

U.S. COMMISSION ON CIVIL RIGHTS

BRIEFING ON RELIGIOUS CIVIL RIGHTS ISSUES

January 14, 1994

Chairperson Berry. I would like to call this briefing to order. I welcome all of you on behalf of Commission. I will introduce everyone in terms of describing your activities, and then I will just call on you briefly according to the order you have already been given for the record.

Dr. Azizah al-Hibri is professor of law at the University of Richmond. Professor al-Hibri will talk about religious civil rights issues of particular concern to Muslims in the United States. She is an Islamic scholar, an expert on religious discrimination, founder of the Muslim American Bar Association, and serves on the board of the American Muslim Council.

Reverend Richard John Neuhaus, Father Neuhaus, is president of the Institute on Religion and Public Life, New York City. Reverend Neuhaus will address the role of religion in American life today and issues deriving therefrom. A longtime advocate for civil rights and religious freedom, Father Neuhaus' public stands and published works have earned him many honors and awards. Formerly the Lutheran pastor of a low-income black parish in Brooklyn, he is now an ordained Roman Catholic priest in the New York Archdiocese.

Barry W. Lynn is executive director of Americans United for Separation of Church and State. Mr. Lynn will address key separation issues that he believes warrant the Commission's attention. Formerly a lawyer of the Washington, D.C., staff of the American Civil Liberties Union, Reverend Lynn is an ordained minister in the United Church of Christ, an expert on the first amendment and religious liberty, and a frequent guest on national TV talk shows addressing this topic.

Mr. Meyer Eisenberg is chairperson of the National Civil Rights Committee of the Anti-Defamation League of B'nai B'rith. Mr. Eisenberg will provide us with a status report on acts of religious bigotry and discrimination committed against Jews and other religious groups in the

United States based in part on longitudinal data that ADL has collected. He will also address religious dimensions of current racial and ethnic tensions. He is a partner in the Washington, D.C., law firm Reid and Priest and has played an active role in organizations interested in strengthening civil human rights.

Finally, Dr. William Scott Green is the Philip S. Bernstein Professor of Judaic Studies of the University of Rochester, and for the past 10 years he's been editor of the *Journal of the American Academy of Religion*. He has been asked to note important points that may have been overlooked during the briefing, that is, if anybody leaves anything out, and will also share his views on the nexus between education and religion.

We welcome all of you again. Let us begin the briefing with Dr. Azizah al-Hibri, according to the order.

Dr. al-Hibri. Thank you. I would like to thank you all for the opportunity to be here with you today to talk about the growing pain of the American Muslims in the United States. This is the first opportunity I know I've had of this sort.

I can start this presentation by actually giving you some examples of bigotry and discrimination against Muslims ranging from the corporate workplace to the Army to academia. I notice many of you are law professors or professors in general, so you would appreciate these examples. But I would rather use those few minutes with you, and they are few in terms of what I want to tell you, discussing instead the ways by which constitutional protections for the free exercise of religion, which is guaranteed to everyone in this country, have been taken away from the American Muslim citizens.

The American Muslim community consists of two constituencies. This is important to understand. We have two branches or two groups: the indigenous population, usually it is African American—actually it's one of the earliest Americans

that arrived in this country; we all know the history; second, an immigrant group, which is also the color of the rainbow.

Neither group so far has been an integral part of the power structure in this country, whatever that term means. Consequently, the voices of authority that we hear discussing Islam in this country have been predominantly non-Muslim voices. You can really notice it in academia where you have a lot of Islamic studies departments and you look around and there are a lot of Muslims who graduated from Ivy League schools, from Islamic studies departments, who are sitting without jobs, and everybody else is teaching the courses. It is also true in the field of communication. It is also true in the field of law.

Let me give you, therefore, some sort of a view of what the problem is for the Muslim American community and go on from there. The problem is because these voices that speak about Islam are non-Muslim, they have tended to distort Islam—maybe out of bigotry, but also maybe out of ignorance for lack of contact with the Muslim civilizations around the world.

The important part about that is whatever the American populace is learning about Islam is not coming from Muslims, it is not accurate, and it's having its repercussions. In the meantime, because of the description I gave of the Muslim community being African American and also immigrant without much access to the power structure, they haven't had their own voice effectively. They haven't been able to speak for themselves, and therefore they haven't had fair access for a rebuttal. That is really the basic part of the problem.

By the way, for this reason I have handed out a couple of articles of mine. I'm sorry I'm biased to my work.

One is general, about Islam and democracy. I particularly wanted to send you that because of the whole issue now and the claims we hear about Islam and the fact that it is opposed to democracy, whatever that means.

The other one is about family planning, and it's just a simple, short article which sort of gives you an idea about the relationships and what the status of women in the family is.

What is the result of this kind of misunderstanding that is being heavily propagated in mass media and elsewhere in this country? What has resulted is that the people who actually have the power to name Muslim Americans are not Muslim. So we are starting to hear things like "fundamentalist," "political Islam," "Islam terrorism," all of which really have a very high cost on our civil rights, and I will explain that to you very quickly.

First of all, I point out the absurdity of these names. It is especially absurd to call the kinds of groups that are being referred to in the media as Muslim fundamentalists. If you know the history of the term in Islam, a fundamentalist is somebody who is a very serious thinker, who actually goes to the fundamentals of the religion and studies them before giving an answer. So actually it's a scholar and it's a term of honor. This whole thing has been reversed, and now a fundamentalist is somebody who is very narrow minded, who is violent, etc., etc. And actually the irony of it is that the Muslim press in other parts of the world has started using the word "fundamentalist" in the Western way.

What is the problem with the term "political Islam"? What is political Islam?

We hear of political Islam; we hear, for example, of an Islamic nuclear bomb; we hear of a lot of things that are Muslim, things that we never thought had religion before. And let's think about that. When we are talking on the news, for example, about the problems in the former Yugoslavia, we speak about the Bosnian Muslims and then we speak about the Serbs. But we don't say the Christian Serbs. And we don't speak about the war in Vietnam, for example, as a war between the Christian Americans and, for example, the Buddhist Asians. We don't speak in those terms. But when it comes to Islam or a group of people who are Muslims, we tend to bring out the fact that they are Muslims, and whatever views and actions they take, we tie back to Islam and make Islam responsible for them, and that's another way of distorting the image of Islam in this country.

By the way, while I am at it, in talking about political Islam, I would like to mention to you an article that came out in *Foreign Affairs* in the

summer of 1993 by Samuel Huntington of Harvard called "The Clash of Civilizations."

In that article, essentially this gentleman analyzes world history in the future as being composed of two forces, the West, and then on the other side what he calls the Islamic-Confucius connection. I think you can imagine what he means.

But it's really very interesting. He says, "there is a fault line between the civilizations which will be the battle lines of the future." I'm reading from his article. It's a very serious article in terms of its implications and has generated a lot of talk and conversation and writing among the West and also in the American Muslim community.

The problem with it is he can't decide whether it's a religious shift or fault line or a cultural one, but it doesn't matter because he's going to blur the two and he's also going to say that there is an opposition and not a harmony. In his case, what I see as a feminist is that patriarchy has run amok, and he is into opposition as opposed to cooperation and harmony.

But that, you see, comes back to really affect the status of Muslims in this country when they are being told that what they believe in is antagonistic and antithetical to the Western civilization in which they live. In other words, somebody like me ought to be a schizophrenic, because I'm a Muslim and I'm also an American and I'm proud and happy to be both, and I really don't see myself being torn by it, but I'm being told that I ought to be torn and I ought to have problems.

There are some other more serious things to consider when we are talking about Islamic terrorism. Again, why do people engage in terrorism? They are not only Muslims. We've seen it all over the world as a phenomenon, and it is usually a political phenomenon with political roots and economic roots, but when we are talking about Muslims who are engaging in it, it has to be Islamic terrorism.

We have seen all of that in the media, but I would like to show the many levels of insensitivity to the civil rights of the Muslims in this country by quoting from what was a very shocking report for me to read, the Task Force on Terrorism, Unconventional Warfare, and that's the House Republican Research Committee. It is not a

partisan point I'm making, but it is the report that I have seen. I would like to read one paragraph from the first page and a couple of sentences from elsewhere in the report.

In the overview, the very opening statement—that report, by the way, is dated February 1, 1993; it is not ancient—it says, "Since the fall of 1992 there has been a significant increase in Islamist terrorism, subversion, and violence in such diverse countries as India, Pakistan, Israel, Egypt, Jordan, Algeria, Nigeria, Somalia, and many others." Despite the different circumstances of these incidents, the report tells us, they do not appear to be isolated events. Rather, they are "the first incidents in the escalation of an Islamic Jihad"—a word the media loves to hear; they don't understand what it really means—"against the Judeo-Christian world order."

Did you know there was such a thing? The Judeo-Christian world order? That's what the Islamists are fighting.

And he goes on to say, "The climax of this struggle could well be an increase in terrorism throughout the West."

By the way, the whole report is entitled *The New Islamist International*. I ask you to take the word "Islamist" out and put some other religion in there and see if you do not feel unhappy, if you do not feel very uncomfortable with the racist and also the antireligious bigotry that is reflected here.

In another part of the report it says, after the Gulf War—the Gulf War, by the way, for those of us who forgot, and I don't think many of us have, the U.S. was the ally of Saudi Arabia, Kuwait, and a majority of Muslim countries who fought in that war to bring the status quo back. Here is the analysis in the report: "After the Gulf War the Islamists sought to capitalize on the widespread communal shock and humiliation suffered by the Muslims." So if you didn't know it, that was a war against Muslims, and we won it, and also Muslims fought in it to win it.

By the way, the American Muslim Council wrote this guy and said, "What do you think you're doing?" It's two guys, actually. And "We don't think this is accurate analysis and we think it's bigotry," etc. They didn't recant. Some members of the commission resigned, as a matter

of fact, because of this. But the people who wrote it actually said, "Well, this is a work that has taken us several years to research." Well, bigotry could be scholarly too. That's what I would like to point out.

So this campaign, whether it is of ignorance or malice, has really had its impact in real life. It has taken its toll on the Muslims, and I am here to quickly brief you on the cost.

For example, the Muslims in America have suffered a great deal in terms of respect. I think you are all aware of that. When you talking about a Muslim, the first image that comes to your mind is not positive, and in fact the American Muslim Council commissioned a poll and the poll revealed that the Muslims are the most negatively thought of religion in this country.

The second cost is equal opportunity in the workplace. There are problems for Muslims in obtaining jobs, and I have a lot of cases that one could talk about. But in particular women suffer. Women who choose to cover their head: suddenly this is extremely controversial, covering one's head, but it's okay to uncover one's legs or top or whatever you please, but the head is very important because that goes directly to the brain. So if somebody is covered, the chance is she is not very smart.

They either do not hire her, or if they hire her, they put her in the back room because they cannot really allow people to see that they are hiring such backward people. Plus, I was told by somebody only yesterday in my office that she was told that, "If you would like to cover, fine, but you should understand"—she was an accountant—"that as such there are certain jobs you are blocked out of outright," at least in the town in which this was taking place. For example, banking, where it tends to be very reserved and formal.

