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5-4-1993

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Recommended Citation

"Hackney, Sheldon: Humanities Chairman Nomination Hearing (1993): News Article 57" (1993). *Hackney, Sheldon: Humanities Chairman Nomination Hearing (1993)*. Paper 87.
https://digitalcommons.uri.edu/pell_neh_I_29/87

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Rough justice at Penn

Just how bad is it to be called a water buffalo? At the University of Pennsylvania that's the hottest question on campus. Now university President Sheldon Hackney knows how it feels. In recent days, Mr. Hackney, who is also President Clinton's nominee for chairman of the National Endowment for the Humanities, has been called just that by a lot of students at Penn.

The reason, of course, is the growing outrage over the treatment accorded freshman Eden Jacobowitz, who stands accused of breaking the university's racial harassment speech code. His crime: to shout out in frustration in the dark of the night at a group of noisy sorority sisters who were keeping him from studying, calling them "water buffalo" and inviting them to go make noise somewhere else.

For this offense, which happened in January, the university decided to prosecute Mr. Jacobowitz according to the letter of the law. Actually, he was offered an alternative by campus judicial inquiry officer Robin Read. If he admitted to being a racist, the university would let him off the hook, insisting only that he apologize, take a racial sensitivity seminar and accept the fact that his record would be forever marked.

As Mr. Jacobowitz refused, the university took a course against him that in itself can only be called judicial harassment. As requested by Mr. Jacobowitz and his counsel, history Professor Alan Kors, a hearing was scheduled — for April 26, four months after the event. It was the "only possible date," insisted judicial administrator John Brobeck. Of course, it also happens to be right in the middle of exam preparations and finals time. It ruined his exams, but Mr. Jacobowitz did prepare himself and he did find some 15 to 20 witnesses among students and faculty to testify on his behalf. Among them were leading black and Hebrew scholars, who testified that no one had ever heard of "water buffalo" being a racial slur; it was most likely a literal translation of the Hebrew word "behameh," which colloquially can mean a fool.

On the preceding Friday, however, that "only possible date" was canceled. Mr. Kors was told it was because the black students had no representation. More likely, however, is that they were told by their advisers that they would have no case. In any event, as university officials stewed over the publicity the case had attracted, they decided to postpone the hearing "indefinitely." It left Mr. Jacobowitz and his future dangling — and, not coincidentally, Mr. Hackney hopefully free of the adverse publicity it would attract during his Senate confirmation hearings for the NEH chairmanship.

That tactic didn't work. The publicity hasn't subsided, and the university appears to have had a change of mind again. Mr. Brobeck yesterday offered a new hearing date of May 14 to Mr. Kors. By that time, most of the witnesses testifying for Mr. Jacobowitz will have dispersed, their work and their exams done. Some offer, that. Unless the decision is made to dismiss the whole sorry case on that occasion, a grave injustice will have been done.

Martin Dias, a senior and former president of the Black Student Organization, perhaps put it best in an interview with The Washington Post: "Black students have a lot of problems in this school. If someone calls me a water buffalo, I give them the finger and walk." A sensible solution, one would imagine, one that fits the offense and the context. Instead of leaving students to trade such words and gestures in the night, as will happen when they live closely in dorms, the university absurdly has elevated the case to a matter of principle, given short shrift to the First Amendment, wasted its resources, and — not to forget — ruined an entire semester of a young, eager freshman's career.

Whether or not Mr. Jacobowitz is given a hearing on May 14, whether or not the case is dismissed, it will surely be necessary for Mr. Hackney to explain the university's conduct in this matter before the Senate Labor and Human Resources Committee when his confirmation hearing comes up.