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Hackney, Sheldon: Humanities Chairman Nomination Hearing (1993): Book Chapter 01

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Free Speech for Me— But Not for Thee

*How the American Left and Right
Relentlessly Censor Each Other*

NAT HENTOFF

1112

Aaron Asher Books

 HarperCollins Publishers

Driven from every other corner of the earth, freedom of thought and the right of private judgement in matters of conscience, direct their course to this happy country as their last asylum.

—SAMUEL ADAMS

We began well. No inquisition here. No kings, no nobles. No dominant church here, heresy has lost its terror.

—RALPH WALDO EMERSON

If large numbers of people believe in freedom of speech, there will be freedom of speech, even if the law forbids it. But if public opinion is sluggish, inconvenient minorities will be persecuted, even if laws exist to protect them.

—GEORGE ORWELL

Every time I criticize what I consider to be excesses or faults in the news business, I am accused of repression, and the leaders of the various media professional groups wave the First Amendment as they denounce me.

That happens to be my amendment, too. It guarantees my free speech as it does their freedom of the press. ... There is room for all of us—and for our divergent views—under the First Amendment.

—SPIRO AGNEW

Liberty wasn't guaranteed by the Constitution. It was only given a chance.

—STEPHEN CHAPMAN, *CHICAGO TRIBUNE*

Amendment, even though it was not legally obliged to pay it any attention. Therefore, said Gunther, the Wisconsin decision “deserves careful study.” Douglas Bone, a graduate student senator in the Associated Students, added: “I don’t think that Stanford should take away rights that are available to other students elsewhere.”

The student senate passed the bill opposing the “fighting words” restrictions on speech but the measure’s future is uncertain because it cannot take effect unless it also is approved by the Stanford Conduct Legislative Council (six professors, five students and the Dean of Students) that affirmed the original Tom Grey restrictions on speech. Whether the Grey interpretation is overturned or not, the incident at Otero Hall appears to indicate that many on campus prefer an open discussion of hurtful speech than its suppression by sanctions. In a November 1991 editorial, the *Stanford Daily* emphasized: “Hate speech is abhorrent—but freedom of expression must be maintained in a university.”

“We have ex-slaves in this class who should know about—and celebrate—the Thirteenth Amendment.”

Of all the stories I’ve covered concerning the ascent of the relentlessly orthodox on or off college campuses, one of the most dismaying has been the initiation into modern times of Murray Dolfman, legal studies senior lecturer at the Wharton School, University of Pennsylvania.

These events began in February 1985, but to this day, President Sheldon Hackney of the University of Pennsylvania says—through a spokesman—that Dolfman was treated fairly in view of his remarks in class which, the university points out, grievously offended black students.

At the time of the incident, Dolfman had been a part-time lecturer in the Legal Studies Department for twenty-two years. He is a practicing lawyer in Philadelphia but, as he has told me, he likes to teach. And he teaches so well that even the university committee that found him guilty of “offensive speech” noted that no previous com-

plaint had ever been made against Dolfman. It also noted that he was an "extremely popular teacher" with "outstanding course evaluations," and that students competed vigorously to get into his classes.

So what did Dolfman do to create a campus-wide demonstration against him—led by black professors and students—in which one distinguished black academic charged that Dolfman had turned his classroom "into a cesspool"?

What had Dolfman done to lead the university's Committee on Academic Freedom and Responsibility (strangely named in this case) to condemn him for behavior that should not take place at the University of Pennsylvania?

Murray Dolfman teaches the way Charles Kingsley (portrayed by John Houseman) taught in the television series "Paper Chase." He makes demands of his students. He challenges them. He will single out a student—of whatever color or creed—and drill him in a point of law or a section of the Constitution. If you come unprepared to Dolfman's class, you are in peril.

On the fateful day that was to make Murray Dolfman a pariah on the University of Pennsylvania campus, he was lecturing about personal service contracts. Dolfman was making the point that no one can be forced to work against his or her will—even if a contract has been signed. A court may prevent you from working for someone else so long as the contract you signed is in effect, but, said Dolfman, there can "be nothing that smacks of involuntary servitude."

Okay, said the professor, where does this concept come from in American law? Silence. Finally, a student screwed up his courage and said, "The Constitution?"

"Where in the Constitution?"

Silence.

Dolfman finally told them where it came from—the Thirteenth Amendment. "What does that Amendment say?" he asked.

No one knew.

Dolfman often tells his students, "We will lose our freedoms if we don't know what they are." He tried to bring in a personal note. As a Jew, he said, and as an ex-slave, he and other Jews begin Passover every year by celebrating the release of Jews from bondage under Pharaoh.