Not only do they not get the jobs; they have difficulty retaining them once they are in. I have seen a lot of cases, some sad cases. One of them now somebody did a writ to the Supreme Court trying to pursue this matter further. Others who have been denied tenure. As professors here you'll understand how important denial of tenure is. And the problem I see in many of these cases is that it's very much like what the women used to

suffer from in the past, and the reaction is very much like the reaction of the women in the past: "Is it me or is it them?" Because the victim always wonders: "Maybe it is me; maybe I can blame myself." But in fact we are seeing too many of these cases and we understand this whole syndrome.

Chairperson Berry. Dr. al-Hibri, you have to bring your presentation in the next 2 or 3 minutes to a close.

Dr. al-Hibri. All right. I will try that.

There is a lot of hostility towards Islamic institutions. We've seen demonstrations against mosques; we've seen worries about Muslims covering their heads, because we are told that means they are fundamentalists; Muslims who want to pray are also being looked at as if they are terrorists. In other words, the whole distinction between political dissension or terrorism, or whatever, and religion has been blurred so that in this case Muslims are not covered by the constitutional protections of being able to practice their religion freely, because now they are looked at as political types and not as religious types. There have been physical threats and there has been also denial of equal justice in the courts.

The community has been very alarmed. They are very alarmed about some of the FBI visits. In fact, some people have prepared brochures of what to do if the FBI comes to your house. A lot of them are very concerned about the history of this country in terms of this kind of bigotry, which is not protected by the Constitution, in particular, what happened to the Japanese Americans in this country. I've actually heard Muslims who told me that not only are they worried about that experience, but in the Gulf War they're even aware of camps and they know in which State they were prepared so that if the Gulf War had continued any longer they would all be shipped to it. Whether it's true or false, that should give you an idea of the extent of alarm and feeling of oppression in the Muslim community.

What I would like this Commission to do for us is to help us open up the doors, open up the windows, let the sun shine in, and let the Muslims get into the power structure so that from here on they can speak for themselves, and they can really

say what they are about instead of having somebody else who doesn't know them or doesn't like them speak on their behalf.

Thank you.

Commissioner Fletcher. Where can one pick up that report?

Dr. al-Hibri. The task force?

Commissioner Fletcher. Yes.

Dr. al-Hibri. I will try and make a copy for you here through Mr. Rivera.

Chairperson Berry. You mean the one from the Republican committee?

Dr. al-Hibri. Yes.

Chairperson Berry. We can have our congressional person get it for us if it's a congressional report.

Dr. al-Hibri. There is also correspondence in response to it, which I don't know if he would have. I will Xerox the whole thing for you.

Chairperson Berry. I want to thank you, Dr. al-Hibri. You and other members of the panel will have a chance in exchanges with the Commissioners once you've given your briefing to continue the discussion. This won't be your last opportunity to talk. We would just like everyone to make an opening statement. I didn't put time limits, because I don't want to do that, but we do want everyone to have time to make an opening statement.

Now we will go to Father Neuhaus, please.

Father Neuhaus. Thank you. It's a great privilege to be here, and I'm glad the Commission is taking up the question of religious discrimination. I will try to be relatively brief and perhaps in a shorthand manner make some rather large propositions which then, as you suggested, can be explored later in the give and take.

I am struck by the fact that the U.S. Civil Rights Commission in all of its constituting literature, charter, and statement of jurisdiction the phraseology is regularly color, race, religion, sex, age, handicap, or national origin repeated again and again. And I would suggest to you that the curious aspect of this is that the U.S. Civil Rights Commission and the very important State commissions, I think we could agree, have not been publicly conspicuous for their attention to religion. They certainly have been, and rightly so, with

regard to color, race, sex, age, handicap. And this, I take it, is a moment of opportunity for the Commission to reflect upon its constituting mission and to say how do other facets, and particular the facet of religion, work in here.

Let me make one more conceptual, even, if I dare use the phrase, philosophical statement with regard to the role of religion and then address some very specific issues where the question of religion becoming rather than it is in the first amendment the first liberty, the first right that is named in the first amendment is the free exercise of religion. It is first in place and it is first in logic, for it is the source and it is the shield of all other understandings of rights. Every understanding of rights is premised upon a notion that is religious in character, namely, that rights are bestowed not by the state and therefore cannot be taken away by the state but are bestowed by a higher authority. So first in place and first in logic, religious freedom.

There is one clause. Among constitutional scholars, it is not by any means unanimously agreed, but I think it very important to advance the proposition that there are not two religion clauses, although frequently people speak about an establishment clause and a free exercise clause. I think this is conceptually a great mistake with some very unhappy consequences that we have witnessed over the last 40 and 50 years in which the Supreme Court itself has again and again quite candidly said it's in a total muddle about how to deal with the religion clause.

Part of the confusion is that people talk about two clauses. Grammatically and logically, it's one clause: Congress shall make no law regarding the establishment of religion or prohibiting the free exercise thereof. It's one clause grammatically, and it's one clause logically, namely, how do you preserve the free exercise of religion? That's what the purpose of that clause was. The only reason for the no establishment provision was that if you had a federally established church it would violate the free exercise of religion. Free exercise of religion is the value being preserved there.

I'm glad to see that at the recent signing by President Clinton of the Religious Freedom Restoration Act, frequently called RFRA. In any case,

as you know, following the *Smith* decision, the so-called peyote decision, the Congress acted through the Religious Freedom Restoration Act and President Clinton signed it.

I think his remarks at the signing were some of the most astute observations. I wish that all activists and courts understood as clearly as the President indicated that he did that the purpose of the religion clause is not to protect the government or public life from the influence of religion; the purpose of it is to protect religion from interference by the government. It is in its entirety a clause that is aimed at limiting what it is the government can do with respect to this most fundamental primordial of human rights, the right to the free exercise of religion.

What has happened—and this is a process that can be traced to the late 1940s; I think most scholars would—is that we have had what I've described as an inversion of the religion clause. So the two provisions of the religion clause, and here I quote Chief Justice Warren Burger, in his retirement—he said they had been turned on their head. I think it's exactly right. So that many people view the religion clause as primarily the no establishment provision, namely, you've got to keep radically separated, a wall of separation, to use a phrase, which is not in the Constitution, it's always important to emphasize, but is a phrase from Thomas Jefferson in a letter to some Baptists. This wall of separation must be preserved.

The whole idea, as Chief Justice Burger pointed out, and as I think is indicated also in the remarks of President Clinton at the signing of the RFRA, has been turned around. So instead of religion being given a privileged status by virtue of the religion clause, religion has become a disability, so that wherever there is an aspect of religion it's viewed as something that must be excluded from the public square.

To put it differently, a certain version of the separation of church and state, again a phrase that is not in the Constitution although it's inevitable in our history now. A certain version says that wherever there is a touch between religion and government, this is a constitutionally prohibited establishment of religion. Wherever there is a cooperation between religion and government, it is

a dangerous and unconstitutional establishment of religion.

I put to you that this is a gross distortion of what the Constitution actually says and what indeed has been most of our jurisprudential history and what I think there is good reason to believe the Supreme Court is going to be moving to remedy.

But this Commission has a role in this. Because, you see, if one subscribes to the notion that wherever religion and government meet you have a prohibited establishment of religion, then it's religion that has to retreat, the consequence being that wherever government goes religion has to retreat, religion has to get away.

The end result at the end of the 20th century is the government goes almost everywhere, so that increasingly the result is what I have described in a book by that title, the naked public square, namely, whatever is defined as the public square or as public space is denuded of religion or religiously based morality.

This has enormous practical implications in areas of education, social welfare, health, a whole broad realm of areas. We have to rethink both philosophically and conceptually and also in terms of specific public policies the very unhappy state in which we find ourselves.

RFRA reestablished a compelling state interest test with respect to instances in which the state may override a claim to the free exercise of religion. I would hope the Commission would take RFRA as an institutional invitation to really move into this area, the third area historically named in your concern and your jurisdiction, color, race, religion. Really move, because RFRA invites you to do that. It invites you, for example, to examine and monitor, police, if you will, very carefully how RFRA is actually applied in courts now. There are going to be a lot of cases coming up in the States and also at the Federal level.

It says that the state must demonstrate a compelling state interest to override a religious free exercise. That compelling state interest in the past has often just been any state agency saying "we have a compelling interest, so the heck with your religious freedom." It has to be more than that. A compelling state interest has to stand to trial

proof. There have to be witnesses; there has to be evidence. That would be a new thing. And it seems to me that the Commission on Civil Rights is ideally situated to propose this and to monitor whether indeed it is done with great care.

Also, the RFRA, the new law, says that the state, if it really does have a compelling state interest, has to exercise that interest in the least restrictive manner, that is, in a manner that least impinges upon the right to religious freedom. That, too, needs to be put to trial test criteria, it seems to me, and your Commission can play an important role in that, demonstrating throughout that conceptually and practically the government is not making an exemption for religion. Religious free exercise is not an exemption; it's a right. Very big difference there. It's not a privilege extended by the government; it's a limit constitutionally imposed upon the government. Big, big difference, and it has too often been treated as an exemption, as a privilege that the government can either respect or withdraw at its convenience. When I say government, I mean at every level of government.

Let me mention a couple of very specific things. That's the conceptual kind of ways. Specifically, we are getting into an area in the last few years of heightened tolerance, and I think dangerously heightened tolerance, of overt and gross religious bigotry.

You mentioned with respect to Muslims in America. With respect to evangelical Protestants, generally under the highly partisan political rhetoric about "the religious new right."

With respect to anti-Catholicism. In the last year we have had some rather astonishing instances, it seems to me, by high public officials in these several respects, of religious bigotry overtly and rather viciously expressed and not censured. It seems to me the Commission should be on the outlook for this.

Let me move in the area of education, the things that need to be attended to. Our religious schools, Jewish and Christian mainly, are seriously imperilled today in terms of respect for religious freedom. It's happening not because people are attacking Orthodox Jewish schools as such or Lutheran schools or Catholic schools or whatever.

It's happening in an insidious way where especially at the State level, States are moving on certification of teachers, for example, in a manner that seriously inhibits the right of schools to define their own values, their own standards, their own way of being religious. I want you to look at that very carefully.

States are mandating curricular material in some areas which have clear moral and sometimes explicitly religious [implications] that violate what the parents and the children are supporting that religious school for. That must be perceived as a denial of their religious freedom. The *Pierce* decision of 1925 is perfectly in accord and perfectly in force in American constitutional law that the prime agents for the education of children in terms of responsibility and competence are the parents. There is no area more important to empower, to use an overused word, but an important word, communities by empowering families and by empowering parents to exercise decision with regard to the kind of education they want for their children. This needs to be looked at.

One can understand well intended programs, programs aimed, however wrongheadedly or righthandedly, as the case may be, to prevent AIDS or to prevent teen pregnancy, and so forth. As with, for example, the rainbow curriculum discussion in my city, in New York; we're all aware of the rainbow curriculum discussion—more than a discussion, debacle, I suppose; a very unpleasant time for everybody.

But clearly one has to see that here among the many things involved are the religious rights of parents, the rights of parents to exercise their primary responsibility for the moral and religious education of their children. How we work this all out is a difficult thing. It requires a lot of thought and civility and mutual respect. But that it is a problem and that it is a problem of religious rights I would urge this Commission to recognize very clearly.

You are going to want me to close off and I am, very quickly.

There are new opportunities. RFRA gives you some opportunities. The *Zobrest* decision of 1993, the Supreme Court decision, gives new opportunities for understanding the ways in which religious

freedom can be accommodated and indeed nurtured in our public life.

