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## Hackney, Sheldon: Humanities Chairman Nomination Hearing (1993): Speech 04

Sheldon Hackney

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**Authors**

Sheldon Hackney, Colleen Bonnicklewis, Ayanna Taylor, Nikki Taylor, Denita Thomas, Suzanne Jenkins, and Kim Morrisson

# Statements Made Monday, May 24, Concluding the 'Water Buffalo' Case

After three press conferences were held Monday, President Sheldon Hackney issued a statement calling the Jacobowitz case "over" and agreeing to "examine the procedures and see what went wrong." (See text below). The press conferences that led up to the statement were held by (a) the Vice Provost for University Life, who initially announced the decision of the May 14 panel to continue toward a hearing (see written statement page 6); (b) the women complainants, whose written statement of withdrawal and request for investigation appears below; (c) the American Civil Liberties Union on behalf of the respondent, Eden Jacobowitz, whose transcribed remarks are also below. Support statements for the complainants and the respondent appear on page 6.—K.C.G.

## President: Conclusion of Case, Plans for Review

The Eden Jacobowitz case has been a painful experience for everyone involved in it and for the University as a whole. We are all thankful that it is over. Now is the time for healing. Now is the time for getting back to our large task of building a humane community on campus.

The University of Pennsylvania has been working extremely hard to create and sustain a campus community that is inclusive and supportive to all its members. We seek a campus in which everyone is treated with respect, and in which the most vigorously free discussions of ideas and issues can take place. We will continue those efforts.

In pursuing that task, there are important lessons to be learned from the hurtful experiences of the past four months. We need to examine the procedures followed in this particular case to discover what went wrong. We need to review the Judicial Procedures as a whole and to restructure them so they work quickly and fairly. We need a thorough rethinking and campus-wide discussion of everything we are doing to promote a wholesome and mutually supportive campus community. Interim President Claire Fagin has placed the issue of "community" at the top of her agenda for the next academic year. We will be announcing soon the ways in which we intend to pursue each of the three tasks mentioned above.

— Sheldon Hackney

## Women Students' Withdrawal of Complaint

On January 13, 1993, during a traditional Founder's Day celebration which is sanctioned by, and common to the University, members of our sorority were subjected to a barrage of racial epithets and slurs. In an atmosphere of being called the "N" word and sexually demeaning words, such as words used to describe our anatomy, and a word used to describe a female dog, someone yelled "Shut up you black water buffaloes" and "Go back to the zoo where you belong." These words likened us to beasts and banished us from an intellectual environment to one more suited for animals, like the zoo. As African-American women, these words marginalized us, so we sought redress through the Racial Harassment Policy, which states in its preamble that "the use of certain words or symbols may constitute abusive behavior." The policy further states that such behavior is intolerable and not beyond reproach. We filed a grievance with the Judicial Inquiry Office with faith that the judicial process would run its course.

The respondent and his advisor chose to circumvent the process and try this grievance among students in the national media, making it an issue of Freedom of Speech and Political Correctness, while blanketing the real issue, racial harassment. Because we honored the University's confidentiality policy which precludes us from publicly responding, the coverage of this case, thus far, has been slanted in favor of the respondent. The media coverage deprived us of our right to an impartial panel, and therefore, a fair hearing. Realizing that justice could not be served, and in efforts to clarify our position, we have decided to formally withdraw our grievance.

In addition to being tried and hung by the media, we, the aggrieved, have been disappointed by a judicial process which has failed us miserably. At every phase of the judicial process, procedures were violated by members of the University community. The system in which we had faith has proven to be corrupt, which substantiates our belief that we would not receive justice. It is with this realization that we have asked the President of the University to institute a committee to investigate the corruption of the judicial proceedings of this case.

We were victimized on January 13th, further victimized by the media, and thereafter by the judicial process and agents of the University. Based on our experiences while in pursuit of justice through the Racial Harassment Policy, we have concluded that the system is not designed to protect our rights.

