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COMMISSION MEETING

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UNEDITED

FRIDAY,

NOVEMBER 18, 2005

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The Commission convened at 9:30 a.m. in Room 540 of the U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Washington, D.C., Vice Chairperson Abigail Thernstrom presiding.

PRESENT:

- ABIGAIL THERNSTROM, Vice Chairperson
- JENNIFER C. BRACERAS, Commissioner
- PETER N. KIRSANOW, Commissioner (via telephone)
- ARLAN D. MELENDEZ, Commissioner
- ASHLEY L. TAYLOR, JR., Commissioner
- MICHAEL YAKI, Commissioner (via telephone)
- KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

- CHRISTOPHER BYRNES
- DEBRA CARR, Esq., Associate Deputy Staff Director
- TERRI DICKERSON, Assistant Staff Director
- PAMELA A. DUNSTON, Chief, Administrative Services
and Clearinghouse Division
- PATRICIA JACKSON, Chief, Budget and Finance Division

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STAFF PRESENT CONTINUED:

SETH JAFFE

SOCK FOON MacDOUGALL

TINALOUISE MARTIN, Director for Management, Office
of Management

EMMA MONROIG. Solicitor/Parliamentarian

AONGHAS ST. HILAIRE

AUDREY WRIGHT

MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

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(9:41 a.m.)

VICE CHAIRPERSON THERNSTROM: Calling the meeting to order. For the record, we are the Commission's headquarters at 624 Ninth Street.

Three commissioners are not present in this room. The Chair, Gerald Reynolds, cannot be with us at all. Commissioners Yaki and Kirsanow are with us, by phone.

And the first item on the agenda is the approval of the agenda. Can I get a motion to approve that agenda?

I. Approval of Agenda

COMMISSIONER BRACERAS: So moved.

VICE CHAIRPERSON THERNSTROM: And a second?

COMMISSIONER KIRSANOW: Second. I'm Kirsanow, by the way.

VICE CHAIRPERSON THERNSTROM: Right. I need a motion to amend the agenda. I think you all have the motions in front of you to remove the item labeled Length of SAC Terms.

COMMISSIONER YAKI: I'll so move.

VICE CHAIRPERSON THERNSTROM: Does everybody have that motion so they know what they're

1 voting on? Okay.

2 And I need a second on that.

3 COMMISSIONER KIRSANOW: Second that.

4 VICE CHAIRPERSON THERNSTROM: All in

5 favor?

6 (Chorus of ayes)

7 VICE CHAIRPERSON THERNSTROM: Anybody

8 opposed?

9 (No response)

10 VICE CHAIRPERSON THERNSTROM: So

11 ordered.

12 **II. Approval of Minutes of October 31, 2005 Meeting**

13 VICE CHAIRPERSON THERNSTROM: Second

14 item on the agenda: Minutes of October 31.

15 Can I have a motion?

16 COMMISSIONER MELENDEZ: So moved.

17 COMMISSIONER BRACERAS: I have a

18 question.

19 VICE CHAIRPERSON THERNSTROM: Yes.

20 Okay, I need a second before we have a discussion.

21 Second, and approval of the minutes for October 31.

22 COMMISSIONER TAYLOR: Second.

23 VICE CHAIRPERSON THERNSTROM:

24 Commissioner Taylor has just seconded it.

25 Okay, yes, discussion, Commissioner

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1 Braceras.

2 COMMISSIONER BRACERAS: It's a small
3 point. But the minutes describe it as the monthly
4 meeting of the U.S. Commission on Civil Rights. I
5 just wasn't sure if that is an accurate way to
6 describe it, since it was - was it a continuation or
7 a separate meeting?

8 I just don't think it's clear for the
9 record what that was. Because we met on October
10 7th, right?

11 COMMISSIONER YAKI: Yes, that struck me
12 as rather odd, too.

13 COMMISSIONER BRACERAS: So can we change
14 that to be more accurate?

15 MR. MARCUS: It was a full meeting as
16 opposed to a continuation. But I think Commissioner
17 Braceras is correct that it was not a monthly
18 meeting, and it would be appropriate I think to
19 delete the word, monthly.

20 COMMISSIONER BRACERAS: That's fine. I
21 just think it would clarify for anybody who happens
22 to be perusing the minutes of the U.S. Commission on
23 Civil Rights.

24 VICE CHAIRPERSON THERNSTROM: All right,
25 we will amend it. Do we need a vote on taking that

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1 one word out? We do not, I assume.

2 MR. MARCUS: It would be deemed a
3 friendly amendment to the motion.

4 VICE CHAIRPERSON THERNSTROM: A friendly
5 amendment to the motion that that one word is taken
6 out, and can we have a vote therefore, approval of
7 the minutes? All those in favor, say aye.

8 (Chorus of ayes)

9 VICE CHAIRPERSON THERNSTROM: Anybody
10 opposed?

11 (No response)

12 **III. Announcements**

13 VICE CHAIRPERSON THERNSTROM: No.

14 Okay, a bunch of announcements before we
15 get to our briefing.

16 The first involves the National American
17 Indian and Alaska Native Heritage Month which is
18 November, this month, dedicated to recognizing the
19 inter-tribal cultures, the events and lifeways, the
20 designs and achievements of American Indians and
21 Alaska Natives.

22 The U.S. Commission on Civil Rights has
23 marked this observation since 1976, and on behalf of
24 the Commission I encourage all Americans to
25 celebrate National Indian and Alaska Native Heritage

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1 Month with appropriate programs and activities.

2 Second announcement: Korematsu
3 Petition, and Japanese-American internment
4 reparations.

5 November also marks the 22nd anniversary
6 of Fred Korematsu, Min Yasui, and Gordon
7 Hirabayashi's petition to overturn their World War
8 II convictions for violating curfew and evacuation
9 orders directed at Americans of Japanese descent.

10 It is also the 16th anniversary of the
11 signing by then-President George H.W. Bush of a law
12 requiring the payment of \$20,000 to each surviving
13 Japanese American internee.

14 Third announcement, the 30th anniversary
15 of Individuals With Disabilities and Education Act,
16 which November 29th, marks the 30th anniversary of
17 IDA, which mandates the provision of a free,
18 appropriate, public education for students with
19 disabilities, as well as some level of federal
20 funding to ensure that such children are able to
21 reach their full potential.

22 And last announcement, I'd like to
23 announce that George Harbison, the director of human
24 resources and the former chief of the budget and
25 finance commission at the Commission, is retiring

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1 after 34 years of federal service.

2 George's last day at the Commission is
3 today, and behalf of the Commission, I wish George
4 all the best in retirement.

5 And from here we do move onto the
6 Commission briefing on campus anti-Semitism.

7 **IV. Commission Briefing: Campus Anti-Semitism**

8 On behalf of the Commission on Civil
9 Rights, I welcome everyone to this briefing. The
10 Commission frequently arranges such public
11 briefings, with presentations from experts outside
12 the Agency in order to inform itself and the nation
13 of issues related to civil rights, and this is
14 certainly an important one.

15 I am delighted to see you here, those of
16 you who have come as experts. This briefing will
17 examine allegations of a pattern of harassment and
18 intimidation of Jewish students at institutions of
19 higher education.

20 In addition, I believe speakers will
21 discuss the steps that universities have taken to
22 ensure that their students are able to receive an
23 education in a nondiscriminatory environment.

24 So we are pleased to welcome three
25 experts on various aspects of anti-Semitism. I will

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1 introduce all three, and call on you in the order in
2 which you have been introduced.

3 First, Gary Tobin, who is president of
4 the Institute for Jewish and Community Research,
5 director of the Leonard and Madelyn Abramson program
6 in Jewish policy research at the University of
7 Judaism in Los Angeles.

8 Dr. Tobin earned his Ph.D. in city and
9 regional planning from the University of California
10 Berkeley. He was the director of the Maurice and
11 Marilyn Cohen Center for Modern Jewish Studies at
12 Brandeis University for 14 years.

13 He is the editor of two volumes: What
14 Happened to the Urban Crisis? And Divided
15 Neighborhoods.

16 He has been a consultant in planning
17 demography and philanthropy with synagogues, Jewish
18 community centers, foundations and other nonprofits.

19 His books include Jewish Perceptions of
20 Anti-Semitism, Rabbis Talk about Inter-marriage, and
21 Opening the Gates: How Proactive Conversion Can
22 Revitalize the Jewish Community.

23 His latest uncompleted work is entitled,
24 Anti-Israelism and Anti-Semitism in America's
25 Educational System.

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1 And I very much welcome him. But first
2 I will introduce the other two, and then we will get
3 to you, Dr. Tobin.

4 Susan Tuchman served as director of the
5 Center for Law and Justice at the Zionist
6 Organization of America since 2003.

7 She graduated magna cum laude from
8 Brandeis University; received her law degree from
9 Boston University School of Law. Following a
10 clerkship at the Superior Court of the Commonwealth
11 of Massachusetts, Ms. Tuchman became a litigator at
12 the Boston firm of Hinckley, Allen & Snyder.

13 She was the first woman partner in the
14 litigation department. Ms. Tuchman has a general
15 and varied commercial litigation practice, and has
16 also handled several civil rights and constitutional
17 cases.

18 Sarah Stern is the director of the
19 Office of Governmental and Public Affairs at the
20 American Jewish Congress. She recently authored a
21 chapter on college campuses in a book edited by
22 Frank Gaffney entitled, War Footing: Ten Steps
23 America Must Take to Survive and Prevail.

24 She, along with the American Jewish
25 Congress, has been a moving force behind H.R. 609, a

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1 legislative amendment to amend Title VI of the
2 Higher Education Act.

3 Prior to her current position she had
4 been director of the Washington office of the
5 Zionist Organization of America.

6 Graduated summa cum laude from Boston
7 University, and has a law degree from - well, has
8 higher degrees from Columbia University and Catholic
9 University of America.

10 She has frequently published in
11 newspapers and journals, and is the author of a
12 recently released novel, Cherished Illusions.

13 Well, we've got three great experts. I
14 hope, I anticipate, we're going to have a very
15 interesting discussion this morning.

16 So I welcome all three of you, and
17 again, we will start with Dr. Tobin, and you each
18 have 10 minutes in which to talk. That may seem
19 like a frustratingly short time, but we will have
20 plenty of time for questions and answers, so that
21 any points you are dying to make and can't make in
22 your 10 minutes, you need to find a way of including
23 them in whatever questions - in your answer to
24 whatever question is asked.

25 So Dr. Tobin, let us start with you.

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1 DR. TOBIN: Good morning.

2 I'd like to set the context for my
3 testimony, which is from the work that we have been
4 doing for the last four years on anti-Israelism and
5 anti-Semitism in America's educational system.

6 There are a number of volumes which are
7 going to be released over the next year, the first
8 which I'm glad to say is no longer an unfinished
9 work, but is entitled, The Uncivil University, which
10 I would like to submit as part pf my remarks.

11 Anti-Semitism and anti-Israelism, we
12 found on campuses throughout the United States.
13 There are some analysts who contend that this
14 problem can be found on a few isolated campuses in
15 this country. We did not find that in our four
16 years of research.

17 We found examples on hundreds of
18 campuses, and had we had the time, I suspect we
19 would find examples on hundreds more campuses; that
20 anti-Semitism and anti-Israelism are systemic
21 ideologies of higher education that have found their
22 expression in the classroom and outside the
23 classroom, producing what we consider to be an
24 environment of intimidation and harassment for
25 Jewish students.

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1 Not only did we interview Jewish
2 students, we also examined campus media, pamphlets,
3 flyers. We had some number of researchers who were
4 participant observers on some number of campuses,
5 and found a systemic pattern.

6 I want to say at the outset that we talk
7 about anti-Israelism as well, because much of the
8 anti-Semitic rhetoric and behavior on campus comes
9 under the radar screen as part of the debate about
10 the Middle East. And what's happened on campuses is
11 that the traditional languages and stereotypes used
12 by anti-Semites have become incorporated into what
13 has become a very uncivil discussion on campus, what
14 we believe violates the norms and values of campuses
15 which are to promote racial and ethnic and religious
16 diversity and understanding.

17 And what's most troublesome about this
18 trend on campuses is that it represents a terrible
19 violation of academic freedom and academic
20 responsibility, and the freedom of speech being
21 abused in the name of open discussion.

22 In 2002 300 college presidents, college
23 and university presidents, signed a statement that
24 said the following: We are concerned that recent
25 examples of classroom and on-campus debate have

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1 crossed the line into intimidation and hatred,
 2 neither of which have any place on university
 3 campuses. In the past few months students who are
 4 Jewish or supporters of Israel's right to exist have
 5 received death threats and threats of violence.
 6 Property connected to Jewish organizations has been
 7 defaced or destroyed. Posters and websites
 8 displaying libelous information or images have been
 9 widely circulated creating an atmosphere of
 10 intimidation.

11 It is unfortunate that more college and
 12 university presidents did not sign this statement,
 13 and we can talk about that later, why they didn't.

14 The anti-Semitic images and language,
 15 both inside and outside the classroom, include the
 16 most terrible charges that have been used against
 17 Jews over the centuries.

18 Among them, you will see posters on
 19 campus that include pictures of Palestinian babies
 20 as canned meat used by Jews for their ritual
 21 purposes.

22 Now it's important to remember that
 23 these posters and images are placed on student union
 24 facilities, or in dorms, that are part and parcel of
 25 the university community, and should be part of

1 university oversight, but in the name of free
2 speech, these anti-Semitic images are portrayed.

3 We have students who are experiencing
4 Holocaust deniers in the classroom, that the
5 Holocaust did not occur, and if it did occur, it
6 really didn't occur to the extent it did.

7 And by the way, as part of this
8 distortion of history, that the Holocaust does not
9 belong to the Jews anyway, because the real
10 Holocaust is being perpetrated against the
11 Palestinians of the day.

12 Therefore the Holocaust is a Palestinian
13 legacy, and not a Jewish experience at all.

14 Part of what we found is the distortions
15 of history. This is particularly problematic in
16 institutions that are supposed to be supporting
17 unbiased scholarship, quality scholarship, and
18 presentations in the classroom that encourage open
19 discussions.

20 The distortions of history are used to
21 quash those discussions, and intimidate Jewish
22 students.

23 We have students who are told that if
24 they wish to raise different views that they are to
25 leave the classroom, or in some course descriptions

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1 it says that people who do not agree with the point
2 of view of the professor should not take the class
3 at all.

4 Nothing could be more antithetical to
5 what the university is supposed to be about.

6 We also note in our volume that colleges
7 and universities are part of the public trust, which
8 is why it is vital that sessions such as these be
9 held.

10 State and federal governments are the
11 single largest contributors to higher education, to
12 the tune of over \$160 billion a year.

13 We contend in this volume that there is
14 no such thing as a truly private university.
15 Universities were created as part of the public
16 trust to help create moral citizens; provide a moral
17 good; to increase the knowledge of society.