Look at the ways, I would urge you, in which sometimes the zeal for enforcing one kind of civil right can be pitted against another civil right. Take a very specific example. With regard to religious schools and hiring and firing practices, the issue of sexual orientation as it relates to homosexuality has a very strong potential for clear conflict that throws into question the religious freedom of a school that ends up in a curious kind of way being in violation of civil rights laws simply by virtue of acting upon its own religious belief.

There are areas of taxation, a big question that is coming up. Municipalities are feeling a financial crunch and it's the poor institutions, especially the black and the Hispanic churches, that are increasingly under pressure from municipalities with regard to taxation and civil service. I would urge the Commission to give serious thought, maybe commission a study, on whether tax exemption is not a right, part of the religious free exercise rights guaranteed by the Constitution. Because that has all kinds of policy implications as to what States and municipalities can do with regard to religious institutions and their programs.

Those are a whole bundle of issues.

Chairperson Berry. Thank you very much, father.

Now we go to Mr. Barry Lynn, please.

Mr. Lynn. Thank you very much for this opportunity to be here. I think any reasonable observer of the American landscape today would recognize easily that religion is alive and well in the United States of America. The extraordinary level of vitality of religion in this country is demonstrated time and again by casual observance as well as by survey data which consistently shows levels of activity and religious commitment in this country higher than anywhere else on the face of the globe. We have higher attendance at places of worship, more citizens who believe in God, more citizens who pray regularly than virtually anywhere on the face of the planet.

There are, however, claims made by some in the so called—and I don't use this word disparagingly—religious right and elsewhere that there is

some profound pervasive bias against religion directed primarily at Christianity. I think those claims are wholly specious. There is no campaign of bigotry, no proliferation of hate crimes, no wave of defamation directed at members of the Christian faith, who still predominate in most parts of the United States.

If there is a dearth of positive portrayals of Christians in the popular culture, as some have alleged, then certainly that is more than counterbalanced by the proliferation of Christian radio and television stations all over the country, which now number about 1,800 outlets for radio and television elaboration of the Christian faith and doctrine.

Moreover, whether Hollywood or New York does or does not promote or take any particular position in regard to Christianity, this is obviously not having any adverse effect on the practice of the faith by any reasonable measurement of religious activity here.

When there are some fundamentalist Christian groups that allege an antireligious bias, I'm afraid what they are really calling for or complaining about is the failure of governments to help them promote their faith or subsidize their religious mission, become de facto advocates of certain theological beliefs, or grant special privileges to a favored few. But those objectives would clearly violate the principle that both government and religion benefit from making there be a clear and distinct distance, a wall, a hedge, a chasm between one and the other.

The Commission, I think, need not expend much attention fighting a bias against Christians, because such a bias does not exist. However, when one turns to non-Christian faith groups, the Native Americans, the Muslims, to nonbelievers and to smaller, often misunderstood Christian denominations, there the view is not so rosy. For practitioners of those faiths both ignorance and bigotry can contribute to legislative initiatives which significantly impede the practice of their religion. Let me just give you a few examples.

In Sayreville, New Jersey, recently Hindus there were trying to convert an abandoned YMCA building into a temple. Local residents and some local officials objected, complaining, they said,

about the problem of parking on the street. Although land use planning need not accede to every demand for accommodation by a religious group, there were two factors in this case that posed the possibility that this dispute did not involve the application of some neutral principles but something more sinister.

First, the antitemple petition that was being circulated in that community suggested that the building would attract more Hindus to live in the area, which certainly raises the specter of both racial and religious bias.

Second, a nearby Roman Catholic church, with even fewer off-street parking facilities and a much larger weekly worship attendance than could ever have been anticipated at the temple, had been operating for years without any complaints or any problem.

In another illustrative example, one house of the Tennessee Legislature last spring approved a bill requiring that Amish residents who use those horse-drawn buggies for transportation must place strobe lights on the back of their vehicles. Since use of electrical devices violates a basic tenet of the faith and indeed the lifestyle of the Amish, this requirement to use what some would call modern conveniences struck at the very heart of their religious practice. In other States and localities, simple reflective tape on the back of those slow-moving vehicles was seen as a sufficient protection against any public safety danger caused by the slow-moving vehicles. However, jumping from reflective tape to electric strobe lights seemed far too simple for at least one house of the Tennessee Legislature.

That case and many others eventually, after great and tedious negotiation, are resolved more or less to everyone's satisfaction.

But the fact that these controversies arise at all is very troubling. There are still regular complaints from Seventh Day Adventists about belligerent opposition by some employers in this country to meeting the needs of their members not to work on Saturdays. There are believers in Christian Science who are concerned about extraordinarily intrusive decisions by State agencies to intervene in so-called child neglect cases even where there is no demonstrable danger to the child.

Americans can have legitimate disagreement around this table and elsewhere about what the proper level of accommodation for religion is in this country, but the insensitivity of some governments to the significance of the religious claim in the first place is something that should be of genuine concern to this body.

Some of these issues, as Father Neuhaus points out, may be resolved by the passage of the Religious Freedom Restoration Act. It does bring back the compelling state interest standard that existed in this country prior to 1990, but in a rare point, I'm afraid, of agreement with Pastor Neuhaus, legislatures do need to demonstrate now a compelling state interest, not some kind of feeble, speculative explanation for why they are trying to restrict the rights of religion through some generally applicable statute, but to come up with a solution to the question of the application of this principle. The devil in this case is in the application of the principle.

Legislatures and the courts that review their actions must recognize that we are talking about specific impediments to public safety, health, or order to rise to a point of a compelling state interest.

I would remind the Commission that back in the days prior to the *Smith* case, in one case in the Federal appellate system a Jewish student was prohibited from wearing a yarmulke on a basketball court under the compelling state interest test because of the possibility that the pins holding the yarmulke to his hair might come loose, the yarmulke might fall to the basketball court floor and might not be picked up by the referee before someone else on the court tripped over it. I don't believe that that stands as a significant or compelling state interest, and I hope there is unanimity about that.

It is important that persons who have been reluctant to go into court for the last few years because of the confusion generated by the *Smith* case go back and represent their rights and to try to protect those rights. In our constitutional history, it's important to recall and to understand that it was often people who were members of small and even unpopular religious groups like the Jehovah's Witnesses that actually brought the cases

all the way to the Supreme Court that established important free speech and other first amendment principles for all Americans, and they did it because they were willing to go the long distance and take their cause to the courts. Now we have an avenue again to try and see what happens.

The other arena in which religious discrimination exists is where majoritarian religious decisions work to make some Americans feel that they are second class citizens in their own country. The examples of this, I'm sorry to say, are legion.

One of the saddest recent examples I've seen was in Concord, New Hampshire. There the school had been extensively decorated for Christmas and a substantial amount of Christmas caroling, which is, of course, in most cases the singing of what are often Christian prayers, was occurring throughout the facility. One female student objected to this emphasis on Christian theology and on worship, and she became the immediate target of considerable harassment. A few days before Christmas one student, after declaring to her that Christmas was the time of peace and love, then shoved her into a locker. Another threatened to burn a cross on her lawn on Christmas even, necessitating the installation of a video camera to observe the lawn.

Now every responsible person would condemn this kind of harassment of that student, but the blatant nature of the incident, I think, masks the prevalence of the sentiment which undergirds these eruptions. We are frequently called by persons who object to some kind of government sponsored religious activity in their community who fear the repercussions of sending even a letter to the editor much less to file a lawsuit, because they fear. They are intimidated into silence by the fear they feel from the religious majority.

New laws probably aren't needed to deal with those situations. They're not hate crimes in a specific sense, often. What needs to occur, and I think the Commission can help us do this, is to simply explain to government agencies once again what the dictates of the first amendment itself are. When you see that cross on a government building, you hear prayers of a particular faith broadcast over the public address system of a public school, there is no message you can receive but

one, and that is governmental endorsement of religions. Words and symbols have power. That is why we use them. But when they are used by governments to promote theology, those governments have crossed a constitutionally forbidden line.

Let me close with just one other observation about the future. There is probably no greater danger to religious civil rights than passage of voucher plans and other instruments to divert tax dollars to private schools. The voters of California recently rejected a proposition called Prop 174. This scheme would have immediately funneled nearly \$1.3 billion into private academies, most of them pervasively religious, in the State of California. Although the Constitution does permit parents and others to set up religious schools, we believe it clearly forbids all taxpayers from being forced to fund them.

In channelling money there, there is a direct benefit given to religious groups who have schools and indeed an incentive to create new religious schools. But the civil rights issue in these voucher cases in some ways is more difficult to see on the surface but much more sinister.

For example, the beneficiaries of that California plan, had it been adopted, would have been permitted to discriminate in hiring and admissions on the basis of religion as well as of gender. In other words, a private school could have erected a giant sign that said "No Jews Allowed" and still received State funding under that initiative. I think this kind of discrimination must always be rejected and should be rejected by this Commission as well.

Ironically, the proponents of these plans talk about choice; that's what this is, religious choice, free choice, private choice; but they don't present any kind of realistic possibility that parents or students will get real choices. They provide only for the choice of the school to select and to retain students based on theological tenets or sometimes on naked bigotry. The Commission should disavow this approach to the so-called reform of education.

Those of us who believe in civil rights and in church-state separation see no contradiction in the purposes here. We don't seek a Nation devoid of

religion; we don't want religious discourse banished from the public square; but we do believe that it is best for both religion and government to keep the two separated whenever there is the likelihood that government's imprimatur on one faith or on religion in general will make any American feel like a stranger in his or her own country.

Thank you.

Chairperson Berry. Thank you very much. I didn't even have to admonish you.

Mr. Eisenberg, please.

Mr. Eisenberg. I get the balance of Mr. Lynn's time.

[Laughter.]

Mr. Lynn. Then I get to admonish him.

[Laughter.]

Mr. Eisenberg. Dr. Berry and members of the Commission, I'm Meyer Eisenberg. I'm the chair of the National Civil Rights Committee of the Anti-Defamation League of B'nai B'rith. We sincerely appreciate the opportunity of appearing before you.

While this briefing is intended as an overview for current issues and emerging trends, we would encourage the Commission to focus more broadly on the issue, updating the 2-day consultation which the Commission sponsored back in 1979 on this subject. That consultation and the Commission's report on those proceedings, *Religious Discrimination: A Neglected Issue*, proved to be very valuable and is certainly timely today.

We also appreciate the leadership role that the Commission has taken in addressing the problem of racial and ethnic tensions in this country, growing racial and ethnic tensions in this country, unfortunately, and exploring ways to promote mutual tolerance and respect.

Throughout the past decade this Commission has repeatedly focused public attention of the devastating impact of hate violence, prejudice, and discrimination and the effect that they have on our diverse and pluralistic society. In recent years, this impact has become painfully obvious to all Americans, as illustrated in south central Los Angeles, Bensonhurst, Howard Beach, and Crown Heights, among others.

I don't want to let this opportunity pass without some comment on the role of the first amendment. I want to associate myself, first of all, with Mr. Lynn's comments and then step back and take a broader view, perhaps.

We regard the first amendment's guarantee of the separation of church and state and free exercise of religion as the paramount constitutional protection of religious minorities in the United States. The maintenance of a high wall of separation—and that may not be in the Constitution but it is certainly accepted in the cases—has been an ADL priority for many years. It is critical to the maintenance of our civil liberties, and it is the rock upon which our security stands, as much as the 14th amendment's due process and equal protection clauses are to racial and ethnic minorities.