— Colleen BonnickLewis, Ayanna Taylor, Nikki Taylor, Denisa Thomas, and Suzanne Jenkins

[All of the signatories except Ms. Jenkins appeared at the press conference. With the women students, and speaking extemporaneously on their behalf, were Dr. Gloria Twine Chisum, vice chair of the Trustees and chair of the Trustees Committee on Student Affairs, and Dr. Houston Baker, Greenfield Professor of Human Relations and director of the Center for the Study of Black Literature and Culture. Dr. Peggy Sanday summarized a prepared statement, which appears in full on page 6.]

## Mr. Jacobowitz at the ACLU Press Conference

[A tape recording made by News and Public Affairs was transcribed in full, and the statements of Eden Jacobowitz and Professor Alan Kors were excerpted from it. Some sentence fragments and false starts were eliminated. Stefan Presser, legal director of the ACLU of Pennsylvania, opened the press conference at ACLU headquarters with, "... We are delighted that we are gathered here for what we certainly hope is the last chapter of the Eden Jacobowitz case. Just moments before this press conference began, we have received two letters from the president of the University. They are both very brief and I will simply read them. The first one states: 'The Judicial Inquiry Office informs me that, in light of the desire of the complainants to drop the charges against Eden Jacobowitz, the case is hereby closed.' ... Because we had some concerns about what the complainants were now calling on the University to do, having charged that there had been a corruption of the judicial process, and not knowing if they were now inviting the University to bring new charges, we have spoken to the President, who issues the following statement. 'The Student Judicial Code gives respondent, that is, Eden Jacobowitz, the right to speak about their case. Therefore, Eden Jacobowitz did not violate the process by making public statements.' ... Eden's going to follow up now; as far as we are concerned, the charges against this young man are finished.'"]

Eden Jacobowitz: I just wanted to say that I'm glad that the charges have finally been dropped, but this all could've been settled a long time ago when I asked, from the beginning... that I could meet with the complainants, and I asked that we could discuss the case, and I assumed that it would be dropped after we had a discussion, because apparently there were some misunderstandings. And I'm very sad that the case dragged on like this and ruined my semester and ruined the complainants' semester and made it very, very tough for us all to just, you know, be normal students. So, while I want to be upbeat that this is over, I have to make it clear that it hasn't been a pleasant situation for anybody involved.

What I want to clarify—this is very important to me to clarify—were the words that were said by the complainants that they heard. Now they heard, they said that they heard the "N" word; that has never been attributed to me, and I would never say that word. They also said that there was a word used to describe a female dog; I did not say that word. When it came to the statement that misinterprets my words, it says, "Shut up you black water buffaloes." I did not say, "Shut up you black water buffaloes." All I said was, "Shut up you water buffalo." I have made that clear on numerous occasions that all I said was, "Shut up you water buffalo." And, I have five, I have six witnesses who know that that is all I have said. All I said was, "Shut up you water buffalo," and "If you're looking for a party, there's a zoo a mile from here." I did not say, "Go back to the zoo where you belong." That's what it says on the statement over here. I did not say that, and I, and I very, very, fervently denounce that statement. I did not say something like that. I have six witnesses to that. Robin Read, the Assistant Judicial Inquiry Officer who had been in charge of this case, said/made that clear, that all I said was, "Shut up you water buffalo" and, "If you're looking for a party, there's a zoo a mile from here." She stipulated that fact, that all I said were what I've always claimed were my words.

It's very easy to understand why the complainants misinterpreted the words, because they were six floors down from where I was shouting; they were stomping their feet and shouting at the time, and other people were yelling out of their windows all these really inflammatory words; so it's very understandable to see why the complainants misinterpreted the words. And, you know, I'm not angry with them, and I still called to speak with them. I would still like to speak to the complainants, and let them know that I didn't mean anything racial when I said that. When I said the word "water buffalo," it's an animal reference, but that animal reference was only meant to describe the noise. It had nothing to do with the race of the complainants and I hope that I can speak with them and maybe, maybe we could even become friends after this whole entire situation.

[In response to query, Mr. Jacobowitz continued, "The real culprit here is the process. The case dragged on and on, and every single time the University had a chance to make the right decision and to drop the case, the case just dragged on further and made it even tougher for us to just continue a normal school semester." See page 6 for statements of Dr. Alan Kors and the Pennsylvania ACLU's Executive Director Deborah Leavy.]