18 And the partnership between the public
19 sector and colleges and universities rests upon
20 those principles.

21 To utilize public monies and endorse
22 through omission or commission the violation of
23 Jewish students' rights on campus seems to be an
24 abuse of the public trust.

25 Many colleges and universities are

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1 afraid at administrative and faculty levels, and
2 also trustees, to deal with the issue of anti-
3 Semitism and anti-Israelism on college campus,
4 because they are afraid of going down the slippery
5 slope of violating academic freedom and freedom of
6 speech.

7 We contend in our volume that academic
8 freedom has always involved academic responsibility,
9 which includes appropriate peer review; the pursuit
10 of honest scholarship; and teaching in a way that
11 does not intimidate students.

12 Academic freedom is used as a threat. I
13 assume that yellow light means the same thing it
14 does in traffic, which is, I'm to being going very
15 fast.

16 VICE CHAIRPERSON THERNSTROM: You seem
17 to have a minute and a half left.

18 DR. TOBIN: All right. I'm supposed to
19 accelerate now, right?

20 VICE CHAIRPERSON THERNSTROM:
21 Accelerate, but as I said before, I invite you to in
22 effect add to your remarks in the question and
23 answer period.

24 DR. TOBIN: I know this from my son,
25 because when he's driving with me he's learned that

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1 red light means stop, green light means go, and
2 yellow light means go very fast.

3 VICE CHAIRPERSON THERNSTROM: Go very
4 fast. Dr. Tobin, go very fast.

5 DR. TOBIN: I'll go very fast.

6 We recommend a variety of approaches to
7 dealing with this issue. I assume others on this
8 panel will discuss Title VI funding. Currently
9 there are issues relating to oversight of Middle
10 East studies programs. And establishing an
11 appropriate oversight committee, which is essential
12 since many of these departments as some university
13 presidents have noted are not only noted, or can be
14 cited for their propaganda, but also for their low
15 quality scholarship.

16 We do encourage Jewish students to begin
17 filing complaints which takes a great act of
18 courage, given the level of intimidation and
19 harassment on campus.

20 It may be appropriate for other
21 congressional oversight committees to be
22 established, for the monies that are coming from the
23 Congress in support of a wide array of academic
24 programs; if colleges and universities cannot handle
25 this issue by themselves.

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1 We are also encouraging donors to make
2 colleges and universities more accountable for the
3 tens of millions of dollars of gifts they get every
4 year. And all stakeholders, including
5 administrators, and especially provost presidents
6 and others who have positions of authority in the
7 university to assert their moral leadership and come
8 and condemn anti-Israelism and anti-Semitism on
9 campus for what it is, a pernicious prejudice that
10 has no place in higher education.

11 Thank you.

12 VICE CHAIRPERSON THERNSTROM: You beat
13 the clock. That wasn't what you were supposed to
14 do.

15 And now, onto Ms. Tuchman.

16 MS. TUCHMAN: Thank you. On behalf of
17 the ZOA, thank you so much for holding this briefing
18 and for giving us the opportunity to participate.

19 Anti-Semitism, hatred toward Jews, has
20 been increasing in frequency and severity, and the
21 roots of the problem run deep.

22 This is the assessment of our own
23 government in a report on global anti-Semitism that
24 was issued in January of 2005.

25 The State Department recognized that

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1 when we talk about anti-Semitism, we're not just
2 talking about Jews being threatened, assaulted,
3 subjected to name calling and slurs. Certain forms
4 of anti-Israel sentiment are also an expression of
5 anti-Semitism.

6 When Israel is demonized, when its
7 leaders are vilified by comparing them to Nazi
8 leaders, by using Nazi symbols to caricature them,
9 that, according to the State Department, indicates a
10 bias toward anti-Semitism.

11 It would be unfair and wrong to say that
12 all criticism of Israel and the Israeli government
13 is anti-Semitic. The policies and practices of the
14 state of Israel, like any other country, can and
15 should be open to legitimate criticism, and rigorous
16 scrutiny.

17 But when Israel alone is singled out
18 and condemned, when the criticism uses anti-Jewish
19 images and caricatures to attack Israel and its
20 policies, and when the criticism is factually
21 inaccurate or lacks any semblance of balance; then
22 the criticism indicates a subtle expression of anti-
23 Semitism.

24 However broadly the concept is defined,
25 there is no question that hatred expressed toward

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1 Jews causes pain, discomfort and fear, and this is
2 certainly true on our college campuses, where
3 unfortunately anti-Semitism is a growing problem.

4 In my written statement to the
5 Commission I provided examples of the kind of
6 harassment and intimidation that Jewish students
7 have been subjected to. For example, in 2003,
8 swastikas were spray painted on Jewish-affiliated
9 buildings at Rutgers University in New Jersey.

10 Jewish students have been harassed,
11 physically intimidated, and assaulted at the
12 University of Indiana at Bloomington in 2004 and
13 2005.

14 And there has been a pattern of anti-
15 Semitism at the University of California at Irvine
16 since at least 2002.

17 In 2003, at U.C. Irvine, a Holocaust
18 Memorial was destroyed. During the same time
19 period, when Jewish students were holding a
20 candlelight vigil to commemorate the Holocaust, a
21 swastika was found after the vigil carved into one
22 of the tables nearby.

23 Anti-Semitic speakers have routinely
24 been invited to the U.C. Irvine campus, inciting
25 students there to hate Jews.

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1 I have described in detail some of the
2 hateful speech on that campus in my written
3 statement to the Commission.

4 Often these hateful speeches have been
5 delivered from a lectern bearing the U.S. Irvine
6 emblem, suggesting that the speeches bear the
7 imprimatur of the university.

8 One Jewish student at U.C. Irvine who
9 was frightened by what she was seeing and hearing on
10 campus wrote a heartfelt letter to the chancellor of
11 the university and other administrators. This is
12 back in April of 2002, and I'd like to read an
13 excerpt from her letter.

14 Not only do I feel scared to walk around
15 proudly as a Jewish person on the U.C. Irvine
16 campus, I am terrified for anyone to find out.

17 Today I felt threatened that if students
18 knew that I am Jewish and that I support a Jewish
19 state, I would be attacked physically. It is my
20 right to walk around this campus and not fear other
21 students and hear condemnation from them. It is my
22 fright for my government to protect me from harm
23 from others. It is my right as a citizen who pays
24 tuition and taxes to be protected from such harm.

25 You may claim the First Amendment. I

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1 claim the right to be safe and secure. You cannot
2 use the First Amendment as an argument against my
3 safety.

4 This was written three years ago. This
5 student never even received a response to her letter
6 from the chancellor to whom she wrote it.

7 One administrator who did respond
8 reacted in a telling way. He suggested that this
9 student visit the counseling center on campus to
10 help her work through her feelings.

11 To me this response epitomizes the
12 problem at U.C. Irvine, and may well be a sign of
13 what is happening elsewhere. The university
14 administration has not viewed the harassment and
15 intimidation of Jewish students as a problem that it
16 has the responsibility to address.

17 It is the Jewish students who have a
18 problem, and they had just better learn to deal with
19 it.

20 Tolerating hate speech is wrong. It
21 sends a message to the perpetrators that they can
22 get away with it. A lesson they will take with them
23 when they leave college and go out into the world.

24 Tolerating anti-Semitic speech hurts and
25 marginalizes Jewish students beyond the effect of

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1 the hateful speech itself. Jewish students perceive
2 the university as taking sides by not taking action.

3 And they are left on their own to deal with the
4 problem.

5 Tolerating anti-Semitic speech is also
6 antithetical to the goals and values of the
7 university. These goals and values include not only
8 encouraging open debate and the rigorous exchange of
9 ideas. Presumably a university's values and goals
10 also include encouraging respect, tolerance, and an
11 appreciation of our individual differences.

12 When hate speech is not confronted head
13 on, slurs and name-calling can escalate into
14 violence, and that is what happened at U.C. Irvine.

15 In addition to the destruction and defacement of
16 property in 2003, there were several instances of
17 outright violence in 2004, which I have described to
18 the Commission in my written statement.

19 For one victim, the experience made him
20 afraid to wear anything that identified him as a Jew
21 ever again on campus.

22 The other victim ultimately decided that
23 he could no longer tolerate the environment at U.C.
24 Irvine. He left the university to study elsewhere.

25 And he's not the only one.

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1 At least one other Jewish student at
2 U.C. Irvine left there because of the hostility and
3 transferred to another university.

4 Colleges and universities that receive
5 funding from the U.S. Department of Education have a
6 legal obligation to ensure that their programs and
7 activities are free from harassment, intimidation
8 and discrimination on the basis of race, color and
9 national origin.

10 The law is Title VI of the federal Civil
11 Rights Act of 1964. The Office of Civil Rights in
12 the Department of Education is responsible for
13 ensuring that colleges and universities comply with
14 the law.

15 In October, 2004, the ZOA filed a
16 complaint with the Office for Civil Rights under
17 Title VI on behalf of Jewish students at U.C.
18 Irvine. The complaint alleges a pattern of
19 harassment, intimidation and discrimination about
20 which the university was aware but did not take
21 steps to correct.

22 After revealing the allegations of the
23 ZOA's complaint, the Office for Civil Rights
24 determined that an investigation was warranted, and
25 that investigation is underway.

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1 It is my understanding that this is the
2 first complaint of anti-Semitism that the Office of
3 Civil Rights has agreed to investigate under this
4 law.

5 I cannot stress enough to the Commission
6 that the complaint does not seek to suppress or
7 restrict offensive and bigoted speech. The ZOA, and
8 the students on whose behalf the complaint was
9 filed, recognize and fully support the protections
10 afforded to speech and expressive conduct under the
11 First Amendment.

12 But colleges and universities have a
13 clear obligation under Title VI to provide an
14 educational environment that is comfortable and
15 conducive to learning.

16 They also have an ethical and moral
17 obligation to act as leaders, and promote the values
18 of respect, tolerance, and inclusiveness on campus.

19 They should be educating students that
20 with freedom of speech and other freedoms that are
21 afforded to them in this country comes
22 responsibility.

23 I thank the Commission for itself
24 assuming a leadership role and taking on this issue.

25 Respectfully, I'd like to suggest some

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1 other steps that the Commission might consider
2 taking.

3 First, the Commission could issue its
4 own report acknowledging that anti-Semitism is a
5 serious problem on our college campuses. Like the
6 State Department's report, a report from the
7 Commission that recognizes the many facets of anti-
8 Semitism would help in educating the public that
9 anti-Semitism can sometimes be expressed in more
10 subtle but no less damaging ways than name calling,
11 threats, and physical attacks on people and
12 property.

13 It would also be valuable for the report
14 to urge colleges and universities to speak out and
15 condemn hateful speech and conduct before it
16 escalates into violence.

17 Second, the Commission could obtain
18 input from experts who develop remedies for
19 preventing and combating anti-Semitism. Colleges
20 and universities need specific tools for preventing
21 and responding to bigotry, and strategies for
22 building respect, tolerance and an increasing
23 appreciation of our individual differences.

24 Finally, I would ask that the Commission
25 void its concern about anti-Semitism in all its

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1 facets to the Office for Civil Rights, and urge
2 that office to conduct a complete and thorough
3 investigation of the complaints against U.S. Irvine.

4 The case focuses on one university, but
5 the problem of anti-Semitism exists elsewhere. And
6 the case therefore has far-reaching implications for
7 colleges and universities across the country.

8 On behalf of the ZOA, I thank you again
9 for the opportunity to participate in the briefing.

10 And thank you so much for focusing your attention
11 on this important issue.

12 VICE CHAIRPERSON THERNSTROM: Thank you
13 very much, and we move on to Sarah Stern.

14 MS. STERN: Thank you.

15 First of all, I'd like to thank Ken
16 Marcus and the U.S. Commission on Civil Rights for
17 the opportunity to present at today's briefing.

18 Natan Sharansky, former prisoner of
19 conscience of the Soviet Union and Minister of
20 Diaspora Affairs for the Israeli government, has
21 referred to the American college campuses as islands
22 of anti-Semitism, and has expressed the fear that,
23 quote, "the next generation of Americans are become
24 the new Jews of silence, because of the atmosphere
25 of fair hatred and intimidation on American college

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1 campuses."

2 Said Sharansky, on the college campus
3 Israel is epitomized as the epicenter of everything
4 that is hateful in the universe. From San Francisco
5 State, U.S. Irvine, U.S. Santa Cruz, and Berkeley on
6 the West, to Columbia and Harvard on the East, to
7 virtually hundreds and hundreds of examples in
8 between, excessive fascination with Israel and the
9 tendency to hold it up to disproportionate scrutiny
10 has spilled over into attitudes and acts of hatred
11 and anti-Semitism on the college campus towards
12 individual Jewish students.

13 Irrespective of the fact that in the
14 darker region of the Sudan Moslems are
15 systematically killing Moslems with more black
16 pigment in their skin, and women who have been raped
17 in Saudi Arabia are routinely killed in honor
18 killings, the single human rights issue that takes
19 up the academy's major focus is the Israeli-
20 Palestinian dispute.

21 Because of time constraints I will limit
22 my remarks to some of the more flagrant examples.

23 May 7, 2002, San Francisco State
24 University, 400 Jewish students held an Israeli-
25 Palestinian, quote, sit-in for peace in the Middle

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1 East, hoping to engage the pro-Palestinian students
2 on campus in a, quote, dialogue.

3 A Russian emigrant spoke affectionately
4 of his new home in the United States as haven from
5 anti-Semitism. Others spoke of their support for
6 Israel and a hopeful peaceful settlement with the
7 Palestinians.

8 What ensured, as the rally was closing,
9 was nothing more than can be described as a virtual
10 hatefest, in which pro-Palestinian students
11 surrounded the 30 remaining Jewish students while
12 cleaning up after the rally, screaming, quote,
13 Hitler didn't finish the job, Quote, expletive the
14 Jews. And quote, die racist pigs.

15 University and city police formed a
16 barrier sealing off the Jewish students for more
17 than 20 minutes until they finally funneled them out
18 into the plaza.

19 Quote, I felt very threatened, recalled
20 Yitchak Santism, director of Middle East affairs for
21 the Jewish Community Relations Council in San
22 Francisco. Quote: I'm convinced that if the
23 police had not been present there, there would have
24 been violence.

25 In April, a flyer advertising a pro-

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1 Palestinian rally at San Francisco State featured a
2 picture of a dead baby, with the words, quote,
3 canned Palestinian children meat, slaughtered
4 according to Jewish rites under American license,
5 thereby reinvigorating the 900-year-old blood libel
6 that Jews kill Gentile children.

7 Passover of that year a brick cinder
8 block was thrown through the glass doors of the
9 University of California at Berkeley's Hillel
10 Building. A week after that two Orthodox Jews were
11 attacked and severely beaten one block from
12 Berkeley's campus with anti-Zionist relief appearing
13 scrawled on blocks and buildings near the school.