During the 12 years of the Reagan-Bush administrations, the separation clause has been under attack by our own government. The Solicitor General has filed briefs seeking to permit organized prayers, both oral and silent, in our public schools, and to permit religious displays on public buildings and grounds. The government has sought to provide aid through subsidies, vouchers, and so on to parochial schools. The Department of Justice has sought and failed to scuttle the three-part *Lemon* test on several occasions. It has sought to tear down the wall of separation erected by Jefferson, Madison, and the Founding Fathers and affirmed through the first amendment cases in the Court.

We have not always been successful, but we have had a fair number of victories, some of which surprised even us. It is our hope that this erosion has been stopped in time. The prayer restriction is intact, as is the three-part *Lemon* test. The Solicitor General lost in his attempt to have organized school prayer, which was not approved in *Lee v. Wiseman*, which is the Rhode Island graduation prayer case.

Now we are facing an end run around *Wiseman* by those who want to dress up organized prayer as student-initiated prayer. That tactic should fail in the Supreme Court.

The first amendment is still under attack, but not by the Department of Justice or by the administration. The so-called religious right, which has

become highly organized at the grass roots and vocal on the Hill and well funded, is out to trash the establishment clause. They want organized prayer in the public schools; they want public funds diverted to religious schools. They lost the voucher plan in California three to two, but they will not give up on the voucher plan.

They want to censor school books, the Wizard of Oz, Snow White, and require teaching of creationism, an essentially religious, nonscientific doctrine.

They want to impose their religious morality on the country, opposing a woman's right to choose, the use of fetal tissue in experiments, blocking access to clinics, and so on.

They believe that God should be returned to the classroom, indeed, to the public square, that "vote Christian" is an appropriate campaign strategy, and that government should favor Christian positions, whatever that could possibly be.

We see the dilution of protections under the first amendment as a major threat to our civil rights, or our right to practice our form of belief unhindered by government weighing in on the side of the majority religion, if there is such a thing as a majority religion.

With the equal access legislation, they intend to keep hammering at the school door and to expand the success of cases like *Zobrest* and *Lamb's Chapel*. We intend to stand our ground. We ask you to view this threat to minority rights for what it is, an invasion of our fundamental constitutional right to government neutrality in matters of religion.

This is not about getting God out of the public schools, and there has been much too much exaggeration and misinformation about the degree to which religion has been cast out of our public life and out of the public square. A look at the Christmas stamp, a look at the lighting of the Christmas tree on the Mall, a look at the various national rituals that we go through should indicate that we are far from excluding religion from the public square.

Surely the lessons of the religious wars and tensions of Europe, the latest example in Serbia and former Yugoslavia, which the first amendment has spared us, are worth remembering.

Let me return to the focus of what I wanted to say. I couldn't resist the opportunity to talk a little bit about the first amendment.

I want to talk a little bit about attitudes, about the hate violence and overt acts of bigotry and the strength of organized hate groups in this country, and I will try and do that in 7 minutes, Dr. Berry.

Chairperson Berry. Actually you have 10.

Mr. Eisenberg. The most recent in a series of ADL-commissioned surveys, which we will supply to you, on anti-Semitism was released in November of 1992 and revealed about one in five Americans, or maybe 35 million adults if the sample is correct, hold views that could reasonably be characterized as anti-Semitic. While the number of Americans within this anti-Semitic segment of the population has been declining steadily over the past 30 years, the decline has been slow. A 1964 ADL survey showed that 29 percent of Americans held such beliefs and today the number is down to 20 percent, but that is still a very significant number.

To date both local and national responses to hate crimes have been severely impeded by a lack of comprehensive comparative statistical data concerning the number, location, and types of hate crimes. ADL has conducted an annual audit of anti-Semitic incidents and we report that every year. That was starting in 1979.

The 1992 audit of anti-Semitic incidents was particularly disturbing: 1,730 separate acts of vandalism, violence, and harassment, the second highest figures that were ever reported.

While the findings represented an 8 percent decline from 1991, which was the first decline in 6 years, the disturbing upward spiral of anti-Semitic incidents on college campuses continued: 114 reported incidents on over 60 campuses, a 12 percent increase.

In addition, for the second consecutive year the audit documented more attacks on Jewish individuals rather than against their property or Jewish institutions.

These numbers do not speak for themselves because behind every one of these incidents is a community outraged by the desecration of its holy places, a family intimidated in their neighborhood, or an individual humiliated and demoralized by an

open affront, particularly in a campus community. The pain of such distress and alienation and the sense of violation run deep and it is not quickly remedied.

The ADL's 1993 anti-Semitic incident survey will be released on January 24 and will be made available to the Commission as soon as it is released. Early indications from that survey that I have seen indicate that the numbers are up from last year. Unfortunately, it appears that a disturbing trend continues with respect to anti-Semitic incidents directed against individuals and not institutions, and one of the most disturbing of the preliminary findings is that many of the most serious incidents occurred on college campuses and involved young people.

Let me talk for a minute about campus incidents, and I mean serious incidents, of deliberate intimidation and bigotry and of organized harassment and of clear hatred. Not just some ambiguous epithet like "you water buffalos" at the University of Pennsylvania.

We have seen KKK smeared on dorm doors of black students, swastikas and SS signs smeared on Jewish students' rooms, and physical threats of "go home ———" and you fill in the blank.

Many campuses are divided. Blacks sit only with blacks and whites with whites in a system of self-segregation. Collegiality is in trouble on the American campus and student sensitivities are too often turned off, and sometimes the persecuted become the bigots.

An invitation to Louis Farrakhan to address a student meeting is to Jewish students the equivalent of inviting a white supremacist like David Duke to campus to black students. The false history promulgated by Professor Jeffries at City College is as offensive to us as Professor Shockley's pseudoscientific evidence of black inferiority was earlier.

An invitation to a Holocaust denier, even one with an academic credential, is insulting not only to Jews but to all of the groups victimized by the Nazis.

It is the climate of polarization in our society that is reflected in the polarization on campus. It is these tensions among us that this Commission seeks to ameliorate if not resolve.

What are we faced with?

In a case now pending before the Maryland Court of Appeals involving a Mr. Ayers. In March 1992—not in the 1940s—he picked out a black woman in a suburban shopping center here in Montgomery County and dragged her off to the woods, put lighter fluid on her, and intended to light the match. When neo-Nazis murder an Ethiopian student by stomping on him at Portland, Oregon, and when Yankel Rosenbaum is stabbed to death in Crown Heights because he is a Jew.

We are faced with racial and religious hatred and its violent expression in a violence-prone and well-armed society. And let's talk about some of the modest measures that we can take to deal with some of these problems.

First is the Hate Crime Statistics Act. This Commission's very first recommendation in its 1983 report *Intimidation and Violence* was that Federal and State authorities should develop a workable hate crime statistic collection system.

The Hate Crime Statistics Act enacted in 1990 holds tremendous promise as such a mechanism and a tool for deterring hate violence and promoting improved police-community relations. The new act requires the Justice Department to collect data on crimes which manifest prejudice based on race, religion, sexual orientation, or ethnicity and to publish an annual summary. The first HCSA data is an incomplete picture, but it's worth looking at. In early January of 1993, last year, the FBI released its first report on hate crime data collected by the law enforcement agencies around the country. The FBI report documented a total of 4,558 hate crimes for 1991, reported from almost 2,800 police departments in 32 States.

Some of the highlights:

Sixty-two percent of the reported hate crimes were race based, with over 19 committed against individuals on the basis of their religion and 10 percent on the basis of ethnicity and 9 percent against gays and lesbians.

Crimes against Jews and Jewish institutions comprise the vast majority of the religion-based crime, 17 percent of the overall total.

Thirty-six percent of the reported crimes were antiblack, 19 were antiwhite, 6 were anti-Asian, and 5 percent anti-Hispanic.

These are a bunch of figures, but these hate crime figures are obviously incomplete. The 2,800 reporting police agencies represent only a fraction of the 16,000 police jurisdictions in the United States. But to its credit, the Bureau has taken this responsibility quite seriously and we are looking forward to subsequent reports which will give us a better opportunity to review the spread of hate crimes.

We have also sponsored the Hate Crime Sentencing Enhancement Act, which in effect enhances the penalty for crimes which are otherwise committed. As you know, there were two cases before the Supreme Court of the United States, and the Court in the Wisconsin *Mitchell* case has indicated that the hate crime enhancement statute, which ADL has sponsored and which has been adopted in about 30 States, is constitutional. We think that that will be a significant deterrent and we believe that a Federal Hate Crimes Act which is now pending in Congress and which we believe the Commission will support or has supported, that the passage of that Federal hate crimes enhancement statute would be a useful tool in bringing the message that people who are engaged in crimes which are motivated by hate and bigotry will be significantly punished.

There are a few other things that I'll try to sneak in later in my comments. I appreciate having this opportunity to give you this very brief overview of where we are now. Thank you.

Chairperson Berry. Thank you very much, Mr. Eisenberg.

Dr. Green, your job is to clean up.

Dr. Green. I am grateful for the chance to come before you and to talk a little bit. Professors of religion are not typical participants in events of this sort. We study the subject for a living, granted our take on it may be a little bit different from people who are in one set of trenches as opposed to the educational trenches that we are in.

I had the privilege of having begun some years ago what has become probably the most phenomenally successful undergraduate program in religion in the country in terms of numbers of student majors. We work a lot with our students and with one another about the rationale for the subject that we teach. The remarks I want to make now have

to do with our understanding of religion in education and particularly religious difference and the first amendment and the implications for education broadly in America, not just in college.

I think I would like to start with a story that will maybe suggest the problem. Some years ago I was teaching a course on the Hebrew Bible. On the first day of class a student raised his hand and said, "Are we going to discuss in this course how the Bible relates to science?"

I was awake that day, and I said, "Did you ask your English professor that when you study Hamlet?" Of course he hadn't.

My point in asking him the question was to show him and the rest of the class that they quite unconsciously held assumptions about the Bible and about its relevance and potential for truth, which is why he thought it needed to connect to science, that they would apply to no other work in the humanities.

There is surely an irony in this. The Bible is the massively circulated work in Western culture and history. It has affected and in some cases determined the shape of Western values more than any other single work. It also has an incomparable role in American political discourse. There are courses on college campuses about the role of the Bible in Supreme Court decisions, and if you read them, you will see the Bible figures prominently, much more so than Plato or Descartes or Shakespeare, in those decisions.

With all that, if you look at the typical college curriculum, you will see that Chaucer, Shakespeare, Plato, Aristotle, Descartes, Hume, Hemingway, Fitzgerald, a host of feminist writers, Third World writers, all of whom are important and all of whom are good—I have no quarrel with them—are self-evident parts of the repertoire of an educated person in a way that the Bible is not. This, I think, is a consequence of the fact that one of the ways we handle first amendment is to keep our educational system largely silent on the question of religion, which generates a whole set of problems that we then have to clean up at the far end of the story.

To get to my larger point, what I would like to do is offer a somewhat different take, a little academic, a kind of read on the first amendment.

This is the age of multiculturalism, and it's a time in which we are all sensitive to the peoples to whom we belong, and I think it is good for Americans to remember that while we look at all these other peoples, we also are a people and we have our particular ways of thinking.

