*, June 1999: "Most white folk attracted to black culture know better than to cross a line drawn in the sand of racial history. Nigger has never been cool when spit from white lips."

But see "Samuel L. Jackson Blasts Spike Lee for Criticizing Him for Using N-Word in *Jackie Brown*, *Jet*, March 9, 1998. Observing that some "black artists think they are the only ones allowed to use the word," Jackson responds, "Well, that's bull." Quentin Tarantino asserts that he is being unfairly attacked for realistically portraying the way that some people use the word nigger: "I am telling the truth. I would not be questioned if I [Tarantino] was black. . . . And I resent the question [being asked] because I'm white." Millner, "The N-Word for Whites, It's Still 'No.' And That's Not Bad Advice for Blacks Either," *Daily News*, January 11, 1998.

⁴⁷That this intuition is so powerful and, for many, so persuasive, indicates the extent to which antidiscrimination norms have failed adequately to grip popular opinion. In many contexts, we eschew the notion that racial discrimination can rightly be predicated upon sociological generalizations even if they are empirically sound. Hence, we do not allow life insurance companies to charge blacks and whites different rates even though, from the point of view of profit maximization, it would be quite rational to do so, since, in fact, whites tend to live longer than blacks. The law demands that insurance companies assess applicants solely on the basis of their individual records. The companies are not permitted to use racial proxies — statistical generalizations distinguishing racial groups en masse — as analytical shortcuts, even though doing so might be considered an efficient mode of proceeding that could produce savings for the companies and, by extension, savings for consumers. Yet in other areas of American life, public morality accedes to decision making by racial proxy. In the Southwestern United States, law enforcement officials prevalently act upon their view that apparent Mexican heritage is a useful proxy for an increased risk that a given suspect is engaged in the transport of illegal aliens. Throughout the United States, law enforcement officials prevalently act upon their view that blackness is a useful proxy for an increased risk that a given suspect is engaged in drug dealing. See Randall Kennedy, *Race, Crime, and the Law*, 136-167 (1997).

⁴⁸See Paul Brest, Foreword: "In Defense of the Antidiscrimination Principle," 90 *Harvard Law Review* 1 (1976).

⁴⁹*Dambrot v. Central Michigan University*, 55 F. 3d 1177 (CA 6 1995). See, also, Michael P. Pompeo, Constitutional Law — First Amendment — Athletic coach's Locker Room Speech Is Not Protected Under First Amendment, Even Though University Policy is Found Unconstitutional, *Dambrot v. Central Michigan University*, 55 F. 3d 1177 (6th Cir. 1995), 6

Seton Hall Journal of Sport Law 277 (1996). My understanding of *Dambrot* has also been enriched by conversations I have had with Professor Robert A. Sedler who represented Coach Dambrot on appeal.

⁵⁰See First Brief of Plaintiffs-Appellants-Cross-Appellees in *Dambrot v. Central Michigan University* at 6 (quoting Complaint of Keith Dambrot).

⁵¹*Id.* Coach Dambrot also said on one occasion prior to the locker room incident that his players should not be "niggers in the classroom." Questioned later about that comment, the coach said that he was trying to express his feeling that "you can't be aggressive, tough, hard-nosed in class, especially at a school like Central Michigan University where the faculty members don't understand a lot about black people or have many black people in class." 55 F. 3d at 1181.

⁵²First Brief of Plaintiffs-Appellants, *supra* note 50, at 10 n.4.

⁵³*Id.* at 11-12 n.7.

⁵⁴*Id.* at 12-13 n. 9.

⁵⁵*Id.* at 13, n. 11.

⁵⁶55 F. 3d at 1187.

⁵⁷Other coaches have used nigger in the way that Dambrot did. For example, testifying on Dambrot's behalf, Adele Young, an African-American basketball coach, maintained that "a coach is around the players seven days a week, nine months of the year. The players are a part of the coach's family. A coach can pick up the players' language and speech patterns without being aware of a change. . . . My players, both African American and white, use [nigger] freely as I do in the coach setting. When used in this way, nigger means a tough, hard player. Coach Dambrot understood the way players use nigger and when he used it, he used it the very same way they did." First Brief of Plaintiffs-Appellants, *supra* note 50, at 9. For a case in which a coach at a public high school was dismissed for using nigger, see *Holthaus v. Board of Education, Cincinnati Public Schools*, 986 F. 2d 1044 (CA 6 1993).

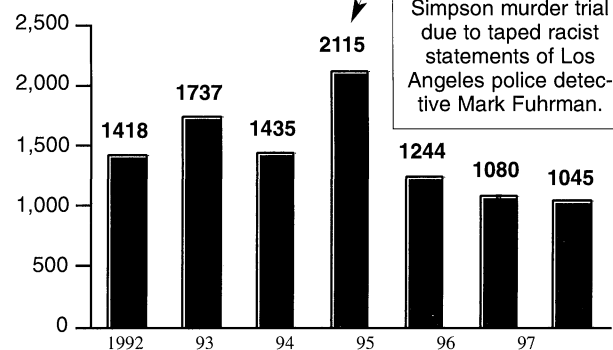
⁵⁸See *Pacific Gas & Electric Co. v. G.W. Thomas Dreyage & Rigging Co.*, 69 Cal. 33, 38 (1968) (quoting Arthur Corbin, "The Interpretation of Words and the Penal Evidence Rule," 50 *Cornell Law Quarterly* 161, 187 (1965)).

⁵⁹*Wood v. Lucy, Lady Duff-Gordon*, 222 N.Y. 88, 91 (1917).

⁶⁰*Towne v. Eisner, Collector of Internal Revenue for the Third District of New York*, 245 U.S. 418, 425 (1918).

The Declining Use of the Word "Nigger" in the World's Major Newspapers

Number of Times the Word "Nigger" Appeared in 70 Major Newspapers Worldwide



Source: JBHE analysis of the LEXIS/NEXIS database.