14 During a vigil during Holocaust day,
15 Jewish students were saying the mourners' kaddish,
16 the prayer for the dead, were shouted down by
17 protesting students saying a prayer in memory of the
18 suicide bombers.

19 Heading east to the University of
20 Chicago, an article coming out of the Chicago Maroon
21 of November 1st, 2005, the University newspaper by
22 Abbey Seiff, reported that, quote, last weekend
23 marked the fifth consecutive year when posters
24 advertised a Chicago Friends of Israel event were
25 found defaced. Posters from the University of

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1 Chicago have also been defaced with swastikas and
2 anti-Semitic graffiti.

3 Northwestern University's Norris
4 University Center became the home of a three-foot
5 swastika in November of 2003, accompanied by the
6 words, die Jews.

7 St. Cloud University in Minnesota has
8 recently had to pay out over a million dollars in a
9 class action lawsuit because of anti-Semitic
10 practices. Professor Ari Zmora had been a tenure-
11 track professor of history from 1998 until 2000 when
12 he was suddenly fired.

13 One of the many incidents he points to
14 is when he was about to deliver a talk featuring his
15 mother talking about her experiences during the
16 Holocaust, which he survived in concentration camps,
17 which as he reported, the ex-chair of the department
18 approached me and said, I cannot talk about the
19 Holocaust. When I told her about my mother's
20 survival, and the fact that most of my family were
21 destroyed by the Nazis, she shouted to me, you know,
22 the SS were wonderful people. They did not
23 participate in the Holocaust, unquote.

24 As he was preparing to leave the
25 university, the issue of fumigating his office was

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1 brought up in a meeting of the history department
2 faculty, because he was dirty and a practicing Jew.

3 While in the case of St. Cloud, the
4 anti-Semitism took the classic ideological form of
5 denial of the Holocaust and support for the Nazi,
6 however, in most campuses throughout the country, as
7 we have seen, and I will continue to illustrate,
8 anti-Semitism has taken a new form. It is the
9 tendency to exaggerate Israel's weaknesses and
10 mistakes.

11 Israel is a healthy democracy, and like
12 all democracies is composed of humans, and is
13 therefore, prone to human frailty. A healthy debate
14 about Israeli policy, therefore, is not anti-
15 Semitism. Israeli Jews themselves are constantly
16 debating about Israeli policy, and they certainly
17 can't be accused of anti-Semitism.

18 However, when Israel alone is demonized
19 and made into the sine qua non of all that is evil
20 in the world; when actions that Israel takes to
21 protect its citizens are held up to an egregious
22 double standard; when other countries in that
23 situation might be forced to take those very same
24 measures; and when Jewish students are intimidated
25 and denied the right of political expression or

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1 participation in class, that is crossing over the
2 boundary from legitimate policy debate into the
3 domain of anti-Semitism.

4 Returning to the words of Natan
5 Sharansky, quote, one of the major difficulties of
6 grappling with the new anti-Semitism is the ease
7 with which it can be denied. Unlike in the past,
8 postmodern anti-Semitism no longer exclusively
9 involves such phenomena as violence against the
10 Jews, sporting swastikas, and burning synagogues.

11 While these phenomena do exist, and are
12 even increasing, especially in Europe today, they
13 form only a small part of the problem. Mr.
14 Sharansky continues: the new anti-Semitism with
15 which we have been deluged in recent years hides
16 behind the cloak of political criticism of Israel,
17 in which the state of Israel is discriminated
18 against, held to a double standard, and has doubts
19 cast onto its right for its very existence.

20 As absurd as it may be, anti-Semitism
21 even appears under the banner of human rights and
22 humanism. According to Sharansky, quote, equating
23 Zionism with imperialism, comparing Zionism with
24 Naziism, doubting the right of the Jewish people,
25 unlike other peoples, to a national state, or

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1 opposition to the occupation, they must be called by
2 their proper name: anti-Semitism.

3 Anti-Semitism that in the past has been
4 the province of the radical right is gaining more
5 and more ground among organizations and societies
6 which had in the past symbolized the forces of
7 enlightened progress and democracy.

8 Left wing political parties, human
9 rights organizations, academic communities, and
10 antiglobalization movements - those that had been
11 the leaders of the struggle against racism in its
12 various forms now lead the boycotting of Israel, its
13 ostracism from the family of nations, and
14 accusations against crimes of humanity.

15 The absurdity shouts to the skies - that
16 was a quote from Natan Sharansky.

17 One such example occurred October 20th,
18 2004, when Duke University was home to the fourth
19 national student conference of the Palestinian
20 solidarity movement.

21 This is a very typical campus activity
22 of the Israeli-Palestinian front. Participants
23 portrayed Israel as simple a racist and an apartheid
24 state. Among them were Mazin Qumsiyeh, an
25 associate professor from Yale University whose

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1 founder of the radical anti-Israel group, Al-Awda,
2 who called Zionism, quote, a disease.

3 Nassar Aburfarha, a doctoral candidate
4 from the University of Wisconsin, who had reportedly
5 said he supported Palestinian terrorist groups such
6 as Hamas and Al Aksa Martyrs Brigade, as well as a
7 host of others; a revisionist spoke of Zionist
8 collaboration with the Nazis by Lenni Brenner,
9 claiming that the early Zionists formed an alliance
10 with the Nazis, was sold at the conference.

11 There is a question, however, as to
12 whether or not this sort of activity, although while
13 making campus life quite uncomfortable for Jewish
14 students, constitutes protected speech under the
15 Constitution.

16 Freedom of expression is an integral
17 part of university life. However, one might do well
18 to ask if he would have as much tolerance for
19 seeing the appearance of the large white crosses of
20 the KKK on campus as we apparently achieve with the
21 tolerance of the appearance of the swastika.

22 What is not protected, however, is the
23 suppression of intellectual diversity and open
24 debate on the part of the classroom professor, or of
25 the professor using his desk as a bully pulpit for

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1 one-sided political ideology.

2 Perhaps the most well-documented of
3 these cases is that of Columbia University. I want
4 to stress that what happened at Columbia is not
5 unique, but there exists in Columbia a critical mass
6 of Jewish students who have enough group support and
7 knowledge of Jewish history, Jewish culture, and
8 Jewish identity, to be able to respond to the
9 charges.

10 This in no way implies that this problem
11 is unique and is not endemic to college campuses
12 throughout the country.

13 I see the red light is flashing. Should
14 I continue?

15 VICE CHAIRPERSON THERNSTROM: Do you
16 have just a few more sentences?

17 MS. STERN: Well, I do have a little bit
18 more. But I do want to say, the film Columbia, On
19 Becoming, which has come out last year, interviewed
20 who have taken classes in Columbia's Middle Eastern
21 and Asian Language department, MELAC.

22 Columbia's MELAC department is funded,
23 along with 17 other Middle Eastern studies
24 departments at American colleges, through Title VI
25 funding at the tune of \$120 million a year. Each

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1 university gets approximately \$50 million a year.

2 There was specific legislative intent
3 behind this congressional allocation to the
4 university. That intent was to raise students to be
5 well grounded in a knowledge of foreign languages
6 and cultures so that they can best serve in the
7 national security interests of our nation.

8 During the Q&A I'd like to talk more
9 about this, but I think the original legislative
10 intent of this funding has been turned on its head,
11 and many of these regional studies programs have
12 actually become hotbeds of both anti-Israel and
13 anti-American radicalism.

14 They are all using one prevalent
15 paradigm, the Edward Said paradigm of Orientalism.
16 And Orientalism, his book which came out in 1978,
17 there is a very, very simple thesis, and the thesis
18 is that the European nations carved up the world
19 right after World War I, the Middle East after World
20 War I. Now America is a hegemonic colonial monster.

21 And unfortunately, this has taken on the
22 aura of scholarship, and has given an intellectual
23 type of patina and validity, authenticity, to an
24 age-old racism, which is called anti-Semitism.

25 Thank you very much.

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1 VICE CHAIRPERSON THERNSTROM: Well, I
2 thank all three of you for these incredibly
3 informative remarks on a topic I regard, and I'm
4 sure the rest of the commissioners do, as extremely
5 important.

6 It is a tradition for the chair, and in
7 this case obviously I'm the vice chair substituting
8 for the chair at this meeting, to open with
9 questions. So let me pose a couple of questions to
10 you, and others will obvious have different ones.

11 Something probably the other
12 commissioners may not or do not know, I was once a
13 Jewish student in a Middle Eastern studies program,
14 this one at Harvard University. I have a Master's
15 degree in Middle Eastern studies, and that was
16 before I moved to the government department, and
17 switched fields, and ended up with a Ph. D. in
18 American Constitutional law.

19 But in any case, I had the experience of
20 being many years ago of course in the context that I
21 just described, and my impression from those years,
22 and kind of watching the scene until now, is that
23 all Middle Eastern studies programs are very much
24 alike; that is, they are violently anti-Israel, very
25 pro-Palestinian, soaked in an ideology that is

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1 either borderline or explicitly anti-Semitic.

2 But one, am I wrong on this? And two,
3 I'm not sure what the remedy is. And here is my
4 concern. I am extremely nervous about
5 administrative oversight on university campuses.

6 I mean in so many respects, it's not
7 simply in this respect, that universities are
8 islands of repression in a sea of tolerance in this
9 country. And if we switch contexts for a second, a
10 - the so-called conservatism on race-related issues
11 of a Thomas Sowell or a Shelby Steele are completely
12 unacceptable on American campuses. Those are two
13 men who left American campuses.

14 Linda Chavez has spoken on campuses, and
15 been hounded off of a platform because of threats to
16 her physical well-being. And I as one am not
17 completely sure of what administrators can or should
18 do. And that is really it seems to me a very
19 difficult issue with respect to what is taught
20 within the classroom.

21 I mean you really do not want university
22 administrators walking into classrooms and deciding
23 whether what the professor is teaching is acceptable
24 or unacceptable.

25 In terms of your statement that there is

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1 no such thing as a purely private university, well,
2 I agree with you. On the other hand, it seems to me
3 a tough issue. And because it's a tough issue,
4 there has been no litigation, for instance,
5 involving racial preferences in higher education as
6 a violation of the Fourteenth Amendment; no
7 litigation involving private universities, because
8 there has been a sense that, yes, they receive
9 federal funding, but they are not public.

10 And so a line has been drawn. And
11 finally, on the pain and discomfort issue, it seems
12 to me one has to separate pain and discomfort from
13 physical fear. That is, I don't want universities
14 to be comfortable places for students, and I think
15 it's part of the psychobabble of our era that we
16 think everybody has to think of every place they go
17 as their living room where they feel safe and
18 comfortable.

19 And in fact at universities, colleges
20 and universities, you want students exposed to the
21 discomfort of dissonant ideas.

22 But physical fear is a completely
23 different matter, and again, where should the
24 universities be drawing the line? And aren't we
25 into when students actually feel physically

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1 threatened, we're into a world of completely
2 different sanctions it seems to me than simply a
3 sense of discomfort.

4 So I will leave it at that, and it was
5 directed towards all of you.

6 MS. TUCHMAN: You know, I just, I wanted
7 to address the issue of discomfort, because I do
8 agree with you that there should and needs to be a
9 certain level of discomfort on the college campus,
10 when you're hearing all kinds of divergent
11 viewpoints.

12 When I talked about discomfort, I'm
13 talking about students avoiding areas of the campus
14 because they are going to hear statements and see
15 conduct that is inciting hatred of Jews. So they
16 may not be in physical fear of their personal
17 safety, but it's uncomfortable enough so that they
18 will afraid to go to the student center. They will
19 take circuitous routes around the campus. They
20 won't be able to get to where they need to go
21 directly because they are going to be confronted
22 with hatred that is expressed toward them as Jewish
23 people.

24 Students who I know who are now afraid
25 to wear a Kippah on their head. Students who are

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1 afraid to wear tee shirts that might demonstrate
2 that they are Jewish or they are supporters of
3 Israel, students who are afraid to wear stars of
4 David or anything that would identify them as
5 Jewish. And that may not rise to the level of a
6 fear for physical safety, but I don't think that
7 that should be tolerated on our campuses, that
8 students should be afraid to be who they are, and to
9 be afraid to say what they believe and what they
10 support for fear of consequences; whether there are
11 physical consequences or not.

12 COMMISSIONER BRACERAS: Can I just jump
13 in there for a minute? You know the flip side of
14 that, though, is that some people, myself included,
15 are actually have their own identity reaffirmed by
16 that type of negativity. In other words, I
17 certainly agree that nobody should feel physically
18 intimidated or afraid that they are going to be
19 physically harmed.

20 But my own experience 20 years ago at
21 the University of Massachusetts at Amherst was one
22 in which the virulent anti-Semitism and anti-
23 Israelism and anti-Americanism of large portions of
24 the student body as well as the faculty really
25 awakened in me a political and ethnic consciousness

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1 that frankly I'm grateful for today.

2 And I'm not grateful that anybody holds
3 those hostile views, but I think a lot of people
4 were snapped out of political apathy because of some
5 of the things that they saw. And I think I am who I
6 am today politically in large part because of that.

7 And so, and yes, it made me feel
8 extremely uncomfortable, but it forced me to have to
9 defend my belief systems, and that was a good thing.

10 So I agree with the vice chair that I
11 have ambivalence about asking the federal government
12 or administrators to impose any sort of speech codes
13 or restrictions.

14 But it seems to me that at least part of
15 the solution is somehow encouraging universities not
16 to hire professors who promote anti-Semitic
17 viewpoints in the classroom, or who don't allow
18 students with divergent viewpoints to participate in
19 discussions.

20 And so some of the other remedies you
21 spoke about in terms of either withholding dollars
22 or you know organizing politically, seem to me to be
23 the way we have to go.

24 And I don't know how responsive
25 universities are going to be, but it seems to me

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1 that the real answer is, not just prohibit people
2 from speaking as guest lecturers, not to prohibit
3 students from saying what they think or putting up
4 posters, but not to give it the cloak of
5 authenticity or credibility by allowing it to come
6 from the professors - not hiring those people to
7 begin with, people who are not serious scholars,
8 people who are using their classrooms as a bully
9 pulpit for these hostile ideas.

10 And somehow I think the universities got
11 off-track in the '70s and '80s and thought that
12 hiring people like this was a way to show sympathy
13 for Third World peoples, quote unquote, and that is
14 not what it is.

15 And so how do we convince them not to
16 hire these lunatics to begin with?

17 DR. TOBIN: The questions that are being
18 raised go to the heart of reform in higher
19 education. And I'd like to address, you have raised
20 five or six different issues, and I'd like to
21 address each of them. They are the critical issues.

22 And the reason why our work is entitled,
23 The Uncivil University: Politics and Propaganda in
24 Higher Education, and not, Anti-Semitism and Anti-
25 Israelism in Higher Education, because we are

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1 dealing with a larger set of issues that go to the
2 heart of what academe is about, and what a good
3 education should be about.