The very language of the first amendment to the Constitution assumes that there is a domain of behavior and thought, a realm of experience, that is called religion, and that that domain of behavior and thought is a normal and familiar aspect of American life. By naming religion and by setting it apart for special consideration, the Constitution embeds the notion of religion in American culture so that it seems a natural part of the way things are.

Because of the first amendment, American culture, Americans in general easily assume that there is an aspect of life called religion that can be distinguished from other aspects of life, such as politics, law, and economics. That very distinction is in part the reason that Americans make so many category mistakes when we encounter other cultures in which those distinctions are not made as they are to us.

The first amendment also assumes that the government will treat religion differently from the way it will treat the other three that I just mentioned.

In an article I published a long time ago, in 1987, I argue that religion is so unquestioned and uncontroversial a part of American life that it can be called a native category. A native category is a fundamental taxonomic concept, a basic classification that a culture routinely uses to sunder and sort out and organize the complexity of human experience. The Constitution assumes religion as a given, and it makes the ability to identify religion an elementary skill of citizenship. You can't very well practice freedom of it if you don't know what it is.

Americans use religion prominently to distinguish our culture from other cultures, as when elected officials once described the communist states as Godless, and Americans use religion prominently to differentiate each of us from one another.

A consequence of the first amendment is that Americans take religion for granted as a meaningful and conventional trait of being human. Because religion is a native category, we grasp it intuitively more than we discern it and deploy it discursively. That is, religion has a kind of weight in American culture that I would argue it doesn't have in other cultures as a category. I can just tell you from personal experience: To teach religion or to be a psychologist are the two best ways to get people either to talk too little to you or to talk too much to you. It's a conversation stopper.

There is something that Americans attach to the importance of religion which comes out of its being set apart by the Constitution as a category of life. But because it's a native category, we think better with it than we do about it. That is, we know how to use it, but we don't know how to talk about it very well with one another, and that's partly because American schoolchildren have very little experience learning how to talk and think about religion.

The first amendment declares freedom of religion a fundamental civil right of all Americans. Significantly, it lists religious liberty together with other freedoms, particularly freedom of speech and freedom of the press. This is an important and revealing association that most Americans overlook. In fact, I think there is some polling data to suggest that Americans don't make the connection at all. But just as free speech and a free press shape American politics, society, and culture, give American life its distinctive character, so does freedom of religion.

Freedom is a fragile thing. To keep it vital, we have to use it. To maintain freedom, we have to understand what is at stake in it. What I would like to do very briefly is to suggest three areas that I think this Commission should think about in terms of what is at stake in preserving American freedom of religion. Those three are pluralism, individuality, and tolerance.

By restricting government control over religion, the first amendment guarantees that America will have more than one religion. The first amendment affirms that religion is a legitimate and legally protected form of difference in American society.

In fact, I think it's the only legally protected form of difference in American society. Poverty sure isn't.

Religious difference was built into America from the start and it is a hallmark of American life. Taking a line of argument from Father Neuhaus, I would say it probably is no overstatement to suggest that our national capacity as Americans is not merely to abide but to appreciate and affirm and respect and celebrate the value of difference in American society. Our capacity as a society to see difference as a positive good for our lives together as opposed to simply an accident is grounded in the constitutional commitment to religious pluralism.

Religious pluralism has two important consequences that are worth considering, one for the character of America as a Nation and one for the character of religion in America.

First, the guarantee of multiple religions undermines any normative claim that America has a particular or even a fundamentally national religious character. The principle of religious equality which is implied by the first amendment is not a doctrine of most of the religions it now protects. So if America does indeed have a religious character, as some claim, it owes that character to a principle which is more congenial to a secular world view than to a religious one.

Second, religious pluralism has meant moving most of the specificities or religious doctrine and disputation away from the political and into the private sphere. As a Nation we have agreed to disagree on a whole host of extremely divisive questions of doctrine and scriptural interpretation. As a result, we accept in the name of religion ideas and claims and opinions that we probably would not tolerate if they required secular justification. That is, religious groups in this country can fight over the proper meaning of the Book of Isaiah, but those fights largely take place with very thick gloves so that no one is really hurt when the argument is done.

Second, individualism. Because Americans have freedom of religion, religion has become a powerful symbol of individualism, of the individual's power to believe as he or she chooses. Wade Clark Roof reports that in a recent survey

80 percent of Americans affirmed the proposition that "an individual should arrive at his or her own beliefs independent of any churches or synagogues." It's the sort of thing that makes the religious situation extremely complex and requires that commissions like this be reasonably astute about understanding what we mean when we talk about religion.

Particularly among the so-called baby boomers who constitute, if not the majority, an increasingly high percentage of all religious groups, religion in America now is highly individuated; and it sometimes divides families as well as unites them, because individuals make individual choices. Sometimes they make choices of three or four religions and take pieces from them, and this is an increasing pattern of religious behavior.

The association of religion with individual choice should warn us against oversimplification of religion. As Bill Moyers as trenchantly put it in a phrase that I really enjoy, "American religion," he says, "is a subject series of subcultures for which there is no common language."

Let me finish with some short observations about religious misunderstanding and religious difference and education.

If it's the case that the Constitution promulgates a vision of a religiously pluralistic America, that leads to an interesting and serious question. If religion is a basic part of American cultural life, if religion is a definitive component of American society, how do we prepare students to contribute to that society if in our schools and colleges and universities we keep religion, so to speak, in the closet?

If education is our society's primary mode of socialization and acculturation, if it is the process by which young Americans acquire not only the information and technical skills but also a basic sense of our culture and its endemic pluralistic structure and values, how can education be effective if it is incongruous to that culture?

By keeping the subject of religion out of our system of public education, which we still do in large measure—there are some changes but [not] nearly enough—by keeping the subject of religion out of our system of education, we accomplish two

things, both of them negative, both of which we have heard about today.

First, we push religion to the extremes. We make religion seem something exceptional, something uncommon, and something peculiar. By denying the ordinariness of religion, which is actually its most interesting trait, its persistence in ordinary everyday lives of people—by denying the ordinariness of religion, we misrepresent it, and we lay the foundation for lots of serious misunderstanding of one another. Jim and Tammy Baker, to evoke some historical memories, Jimmy Swaggert, to evoke a present memory, and Oral Roberts no more typify Christianity than the Hesbalah typifies Islam or the Gush Emim typifies Judaism. But most Americans have no institutionalized educational way of knowing that. They know what they read in the newspapers, in those abbreviated stories, which are written by people educated in this system who don't always, as we have heard today, know what they are talking about in the first place.

For far too many Americans religion is not just in the closet. It is the mad woman in the attic. Too many Americans encounter religion only in the extremes and judge it to be something only for fanatics or crazies, a judgment that is historically and intellectually and morally false.

Second, by failing to devise for ourselves an educational discourse for the study of religion, we close ourselves off from one another and we thereby undermine the very pluralism that defines American society. A good American education should do many things, but one of the things it absolutely must do is to give students the ability to conceive the tenability and the enchantment, the plausibility and the appeal of lives that they do not lead and never may.

This is more than a matter of supplying information. It is a matter of giving them the capacity to understand ways of living that are unknown to them, that are alien, that are even threatening to them so that they can acquire the skills to make sense and meaning of what they have not yet read, seen, heard, thought, or experienced.

Let me put this in a different way to conclude. Pluralism, it's important for us to remember when it comes to religion in particular, is not simply a

matter of the acceptance of difference. It is the tolerance of irreconcilable difference.

What makes pluralism plural is the root fact that in the end we are not likely to change one another all that much. American culture long ago renounced the possibility that irreconcilable differences would lead to social and political divorce, and we have resolved to live together despite these differences.

The way to manage that problem, or one way, with respect to religion is to rethink the implication of the first amendment as to how young Americans learn to think about religion and to talk about religion and religious difference from the beginning of their education to the end of it.

Chairperson Berry. Thank you very much, Dr. Green, and thank you, Dr. al-Hibri and gentlemen, for your presentations. Now we are at the point where we ask if Commissioners have any comments or questions that they would like to ask, including testifying.

Does any Commissioner care to engage the panelists in discussion or make a comment?

Yes, Commissioner Wang.

Commissioner Wang. Dr. al-Hibri, I came across in New York several years back a group of Christian Arabs and they have faced a quite a bit of hard times even among their own people. So they came to seek help from New York City and I was asked to assist them. Eventually I was able to help.

Can you elaborate a little bit about the differences? How have they been viewed by the Muslim majority?

Dr. al-Hibri. You mean they are also suffering from discrimination in the U.S.?

Commissioner Wang. In the U.S.

Dr. al-Hibri. From Christians in the U.S.?

Commissioner Wang. No, they are Arab Christians.

Dr. al-Hibri. That happens too to Christians. I do have a report here with me from the AEC, which worries about issues of defamation of Arabs. They have a report on hate crimes, and so on.

In the mind of the American populace, the distinction between Arab and Muslim is very thin indeed. Very often they confuse the two quite a

bit. In fact, there are Muslim Arabs, Christian Arabs, and Jewish Arabs. We have quite a spectrum of religions as an Arab, which is an ethnic identity. However, because the predominant number of people in the Arab world are Muslim, that distinction is sort of eliminated in the minds of many.

I will give you an example. This happened in New York too. During the Gulf War, one person very dear to me received a death threat because of the Gulf War. Actually the person who made the threat left a message on the machine and actually, "24 hours, after that you're dead; you're a nice guy, nothing personal, but. . . ."

That person was Saudi, supposedly the ally of the United States in the war. But the distinctions are not made. When the FBI was contacted, their answer was, be careful, because the American population does not draw these distinctions. In fact, when the Iranians were having hostages in Tehran, a lot of the Arab Americans in this country were suffering. Iran is a Muslim country, but they decided that that means Arab.

Because of this mixed bag and lack of consciousness about the distinctions, the discrimination is being moved from one realm to the other regardless of if it actually fits or not. There isn't really much difference in the type of discrimination that both groups face as a result.

Commissioner Wang. Thank you.

Mr. Lynn, you cited an example. It reminds of one example in upstate New York where the Assideans tried to set up their house of worship. The local residents put up quite a fight based on the zoning. I was called in to help mediate. I wasn't too successful. It is not just one group; it's many, many different groups.

The Commission during the time of the Gulf War, under the chairmanship of Commissioner Fletcher, had a statement issued calling on the Nation not to view all Arabs as from the Gulf. Arab Americans are not enemies. They are Americans.

Dr. al-Hibri. If I may add to what you said. There was also a zoning problem with a mosque in northern Virginia and it was solved with the mosque buying a piece of land and establishing a parking structure on it.

Chairperson Berry. Commissioner Fletcher.

Commissioner Fletcher. With reference to the Arabs in Detroit, what is the relationship between Detroit's predominantly black community and the Arab community there? I got word that there was considerable stress between them.

Dr. al-Hibri. Let me give you a more general answer. I lived in Detroit for a while many years ago, but I'm not familiar with the situation right now, although I just came from Nevada where I met some of the Muslim women there who are predominantly African American. We had some discussion about that.

In fact, it turns out that many of the immigrants who come to this country are doctors and engineers, etc., highly professional people, and are doing very well. We don't have many lawyers at all. But also many of them come from a different income level. They do not have language skills, and therefore they cannot communicate very well with other people, and they also come with a certain culture or mindset which might not be very well suited for the U.S. We're talking about the first generation, not the second or third.

As a result of some of these facts plus the different economic and political situation that some of these people might be facing in their own communities, they have not really agreed on many things all the time with the African American or indigenous branch of Islam in this country.

