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6-17-1993

## Hackney, Sheldon: Humanities Chairman Nomination Hearing (1993): Correspondence 03

Sheldon Hackney

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UNIVERSITY of PENNSYLVANIA

AC  
reply

Office of the President

100 College Hall  
Philadelphia, PA 19104-6380  
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June 17, 1993

Captain Herbert Fox Rommel  
77 Bridge Street  
Newport, Rhode Island 02840

Dear Captain Rommel:

I can well understand the distress and incomprehension that press accounts of the racial harassment case involving Eden Jacobowitz have aroused. I suspect that nothing I say or do can correct all of the inaccuracies and distortions that have appeared in the media. I would only caution against assuming the worst of what is still a great University and believing everything that you may have read or heard about the case.

As you probably know by now, the case itself is over. The complainants have withdrawn their charges of racial harassment against Mr. Jacobowitz, and the matter is formally closed. (The final statements of all parties are enclosed.) During the weeks and months ahead, the University will continue to work with both Mr. Jacobowitz and the complainants to ensure that their academic and personal lives are normalized as quickly as possible.

However, for the Penn community as a whole, the hard work is only just beginning:

. First, there will be an inquiry to determine what went wrong in the handling of this particular case; it took too long, created an erroneous impression of "political correctness," and served neither the complainants, the respondent nor the University well.

. Second, the Charter of the Student Judicial System is clearly in need of a thorough review. Not only must justice be fair, but it should also be expeditious, particularly when young lives and academic careers are at stake. In addition, the one-sided media coverage that our current charter permitted is an obstacle to the fair handling of future cases.

. Finally, and most important, it is clear that no set of policies and procedures can by itself establish a workable framework for the kind of diverse, humane and supportive community we seek to create at Penn. Claire Fagin has announced her intention to make "community" the central issue of her interim presidency. We need to discuss and set forth the principles that bind us together as a community, and then make sure that those shared beliefs are clearly embodied in the policies that govern the University.

We will be announcing soon the ways in which we intend to pursue each of these three tasks. In the meantime, let me try briefly to put the events of the past few months into context.

First, it is important to keep in mind that the University was extremely constrained in its ability to respond to the recent media campaign launched against it. Federal law and University policy prevent me or other University officials from discussing the details of **any** case involving an individual student -- to protect his or her right to privacy.

Second, whether Mr. Jacobowitz, or any other student, has violated a University policy is not something that I, or any other administrator, determines or adjudicates, whether wisely or capriciously. The University's four undergraduate schools have adopted a judicial charter that generally provides an orderly process for the resolution of such cases. The courts have upheld the fairness of that process and Penn's right as a private institution to impose its procedures and responsibilities as part of the implicit contract between the institution and its students. It includes rights of appeal and review of proposed sanctions to protect any respondent from inappropriate punishment.

Though that process does not appear to have worked well in this particular case, the University had little alternative but to stand behind an established system of due process, knowing that whatever the appearance of silliness or "political correctness," there would in fact be ample means to ensure fairness if the process were allowed to run its course.

Much has been said in the media to characterize inaccurately Penn's policies regarding freedom of thought and expression. Let me state clearly that **Penn's only "speech code" is freedom of speech.** That principle is clearly stated in the University's Guidelines on Open Expression which assure the right of all parties to engage in constructive debate and consideration of even the

most repugnant ideas. Freedom of expression has been, and remains, the paramount value at Penn, and we are unwavering in our commitment to protect it.

One of the ways in which freedom of expression has needed protection in the special setting of the University community is to ensure that all members of that community are able to exercise their right to full participation in the intellectual discourse of the campus. Unfortunately, for some groups (including at different times in Penn's history, women, African-Americans, Jews, and political minorities), speech that is used **solely** to intimidate and harm can prevent such full participation in the "marketplace of ideas." This is a class of speech that the Supreme Court has held does **not** warrant constitutional protection, and Penn's very narrowly-drawn Racial Harassment Policy sets an extremely high test for any complaint to satisfy.

Of course, whether that test would have been met in this or any other case, I cannot say. That would have been up to a hearing panel of faculty and students to decide, with ample avenues of appeal if errors were made.

The Penn community is open, politically diverse, and engaged. We come together regularly to discuss and debate constructively the rules under which we live together. It seems clear that the time has come to do so again. The fact that Penn's policies have had unintended or unsatisfactory outcomes will be addressed rationally and carefully.

These are painful and emotional issues, especially when we feel that fundamental principles of our society or the academic enterprise are in dispute. However, I do hope that you will recognize that, regardless of whether the University's policies and procedures are right or wrong, effective or ill-considered, they were not adopted lightly, without debate, or without keeping foremost in mind the need to protect freedom of expression for all on this campus. The University, and I, remain deeply committed to that principle.

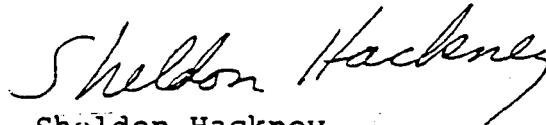
I am also deeply grieved by the distorted view this case has given many of this University. Penn is **not** the home of "thought police" or rampant "political correctness." It is a place in which all sides can and do debate controversial ideas. Members of our community generally do so without engaging in ad hominem personal attacks, racist or anti-Semitic hate speech, or other forms of intimidation that are inimical to both academic and inter-personal discourse.

June 17, 1993

Page 4

As those who were here in May for Alumni weekend and Commencement can attest, Penn's faculty and students, even those who disagree with me on some of the policies at issue, do not share the same sense of crisis and calumny that has been so much in the news. I hope that fact will give you pause and the opportunity to recognize that the worst that has been said about the University these past weeks is almost certainly not true. For that I would be grateful, as I am for your taking the time to express your concern.

Sincerely,

A handwritten signature in cursive script that reads "Sheldon Hackney". The signature is written in dark ink and is positioned above the typed name and title.

Sheldon Hackney  
President

Enclosure