4 So let's look at each of these. First
5 of all, the Middle East studies center. There is an
6 excellent been written by Martin Kramer entitled,
7 Ivory Towers on Sand. It is a good discussion about
8 the dissent of these departments in what was a
9 reasonable field of academic inquiry into
10 essentially propaganda machines that are the exact
11 opposite of open and intellectual inquiry; that is,
12 they have a bias from the moment they begin, and
13 they are not interested in open debate and
14 discussion.

15 This is not what universities are
16 supposed to be about. You say, do we want
17 administrators walking into the classroom? The
18 answer is no, obviously, any more than we want an
19 abrogation of the free exchange of ideas.

20 However, if a sociology department is of
21 low quality, does not have appropriate scholarship,
22 it is within the purview of the provost and
23 president and board of trustees, to have outside
24 oversight of that department and take appropriate
25 actions if necessary.

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1 Indeed, in academe we find that
2 sociology departments are shut down. That is, they
3 don't serve the purpose of the university any
4 longer, or any department that descends into low
5 quality teaching or research.

6 The mechanisms that universities have to
7 deal with these kinds of issues exist. What we're
8 suggesting is when it comes to Middle East studies
9 centers, it's hands off. So we don't want people
10 spying on professors, we do want these departments
11 appropriately overseen by outside reviews that don't
12 come from the field.

13 We're even recommending at this point,
14 given the point that you're raising, is that Middle
15 East studies programs should not be able to tenure
16 their own faculty at this point. And that does
17 happen in the university.

18 I'm not suggesting that they all be put
19 into receivership immediately, but that might be one
20 of the outcomes. That is point number one about
21 Middle East studies programs.

22 Number two, the - we believe that the
23 best approach so far to the issue of anti-Semitism
24 and anti-Israelism on campus is as much sunlight and
25 exposure as possible. That is, this is the best

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1 disinfectant at the moment, before we get the
2 federal government or anyone else involved.

3 Most people do not know what goes on in
4 colleges and universities, and what you suggested
5 about them being bastions of certain kinds of
6 behaviors that are opposite of what is going on in
7 the general society is absolutely so.

8 Indeed, we would argue that levels of
9 anti-Israelism and anti-Semitism on college campus,
10 and their expression, exceed what's going on in the
11 general public.

12 How sad! How sad, that institutions
13 that are supposed to be promoting dialogue and
14 understanding are doing the opposite in this case.

15 And I'd like to address the point of
16 pain and discomfort. All of us who have been
17 parents know that there is some point at which
18 discipline crosses the line and becomes abuse. And
19 everybody wants to be a good parent, wants to guide
20 their children and discipline them appropriately.
21 But there are rules for the way that parents
22 interact with their children, and when you cross
23 those lines you're no longer being a good parent.

24 Colleges and universities are no
25 different. That is, we should encourage the most

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1 difficult issues in - about race, ethnicity and
2 religion. We should talk about them in ways that
3 challenge us, make us uncomfortable, make us think,
4 make us approach ideas in ways we wouldn't have
5 approached them before.

6 The heart and soul of academic discourse
7 should be about making people think about things
8 they wouldn't think about, and interact with people
9 they would not have interacted with.

10 This whole promotion of diversity on
11 campus should be about that. But these have become
12 perverted.

13 We're not necessarily promoting
14 diversity on campus. When it crosses from comfort
15 into discomfort, and then from discomfort to abuse,
16 are we making people not able to talk about things
17 because they so agree.

18 COMMISSIONER BRACERAS: Sorry, but I
19 agree with you theoretically, but I'm trying to
20 understand where that line is drawn between
21 discomfort and abuse? For example, some of the
22 posters you talked about going up that have
23 extremely offensive things on them, I'm not sure
24 whether I'm comfortable or would be comfortable as a
25 university administrator or an official of the federal

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1 government demanding that those things be taken
2 down.

3 Yes, they are offensive. But sometimes
4 when offensive posters are put up, it can actually
5 inspire very productive dialogue on campuses about
6 racism and anti-Semitism, and as I said before, you
7 know, sort of encourage useful dialogue.

8 I'm not saying anybody should put those
9 types of things up purposefully to encourage
10 dialogue, but some of these - there are copies in
11 our materials of some of these awful posters.

12 And believe me, I wouldn't want to
13 confront any of them in my dorm room or in the
14 student union, were I a student on any of these
15 campuses. On the other hand the students who put
16 them up have the right to express their views no
17 matter how hateful and bigoted and awful they may
18 be.

19 So I'm just not sure where that line is
20 drawn.

21 COMMISSIONER TAYLOR: Let me just
22 piggyback on that one second, and then we'll get to
23 all of you.

24 I think there is - both Commissioner
25 Braceras and I agree, and probably other

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1 commissioners as well, that universities are a
2 pretty sad scene in many respects.

3 But Dr. Tobin, you said universities
4 should be places of unbiased discussion and
5 instruction. It does seem to me that is an ideal
6 that is not realized in any departments outside of
7 the sciences and math.

8 And in terms of low quality scholarship,
9 if we are going to close departments for low quality
10 scholarship, I would say most English departments,
11 in at least the prestigious universities, deserve to
12 be closed tomorrow.

13 COMMISSIONER BRACERAS: You could
14 probably close the political science departments
15 too.

16 VICE CHAIRPERSON THERNSTROM: I mean
17 this is a bias of mind. But I mean these places are
18 places of indoctrination instead of your image of
19 what a university image is all about.

20 Let's go to the --

21 MS. STERN: I'd like to respond to a
22 great deal of this. These are really wonderful
23 meaty questions, but it gets right to the heart of
24 the issue.

25 The issue is, when I was a student way

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1 back in the dinosaur age, and I went to Boston
2 University, I had a wonderful professor who was not
3 a Marxist. But there was a give and take within the
4 classroom that was a heady experience for me.

5 I think the university classroom should
6 be the first - for many people is the first
7 opportunity to engage in the life of the mind and
8 the free expression of ideas, and it's a wonderful,
9 liberating, exhilarating experience.

10 I'd like to quote from some of the
11 students --

12 VICE CHAIRPERSON THERNSTROM: Wait a
13 minute, the operative word there is "should".
14 Should, sure.

15 MS. STERN: But we can aim for that. We
16 should not - I don't think, because let's not make
17 the ideal the enemy of the good.

18 Okay, we could certainly aim for that.
19 What is going on right now is nothing short of
20 horrendous. When you have students who raise their
21 hands in class, and say to a professor such as
22 Professor George Saliba of Columbia University, when
23 he said, I wanted to say that the film that you
24 presented without any kind of framing had a very
25 one-sided point of view, it took this woman outside

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1 of the classroom, walked and stood on the College
2 Walk at Columbia for about 45 minutes and said, you
3 have no voice in this debate.

4 And she said, of course, I'm allowed to
5 express my opinion. He came really close to me. He
6 moved down his glasses, and he looked right into my
7 eyes, and he said, see, you have green eyes. He
8 said, you're not a Semite. He said, I'm a Semite.
9 I have brown eyes. You have no claim to the land of
10 Israel, as if - and this woman said, as if my
11 ancestors were not there, and I am not allowed to
12 participate in the debate.

13 Also documented in Columbia, On
14 Becoming, I would like - there was a student who
15 raised her hand when there was a class about Israeli
16 atrocities - this was a class by Joseph Mossad. And
17 before she could get her point across, he quickly
18 demanded and shouted at her, I will not have anyone
19 sit in my class and deny Israeli atrocities.

20 Now, that is not the life of the mind.
21 That is the tyranny of the deaf.

22 COMMISSIONER BRACERAS: But I guess I
23 would draw a distinction between those examples in
24 which the student is being denied the opportunity to
25 participate in the educational program by the

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1 professor; the professor is denying them the right
2 to express their views, I would draw a distinction
3 between that on the one hand, and putting up a
4 hateful poster on the other hand.

5 To me the example of the poster, the
6 best way to counter that is through more speech; put
7 up another poster saying that they are racist. Put
8 up another poster saying that they are wrong.

9 MS. STERN: The problem is, Jennifer,
10 that when the classroom has become the battlefield,
11 when the classroom is the place where the professor
12 has controlled the debate, and the student feels
13 intimidated and threatened by retribution in their
14 grades if they come forward - I mean there were many
15 people in the MEALAC program, a Title VI funded
16 program, who have said and are still saying that
17 they are afraid to come forward because of fear of
18 retribution, because of the film, Columbia
19 Unbecoming, Columbia has instituted a system of
20 grievances.

21 But there are many colleges, and each
22 grievance procedure is different. There is no
23 unanimity in terms of how a student is supposed to
24 petition this.

25 The student cannot come forward with

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1 anonymity. The student has got to point to his
2 name, and the name of the professor, and they are
3 very afraid of retribution in terms of their grades.

4 This is a process of intimidation and
5 fear.

6 COMMISSIONER BRACERAS: Oh, I agree.

7 MS. STERN: And the problem is actually
8 the antithesis of what the college experience should
9 all be about. It should be about the life of the
10 mind, and the free exchange of ideas.

11 COMMISSIONER KIRSANOW: Madam Chairman,
12 this is Kirsanow. May I interject real quick?

13 VICE CHAIRPERSON THERNSTROM: Please,
14 yes, of course.

15 COMMISSIONER KIRSANOW: This is
16 Kirsanow. I regret not being there, but I may have
17 to run off to court momentarily, and therefore I
18 wanted to pose a quick question.

19 I think this is a very important debate
20 that we've having. I'm particularly interested in
21 this, and I wish I could be there.

22 I have a question directed primarily at
23 Mr. Tobin. Much of what I've heard so far, I've
24 studied this issue for several years pretty
25 extensively, suggests to me a failure in leadership.

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1 Now you say in your statement that there
2 were a number of presidents who refused to sign the
3 statement, and I'm curious as to what your opinion
4 is as to why that is the case.

5 VICE CHAIRPERSON THERNSTROM: And by the
6 way, who mostly did sign the statement? The major
7 universities?

8 DR. TOBIN: Only one Ivy League
9 president signed it.

10 COMMISSIONER KIRSANOW: Who was that?

11 DR. TOBIN: Ruth Simmons.

12 VICE CHAIRPERSON THERNSTROM: So
13 Bollinger wouldn't sign it?

14 DR. TOBIN: No, and their refusal to
15 sign goes to the heart of your question about
16 posters. And that is that they said that it didn't
17 include all kinds of condemnations about racism and
18 sexism in general; that is, it should not be about
19 anti-Semitism or anti-Israelism, it should be about
20 all forms of prejudice on campus.

21 And the point is that under both the
22 informal and formal norms on campus, other forms of
23 racism, sexism, are not expressed; that is, this is
24 the one that is slipping under the radar. You don't
25 see anti-Latino, anti-black, anti-Native American,

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1 any kinds of such posters on campus. The campus
2 norms wouldn't tolerate them.

3 What we're suggesting is that this
4 prejudice slips under those norms, and that somehow
5 or another putting up other posters does not
6 counteract them.

7 In the same way we would argue that in
8 this environment, good black talk does not
9 counteract black talk, or good Jew talk counteract
10 bad Jew talk.

11 In other words, if this is an
12 environment that is supposed to be teaching about
13 race, ethnicity and religion, we should be doing it
14 in a way that actually teaches.

15 Campus does not tolerate these kinds of
16 expressions, and so the university presidents in
17 what we consider to be an act of moral cowardice in
18 refusing to sign this, are saying, we've got this
19 under control. Or if we don't have it under
20 control, we don't want to talk about it
21 specifically.

22 And the issue - the heart of this issue
23 does go about moral leadership; that is, while we
24 don't want administrators spying on faculty, they
25 should be exerting moral leadership, and the

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1 trustees should be exerting moral leadership.

2 The alumni should be exerting moral
3 leadership, and while we don't want government
4 regulation, public officials should be exerting
5 moral leadership about this issue.

6 And to say it's wrong, well yes, under
7 freedom of speech one has the right to put such a
8 poster up, but everyone should be saying, it's
9 wrong, it's wrong.

10 MS. STERN: As one would say if there
11 were the large white crosses of the KKK. I mean why
12 is our tolerance for this sort of racism greater
13 than our tolerance for the large white crosses of
14 the KKK? A swastika is a symbol that brings with it
15 a great deal of meaning. Swastikas are all over
16 college campuses today.

17 VICE CHAIRPERSON THERNSTROM:
18 Commissioner Kirsanow, I want to give you a full
19 opportunity to speak before you have to leave.

20 COMMISSIONER KIRSANOW: Thank you,
21 Commissioner. I do have to leave in about three
22 minutes.

23 Real quick, and I appreciate the answer
24 to that, it seems to me that there are obviously
25 several gradations of issues that maybe can and

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1 can't be addressed within the context of the free
2 speech environment which is the academy.

3 But something to me that seems a no
4 brainer is when you talk about free speech, and a
5 free exchange of ideas, the university is also a
6 place where the truth is held above all else, and
7 when you have for example classes or professors
8 where blatant untruths are being spoken as the
9 truth, such as Holocaust deniers, people who make
10 just the most absurd and readily demonstrable false
11 statements about Judaism or Israel or historically
12 factually inaccurate statements, those are the kinds
13 of things it seems to me that the academy should be
14 policing from the standpoint of its own
15 institutional integrity.

16 And again, I am baffled as to why - and
17 I know you had some answers in terms of moral
18 cowardice - but I'm just baffled as to why this
19 seems to be slipping under the radar.

20 Does anyone have any ideas?

21 MS. STERN: I think anti-Semitism is a
22 very virulent disease, and it has taken many guises,
23 and it seems to have endured through many
24 generations, and this is just a politically correct
25 form of anti-Semitism. We have yet to figure the

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1 antidote for this disease.

2 DR. TOBIN: And I have another response,
3 which is, administrators and trustees, and all those
4 involved in the academy, are afraid of going down
5 the slippery slope of interfering with free speech
6 and academic freedom.

7 And if every time one begins to address
8 this issue, one is accused of McCarthy-like
9 activity, or trying to squash free speech, or
10 interfering with academic freedom, those themselves
11 are very powerful forms of intimidation for people
12 to avoid this idea, and the faculty particularly
13 have become adept at stiff arming any kinds of
14 inquiry about the academy, whether it's fiduciary
15 inquiries, quality of scholarship as you said -
16 maybe many departments would be shut down.

17 They are terrific at stiff arming the
18 rest of the stakeholders in the system, whether they
19 are alumni, donors, administrators, funders,
20 anybody, by saying, you can't ask that question,
21 you're interfering with academic freedom.

22 COMMISSIONER BRACERAS: Right,
23 condemning the speech is not the same thing as
24 suppressing the speech. And so I fail to understand
25 why they don't have the moral courage to stand up

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1 and say, yes, as you say, yes, you have a right to
2 say that, but what you say is repugnant. Why don't
3 university presidents and chairs of departments
4 stand up and say that?