There are now serious attempts on a national level, and I am involved in that on a level of women, to try and build an understanding which is based on a better understanding of Islam. When I say that, I don't mean to suggest that, for example, as many Muslims who are immigrants would say, oh, African Americans don't really understand Islam very well because they can't read the Koran. That's not true. When I was in Nevada, there were many African American women who have learned Arabic so that they can go to the Koran and find their own answers because they weren't satisfied with the answers that some other people, like the men in their community, were giving them.

The immigrants come here with their interpretation of what Islam is in their own country. So they are also facing disagreement among them-

selves. There are ethnic groups within the immigrants. There are the Pakistanis, the Syrians, the Lebanese, the Moroccans, the Egyptians, and each has a different interpretation. Now they are finding out that this clash, which is caused by misconceptions in their own minds about what Islam is in their own countries, is forcing the new generation, and maybe the older generation, to restudy Islam, go to the fundamentals, and then really produce what I call an American interpretation of Islamic jurisprudence. That's why I gave this Islam and democracy paper, because it shows you how Islamically you can properly do that. It is expected of you that whenever you become a Muslim, you understand that in terms of your own culture and your own society; and the Muslims in this country have not done that, but this is the time when this is starting to happen.

Commissioner Fletcher. Mr. Eisenberg, I am going to wander off into this minefield, but I think we have to deal with it. I see Farrakhan growing in influence in the black community, not diminishing. I also see black religious groups that dealt with him at arm's length shortening the distance, so to speak. I think step number one was the celebration of the march and he was absent. There was a real uproar. It didn't hit the evening news, but throughout the black community from San Diego to Boston, from Anchorage to Florida and all the places in between the pressure was put on. Of course he had a dominant role, a very significant role at the Black Caucus, and his influence is beginning to grow.

With the attitude that the Jewish community has toward him, what kind of fracture or split, what's this going to do, in your view, to black and Jewish relations at this particular transition period?

From my perspective, black and Jewish relations should be coming together. I have to tell you that it's my observations from going across this country the last couple of years that I don't see that happening, and I see one of the major stumbling blocks is Farrakhan. What does the future hold in store?

Mr. Eisenberg. That session of the Black Caucus at which Farrakhan and some of the other members of the Black Caucus embraced did get national publicity, and it got publicity outside of

the black community. It was on C-SPAN. Many of us who watched it were very disappointed in that development.

We have worked together as communities in the civil rights struggle for many, many years. The mainstream black organizations, the NAACP, the Urban League, and so on, have attempted to avoid the kind of radicalism that Farrakhan has preached. We have attempted in discussing these issues with Representative Mfume, with Representative Waters, with the others who were involved in the Black Caucus to point out the kind of danger that Farrakhan represents.

Let me just refer to an incident that happened in December 29, 1993, at Kean College in New Jersey where a representative of Mr. Farrakhan, Kalede Abdul Muhammed, a spokesman for the Nation of Islam, spoke to the students at Kean College. According to the *Times* and to people who were there, he used the kind of raw phrases like Columbia "Jewiversity" and "Jew York City" and epithets like that. The *Times* reported that Mr. Muhammed suggested that the victims of the Holocaust had brought it upon themselves. They went in there to Germany, he asserted, the way they do everywhere they go and they supplanted, they usurped, they turned around, and a German in his own country would almost have to go to a Jew to get money.

In addition, anti-Semitic books were being sold outside the auditorium, and the Jews were not the only targets of that ugliness.

We have met with Reverend Jackson. We have met with other leaders in the black community in an attempt to make it clear that that kind of hate-mongering that Farrakhan has used and has used very effectively—he is an enormously effective speaker, as you well know—is the kind of thing that divides two communities that should really be united and have been united over the years in their fight against bigotry. To the extent that the black leadership accepts Farrakhan, it in effect promotes the perception in the black community that, well, maybe we don't agree with what Farrakhan is saying, but it isn't that bad and we could get together with this. The kind of doctrine that Farrakhan is spouting is beyond the line which we can tolerate. It's pure anti-Semitism.

People can disagree with us on Israel and foreign policy and so on, and they are not anti-Semitic. They can disagree with us on approaches to quotas and affirmative action and things like that, and there is a basis for us to talk and there is a basis for us to come together and compromise.

We strongly supported, as you know, the Civil Rights Act of 1991 and very actively involved in achieving the compromise that brought that act together. We have worked together with the civil rights coalition for many years. It would be a shame if Farrakhan would be the rock upon which that coalition shattered. I do not believe that it will, because I think there are saner voices in the African American community that recognize the danger of Farrakhan but are concerned about his popular grass root support, and therefore their ability to counter him is to some extent inhibited.

Nevertheless there are black leaders who I think who have recognized the danger of what Farrakhan is saying. I mean outrageous stuff. His people are talking about Jewish doctors injecting black children with the AIDS virus to decimate the race. Absolutely incredible Nazi type of anti-Semitism.

I think the black leadership has to stand up to Mr. Farrakhan. To the extent that he is willing to modify his views so that he can come into the mainstream of the African American community, that would be helpful. We have not really seen any sign except some lipservice that Mr. Farrakhan is willing to do that, and that unfortunate incident at the Black Caucus, I think, solidified his position rather than weakened it.

Chairperson Berry. Dr. al-Hibri.

Dr. al-Hibri. As a Muslim I would like to speak a little bit about Minister Farrakhan. I met him for the first time in the fall of this year at the Parliament for World Religions, which some of you might have heard about. He was assigned to my table so I had the chance in the afternoons to talk to him.

At that conference he gave a keynote address which I attended—and it was carried on C-SPAN—in which he said very clearly that whatever has been attributed to him in terms of anti-Semitic statements are inaccurate and misstatements of his position.

I do not know the history of the disagreement between Minister Farrakhan and the Jewish community. I've heard about it. I don't know the details.

So when I met him the next day at the table I said that I really was impressed by his speech but that I didn't know the details, and if it was really a matter of misunderstanding, then there should be something civil one could do about it, like dialoguing. So I actually asked for him to supply me with tapes of all the statements he said were misinterpreted. I only recently received such a collection from his group.

Since then I've been in touch with my Jewish friends, presenting them with this idea, saying I would like to listen to the tapes, and if I could see that it is a misunderstanding, if I'm not offended by them, in other words, I will then ask them to hear them and tell me why is it offensive to them when I did not see something offensive.

The reason for that is chances are there might be something offensive there. I haven't heard them. But if so, I would suppose that it is going to come from an earlier period, because this keynote address I interpret as an attempt out of many recent ones to hold his hand out and either say let bygones be bygones or let's talk or let's review or let's find out what is the real disagreement about.

As a Muslim and as a person who is really interested in justice, I think we need to move away from condemnation into dialoguing. Given that we are starting with this from good intentions and given that through dialoguing we are going to really find out where everybody stands, then I think it's very important for us to do that.

Chairperson Berry. So that this discussion does not get bogged into a discussion only of Louis Farrakhan and the question, may I just comment very briefly and then see if anybody wants to discuss that or something else.

I don't want to interfere with the discussion, but it does seem to me in listening to you and listening to your comments earlier, Commissioner Fletcher, that there is a serious question about when matters that are thought to constitute religious bigotry relate to freedom of expression issues.

There is a very serious question about whether if someone makes remarks against someone of a

particular religion, however heated, however much filled with invective, whether they can somehow claim that they are exercising freedom of expression. It could be argued, as the Court did, that in the case of Mr. Jeffries and his remarks that he was exercising freedom of expression. Whether one disagrees with him or not, and I happen to think most of what he said was nonsense, the point is, is that is freedom of expression? Or if someone calls an African American a name, race discrimination, are they just exercising their freedom of expression and therefore we shouldn't be "politically correct" and insist that they not name names?

So these are serious issues aside from simply focusing on whether Mr. Farrakhan did say this or whether he did say that or listening to this tape. So maybe we can think about it in that way as well as any other points that Commissioners want to make about the total discussion here so we don't just spend the whole time talking about Farrakhan and whether he said something or not.

Mr. Eisenberg. We will supply to you and the members of the Commission and also to Ms. al-Hibri some of the recent statements of Mr. Farrakhan. I know that he was a little bit more moderate at the All Religion Conference, but that the Kean College situation just took place last month. There are other comments like that.

With respect to what you have just indicated, Dr. Berry, it is a very difficult situation, the question of academic freedom and how far you can limit academic freedom and that kind of thing. That's why I tried to indicate in connection with the Holocaust denial as an example—an academic who says the Holocaust never happened and so on—that there are limits in terms of competence for academics, and that tolerance is much larger on campus than it may be in ordinary situations, as it should be, because we value academic freedom.

On the other hand, if someone like Dr. Shockley came up as part of his academic and said, "Well, blacks are inferior and I can prove it scientifically," and it's really just a bunch of pseudo-scientific garbage, that is the same kind of thing to us as the Holocaust didn't happen. So there are certain lines of academic competence which are extremely difficult to draw. I would

hate to see the government try to draw those lines. I think that those are lines that faculties have to draw. Unfortunately, persons on faculties have been intimidated by these kinds of things and don't want to get involved in that kind of argument. We have seen people shrink from their responsibility. That depends on what faculty, what campus, what the situation is. It took over a week for the faculty at Kean College to say, "Well, that's a bunch of junk," and it shouldn't have.

Chairperson Berry. Commissioner Horner.

Commissioner Horner. I would like to ask for a reaction from Father Neuhaus and from Barry Lynn to this thought. It seems to me that the cure for bigotry of all kinds, including anti-Semitism, is not the withdrawal of religion from the public arena but the increase of religion in the public arena, the increased sense of cultural freedom we feel to introduce religiously based ideas and judgments into the public arena, for this reason. It seems to me that if someone is engaging in anti-Semitic acts that it's impossible to confront that person and say what you are doing is wrong without establishing a basis for the moral judgment that bigotry is wrong. It seems to me that groups endangered by the human tendency to bigotry are further endangering themselves if they dampen the expression of religiously based moral judgment in the public arena.

I would like to hear comments. Father Neuhaus is someone who I think may sympathize with that thought and Mr. Lynn not.

Father Neuhaus. I think what you say is right. In the situation that I've described as the naked public square, it's a very dangerous situation precisely for minorities, and history demonstrates this with tragic, dramatic force. If there is in the public discourse and in the vibrancies of the culture no clear morally strong and religiously grounded sense of a transcendent good that we are to serve, there is also no clear transcendent sanction against great evil, including the evil of doing in people you don't like, or excluding them, or even worse.

I think your intuition is exactly right. There are so many ways that vibrant moral and which for most Americans is religiously based—like well over 85 percent of Americans claim that they think

that morality is derived from religion. Very confused when you start probing what they actually mean by that—but this close connection between morality and religion is deeply entrenched in our popular culture. That needs to find a more easy expression but one that respects civility. Civility is not a wimpish or limp term. I take civility to be a strong virtue. Civility is exercising the arts and the self-command of keeping together a community in which there are very, very real and serious differences but in which you are committed to sustaining the community.

Let me just say that I think part of civility is often just having heightened consciousness as to what gives offense. Even in august meetings such as this, while we have talked, and deservedly so, about anti-Semitism and the obscenity that that is, we can also at the same time talk about the religious right trying to take over America and trash the first amendment, and so forth. I'm sorry this edges up to something like bigotry. Who is the religious right?