Sent by Captain Herbert Rommel  
77 Bridge St. Newport RI 02840

## Statements Concluding the Water Buffalo Case (from page 3)

**Dr. Peggy Sanday at the Complainants' Press Conference:** There are many reasons why the complainants in the controversial "water buffalo" case have decided to withdraw charges against Eden Jacobowitz. One of these reasons has to do with their desire to inform the public about the nature of the racial prejudice they experienced on the night of January 13, 1993.

First, let it be said that all those at Penn involved in this case on the side of the complainants strongly believe that this case should not be confused with issues of free speech or political correctness. Free speech and political correctness have to do with *ideas*, not with *offensive conduct* interfering with the rights of others. All of us would agree with Chief Justice William H. Rehnquist who said in his recent Commencement speech at George Mason University, "[i]deas with which we disagree—so long as they remain ideas and not conduct, which interferes with the rights of others—should be confronted with argument and persuasion, not suppression."

We believe this case is about conduct. Taken out of the context in which it was uttered, the phrase "water buffalo" is not a racial epithet. Understood within the context of the overall incident, the phrase is offensive and demeaning to African American women."

The incident occurred the night of January 13th while the complainants and their sorority sisters were celebrating their founder's day on the lawn outside one of the High Rise dormitories at Penn. In the midst of their singing they heard shouts of "nigger," "bitch," and "fat asses" yelled from one of the rooms on the sixth floor. As they looked up they also heard someone shouting the phrase, "black water buffalo." This same person, later identified as Eden Jacobowitz, yelled at them to take their party down to the zoo. Although Jacobowitz was not associated with the other epithets, his comments were interpreted as racist because they turned the young women into beasts whose social activities were more appropriately conducted in a zoo rather than on Penn's campus.

From my perspective as an anthropologist, calling African American women "black water buffalo" reduces them to work animals and beasts of burden. Telling them they should socialize in a zoo not only doubles the reference to animality; it also ostracizes them from campus and marginalizes the legitimate social activity of their sorority. The young women who heard these remarks took them as fighting words and acting accordingly by identifying the source and reporting to the Police. They did so because they believed that their rights as outlined by several of the University's Policies and Procedures had been violated.

Seen in the broader American historical and cultural context, the incident of January 13th was undeniably racist. Throughout Asia, water buffaloes are the premier work animal and beast of burden upholding the domestic economy. The history of American race relations is replete with instances where Whites associated Blacks with the animal end of the "Great Chain of Being" and used this association to reduce them to work animals and beasts of burden. Indeed, as one well-known history of American attitudes toward Blacks shows, this association was one of the main rationales for the enslavement of Blacks.

Having entered the due process procedure at Penn, the young women respected the confidentiality restriction. Their actions throughout the process demonstrated their integrity and belief that the process would work for them. Regrettably, the integrity of the University's judicial proceedings was violated by the respondent's advisor who decided to take the case to the media and try it there. Regrettably also, the press delivered a verdict without hearing the other side. The pressure brought on the University by the media blitz caused the whole process to cave in. Deals were made in private to bring the process to an end. Refusing to buckle under this pressure, the complainants went through the hearing scheduled for May 14th.

Both at that hearing and in the subsequent press coverage it became clear to the complainants that they could not receive "substantial justice," as promised by the University's Policies and Procedures. They feel fully justified now to tell their story to the general public, hoping that some small gain of understanding the plight of African American women might be achieved.

The breakdown of this case raises troubling issues for those working toward the goal of tolerance and civility in the diverse environment of contemporary campus life. While we can all agree on the importance of the free exchange of ideas, this case shows that we cannot agree on where fighting words end and free speech begins. Until we can determine the fine line between the two, the current all-out verbal warfare and abusive atmosphere that plagues so many of our campuses will continue.