5 MS. TUCHMAN: Because they say that we
6 have to uphold the principles of academic freedom,
7 rigorous exchange of ideas --

8 COMMISSIONER BRACERAS: It doesn't mean
9 you have to agree with them.

10 MS. TUCHMAN: I agree with you. And in
11 the classroom I doubt that our colleges and
12 universities would tolerate professors teaching
13 their students that the world is flat. I don't
14 think that would be tolerated.

15 So why are they tolerating professors
16 teaching that historical inaccuracies about the
17 conflict in the Middle East?

18 VICE CHAIRPERSON THERNSTROM: Well, I do
19 think that there is on campuses an amazing amount -
20 for good or ill - and I think basically for good,
21 even though much of what is said appalls me - a high
22 degree of tolerance for the world is flat ideas, not
23 literally.

24 MS. STERN: But the very term, academic
25 freedom, is a misnomer when used in this case. This

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1 is academic suppression. Academic freedom is the
2 freedom to engage in debate. And when the classroom
3 professor uses his desk as a bully pulpit to
4 suppress the great dialogue of mind, the life of the
5 mind, that is actually the antithesis of academic
6 freedom.

7 But they are using this, and
8 unfortunately, I really do believe that political
9 correctness is a disease of the central nervous
10 system, and it first targets the brain.

11 You know people use this kind of slogan,
12 and when you use the slogan, academic freedom,
13 something goes mushy in everyone's brain. But
14 you're not examining what academic freedom.

15 Academic freedom is not the freedom to
16 say that the Copernican revolution never occurred.
17 I mean some things have got to be based on truth,
18 and at least on a balance of perspectives, and not
19 in a suppression of debate, free and healthy open
20 debate within the classroom.

21 The college professor has a heady
22 responsibility to try to inform his students about
23 civility and discourse.

24 MS. TUCHMAN: You know, I wanted to go
25 back to what you raised about the signs on campus,

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1 because I think we all agree that we cannot - as
2 much as we would like to tear those signs down,
3 we're not able to; that they are protected speech
4 under the First Amendment.

5 But I do think it's important to
6 emphasize that colleges and universities have an
7 obligation themselves to exercise their own free
8 speech rights. Get up and say, we recognize that
9 you have a right to put up these offensive and
10 bigoted posters, to say what you are saying, but we
11 don't support it; it's not consistent with our
12 values as a university.

13 And I just want to bring to the
14 attention of the commission as very, very fine
15 example of that, which I believe I put in my written
16 statement. There was a cartoon in a student
17 newspaper at Rutgers University that mocked the
18 Holocaust. It was a picture of a man sitting on an
19 oven, and another man was throwing money at him, and
20 it said words to the effect, of three throws for a
21 dollar, knock the Jew in the oven.

22
23 This was so offensive. It was put in a
24 student publication at Rutgers. But the president
25 of Rutgers reacted to me in a completely appropriate

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1 way. He issued a public statement. He said, we
2 recognize your right to publish this, but it was
3 offensive, it was outrageous in its cruelty. It is
4 inconsistent with our values as a university. We
5 hope you will recognize that with freedom comes
6 responsibility. And you will apologize for the hurt
7 that you caused to people.

8 Rutgers Senate also issued a statement
9 distancing themselves from what was done, and lo and
10 behold, the perpetrators apologized.

11 And so it's recognizing you have the
12 right to say it, but let's shape the way we say
13 these things. We have strong feelings about the
14 politics in the Middle East, but let's express them
15 in a civil and respectful way.

16 VICE CHAIRPERSON THERNSTROM: Are you
17 really comfortable with administrators getting up,
18 saying, students feelings have been hurt and we
19 expect apologies?

20 Now, look, let me give you two other
21 examples. A few years ago at Harvard, some student
22 put a Confederate flag. His, or her - I can't
23 remember whether it was a his or her dorm - door.

24 There were students who were hurt,
25 students who were offended. Should that student

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1 have been in effect forced by the administration to
2 apologize?

3 And it seems to me, the answer has got
4 to be no. There is, when you talk about the
5 repression of dissenting voices - I'll go back to
6 something I said before - on campus, and you go to
7 the issue of race, there are no dissenting voices on
8 issues like affirmative action, that is, racial
9 preferences, because the universities have succeeded
10 in making it totally unacceptable. And probably in
11 some of the elite - to discuss the issue - and
12 probably in some elite universities, I'm not sure of
13 this, the abortion question falls into the same
14 category.

15 I mean it is going back to Dr. Tobin's
16 larger point about the atmosphere on campus that
17 goes way beyond the issue, specific issue, we're
18 talking about today.

19 But I still find it troubling - I don't
20 want the Rutgers University administration to ask
21 people to apologize. Whatever their views are. I'm
22 just - I am a slippery slope nervous type in this
23 respect. It feels like a Stalinist apologizing.

24 MS. STERN: I don't think it was a
25 question of forcing an apology. But what I think he

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1 effectively did was raise issues, and raise more
2 topics for discussion, and pointing out to people
3 that the implications of what they are saying, and
4 its effect on other people.

5 VICE CHAIRPERSON THERNSTROM: These
6 administrators make me nervous, and they make me
7 nervous particularly because, look, they wouldn't
8 sign the letter. What does that tell you? These
9 administrators aren't exactly the people to moral
10 leaders on campuses.

11 DR. TOBIN: I think --

12 VICE CHAIRPERSON THERNSTROM: Why don't
13 you just go ahead and answer that, and then let's
14 have a question over here.

15 DR. TOBIN: I think we either get rid of
16 hate speech codes and political correctness, and let
17 a thousand Confederate flags and every other form of
18 expression bloom - that is one alternative; or the
19 other is that anti-Semitism and anti-Israelism, in
20 the kinds of expressions we're talking about, such
21 as posters and so on, be dealt with the same way.

22 The hypocrisy is a little overwhelming.
23 That's number one.

24 And number two, we have to distinguish,
25 and as important as this conversation has veered in

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1 this direction, that there are posters on the one
2 hand, but there are also intimidation in the
3 classroom, suppression of ideas, intimidation of
4 students, physical harassment and violence as well.

5 And I don't want to be lost on the
6 poster issue, and let all of the others go by the
7 wayside. As somebody who spent 25 years as a
8 faculty member at Washington University and Brandeis
9 University, I share your concern about
10 administrators and their moral leadership, and I
11 would not trust them alone in terms of moral
12 leadership in terms of dealing with these issues.

13 But certainly members of the faculty
14 should be exerting moral leadership, and trustees,
15 and donors, and alumni, and the whole range of
16 stakeholders in this system who have bought the
17 notion that the university belongs to the faculty,
18 and the university does not belong to the faculty,
19 or should not belong to the faculty.

20 * VICE CHAIRPERSON THERNSTROM: Well, I
21 agree with that. And Commissioner Melendez, I want
22 to get you in a second.

23 A question again for Braceras, though, I
24 mean I remember a number of years ago a Harvard law
25 school faculty member, I was at a forum, you are a

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1 graduate of the Harvard Law School faculty, saying,
2 flatly, okay, if a student comes in with politically
3 incorrect ideas, and those ideas are expressed in
4 the first couple of weeks of the class, all right,
5 I'll tolerate it.

6 But after that, that students gets
7 graded down.

8 Now, I mean --

9 COMMISSIONER BRACERAS: Maybe that
10 explains a few of my grades.

11 (Laughter)

12 VICE CHAIRPERSON THERNSTROM: It is not
13 to me an unfamiliar animal on our university
14 campuses.

15 MS. STERN: This is - intellectuals are
16 not necessarily wise. I mean there is this herd
17 mentality which is really rampant throughout the
18 college campus.

19 And what is extremely pernicious and
20 disturbing is, if there is a body of scholarship
21 that is all predicated upon the same initial biases,
22 and then it takes on the guise of legitimate
23 scholarship, but it's basically political propaganda
24 wrapped around footnotes and indexes, and it looks
25 like legitimate scholarship, then it is very very

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1 pernicious.

2 So then a Halib Rashidi could footnote
3 and Edward Said who could footnote or Joseph Mossad.

4 And what we need is a balance of perspectives.
5 What we need is a Bernard Lewis in there, or a
6 Martin Kramer.

7 I mean there has to be some - but when
8 the entire Middle Eastern studies programs which
9 are, I have to say, funded, the basis of this was
10 the original 1958 legislation, which were funded at
11 taxpayer expense, and were used as basically a
12 launching pad --

13 VICE CHAIRPERSON THERNSTROM: That's the
14 National Defense Education Act.

15 MS. STERN: Exactly. And it's taken on
16 - after September 11, I have to say, the academy
17 went and petitioned the United States Congress and
18 said, because we have got to ground our students in
19 foreign language and cultures for our national
20 security concerns, they had the audacity to take
21 another 20 percent - this is \$120 million of
22 taxpayers' money - and this money has been
23 appropriated to raise a generation of students to be
24 well grounded in languages and cultures to serve the
25 national security interests of this nation.

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1 And what they have been getting instead
2 is a pure diet of political propaganda, wrapped in
3 the garb, in the nice clothing, of intellectualism.

4 And this is really wrong. This is just
5 not right.

6 VICE CHAIRPERSON THERNSTROM: Disturbing.

7 COMMISSIONER MELENDEZ: Just a comment.

8 I know that everyone has a certain responsibility
9 to prevent civil unrest, in a time with the things
10 that are happening with France and around the world,
11 I think universities especially have that challenge.

12 The issue is that everybody accepts a
13 certain amount of tolerance to signs and what's said
14 about them. Every individual student at the
15 university. So the issue is, if the university
16 administrators don't do anything basically, and I'm
17 speaking on behalf of sometimes Native American
18 students, the issue is that we would do something
19 about it, I mean when I was younger, and what you
20 really will have is a clash on university campuses.

21 And the question is, are we leading to
22 things like that that could happen in the future?

23 And I think the responsibility for university
24 officials, we may not be able to mandate totally as
25 far as what the signs should say, but I think there

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1 needs to be a raising of the awareness of this
2 issue, and whether or not the commission can help by
3 a report or something like that, that can at least
4 let the general public and America know that this is
5 an issue that needs to be dealt with, and we can't
6 sweep it under the rug.

7 So I just wanted to make that comment.

8 MS. STERN: Thank you very much.

9 I would actually like to make some
10 recommendations to the Commission.

11 If there can be an independent body of
12 experts. And that is what H.R. 609, and this
13 amendment to the higher education authorization act
14 is actually looking for, an advisory board that is
15 outside the Middle Eastern studies program, to
16 really make sure that there is a balance, or at
17 least a diversity.

18 VICE CHAIRPERSON THERNSTROM: How does
19 the language read?

20 MS. STERN: It's basically - I can
21 actually get the legislation - but it is for a group
22 of advisers to actually weigh in - the House bill
23 and the Senate bill are two different things. And
24 the House bill is actually a group of advisers or
25 experts who will advise the secretary of education.

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1 And the Senate bill actually calls for
2 three things - the Senate bill calls for basically a
3 petitioning of the agencies of the government about
4 what we need from a university, which is essentially
5 language instruction right now in Arabic; a
6 grievance procedure for those students who feel they
7 have been discriminated against for either political
8 or racial reasons; and number three, some kind of
9 accounting, because this money was first
10 appropriated through the United States Congress for
11 Americans to serve the national security interests
12 of our nation.

13 So we want some sort of accountability
14 as to how many of the students were graduated from
15 these programs actually do go on to serve in the
16 national security or defense interests of our
17 nation.

18 VICE CHAIRPERSON THERNSTROM: I mean
19 would you disagree with the statement that
20 ultimately the real solution here may be a drop in
21 funding for, say, Columbia University by its alumni,
22 that is, a drop in donations, and fewer parents
23 thinking that it is do or die to get their kids into
24 some of the more prestigious universities, and even
25 Irvine I would point in that category?

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1 MS. STERN: Well, there, being a proud
2 parent of a student at Columbia Law School, I think
3 that is almost unrealistic. I think most parents
4 really do want their children do --

5 VICE CHAIRPERSON THERNSTROM: But at the
6 end of the day, dollars talk.

7 MS. STERN: Yes, dollars do talk. But I
8 don't think that is really the solution to the
9 problem. The solution to the problem is to look at
10 what is going on within the body of scholarship, and
11 there has got to be some - these Middle Eastern -
12 the Middle Eastern language studies association,
13 whose president right now is Juan Cole from Michigan
14 University. Juan Cole has made the most outrageous
15 claims that American foreign policy is all
16 controlled by a group of Likudniks in the United
17 States government.

18 It's kind of Lyndon Larouchean type of -
19 and this is who they have elected as their
20 president, the kinds of forums that they have have a
21 disproportionate amount of time talking about the
22 atrocities.

23 This is MESA. MESA is the grandchild of
24 the Title VI funding, and the Middle Eastern studies
25 - there would be no Middle Eastern studies

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1 association, as there would be no African studies or
2 Latin studies associations without this Title VI
3 funding.

4 The Title VI funding originally gave
5 birth to the regional studies centers on campuses.
6 And the regional studies associations.

7 So we're talking about a very, very
8 incestuous type of problem. And it starts really in
9 terms of what is being taught in classrooms, and
10 what is being taught. And what is most pernicious
11 is, what is being taught in the classroom can add an
12 aura of intellectual legitimacy to those acts of
13 violence and anti-Semitism that I spoke about
14 earlier in my presentation.

15 MS. TUCHMAN: You know, I just wanted to
16 point out that Title VI that Sarah has been talking
17 about is Title VI of the Higher Education Act. And
18 the Title VI that I was addressing is Title VI of
19 the Civil Rights Act.

20 VICE CHAIRPERSON THERNSTROM: Of the
21 Civil Rights Act, yes. I gathered that.

22 MS. TUCHMAN: Also, if a college or
23 university is found to be in violation of the Title
24 VI I was referring to, potentially that college
25 could lose its federal funding as well. That would

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1 be the penalty.

2 VICE CHAIRPERSON THERNSTROM: Right.

3 COMMISSIONER YAKI: Commissioner
4 Thernstrom?

5 VICE CHAIRPERSON THERNSTROM: Yes?

6 COMMISSIONER YAKI: Commissioner Yaki.

7 VICE CHAIRPERSON THERNSTROM: Hi. Are
8 we allowing you to speak?

9 COMMISSIONER YAKI: May I please be
10 allowed to speak?

11 VICE CHAIRPERSON THERNSTROM: Of course.

12 COMMISSIONER YAKI: First of all, I just
13 wanted to say that having going to a law school that
14 had no grades, Yale, I never really worried too much
15 about what I was going to say. Sorry, Jennifer, if
16 you were in activities skewed academically.

17 Listening to this discussion, and the
18 very valuable briefing we're having today, brings
19 back a lot of memories on having these exact same
20 kinds of debates 20 years ago when I was on the
21 Berkeley campus, as an undergrad, and how cyclical
22 these things can be.

23 Let me first preface this by saying, as
24 a law student and then as a professional whatever it
25 is I am now, I am pretty much as close to a First

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1 Amendment absolutist as you can find. One of my
2 heroes in law school was Thomas Emerson, or he was
3 officially called Tommie the Commie, professor at
4 Yale Law School who really was a First Amendment
5 absolutist.