"We have ex-slaves in this class," Dolfman said, "who should know about—and celebrate—the Thirteenth Amendment."

Dolfman later told me, "I used that approach because I wanted them to think about that Amendment and know its history. You're better equipped to fight racism if you know all about those post-Civil War amendments and civil rights laws."

He started asking black students in the class if they could tell him what's in the Thirteenth Amendment. None could.

The Thirteenth Amendment, he said, provides that "neither slavery nor involuntary servitude... shall exist within the United States."

He asked a black student to stand and read the Amendment and to repeat it.

Four black students later complained to higher authorities that they had been hurt and humiliated by the way Dolfman had taught them the Thirteenth Amendment. They resented being called "ex-slaves." Furthermore, they said, why should they be grateful for an Amendment which gave them rights that should never have been denied them—and that gave them little else?

They had made none of these points in Dolfman's class.

Three of them later went to see Dolfman. He said he certainly had not meant to offend them and apologized if he had. He added that he should have said "descendants of slaves" rather than "ex-slaves." The students did not accept his apology.

Charges were filed, and university committees conducted a probe. One thing they came up with was that Dolfman had always taught this way. He had always zeroed in on students, not only blacks, to force them to think. But the university had to set an example—all the more since there were rising black-Jewish tensions on campus on other matters. A sacrifice was needed, and who better than Dolfman? He was part-time, without a contract, and without a union.

Dolfman's class was disrupted on February 13. Seven days later, there was a rally at which Houston Baker, Albert M. Greenfield Professor of Human Relations and director of the Center for the Study of Black Literature and Culture, declared:

"We have people here who are unqualified to teach dogs, let alone students, and they should be instantly fired."

Four days later, a vigil and rally took place in front of the home of the president of the university. According to the *Daily Pennsylvanian*, Professor Baker thundered: "We are in the forefront because some asshole decided that his classroom is going to be turned into a cesspool.... This administration is bull shit." To spell Professor Baker and other speakers, recordings of speeches by Martin Luther King and Malcolm X were played. And Ralph Smith, associate professor in the law school, declared, "Dolfman must go!" Both professors are black.

The Black Student League called Dolfman "a racist," adding "we will not be satisfied until we are convinced that actions such as those undertaken by Senior Lecturer Murray Dolfman will NEVER, NEVER take place again at this university."

University president Sheldon Hackney did not defend academic freedom, free inquiry, common sense, or Murray Dolfman. And Dolfman said to President Hackney: "If a part-time professor can be punished on this kind of charge, a tenured professor can eventually be booted out, then a dean, and then a president."

Having no epaulets that could be stripped from him, Dolfman had to make a public apology to the entire university. It was, he told me, a forced apology. He also had to attend "a sensitivity and racial awareness" session, sort of like a Vietnamese reeducation camp. But that wasn't punishment enough. He was exiled from the campus for a year. A good many of the faculty, black and white, was sorely disappointed. They thought he should be fired.

June Axinn, professor of social work and former Faculty Senate chairman, observed that the punishment was fair. "They found that Mr. Dolfman made racist remarks and was insensitive, and I hope an educational institution would find a way to educate him."

It is worth noting that, so far as I can find out, none of the law school professors, including those specializing in civil liberties, defended Dolfman. Nor did the liberals elsewhere on the faculty. If they had, they might have been called racists!

Nor, I might add, did the American Civil Liberties Union of Pennsylvania get involved. But other ACLU affiliates are likely to have defended Dolfman's free-speech rights.

I have left out one of the charges leveled against Dolfman. It was held against him that he had told a black student to change his

pronunciation from “de” to “the.” He also corrected the speech of white students, and had routinely instructed students to omit the repetitive “you know” from their ways of speech, and to get their hands out of their pockets when they talk. But it was the changing of “de” to “the” in the black student that offended the University’s Academic Freedom and Responsibility Committee.

When Dolfman was finally permitted to teach again, he took his students—as he had previous classes—to hear oral arguments in Pennsylvania’s Supreme Court. On that day, the diction of one of the lawyers was so bad—full of “deses” and “doses”—that the students found it difficult to concentrate on his argument.

When they were outside the courtroom, Murray Dolfman told the class, “Now you see why I stress the need to speak well.”

The lawyer in the courtroom who had been using all those “deses” and “doses” was white.

Later, when Louis Farrakhan was invited by black groups to speak at the University of Pennsylvania, the student newspaper urged that the invitation be withdrawn. President Sheldon Hackney demurred: “Open expression is the fundamental principle of a university,” he said.