**Dr. Alan Kors at the ACLU Press Conference:** I can confirm Eden's statement that it had been agreed upon after investigation by the Judicial Inquiry Officer and stated to Eden in front of his first advisor, a member of the administration, who twice confirmed this, to me by telephone, the second time just a few days ago, that it was understood that Eden had never uttered any other phrases than the phrase, "Shut up you water buffalo" and in response to a line about a party, "If you want a party, there's a zoo a mile from here." [Unidentified voice: "Understood by whom?"] That it was understood by the [JIO] after weeks of investigation, after discussing it with all relevant witnesses and before reaching her finding, after weeks, it was stated to Eden in front of his first advisor, a member of the administration, that Eden did not say, "black water buffalo," that he only had said, "water buffalo" and "If you want to party, there is a zoo a mile from here." And that had been confirmed to me twice, by the member of the administration, to whom, as late as last week, that that had been confirmed to me that the Judicial Inquiry Officer, after weeks of investigation and after talking to the relevant witnesses, had agreed that all Eden said was "water buffalo," that he had never said "black water buffalo." With Eden, I can understand what may have been the confusion of that evening, with a large number of people shouting things down, but that had been agreed upon.

Secondly, on the issue of choosing to circumvent the process, the University's own Judicial Charter gives the respondent the absolute right to comment upon a case and says if the respondent comments upon a case, anyone who believes himself or herself impugned by that, has the right to reply. The confidentiality is there to protect the respondent and the Charter explicitly states that no one except the respondent may comment about a hearing or a proceeding. In terms of my own discussion of the case, I refer you all to the University's Guidelines on Open Expression in which Principle I.A. states that "the freedom to voice criticism of existing practices and values are fundamental rights that must be upheld and practiced by the University in a free society." Which seems to me, profoundly correct. And Section I.D. of Principles, "In case of conflict between the principles of the Guidelines on Open Expression and other University policies, the principles of the Guidelines shall take precedence." The University is not the Nixon Whitehouse and members of the University community have the right to comment upon the policies and procedures of the University and to criticize those.

[Mr. Presser: "If we could just have one last statement . . ."]

**Deborah Leavy:** We are grateful that the case against Eden has been dropped. But the case involving the University of Pennsylvania remains and now we call upon the University to repeal its hate codes, its hate speech code. Eden has been punished. Make no mistake about it. Even without the judicial inquiry going its full course, even with the charges being dropped, Eden has been punished, and other students will be punished and their speech will be chilled because they, too, can now be afraid that their remarks might be misinterpreted, their words will be held up for examination and determination by the University about whether they are, whether they should be punished. This cannot be in an academic society. This cannot be in our society, because the values of free expression are too dear to us and too important to us and the hate speech code is the problem. There was a question earlier, "Is the process the problem?" The process is only part of the problem. There were lots of problems with the process, but the real problem is the hate speech code and until Penn gets rid of the hate speech code, every student at Penn can fear going through what Eden went through and that is too much punishment and too much chilling of speech. It has no place in an academic community.

**VPUL Statement on the Panel Decision [made prior to the dropping of the case as shown on page 3, but included for the record]:**

Today I have received the faculty-student judicial panel's report, which is required within ten days of a hearing. In the report, which was limited to procedural issues relating to a motion for dismissal of the charges:

- The faculty-student panel denied Eden Jacobowitz's request for dismissal, believing that the case should be heard. It noted that the hearing could not be held May 14 because of the inability of the respondent and the complainants to fully prepare.

- The faculty-student panel recognized the value of an early resolution to the case, but also that it may be inconvenient for the students, their advisors and witnesses to come back to campus during the summer for the hearing. The panel calls for the hearing to be held as soon as possible, but no later than early in the fall semester. (September 9 is the first day of fall classes.)

- The faculty-student panel requested that the individuals involved in the case respect the confidentiality of judicial proceedings, realizing that unfairness can result from selective disclosures, partisan representations, and the inability of some, under the Charter, to respond to such disclosures and representations.

Consistent with the Charter of Penn's student judicial system, the University will not release the panel's report or the names of the panelists. The charter requires confidentiality regarding identities of individuals involved in matters being considered by the Judicial Inquiry Officer, records, files and testimony. The Charter's provisions are in accordance with University guidelines concerning the confidentiality of student records pursuant to the federal Family Educational Rights and Privacy Act of 1974, as amended (commonly known as the Buckley Amendment).

We recognize the hardships that have been suffered by all the students in this matter and hope that a fair and expeditious resolution of this process will allow them to return to their goal of continuing their educations.

—Kim M. Morrisson, Vice Provost for University Life