6 And I think that the points that
7 witnesses and commissioners have brought up are
8 exactly to the point of the heavy hand of government
9 is one where I think we want to tread very
10 carefully, because government tends to use a \$9
11 million sledgehammer on a gnat, when it tries to
12 take action on something as difficult as this.

13 On the other hand, it's also pretty
14 clear that simply because something happened in the
15 arena of a university does not and should not
16 automatically qualify it as an untouchable
17 statement, because of the mere fact that it is in
18 the university setting.

19 We see today that certain types of
20 speech or conduct is not tolerated. We have hate
21 crimes legislation. We have legislation on sexual
22 harassment, which is often verbal in nature. And so
23 there are obviously some limitations that we as a
24 country have decided can and should be put on what
25 people say and do in a way that is offensive or

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1 hateful.

2 And I think that the distinction to be
3 made, and I don't know if a government commission
4 should do it, or someone should do it, distinguished
5 between what is an idea, and what is hate.

6 Because anyone who simply espouses an
7 idea with no expectations of being open to debate or
8 discussion, but is simply animated by prejudice, I
9 have less of a difficulty in saying - in fact, this
10 is where I almost depart - if there were a what I
11 considered to be a purely hateful poster up, all
12 blankety-blank die, or the Holocaust never happened,
13 blah blah blah blah blah, I would have very little
14 trouble tearing that poster down as an official act
15 of a university, and then taking the people who have
16 signed it and say, look we are now placing you on a
17 suspension for hate activities on campus, and we
18 have a grievance procedure, but we think you are on
19 your way out.

20 Similarly, professors who haven't got
21 the rigors of scholarships and academia that should
22 be part of a university shouldn't get tenure;
23 shouldn't get hired; shouldn't get whatever.

24 But I think the criteria must be very
25 rigid. It cannot be flexible, because when you have

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1 flexible criteria, when you have mushy criteria, I
2 think that is when you get into the slippery slope,
3 that is when you get into the problems we had with
4 in the '50s, with people being blackballed from
5 university campuses, when tenure was being denied,
6 for what then was thought to be a hateful idea, and
7 that was, anyone who possibly could and maybe should
8 have, could have, would have, possibly joined,
9 attended, or even any sympathy toward Stalin or
10 communism or what have you.

11 It's a difficult, difficult subject. If
12 there is a way to create a bright line, I think
13 there is a way to deal with it.

14 The question is, can it be done? I
15 don't know if it can be done. But it raises an
16 interesting point that I think is worthy of further
17 discussion, and to try to figure out a way to deal
18 with this.

19 Because I don't think as one speaker was
20 paraphrasing Chairman Mao, that we should allow
21 1,000 Confederate flags to blow, and I don't think
22 we should be allowed to deny the existence of the
23 Holocaust. And I mean that in every sense, choosing
24 my words carefully.

25 That I think goes beyond the pale of an

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1 open, free, and democratic society. That's all I
2 have to say, and I want to thank the speakers for
3 what they have contributed today.

4 I'm going to have to be jumping off in a
5 few minutes.

6 VICE CHAIRPERSON THERNSTROM: Can I just
7 say something before you jump off, Michael?

8 I'm having a hard time - I'm lost, I'm
9 having a hard time reconciling what you had to say
10 with your opening statement that you are close to a
11 First Amendment absolutist.

12 You really do sound as if you are
13 strongly in favor of, for instance, of speech codes.

14 Tearing down a Holocaust never happened poster?
15 Look, I don't like Holocaust Never Happened posters
16 either. I would never tear them down. I would
17 hope, as Jennifer said, there would be another
18 poster up: Do not be ridiculous.

19 You know, I just don't understand how
20 you can start out saying I'm a First Amendment
21 absolutist, and then go down a speech code route.

22 COMMISSIONER YAKI: Well, Commissioner
23 Thernstrom, with all due respect, I think that the
24 major difference is a First Amendment absolutist
25 believes that everyone's ideas are worthy of being

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1 heard at one time.

2 But to me, that's based on actual
3 interpretation of facts, rather than someone who
4 simply denies fact, denies reason and denies logic,
5 and then just in the cloak of speech put outs what I
6 think is not any contribution to the marketplace of
7 ideas.

8 VICE CHAIRPERSON THERNSTROM: Well, I
9 don't know how to define properly a contribution to
10 the marketplace of ideas. That is where I'm stuck.

11 Today's outrageous ideas, may tomorrow -
12 I hope not with respect to things like the Holocaust
13 and so forth - but you know, you can go outside of
14 this specific issue we're talking about today,
15 today's obnoxious idea is tomorrow's wisdom.

16 MS. STERN: Well, I'm not quite sure.

17 You have to understand, in 1939 in
18 Germany, the very first institution to embrace
19 Naziism was the university. And freedom of speech
20 and Jewish faculty members were quickly fired, if
21 hate speech is wrapped around the patina of
22 intellectual ideas, but is nonetheless hate speech,
23 that is where we draw the line. We really have to
24 be careful.

25 And I think the First Amendment issue is

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1 a very, very important issue. What happens on the
2 campus to me is not nearly as important as what
3 happens inside the classroom. And that is where we
4 really have to put our focus. And that's why I
5 think that this legislation is extremely important.

6 We do need an independent advisory board to look at
7 what is being talked about.

8 MS. TUCHMAN: You know, going back to
9 the Commissioner's point about following up a
10 Holocaust denial poster with a this-is-ridiculous
11 poster, and then identifying what the actual facts
12 are, that's great, and hopefully Jewish students
13 will do that. But I think many Jewish students are
14 feeling beaten down on campuses. And they are
15 intimidated, and they are afraid, and it's not just
16 a question of this one poster --

17 COMMISSIONER BRACERAS: But others are
18 invigorated by it.

19 MS. STERN: Some are. Some are, that's
20 true.

21 But there is a barrage of hate going on,
22 and I think that is where the university
23 administrations have to step up to the plate.

24 And I don't think it impinges on
25 anyone's free speech rights to say, that's wrong,

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1 the Holocaust happened.

2 There are posters that go up that say,
3 the Jews caused the Holocaust. That's wrong. And
4 universities have to come up and say, what you are
5 doing is wrong, it's dishonest, it's factually
6 inaccurate, thereby helping to make the Jewish
7 students feel supported and less marginalized.

8 DR. TOBIN: I think there are two sets
9 of issues on the table. The first is how we deal
10 effectively with discrimination, harassment, and the
11 - what goes on in the classroom or outside of the
12 classroom in terms of Jewish students and the
13 expression of anti-Israelism and anti-Semitism.

14 That's one set of issues, and they
15 require certain kinds of approaches and remedies.

16 There is a second set of issues which
17 concern the quality and atmosphere of higher
18 education that free speech issues are part of, hate
19 speech codes, and so on.

20 They are separate but they are
21 connected. The remedies for the former should
22 include not only exposure, additional research and
23 the disinfectant that comes from both, but should
24 include legal remedies, that is, complaints being
25 filed in the appropriate places, and where Jewish

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1 students should be protected by law, they should be
2 protected by law. That is one set of issues.

3 The second set of issues have to do
4 about academic reform, and there I think
5 stakeholders taking hold, we say it's about money,
6 partly it is about donors and alumni holding these
7 institutions accountable for what goes on.

8 Consistency in how hate speech is dealt
9 with. We would argue that it should not be a
10 cafeteria of prejudices; that this kind of prejudice
11 is sanctioned by the University in all kinds of
12 ways, but this kind of prejudice is prohibited by
13 hate speech.

14 It's a hypocrisy that is not only
15 intolerable at the face of it, but university
16 environments teach both within the classroom and
17 outside the classroom. It is a community.

18 And one learns in the formal settings of
19 the university, and one learns in the informal
20 settings of the university.

21 VICE CHAIRPERSON THERNSTROM: Probably
22 more in the latter; go on.

23 DR. TOBIN: And probably more in the
24 latter.

25 And therefore, what takes place in

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1 university property in the dorms, in the student
2 union, in the lecture halls, where people are
3 watching movies, and does have the endorsement of
4 the university de facto, there should be, and there
5 are rules for formal and informal discourse and
6 activity on campus.

7 Those kinds of remedies fall within the
8 activities of all the stakeholders in the system who
9 should be asserting both guidance, moral authority,
10 rules for behavior about what is acceptable and not
11 acceptable. All of those should be in play.

12 What happens in this discussion is, the
13 issues of harassment, discrimination, legal remedy
14 and protection get conflated with the issues of free
15 speech, and therefore, we can't deal with the
16 former. Let's separate them. Let's deal with
17 appropriate remedies with both. But understanding
18 that allowing this open display of hostility and
19 ugliness about Jews in Israel helps facilitate and
20 encourages this discrimination and harassment.

21 They are separate, but they are not
22 completely unrelated.

23 VICE CHAIRPERSON THERNSTROM: Have you
24 ever seen a speech code you like?

25 DR. TOBIN: No. I have not ever seen a

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1 speech code I liked, and I have not seen a speech
2 code enforced in ways that I like.

3 And speech codes about what one may say
4 and may not say about somebody else is not the best
5 way to approach this.

6 And I think also devolving immediately
7 into speech codes keeps a whole array of other
8 approaches to this off the table. And we don't have
9 to go to that absolutely route.

10 MS. STERN: I'd just like to add, what
11 bothers me is the egregious double standard of
12 tolerance for hate speech towards Jews in the
13 classroom. Would we allow for a known white
14 supremacist like David Duke to give a class on the
15 Civil Rights movement, or what happened - American
16 history.

17 I mean when these people have made such
18 outrageous claims against Israel and Jewish people,
19 I mean the chairperson, I just would like to read
20 one claim of Middle Eastern Studies Association.
21 Hamid Debashi had written in the Egyptian newspaper,
22 Al Ahram, on September 23rd, 2004, half a century
23 of systematic maiming and murdering of another
24 people has left is deep marks on the faces of
25 Israeli Jews, the way they talk, the way they walk,

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1 and they way they greet each other. There is a
2 vulgarity of character that is bone deep and
3 structure to the skeletal vertebra of its culture.

4 Now this is the chairperson of
5 Columbia's MEALAC department. This is hate speech.
6 This is just unconscionable.

7 VICE CHAIRPERSON THERNSTROM: The staff
8 director, Ken Marcus, has some questions.

9 Deborah, were you about to say
10 something?

11 COMMISSIONER BRACERAS: I just had one
12 brief question, which is a little bit off the topic.

13 But when you raise the point of speech codes being
14 enforced inconsistently, or the tolerance for
15 discriminatory things on campus being inconsistent,
16 I wonder if you also notice hypocrisy when it comes
17 to anti-Catholic statements or speech on campus?

18 Because it seems to me that while it's
19 not cloaked in international politics the way the
20 anti-Semitic speech is, and there aren't on most
21 campuses necessarily departments in which professors
22 are spewing the venom, there does seem to me to be a
23 tolerance for negative comments about Catholics and
24 Catholic students, and a tolerance for what would
25 otherwise be regarded as hate speech were it to be

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1 directed towards African-Americans, Muslims, gays
2 and lesbians, other groups on campus.

3 And I'm just wondering if in your work
4 you see that as well.

5 DR. TOBIN: I haven't don't any research
6 on the issue, so I can't answer definitively. And I
7 don't even have anecdotal information.

8 COMMISSIONER BRACERAS: Because I think
9 the larger issue, really, is that there are certain
10 groups in society currently where prejudice against
11 them is still acceptable for whatever reason, and
12 other groups where prejudice is immediately
13 condemned. And it seems to me that both Jews and
14 Catholics fall into the category of groups where
15 prejudice against them for some unknown reason still
16 seems to be acceptable.

17 MS. STERN: I'm not aware, I don't know.

18 I would be surprised, but I haven't studied the
19 issue, to see if the extent and depth of prejudice
20 permeates the college campuses towards Catholics.

21 COMMISSIONER BRACERAS: It may not on
22 the college campuses. I personally see it in the
23 media a lot. It may not be the same as on college
24 campuses, precisely because you don't have whole
25 departments promoting the hostility.

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1 But I was just wondering if you had ever
2 encountered it.

3 MS. TUCHMAN: I would be speculating
4 too. I don't have any information, unfortunately.

5 VICE CHAIRPERSON THERNSTROM:
6 Commissioner Taylor wanted to get in here.

7 COMMISSIONER TAYLOR: Thank you all for
8 coming, first of all. While it's been informative,
9 it's been disheartening, quite frankly, to hear it,
10 which in my mind raises one issue: why am I hearing
11 this for the first time here, rather than when I'm
12 traveling, when I pick up the USA Today, I would
13 expect in the snippets to hear of these instances
14 occurring around the country, as I do other
15 situations.

16 So that's sort of a global point that I
17 don't understand.

18 I have a very negative visceral reaction
19 to the heavy hand of government, and placing it in
20 the hands of any administrator, well intentioned or
21 not, the ability to parse the intent, heart, that
22 always gets me nervous.

23 On one side of the ledger, I have a very
24 uncomfortable environment, which I think is healthy;
25 on the other hand, I have physical threats, I have

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1 hate, I have a situation where speech creates a
2 dangerous environment, I place those on the other
3 side of the ledger.

4 So that is sort of where I come from,
5 and I feel more comfortable, candidly, with a
6 diversity of ideas, even stated very aggressively,
7 and creating an uncomfortable environment. I prefer
8 that rather than falling on the side of the ledger
9 where you place certain authority in the hands of a
10 government official.

11 Having said that, what I don't - I just
12 don't understand why the Rutgers situation is so
13 unusual. To me that seems appropriate, not having
14 the government official come in and either condemn
15 or take down or prevent the speech from occurring in
16 those cases, but simply saying, that does not
17 represent the institution, because that seems to me
18 to be what happens in most other cases, where you
19 fall down on the side of, again, not preventing the
20 speech. You may even provide a government forum for
21 the speech and then say, this is not speech endorsed
22 by the institution, which sends the broader signal
23 to the community.

24 And in my experience, although limited,
25 that seems to spark the real debate.

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1 (Simultaneous voices)

2 MS. TUCHMAN: Most colleges and
3 universities remain silent. And they do it, they
4 say, because of the First Amendment that we've got
5 to encourage free exchange of ideas and rigorous
6 debate.

7 There have been occasions where
8 university presidents and chancellors have spoken
9 up, Rutgers being one example. The American
10 Association of University Professors, while against
11 speech codes and restricted speech, encourages
12 college administrations to speak up.

13 The ACLU takes that position as well:
14 No suppression or restriction of free speech, but we
15 encourage and endorse administrations to vigorously
16 come out and condemn hate speech.

17 So I agree with you. I don't really
18 understand why universities are not speaking up,
19 because the effect is, by tolerating it and
20 remaining quiet, you are sending a message to the
21 perpetrators and the victims, we accept this, it's
22 okay with us. And it's not okay.