There are about 60 million Americans who call themselves evangelical Protestants, who are overwhelmingly conservative in their political orientation, and a very significant number of them are highly politically engaged, black and white. Are these 25, 30, whatever it is, million Americans out there beyond the boundaries of our covenant of civility? Are they our enemies, the religious right who are trying to destroy the Constitution? No. We have to disagree with them if we disagree with them on this issue, that issue, and the other issue within the bounds of civility, making public arguments and knowing that nobody is going to win all the time and nobody is going to win most of the time, and we are going to continue this thing that the founders understood to be an experiment.

I really thought the most interesting exchange conceptually for the Commission to explore would be the very sharp distinction between Dr. Green's concluding remarks and Mr. Lynn's remarks. I say this with all respect. It's an interesting question to explore.

Barry Lynn says, look, the thing we have to do is create a society in which in no way, at least with respect to government involvement, will any

person feel uncomfortable or feel that they are second class, or whatever.

Dr. Green says—and I make no secret of the fact that I am agreeing with Dr. Green on this—this is exactly what democratic pluralism is. It's learning to cultivate the skills and the patience and mutual respect and the linguistic and attitudinal talents to live seriously with serious differences.

It's a question of pluralism. Is pluralism the discussion stopper in which we say, "Oh, you can't be religious in public because this is a pluralistic society"? Which ends up meaning we all have to pretend that we are all the same, which is ridiculous. We're not all the same religiously, culturally and a host of other ways, thank God.

Or is pluralism the civil engagement of our deepest differences? Is it pretending there are not differences or the civil engagement of the differences?

I think around that distinction turns an awful lot of the debates about the role of religion in American life.

Mr. Lynn. Let me just observe that I don't think that the public square is naked. I don't even think it's occupied by people wearing lingerie. I think what we see in that public square is the province of fully clothed and fully occupied participants, many of whom are religious. Who is the religious right? I don't think one has to do an extensive amount of survey research to figure out what most of us who use that term mean it to represent. It represents the thinking that is articulated by Reverend Jerry Falwell, by Bob Simons who runs Citizens for Excellence in Education, Pat Robertson and his many organizations that represent his viewpoint.

Father Neuhaus. Are they out to destroy the Constitution?

Mr. Lynn. Absolutely. They are absolutely out to trash the first amendment.

Chairperson Berry. One at a time.

Mr. Lynn. I had the occasion recently on Bill Buckley's "Firing Line" to engage Pat Robertson on this question of why he took the position, which he reiterated on that program, that if he were elected President he would appoint no one but Christians and Jews to public service. I said,

"Let's eliminate for a moment the constitutional issue about the minor prohibition against having religious tests for public office." I said, "Why would you make the decision anyway?"

It was clear to me that it was his belief that persons who do not come from the Judeo-Christian background are not worthy of public service.

When I said, does that mean that you take a secular humanist like Einstein and not put him in the cabinet, I didn't think I got a very good answer from him. I think the answer is, "Yes, I wouldn't put him in because he doesn't share some grounding in a particular faith that is of importance to him."

I don't believe it's bigotry to observe that some people's policies if implemented by governments would trash the fundamental principles of the first amendment. And that's the key distinction. Father Neuhaus made it. My complaint is not with discourse no matter how offensive it might be to me personally; it is when governments are asked to become engaged in a process by which they turn certain theological tenets antithetical to the first amendment into the public policy of the United States. Dr. Falwell, Mr. Robertson, and others seek to do just that, and I think they'd be the last people to deny. They might deny the characterization that it's trashing, but they are crystal clear that that is their goal.

Chairperson Berry. Commissioner George.

Commissioner George. Let me direct this to Mr. Eisenberg, but it has obvious implications for the sentiments expressed by Mr. Lynn, and it goes precisely to this question of civility and its relationship with tolerance and sensitivity and the other values that we lump together under the sort of notion of opposition to bigotry.

Mr. Eisenberg, if you were in my position and a Christian activist were sitting in your position and said to you, taking into account now the positions that have been advocated on strict separationism by your own organization and by other Jewish organizations, having in mind that Jewish organizations and Jewish people are not united on these positions—

Mr. Eisenberg. We're not united on anything.

Commissioner George. My friend David Novak, the distinguished rabbi at the University of Virginia, has a saying, three Jews, four opinions.

Dr. Green. He didn't make that up either.

Commissioner George. In any event, you're in my place and there is a Christian activist in yours who says, "Look, there is a well-organized, well-funded movement of the Jewish left to trash God and drive him from our public life." You wouldn't detect in that some hint of anti-Semitism or at least insensitivity? No faint whiff of it?

Mr. Eisenberg. Commissioner George, let me read two quotes to you and then you'll see on what level the civility is. I agree with Reverend Neuhaus that the discussion ought to be civil. Maybe there are those of us who engage in litigation and that kind of thing who use terms which are not often used in academia. I had that problem when I was a professor at Berkeley. Nevertheless, try this:

The modern U.S. Supreme Court has raped the Constitution and raped the Christian faith and raped the churches by misinterpreting what the founders had in mind in the first amendment of the Constitution. We must fight against those radical minorities who are trying to remove God from our textbooks, Christ from our nation. We must never allow our children to forget that this is a christian nation. We must take back what is rightfully ours.

That's Jerry Falwell in 1993.

Commissioner Fletcher. I thought that was Farrakhan.

[Laughter.]

Mr. Eisenberg. He would have substituted certain words.

Then there is another one. This is Pat Robertson, November 1992:

If Christian people work together they can succeed during this decade in winning back control of the institutions that have been taken from them over the past 70 years. Expect confrontations that will not only be unpleasant but at times physically bloody. This decade will not be for the faint of heart but for the resolute. Institutions will be plunged into wrenching change.

And so on. This is the kind of thing that we are talking about. We know very well when we talk about the religious right we are not talking about all fundamentalists, but we are talking about Pat Robertson's Christian Coalition and Jerry Falwell's old Moral Majority, and the people that are talking in these terms, I would welcome the opportunity to talk within rational collegial terms.

When I say trashing the first amendment, what I am talking about is people who are seeking to reverse the trend of the Supreme Court by such radical justices as Mr. Justice Clark and Chief Justice Burger and others who have said prayer in public schools is a violation of the separation clause.

Commissioner George. That's who you are talking about, Mr. Eisenberg?

Mr. Eisenberg. That's right.

Commissioner George. I'm afraid you're talking about me. You're talking about Richard John Neuhaus. You're not just talking about Pat Robertson and Jerry Falwell. In other words, anyone who disagrees with your strict separationism now turns out to be trashing the Constitution. I don't believe that you are trashing God and driving him from the public square. I believe that we have a legitimate debate on which you might be right, and I'm prepared to entertain argument. I request that you extend to me that same civility. Is that not possible?

Mr. Eisenberg. I had hoped that what I said was not uncivil.

Commissioner George. You said that people were trashing the Constitution if they want to reverse the trend of Supreme Court decisions.

Mr. Eisenberg. I believe that's an appropriate statement, and I think that in my view of the cases and my view of the first amendment that's appropriate. That's not calling names. You certainly can disagree. I will engage in conversation and discussion. I may be wrong and you may be wrong or we may be right. We do this all the time on issues which are of a lot less consequence to minority groups and minority religions than the first amendment. We argue about all sorts of things.

If you take exception to the words "trashing the first amendment," I'd be happy to revise that.

"Seeking to undermine," "seeking to erode the wall of separation"—there are all sorts of words which I hope will be less offensive to you. But to give you the sense of my feeling about what is happening to the first amendment, that this is a real danger, that this Commission is concerned about the maintenance of minority religious rights, I have to communicate to you the urgency with which we feel that this amendment is being undermined.

Commissioner George. Then I would suggest, respectfully, because I do have a lot of respect for your organization, and much of what you said struck me as very instructive, but I would suggest that we not use that language in connection with people's religious beliefs. I would tell any evangelical who made reference to the Jewish left moving to trash God or drive him from the public square to make your argument, make your anti-strict separationism argument, make the argument that it would be bad to continue this trend toward strict separationism, and so forth, but please leave the religious affiliation of the person who is making the argument out of it.

Mr. Lynn. The difficulty, Commissioner George, with doing that is that the religion is by the definition of the people promoting what we could call the undermining, the evisceration of the first amendment, the religious doctrine is terribly important to the very people who are speaking. In one sense one is respecting the fact that they are coming from a religious perspective, but one still needs to say in our constitutional system coming from that perspective, we understand it, but we must disagree with it because its conclusion if it became part of the law of the United States would seriously undermine the right of all of us to practice our religion.

Commissioner George. The very same can be said, Reverend Lynn, of Jewish contributors to the debate, but let us leave their religion out of it.

Chairperson Berry. May I ask a question which might illuminate this, because I'm not sure I understand what is going on. Just a very brief question. What is the difference between someone saying the "Jew-dominated media" and how hateful that is and someone saying "people who believe in bringing religion into the public place

are just trashing the Constitution"? What is the difference? Aren't they both a question of fact? Is it fact that someone is trashing the Constitution? Is it a fact that there is a Jew if somebody uses that term Jewish-dominated media? One would find that offensive. People throw statements around like that. The media is dominated by Jews and blah, blah, blah. Which isn't true.

What is the difference between you objecting if someone makes statements like that impugning Jews—I regard that as anti-Semitic—and your making statements about Christian fundamentalists and saying that they are trashing the Constitution, characterizing what they are doing in that way? What's the difference?

I'm not saying I don't know the difference. I'm just asking, because it seems to me that the interstices of what you are debating about are somewhere along that line.

Mr. Eisenberg. It seems to me, as you indicated, Jews owning the media or running the media is not true. On the other hand, as we have indicated, there are certain fundamentalist Christian groups who have made public statements—Robertson, Falwell are just examples—and they have a specific view of the first amendment which we disagree with. They have a right to express their opinion, but we have a right to say to them that we believe that you are seriously undermining the first amendment.

Chairperson Berry. "Trashing" the first amendment was the issue. Isn't trashing a question of fact? Your trashing is his promoting.

Mr. Eisenberg. The difference is, I believe, that there is sufficient evidence in what has been accumulated just in the courts and on the public records in terms of undermining the first amendment and the separation clause. I called that trashing. I didn't think the difference between trashing and undermining, eroding as all that much.

Commissioner George. No, but it's the reference to the religious beliefs.

Mr. Eisenberg. But that's the key to their attack.

Chairperson Berry. Can we recognize someone else? I want to recognize Father Neuhaus and then I'll recognize somebody else.

Father Neuhaus. I want to agree with Mr. Lynn. I think, Commissioner George, that it's legitimate. He said in response to your question, well, the reason you have to bring the religion thing is that if you are going to understand "the religious right," the religion factor is the driving or at least a formative reality there.

Of course, alternatively, your comeback on that is exactly right. Being Jewish in America and being Jewish generally has a great deal to do with one's attitude toward certain questions in the public square particularly relevant to church-state relations. This is emphatically the case in organized American Judaism, that is, in the major organizations such as the [American Jewish] Congress, the [American Jewish] Committee, ADL, etc. And it has a long history, and I'm glad to say that in recent years there are more and more younger Jewish thinkers, more constructive ones like Dr. Green, who understand that some of the problems in the past that have characterized the major Jewish organizations are being reexamined in a constructive way.

