Cultural Daily

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The Arduous Ride(r) to Inclusion

Kathleen Antonia Tarr · Wednesday, April 25th, 2018

> *"It is important for the liberal to see that the oppressed person who agitates for his rights is not the creator of tension. He merely brings out the hidden tension that is already alive."*
> ~ Martin Luther King, Jr., Where Do We Go from Here: Chaos or Community? (1968)

Well. Since I am the one who publicly likened the Inclusion Rider to separate-but-equal, I should probably explain.

When Frances McDormand ended her acceptance speech at the 2018 Oscars with "I have two words to leave with you tonight, ladies and gentlemen: inclusion rider," the internet buzzed with inquiry. What these citizen researchers discovered is a stipulation screen stars might add to their contracts that requires a certain level of diversity among cast and crew for the productions to which they are attached.

Formally titled "Inclusion Rider" by a village that includes Fanshen Cox DiGiovanni (Pearl Street Films), Kalpana Kotagal (Cohen Milstein), Stacy Smith (USC Annenberg), and folks who said, "please don't say equity or diversity," its template posted March 19 to Cohen Milstein's website.

This Inclusion Rider overshadowed every effort before it to evolve celebrities' contract language to provide for equitable hiring of marginalized talent. P. Jay Sidney, who fought to help integrate television in the 1950s, probably engaged comparable appeals. I imagine as soon as stars used riders to guarantee blue M&Ms in craft services, there were people trying to convince them to leverage more important matters.

This Inclusion Rider also obscured industry unions' employment contracts that have for decades included nondiscrimination clauses (ergo with few exceptions, A-listers acting in film and television have long had nondiscrimination language attached to their contracts). The Inclusion Rider is not a new concept. However, just like research the Screen Actors Guild published on hiring data before doing so went mainstream, union contract efforts and decades of similar advocacy have been erased from the current conversation. It is important to remember these efforts in order to understand the history of what hasn't made a big enough dent in the inequitable hiring that is Hollywood.

Is the Inclusion Rider as destructive as separate-but-equal? No, if not just for the fact that it is not government's creation. Separate-but-equal is of course the doctrine that was eventually overturned

by the US Supreme Court that proclaimed race segregation was acceptable as long as those segregated received essentially equal treatment; it lived a long life of irrational justifications and left a wake of destroyed lives. While not rising to that level of devastation, the Inclusion Rider in its discriminations nevertheless also entrenches ideas that will harm a great many people while derailing efforts to evolve the entertainment industry (and all of us) to understanding that an individual's demographics are not indicative of their abilities.

We all shorthand. We draw swift conclusions based upon limited information. One of the inevitable misfortunes is that we discriminate against people who are not in fact what we imagine them to be. In employment, doing so because of race, gender, disability, color, etc. is illegal. Seems simple. In the entertainment industry, it is not remotely so.

A major challenge is enforcement. The public doesn't understand how the entertainment industry works, and as consequence, many judges and attorneys – as members of the public – don't understand either. They may think that the problem of underrepresentation on screen will be fixed when writers author more diverse characters (those scripts already exist). They might think that Hollywood is a meritocracy and folks just need more training (females graduate film school at equal rates as males but garner only 20% of the key decision-making jobs in the industry). They might profess that the First Amendment should protect Hollywood's artistic expression while even limited understanding of industry financing demonstrates that most greenlighting choices are commercial in nature (and there are plenty of existent limitations on free speech that demonstrate employment discrimination based upon race, gender, et al. is not a constitutional right).

The Inclusion Rider team laudably sought a way to reduce the impact of un-remedied discrimination and unequal employment opportunity in this landscape by drafting template contract language. However, there are challenges to the text, beginning with a number of concessions. The rider does not impact leads, instead only addressing supporting roles; the "White hero" is untouched. Also, in its version of the NFL's Rooney Rule (§ 3(a)), "The Director and Casting Director will audition at least one female and one person from any other under-represented group for all supporting roles." As data is collected, compliance with this clause will likely reveal that "one female" will preference White women, and "one person" from another group will most often be male. I can only guess how an underrepresented "other" feels being grouped in a singular category.

However, it is Section 4(a)(ii) that for me is truly cringeworthy.

Wherever possible, the Director and Casting Director will select qualified members of under-represented groups for supporting roles in a manner that matches the expected demographics of the film's setting (with a confidence interval of XX%).