23 MS. STERN: Right, I agree with you 100
24 percent. The problem is, there are very few
25 profiles in courage on the college campus. I don't

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1 know why it is so politically correct to be anti-
2 Semitic.

3 COMMISSIONER TAYLOR: Why does it
4 require a profile in courage?

5 MS. STERN: Because this is the
6 politically correct parroting. That's why I say,
7 these people are like herds. They are not thinking
8 outside of the box. They are all following like a
9 bunch of sheep. And unfortunately, it has become so
10 de rigeur to bask Israel on college campuses without
11 realizing the implications in just how deep and how
12 pernicious that hatred is.

13 DR. TOBIN: May I? Anti-Israelism
14 serves as an appropriate guise for anti-Semitism.
15 And what we've seen is the language of anti-Semitism
16 used in the debate, as it's called, about Middle
17 East politics, so that traditional anti-Semitic
18 images are used.

19 Israel is a Jewish real estate
20 adventure. Jews control the Congress of the United
21 States; substitute that for Israel controls the
22 Congress of the United States. Jews are greedy;
23 Israelis and Israel is greedy; they want to own all
24 the oil resources of the Middle East. So on and so
25 on and so on.

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1 And by using anti-Semitic language and
2 images in this discussion, it goes under the radar,
3 and most faculty and university administrators are
4 reluctant to deal with it because they don't want to
5 interfere with a debate about politics.

6 And it would seem that they are stepping
7 on the toes of faculty in this debate.

8 Secondly, you don't see much about this
9 in the media, because I think this Commission is the
10 first that I know of to actively explore this issue
11 in this way. Occasionally, the Columbia story,
12 because it was so outrageous, was covered in the New
13 York Times and the Sun and other places. And the
14 Irvine issue might get into the local paper in
15 Orange County. And something outrageous at San
16 Francisco State might get into the San Francisco
17 Chronicle.

18 But it's not, as you are suggesting, the
19 overall seriousness of this issue is not well
20 publicized. We hope it will be after this.

21 The third thing I would say is, I
22 certainly am not advocating the heavy hand of
23 government as the first solution. What I am
24 suggesting is that governments at all levels, both
25 state and federal, in providing huge amounts of

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1 money to colleges and universities, have not only
2 the right but the obligation for appropriate
3 oversight, and I am stressing appropriate.

4 Again, anybody who has been in the
5 university knows that if one receives a grant from
6 the National Science Foundation or the National
7 Endowment for the Humanities or the National
8 Institutes of Health, there are appropriate review
9 and oversight requirements that come with those
10 funds.

11 It cannot be that the colleges and
12 universities are receiving these tens of billions of
13 dollars with not appropriate oversight when it comes
14 to these kinds of issues.

15 And last but not least, in terms of the
16 free speech issue once again, I come from this with
17 a variety of perspectives. I can step out of my
18 role as a researcher. I am the father of an
19 African-American son. I don't want him to be on a
20 college campus and have to deal with posters all
21 over the place proclaiming the genetic inferiority
22 of blacks. I don't want him to have to go in a
23 classroom and defend his race by saying that he is
24 an inferior person. It doesn't belong on campus.

25 This is ugly, and it doesn't belong on

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1 campus.

2 VICE CHAIRPERSON THERNSTROM: Would you
3 add another point, which is, look, Israel is seen as
4 a country of privileged whites, and that viewpoint
5 is at one with the political atmosphere on campus
6 with respect to a variety of issues.

7 DR. TOBIN: I have a comment about that.
8 I seem to have a comment about everything; I'm
9 sorry if I'm monopolizing the conversation.

10 We issued a book two months ago called
11 In Every Tongue: The Racial and Ethnic Diversity of
12 the Jewish People, which documents that 20 percent
13 of American Jews are Latino, Sephardic, black and
14 Asian, and that Israel is the most racially and
15 ethnically diverse nation on the face of the earth.

16 Forty percent of the population is African, Asian,
17 Latino and Arab.

18 The anti-Israel debate is framed in the
19 politics of race. Jews are white colonial
20 oppressors. Palestinians are brown indigenous
21 colonized victims. It's one of the great lies that
22 one perpetrates by distorting who Jews are, who
23 Israel is, and it's part of the paradigm of Saidism
24 in general on campus.

25 So the politics of race are particularly

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1 problematic in this debate, and one is accused of
2 supporting Israel - and we've documented this over
3 and over and over again - if you support Israel, and
4 as a Jew you say, I support Israel, you are labeled
5 racist at the outset.

6 This is also an ugly misuse of
7 politically correct language on campus. We have in
8 this book a picture that says it as well as anybody
9 can say it about the paradigm of race. It has
10 Israelis after Palestinians. And the caption is,
11 are brown lives worth less than white lives? That
12 is the way it's framed.

13 VICE CHAIRPERSON THERNSTROM: And my
14 point was simply that that distortion partially
15 explains the timidity of administrators on campus.

16 COMMISSIONER TAYLOR: One more question
17 if I may. You raise an interesting point.

18 Do you see a distinction between, for
19 example, David Duke being given a forum, assuming it
20 applies with all the applicable local statutes, to
21 speak in a public square, versus the opportunity to
22 speak on a university campus?

23 DR. TOBIN: I think David Duke should
24 have the opportunity to speak on campus.

25 COMMISSIONER TAYLOR: Okay, how is that

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1 different than what you said about your son not
2 being subjected to those statements, because he
3 would be in the context of David Duke coming to the
4 university?

5 DR. TOBIN: I don't want my son
6 surrounded by those statements. That is, if that
7 becomes the language of the campus, both inside and
8 outside the classroom, then the university has
9 failed to appropriately deal with the issues of
10 race, ethnicity and gender.

11 That's the point. This is pervasive.
12 It's overwhelming, and part of the political
13 discourse of campus, whereas other forms of racism
14 are not. And that is the problem.

15 MS. STERN: If every classroom, I might
16 add, within a department --

17 COMMISSIONER TAYLOR: Were populated by
18 David Duke professors, that's right, okay.

19 MS. STERN: And there would be no way
20 for a black child to feel comfortable, then we're
21 failing. We're failing miserably on college
22 campuses.

23 DR. TOBIN: And worst of all is, if you
24 criticize David Duke, you are accused of being a
25 racist. That's when it becomes perverse.

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1 VICE CHAIRPERSON THERNSTROM: Let us, we
2 do need to wrap this up. But the staff director has
3 some questions.

4 MR. MARCUS: Thank you, Madam Chair.

5 These have been wonderful presentations,
6 so I thank all of the witnesses. I also would like
7 to thank the staff members who all put this
8 together, especially Chris Burns.

9 Dr. Tobin, you mentioned a few times the
10 problem of anti-Semitic incidents on campus falling
11 below the radar screen. And I would like to ask the
12 panelists about one specific aspect of this.

13 Earlier this morning, the Commission
14 received from the Anti-Defamation League a helpful
15 statement on the topic of campus anti-Semitism in
16 which they argued, in part, that there is
17 insufficient monitoring of campus anti-Semitic
18 incidents.

19 And if I may try to characterize, they
20 indicate that there is a discrepancy in the manner
21 in which the Department of Education collects hate
22 crime statistics, and the manner in which it is
23 collected by the FBI.

24 And in particular they point out that
25 the Department of Education does collect information

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1 about certain anti-Semitic and other hate crime
2 incidents under the 1998 amendments to the Higher
3 Education Act, but that they are limited to those
4 forms that involve bodily injury, where the data
5 does not include other forms of anti-Semitic
6 incidents which might include harassments, threats,
7 intimidation, perhaps vandalism.

8 Do the panelists agree that there is a
9 lack of data or information about anti-Semitic
10 incidents, and a need to collect greater data in
11 some way or other?

12 MS. TUCHMAN: Absolutely, even before we
13 get to the governmental level. I think there is a
14 problem first in students reluctance to report
15 incidents of anti-Semitism. I think they are
16 uncomfortable raising the issue. I think they sort
17 of talk it away.

18 And even if they do end up reporting it,
19 I don't know that it always gets documented
20 sufficiently by the administrations on our college
21 campuses.

22 So even before we get to the point that
23 you're talking about, I don't know that there is
24 sufficient documentation on the lower levels.

25 MS. STERN: Right, I think there has got

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1 to be some user friendly mechanism, and some
2 publicity, and here I think we can make some
3 really great recommendations.

4 If we could have whatever institutions
5 of Jewish life there are on campus be the vehicle
6 with which you could publicize, there should be
7 documentation if a student is threatened or
8 intimidated in anyway.

9 I mean we really do need the data.
10 Students don't know how to come forward.

11 There is this lopsided power hierarchy,
12 where there is the college professor who is grading
13 them, and you're afraid of intimidation and
14 retribution if they do come forward.

15 So it's a very - if there were some sort
16 of transparent grievance procedure where students
17 could come forward without having to confront the
18 professor directly, it would be really wonderful.
19 It would be a tremendous help.

20 There are many, many - we don't know -
21 I've heard ad hoc stories, but we don't know how
22 many lonely college students there are, Jewish
23 college students, in East Podunk University, you
24 know, who are feeling threatened. We know about
25 Columbia, because there is a critical mass, and they

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1 support one another, and so they can come forward.

2 So that would be just a wonderful,
3 wonderful and tangible result of today's remarks.

4 MS. TUCHMAN: I can speak to what I know
5 about at U.C. Irvine, and I can tell you that for
6 years the Jewish students there have been
7 complaining, whether it's verbal complaints - I
8 don't know how many formal written complaints. But
9 there have been meetings upon meetings with
10 administrators there.

11 And I don't know to what extent those
12 complaints have been documented. I mean I would
13 doubt that they have been sufficiently documented.

14 MS. TUCHMAN: As a whole, can I add just
15 one more thing, as a whole university administrators
16 have been very dismissive, and pejorative, and
17 patronizing toward Jewish students. And many times
18 they say, well, don't you just feel this way because
19 you come from a very insulated environment or
20 parochial environment?

21 MS. MONROIG: That actually provides a
22 good segue to my next question. Dr. Tobin, I
23 believe earlier you indicated that one of the things
24 that might be done is to encourage students who
25 believe their rights have been violated to file

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1 complaints.

2 Do the panelists believe that there has
3 been adequate public education or technical
4 assistance regarding the rights that students have?

5 And if not, is there a need for federal agencies to
6 do more to ensure either that students know their
7 rights, or that educational institutions know their
8 obligations, what could be done?

9 DR. TOBIN: Quick answer, Ken, is that
10 students do not know their rights, and it would be
11 very important for all agencies to publicize what
12 their rights are, and encourage them to protect
13 their rights.

14 They don't know, and it would be very,
15 very, very helpful.

16 MS. TUCHMAN: Just to supplement what
17 Gary said, I think it's particularly important in
18 the context of the Title VI under the federal Civil
19 Rights Act, and that's because there's been a
20 recent change in the way that that statute has been
21 interpreted with respect to anti-Semitism.

22 Up until the fall of 2004, the Office of
23 Civil Rights in the Department of Education were
24 interpreting the law as not protecting against anti-
25 Semitism. The statute speaks about race, color, and

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1 national origin. The interpretation was that anti-
2 Semitism is religious discrimination, and doesn't
3 fall under the statute.

4 Fortunately - fortunately - in September
5 I believe of 2004 there was a change in the
6 interpretation which I personally believe is
7 consistent with federal court decisions, Supreme
8 Court decisions, that understand that being Jewish
9 is far more than just a religious designation; it's
10 a recognition of one's ethnic identity, one's
11 cultural identity, and that it's completely
12 appropriate to consider Jews as a protected class
13 under Title VI.

14 That's the next interpretation of the
15 law, and many people may not know that. So I think
16 it's important to get that word out, and make people
17 clear on what their rights and obligations are under
18 the law.

19 MS. STERN: I certainly needed to know
20 that Jews were protected under the law. And I am
21 certainly not a novice to these issues.

22 So the fact that I didn't know that
23 until Susan just said that should really indicate
24 that our students don't know this. They have no way
25 to turn.

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1 MS. TUCHMAN: If my complaint had been
2 filed a month or two before it was filed, it
3 probably would have been dismissed by the Department
4 of Education without regard to the facts, based on
5 the construction of the law.

6 VICE CHAIRPERSON THERNSTROM: So do the
7 language students get in their handbooks when they
8 first arrive on campus - let's say at Columbia for
9 example, many Jewish students, many Jewish alumni, a
10 lot of Jewish scholars at the university - does the
11 handbook they receive as freshmen says what that is
12 relevant to this issue?

13 MS. TUCHMAN: I don't think it says
14 anything as far as I know.

15 DR. TOBIN: I don't know what they say
16 either. I suspect they say something generally
17 about pluralism and diversity and blah blah,
18 embracing diversity, embracing diversity, embracing
19 diversity, I suspect that's what they say.

20 I don't think university handbooks are
21 going to be publicizing that the students have legal
22 rights for the failure of the university to protect
23 their racial and ethnic identity. Just a guess.

24 MR. MARCUS: Since both Columbia
25 University and the University of California at

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1 Irvine have been mentioned during the course of this
2 meeting, I should state for the record that those
3 universities were invited to participate and
4 declined.

5 Columbia University did send me a letter
6 too long to read into the record on November 15th,
7 but there are a couple of points here that I just
8 think I ought to mention.

9 Columbia does state, quote: Like the
10 Commission, we at Columbia abhor anti-Semitism or
11 any other form of invidious discrimination, close
12 quote.

13 They also maintain the following: At
14 Columbia like all universities faculty and students
15 with different views, perspectives and experiences
16 must be free to vigorously and openly engage in
17 ideas and issues with a diversity of thought and
18 freedom of inquiry and expression undergird the
19 entire academic enterprise. An atmosphere of mutual
20 respect, civility and tolerance at our nation's
21 universities must be ensured.

22 COMMISSIONER BRACERAS: I have a
23 question for the staff director, well, actually a
24 proposal, but a question to the staff director as to
25 whether it is feasible.

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1 Might it be possible for the Commission
2 to put out something informing students of their
3 rights? Because as we say, universities - of course
4 they will say they have a right not to be
5 discriminated against, but they are not going to
6 distribute the name and address of the local
7 representatives of the Department of Education where
8 students can then go file complaints against them.

9 Might it be possible for us to put out
10 some sort of brochure, pamphlet, or maybe we've done
11 so already, that would specifically highlight or
12 mention the change in the law, indicate who is
13 protected, and what types of things they are
14 protected from, and where they can go for recourse.

15 And obviously we wouldn't have the money
16 or the resources to distribute it to every
17 university. But we could take a subsection of
18 colleges, key state universities, or just Ivy League
19 universities, or just pick a small group, and get
20 the word out to students as to their rights.

21 Is that something we might want to think
22 about doing?

23 MR. MARCUS: It's certainly something we
24 ought to explore. I can't think of any reason why
25 not. The only limitation would be a budgetary one

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1 in terms of how it would be prepared or
2 disseminated.