The real test of civility, indeed, is if we are able with candor and mutual respect to recognize that indeed we are all shaped by specific moral, cultural and religious presupposition, and that all of this can be discussed in public. It's not simply something that has to be sealed off in the private realm of life as though it didn't matter.

Commissioner Wang. A Buddhist will face a wall and meditate.

Father Neuhaus. Buddhism and Confucianism. One of the most interesting questions in American religion is, is there a distinctive way of bringing the Buddhist and Confucian, and of course we are being tested with the Islamic situation as well.

This is exactly the excitement of the American experiment in pluralism, to have all of these differences engaged in public, in civil argument. If we don't believe in that, it seems to me we don't believe in democratic pluralism.

Chairperson Berry. The Vice Chairman has to leave and he wants to say something.

Vice Chairperson Reynoso. A meeting came up late, so I just want to apologize. This has been for me one of the most engaging discussions we've had. I just mentioned to the Chair that I am still

interested in the issue raised earlier that Reverend Neuhaus, I think properly, identified as one of the key issues for us as a civil rights group to be concerned about, and that is, do you exclude religion from debate, particularly in grammar schools? Do you include it, and how do you include it? I'd be interested in reviewing the transcript if you get to that issue.

I apologize to you and to my fellow Commissioners. I've got to run. But I think that really is a key.

Chairperson Berry. Commissioner Redenbaugh.

Commissioner Redenbaugh. I want to in some way express a concern that I think is in part shared by my colleague Robert George about the notion of language and the language that was used, I think, by you, Mr. Eisenberg, and by you, Reverend Lynn. As you know, language is very important, and trashing and eroding have quite different meanings in almost every community.

I think what I find troubling is the characterization of a large group of people and the association of that group with three or four vocal representatives that you cited. I think what is troubling to me about is it categorizes a group of people, all of whom I'm certain don't feel the same way. In a way it's a prejudice. In a way it's like saying, "Well, all so and so are this way, all the religious right are this way, or all blind people are."

I think we can be more careful in the way we use language and more precise. I certainly would not associate myself with the religious right, although I don't have a very clear understanding of just what that is. Some of what they stand for has merit and I do support it.

Maybe what I'm saying is I would like us to have more distinctions and more subtlety, and I think that would help a lot with this question of civility.

Mr. Lynn. May I just respond to that? I agree very much that one has to be very careful about categorizing everyone of a specific religious background or to associate them with the remarks of someone like Jerry Falwell or Pat Robertson. On the other hand, I believe Pat Robertson has a \$1 billion endowment created by people all over the United States who support what he believes in.

And I don't think it's wrongheaded for us to associate with the supporters of Pat Robertson or to attribute to them the same range of religious and political beliefs that their leader, and I think they would recognize him as such, happened to promulgate in this public square and do so very vociferously and honestly.

Mr. Eisenberg can speak for himself on this, but when we were asked to explain who we meant when we referred to—I use this phrase so-called "religious right" because it has got some cachet—to name the specific people and to quote to you, as Mr. Eisenberg did, the specific arguments that we find so objectionable: return of Christian prayer to public school; efforts to teach creationism as science in public school. These are the specific doctrinal positions and political positions that Mr. Eisenberg and I would disagree with.

I don't think there has been anything uncivil said in asserting what the goal of these organizations is. Mr. Eisenberg was quoting Pat Robertson saying he wanted to take over the political machinery of our country. In other speeches, he talked about it from the presidency down to the school board.

Father Neuhaus. Isn't that what the Republican Party wants to do? Or the Democratic Party? Why is this language outside of bounds?

Commissioner Horner. Right.

Mr. Lynn. It shouldn't be outside of bounds, but neither should it be outside of bounds to say that this would undermine, eviscerate, or trash the first amendment. Normally during these hours of the day frequently I do a radio program with Pat Buchanan, and I can tell you some very uncivil things are said by callers well beyond the bounds of saying that someone is trashing the first amendment.

Commissioner George. Let's get back to the specific point.

Chairperson Berry. I think Commissioner Anderson had his hand up.

Commissioner Anderson. Thank you. I want to talk about it from a little bit different perspective.

Pluralism, individuality, and tolerance are really more secondary issues or result of an agreement on a particular religious character that for most of

the history of this Nation was apparent. It is not an agreement so much on morality, but it is an agreement fundamentally on a vision of the human person which has something to do with the creative and redemptive experience of the person, and that that common vision of what a human being is, what a person is, has very specific consequences in terms of conscience, in terms of equality, and those consequences lead to areas of plurality, individuality, and tolerance.

It seems to me that in the civil rights movement of the 1960s Dr. King's force was a moral force based on a vision of the human person that this country historically had an underlying consensus about. It would be better to begin to discuss what our common religious heritage is, which I would say is distinctly Judeo-Christian, but this area would be open to Islamic as well, as a way of getting out from this sort of dilemma of staring across at each other on these kinds of specifics.

Father Neuhaus. I think you are exactly right. There were a whole set of presuppositions. In many ways they are still there for most Americans in terms of human beings created by God, nature and nature's God accountable to God. Even revelation, redemption, and discipleship. For the great majority of Americans this language is still the language by which they interpret their everyday reality, by which they understand themselves.

But we have gotten into an enormous kind of cultural crisis—some people call it a culture war, whatever—in which a great deal of our public discourse and our legal discourse and our political discourse has been divorced from that reality of American life. So when Jimmy Carter, for example, came to national prominence and said, "I'm a born-again Christian," most of the newsrooms around the United States went crazy. "What's this? Born-again Christian? What does this mean?" As though it were something from some alien planet instead of something that most Americans know all about, the experience of being born again, or at least talk about it.

You mentioned Dr. King. One of the graces of my life was to work closely with Dr. King, especially in the last 2 years of his life. I was always struck, and it illustrates your point very well, that in his public speeches—there was usually a lot of

media—all the strobe lights, the big television lights, and so forth, would go on at certain times and then go off at other times. They'd go on whenever he would get expressly political, and especially if attacking someone politically. All the lights on.

Then he'd talk about what he really wanted to talk about, about the moral and the religious and the Biblical meaning of the movement that he was leading. The lights would go off. It's just that religious boilerplate again. Which, of course, was to miss the whole point of the civil rights movements, which was especially, as articulated by Dr. King and others, a movement of enormous spiritual renewal and insurgency of a Biblical and transcendently grounded understanding of humanity and human community.

Dr. Green. I think that's right to a certain extent. This is part of what I was trying to say before about we need to get better informed. I think there is a profound and powerful religious motivation for the civil rights movement, and it's Biblical, but it is a particular Biblical reading. There were people in the period of slavery who claimed slavery was God and in fact not incredible arguments on that side.

I think what I would like to add to this and in some way to address your question is—we are leaving out these kinds of discussions other ways in which we are living out really an extraordinary kind of experiment. One of the assumptions that we probably need to get rid of—we really are much more postmodern than we think. There really isn't any center for these things. There isn't any Archimedean point of neutrality. Religions, we know, tend to totalize. That's what makes them powerful. It's not true that only government is about power. Religion is all about power. It's about control; it's about truth; it's about being right; it's about how to live; it's about how to die and what will happen after you die, which is not nothing. Those are serious matters. Religion tends to totalize.

The founders knew that and tried to create a context that would domesticate religion so that it couldn't totalize itself through the political system. There are all kinds of things you can do in neigh-

borhoods but don't make laws restricting other people's religious behavior. That's the first.

So you begin with all these different religions with their totalizing tendencies and their perspective and their strong negative opinions about people who see the world differently from them, which is part of why things don't sound right to us because our positions are sometimes irreconcilable and people have a lot at stake in them. It's not easy to hear somebody say, "I really think that you're wrong; I don't think He rose from the dead," or, "I don't think God chose you," or a whole lot of other things. That's very hard stuff to take.

The second part is that we don't really have a neutral sort of civic perspective on religion. There are some kinds of religious behaviors that American society will not tolerate. We will not tolerate religious behavior that advocates genocide. We simply won't do it. We won't tolerate religious behavior that violates a whole set of civil laws or that produces all kinds of disorder. We negotiate these things out almost case by case because it's very tricky.

We're trying to do two things at the same time. We're the only Nation on the face of the earth that has proclaimed itself willing to do that. We are trying to preserve a context in which there can be religious absolutism and religious relativism at the same time. So that religions are free to assert themselves and to say what they believe and at the same time do that in a way that doesn't deny anybody else the right to say that and to live that way.

It's enormously complex. Just to come back to the point I tried to make earlier, I don't think we can solve all these problems politically. I'm not even sure we can solve them educationally, but if we don't do something at the educational level, this is never going to get better.

One last point. The adults in some way are already telling us, I think, what we should be doing in school. There is probably more awareness of religious pluralism and difference and experience with it among adults now than at any other time in American history. In 1984 four-fifths of Americans said they had had experience with at least two religious denominations or faiths.

Three-fifths said they had had experience with at least three. One-half said they had had experience with at least four, and one-third said they had had experience with at least five.

One out of every three people changes religions now at least once in his or her life, and others do it more than once, as opposed to one out of twenty-five 20 years ago.

People are aware of the difference. They are experiencing the difference. But the educational system is not at all in concert with that.

I think part of the problem is we don't really quite know [how to treat religion]. We keep it too much out of public discourse, and we make it something that frightens us. People are uptight about talking about it. I don't think Reverend Lynn would disagree. I think it would be great if Americans knew how to talk about religion with one another as easily, for example, as we know how to talk about sex with one another. We say anything. We put anything on television. We are a lot more reticent when it comes to religion, partly because we really don't know what to say. I think that in large measure stems from just massive ignorance.

Chairperson Berry. We are going to take another comment and possible exchange, but then we are going to have to close this. We will take your comment, Dr. al-Hibri.

Dr. al-Hibri. This ties to the question you asked, but really I want to start from the point of answering Professor Berry's question earlier about trashing the first amendment, going back to this issue which relates to it: Is it a question of fact? Why don't we find out who is doing what, who controls the media, etc.?

I really think that what we have a problem with from what I hear from the various comments, including yours now, searching for the neutral position, etc., is that we are assuming that there is something objective out there which is going to tell us what the truth is. The fact of the matter is, while I do not think we are monads and we do talk to each other, we are all talking in terms of subjectivity.

If for you, Mr. Eisenberg, somebody is trashing the first amendment, for that person probably what you're doing is trashing the Constitution, because

you are foisting upon it, and I'm using value-laden terms, an interpretation which they think is not justified and was not meant by the framers of the Constitution.

So it's really where you stand, and therefore it becomes much better not to use value-laden terms and talk in terms of what you have referred to in this room as civility, sensitivity, etc., so that we can go forward with our discussion, because we are not monads and because further discussion and dialogue might bring us closer to each other.

I would like to say one tangential point important to me in terms of civility and dialogue, etc. I want to sensitize you to one term that has been bandied around in this room today. You all speak about the Judeo-Christian tradition. This is historically, by the way, unjustifiable, at least from where I stand. Islamic culture and civilization has contributed a great deal more than Americans are aware of to the civilization, and if anything, I don't suggest we call this Judeo-Christian-Islamic, but rather the Abrahamic tradition, because that is exactly what these three religions are.

Chairperson Berry. Let me thank everyone for coming to give us this presentation and let me thank Commissioner Horner, who suggested this briefing, for the suggestion. We have been enlightened by the discussion and can use the information as we decide on our agenda for the future. We have not all agreed, but it has been an illuminating discussion. Thank you very, very much.

[Applause.]