This clause is the language of quotas.

In other nations, quotas are perfectly acceptable methods of proactively addressing employment discrimination and the challenges of underrepresentation and marginalization. In the United States, not so much (and by "not so much" I mean never). The obvious danger with quotas is that in attempting to remedy discrimination, they themselves can discriminate against people because of immutable characteristics. We live in a society that claims it seeks to avoid such harms. Measure by confidence interval further counters argument that this section is instead Affirmative Action. While certainly a noble effort to combat rampant discrimination in entertainment industry hiring,

the Inclusion Rider clearly attempts to portion roles which is a violation of US law.

Attempting to match a film's setting is also always a matter of biased perspective, further embedding discrimination. James Cameron's *Titanic*, for example, did not noticeably include any passengers of color although they were certainly aboard the real vessel. Would contract enforcement require historical research beyond the grossly limited state-by-state and nationwide data upon which this rider relies (§4(a)(ii))? Further, given that films are by definition fictitious, couldn't the supporting roles (and leads) be equally filled with fictions (i.e., equal employment opportunity)? This rider's use of the word "setting" privileges playing into the biases of audiences that may, for example, willingly suspend disbelief about the physics of two people floating on a door but not a Japanese passenger on one of the RMS Titanic lifeboats (in real life, Masabumi Hosono).

The only way matching passes legal muster is if demographic discrimination in casting is legal. Reinforcing that ideology obviously hamstrings the argument that it is not. It took too many years for courts to recognize separate-but-equal actually violates our Constitution, too many years to recognize anti-miscegenation laws violate our Constitution, and too many years to recognize same-sex marriage is a right under our Constitution. Why must we repeat this belabored process over and over again? Justice Kennedy in delivering the 2015 Obergefell decision noted "new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged." That assertion is simply untrue. Unjustified inequalities aren't unnoticed or unchallenged by the people experiencing the oppressions or their pro-justice accomplices.

As an accomplice and an oppressed – and as a member of the California Bar with extensive acting experience – I am telling you that Hollywood's inequalities are unjustified, and further that business-as-usual in Tinseltown should matter deeply to those who do not land on the privileged side of life in these United States. Media shapes thinking, and if you are feeling the burden of inequality, look to the screen to see one of the most influential reasons why.

It is wonderful that more of the "right" people have noticed that entertainment industry hiring is blatantly, painfully, and intersectionally discriminatory. It is terrific that those people are working on remedial steps we can take to overcome what at this pace – according to Geena Davis about female character parity – will take 700 years. However, this particular Inclusion Rider is not the answer.

Among its additional challenges is determination of compliance, charged only to Smith and based upon "the demographics of characters in the project, not the demographics of actors" (§ 8(a)). Where does blackface/redface/yellowface fall given that the characters are the only analysis? Anna Deavere Smith plays a number of roles in her one-person shows. Does *Notes From The Field* result in increased inclusion data based upon how many characters she portrays even though she alone acts all of them? While this Inclusion Rider is meant to increase acting opportunities for underrepresented people, those people are not going to be counted when determining compliance (what the Inclusion Rider doesn't do for off-screen positions is another article).

I wish pivotal sections of the Inclusion Rider had instead borrowed a bit more from the Americans With Disabilities Act, Civil Rights Act of 1964, and state equal employment opportunity laws to read **(which I offer to the public domain):**

Except where germane to the story, no character shall be predefined by race, sex, gender, age, physical or mental ability, sexual orientation, ancestry, color, religion, or national origin.
(a) Characters and the workers who portray them shall not be conflated.
(b) Affirmative steps must be taken to ensure equality of opportunity in all aspects of employment.
(c) Race, sex, gender, age, pregnancy, physical ability, mental ability, genetic information, sexual orientation, ancestry, color, religion, and national origin shall not constitute bona fide occupational qualifications for any worker at any stage of production, on or off screen.
(d) Requiring demonstrable comprehension of characteristics germane to a character and/or story as a condition of employment does not violate this section.
(e) Sales projections are not a defense to violation of this section.
(f) Nothing in this section shall be construed to supersede the Indian Preference under Title VII.

The goal I would think is to liberate us from the discriminations that follow us to our jobs, within the entertainment industry and without. Unfortunately, the Inclusion Rider more deeply embeds that which so many social justice accomplices have long fought against.

Image: Frances McDormand receives her Oscar and calls for an Inclusion Rider.

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