3 But we certainly have both a
4 clearinghouse function to distribute information
5 about civil rights issues, as well as a statutory
6 public service announcement function which may be
7 broader than simply radio spots, and it might
8 potentially --

9 COMMISSIONER BRACERAS: Because I
10 actually think that we do a good job of letting
11 people know about their rights in the workplace and
12 other areas. But students really don't have a good
13 sense.

14 If you are a victim of employment
15 discrimination there are a lot of people who will
16 inform you of your rights. The employer itself puts
17 up posters, and the U.S. Commission on Civil Rights
18 makes people aware, and other agencies of the
19 federal government make people aware.

20 But I think if you are a student you may
21 not be quite as aware of the resources available.

22 Now I think it would be a small and
23 modest contribution we could make, but it might be a
24 good one.

25 MS. STERN: It's a great start, it would

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1 be a very tangible and positive thing.

2 COMMISSIONER BRACERAS: Maybe we could
3 put that on the agenda for the next meeting, to
4 raise it for a vote?

5 VICE CHAIRPERSON THERNSTROM: I mean
6 obviously we've had in the past a hotline for people
7 who were Arab-Americans who feel discriminated
8 against, who felt discriminated against in the wake
9 of 9/11. I mean it does seem to me there is
10 precedent for the Commission taking some action.

11 COMMISSIONER BRACERAS: But I think a
12 written document where people can see the addresses
13 and the phone numbers of who to contact at the
14 Department of Education, and inform them that they
15 are protected.

16 In particular, Jewish students may not
17 know that they have rights, enforceable rights, at
18 the Department of Education.

19 VICE CHAIRPERSON THERNSTROM: I also
20 like the idea. And I would also like, and we will
21 need to take a vote on this, I would like to put
22 into the record the statement of the Anti-Defamation
23 League that the staff director referred to submitted
24 to the Commission. It's called, Briefing on Anti-
25 Semitic Incidents on College Campuses, dated

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1 November 18th.

2 And as well, this letter to which the
3 staff director also referred from the provost, Alan
4 Brinkley of Columbia University. It's a letter
5 declining our invitation to come be a part of this
6 panel. But I think that the letter is worth
7 including in the record.

8 And I would like if other people are so
9 inclined to have a motion to that effect, that we
10 include these two documents in the record.

11 COMMISSIONER BRACERAS: So moved.

12 COMMISSIONER TAYLOR: Second.

13 VICE CHAIRPERSON THERNSTROM: All in
14 favor?

15 (Chorus of ayes)

16 VICE CHAIRPERSON THERNSTROM: Have we
17 lost a quorum?

18 MR. MARCUS: Commissioner Yaki?

19 COMMISSIONER YAKI: No, you have not
20 lost a quorum.

21 VICE CHAIRPERSON THERNSTROM: Would you
22 like to vote? Well, I said all in favor aye. I
23 guess the ayes have it.

24 All opposed?

25 (No response)

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1 VICE CHAIRPERSON THERNSTROM: And
2 Commissioner Yaki, are you abstaining?

3 COMMISSIONER YAKI: No, I voted yes.

4 VICE CHAIRPERSON THERNSTROM: Oh, I
5 didn't hear you. I didn't hear you.

6 I believe then the vote was unanimous.

7 These two documents will be included in
8 the record. And I think, with many thanks to the
9 panelists for this really fascinating discussion,
10 and Commission meetings aren't always this
11 interesting, so this is really a pleasure, with many
12 thanks to you for coming today.

13 And I hope we will follow up with some
14 constructive measures.

15 This part of the Commission meeting
16 comes to an end, and we will take a brief break, and
17 then we will reconvene to go through the regular
18 Commission business.

19 So thank you very much.

20 (Whereupon at 12:02 p.m. the
21 meeting of the Commission went
22 off the record, to return on
23 the record at 12:24 p.m.)

24 **V. Staff Director's Report**

25 VICE CHAIRPERSON THERNSTROM: The staff

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1 director's report does not require a quorum. I am
2 calling the meeting to order, and the next item is
3 the staff director's report.

4 And staff director, you've got the
5 floor.

6 MR. MARCUS: Thank you, Madam Vice
7 Chair, Commissioners.

8 If it please the Commission, I'd like to
9 extend and revise my written staff director's report
10 with brief additional remarks concerning management
11 and operations.

12 VI. Management and Operations

13 First, I'm pleased that we have just
14 been able to issue a new travel policy for the
15 agency. The commissioners will recall that there
16 were approximately nine recommendations from the
17 Government Accountability Office relating to aspects
18 of travel.

19 The policy that we have just issued in
20 the form of AI 314 is intended to address all of
21 them. They range from issues such as documenting
22 travel policies, properly using and retaining
23 vouchers to support travel claims, improving travel
24 file maintenance, requiring appropriate travel
25 documentation, et cetera, et cetera.

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1 And we are working now to make sure that
2 this policy now issued will be fully implemented
3 within the agency.

4 I would urge all staff members and also
5 all commissioners to review the policy. There are
6 some items that are new, and others that remain the
7 same. In particular, I would remind everyone that
8 the requirement that travel vouchers be submitted
9 within five days of the expense, we will need to
10 enforce that. The sanctions for noncompliance with
11 that are a matter of federal law, and they are
12 described within the policy.

13 We have also recently requested a
14 program assessment and rating tool by the Office of
15 Management and Budget in 2006. This also is
16 something that was recommended by GAO. They
17 recommended that we consider the costs and benefits
18 of undergoing a part review, and they also indicated
19 that it would be useful, they believe, to us.

20 I have spoken as recently as yesterday
21 to the Office of Management and Budget. They have
22 emphasized to us that it is a very rigorous process
23 involving a considerable amount of resources, that
24 would involve OMB resources as well as our own.

25 They point out that in many cases the

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1 standards they used have been more stringent than
2 other agencies might have liked, and that they do
3 have an extensive backlog dealing with responses
4 from other agencies to the part review.

5 However, it is my belief that the rigor
6 and credibility of the OMB part process is going to
7 be important for us. The purpose is to identify
8 weaknesses in Commission programs, and to assist in
9 the planning process.

10 It will be an important part of the work
11 that we do during 2006 to assess our management, and
12 to ensure that we are making any changes that are
13 necessary.

14 We have indicated to the Commissioners
15 previously that we are trying to provide a draft
16 strategic plan for a vote during the December
17 meeting, in keeping with our timetable of trying to
18 achieve implementation of GAO reform by the middle
19 of January, given that there are some reforms that
20 we need to undertake in order to comply with all the
21 GAO recommendations that can only be done after our
22 strategic plan is finalized.

23 As a part of the strategic plan process,
24 we have been soliciting input from various
25 stakeholders including congressional committees,

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1 federal agencies, and staff within the agency.

2 We have just received some input, both
3 oral and written, from at least one congressional
4 committee. They have, however, also indicated an
5 interest in receiving an additional draft of that in
6 the middle of December. We are in the process now
7 of reviewing and analyzing all of the input that we
8 have received from stakeholders, including
9 congressional and noncongressional stakeholders.

10 Of course one of the issues that we are
11 going to have to look at is the question as to how
12 the mid-December deadline for providing a draft to
13 Congress will impact upon our intended mid-December
14 vote on the strategic plan, and how that in turn
15 will impact on the timetable for completing those
16 aspects of the GAO recommendation that can only be
17 completed after we have the finalized strategic
18 plan.

19 As the commissioners are aware, the 2004
20 audit by Parker Whitfield was intended to be
21 completed by the end of November 2004. It is now
22 nearly a year overdue. We have been continually
23 reminding the audit firm of Parker Whitfield of the
24 need to complete the review.

25 We've also emphasized to them that the

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1 current work period ends at the end of this month in
2 November, and will not be extended further, so we
3 certainly need to get from them whatever it is they
4 are going to provide us within that time period.

5 Some commissioners have commented on the
6 question as to whether we are even currently
7 auditable for 2004 or 2005. We will I hope find out
8 Parker Whitfield's conclusion with respect to the
9 2004 year fairly soon.

10 Now we do also simultaneously have an
11 audit process underway for fiscal year 2005. The
12 firm of Williams Adley has been retained to provide
13 that audit. They are now somewhat delayed, partly
14 as a result of the delay in the 2004 audit, which
15 they would like to have before they do 2005.

16 They are also somewhat delayed by virtue
17 of the fact that we had to issue a request for
18 audits twice. The first time we issued it, we had
19 no one bidding, so that delayed the process
20 somewhat.

21 We have brought this to the attention of
22 the Office of Management and Budget, which has
23 granted us a 60-day extension on our performance and
24 annual report requirement, which includes a
25 requirement to provide the audit. So it will be due

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1 now during the middle of January, January 15th, at
2 the Office of Management and Budget.

3 However, as requested, that after we
4 receive the audit from Williams Adley we provide a
5 corrective action plan describing how we intend to
6 address any weaknesses identified by Williams Adley
7 by February 15th. So that work is also underway.

8 We are delighted that we now have on
9 board a new full service accounting provider in GSA,
10 and I believe that with their arrival, and with the
11 new reforms that have taken place, in 2006 we will
12 have a greater degree of controls than we've had
13 previously. However, I would not be surprised if
14 the results of the audit for 2005 should reflect a
15 lack of controls that we have had previously.

16 That is my report, but I would be
17 pleased to answer any questions that commissioners
18 might have.

19 VICE CHAIRPERSON THERNSTROM: Do any
20 commissioners have any questions?

21 Well, if not we're moving on to a group
22 of motions.

23 I think all of you have copies of those
24 motions. You should have in front of you, the first
25 one which involves the posting of a report to

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1 Congress on the Commission website. And I do need a
2 motion to post that report.

3 So if somebody could find the language,
4 and make a motion.

5 COMMISSIONER TAYLOR: Madam Chair, I
6 move that the Commission's September 30th, 2005
7 report detailing recent Commission reforms and
8 issued to the Senate Committee on Appropriations
9 pursuant to a report for commerce, justice and
10 science for fiscal year '06 be posted on the
11 Commission's website at the earliest practical time.

12 VICE CHAIRPERSON THERNSTROM: And do I
13 have a second on that?

14 COMMISSIONER BRACERAS: Second.

15 VICE CHAIRPERSON THERNSTROM: Any
16 discussion?

17 Okay, all in favor by indicating aye.

18 (Chorus of ayes)

19 VICE CHAIRPERSON THERNSTROM: Anybody
20 opposed?

21 (No response)

22 VICE CHAIRPERSON THERNSTROM: Motion is
23 approved.

24 I believe it's Commissioner Braceras who
25 has a message that she would like to read that is

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1 from the Chairman Gerald Reynolds.

2 COMMISSIONER BRACERAS: Yes, here is
3 chairman Reynolds message. It reads:

4 I have decided to appoint vice
5 chairperson Abigail Thernstrom and Commissioner
6 Ashley Taylor to sit on the U.S. Elections
7 Assistance Commission Board of Advisers.

8 According to the Elections Assistance
9 Commission's regulations, as well as the past
10 practice of this Commission, it is appropriate that
11 the chair would make these appointments. The board
12 of advisers consists of 37 members drawn from
13 various national associations and government
14 agencies who play a role as volunteers in the
15 implementation of the Help America Vote Act.

16 The board members serve for two-year
17 terms and may be reappointed.

18 I have every confidence that Vice Chair
19 Thernstrom and Commissioner Taylor will be effective
20 representatives of the commission, and that their
21 expertise and knowledge will enable them to
22 contribute significantly to the Elections Assistance
23 Commission.

24 That is the end.

25 VICE CHAIRPERSON THERNSTROM: That does

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1 not need to be voted on.

2 **VII. State Advisory Committees**

3 State advisory commission issues.

4 Working group on the state advisory committee
5 discussed the issue of the criteria for voting on
6 SAC reports. For instance, we now publish reports
7 written by SAC, giving the impression the Commission
8 has signed on to the substance of those reports.

9 In fact, in reality, we do not verify
10 either the accuracy or the validity of the factual
11 findings in such reports.

12 I think there is a motion rising out of
13 the last meeting of the working group aimed at
14 addressing this problem.

15 Commissioner Taylor, do you have, as I
16 understand you do, a motion for the Commission this
17 morning?

18 COMMISSIONER TAYLOR: I do.

19 I move that the Commission establish a
20 policy which will supercede all prior inconsistent
21 policies previously adopted, and policies as
22 follows.

23 I move that the Commission continue its
24 process whereby we vote to publish the state
25 advisory committee reports.

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1 However, when the Commission votes on
2 whether to publish a state advisory committee
3 report, commissioners may consider evaluating the
4 quality and substance of said report.

5 The commission will not, however,
6 attempt to engage in undue influence regarding the
7 content of the state advisory committee reports,
8 including the findings and recommendations.

9 If the particular state advisory
10 committee report in question does not obtain a
11 majority of the votes of the commissioners, the SAC
12 report will be deemed filed with the Commission but
13 not published.

14 All published reports will be available
15 to the public. Any report deemed filed but not
16 approved for publication shall not be placed on the
17 Commission's website, nor obtained via a link on the
18 Commission's website.

19 VICE CHAIRPERSON THERNSTROM: Do I get a
20 second to this motion?

21 COMMISSIONER BRACERAS: Second.

22 VICE CHAIRPERSON THERNSTROM: And we
23 need some discussion. If there is any. Yes?

24 COMMISSIONER MELENDEZ: Ccommissioner
25 Melendez. How time-consuming is that for us to

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1 review these?

2 VICE CHAIRPERSON THERNSTROM: The staff
3 director can maybe - I mean the volume of these
4 reports has not been huge.

5 MR. MARCUS: The volume has varied over
6 time, and regrettably has decreased in recent years
7 as the budget for SAC travel has led to a decrease
8 in SAC reports.

9 The historical expectation has been that
10 every SAC shall submit one report, which is to say
11 within a two-year period of the SAC's charter, they
12 would do a report, which is to say we would have 25
13 or 26 reports within a given year.

14 However, there has been a custom,
15 particularly in recent years, for supervisory
16 committees to combine together, so that often there
17 would be one regional report, which would be the
18 report of as many as six of the SACs or more.

19 I don't believe that there have been in
20 recent years more than a handful of separate reports
21 coming from the State Advisory Committees. So it
22 would be a matter of how long it takes a
23 commissioner to review each one.

24 I don't think that there has ever been
25 at least in recent years as many as one report per

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1 meeting.

2 VICE CHAIRPERSON THERNSTROM: I think
3 that is correct. And the average length of these
4 reports is not - this is not an onerous job.

5 And in many instances, of course, you
6 will look at a report and feel you do not have to
7 read every sentence in it; that you get the gist;
8 you are in favor of having it posted or not posted.

9 MR. MARCUS: And I'm reminded that the
10 administrative instructions of the agency require
11 that commissioners have at least 60 days to review a
12 report before having to vote on it.

13 VICE CHAIRPERSON THERNSTROM: Any
14 further discussion of this motion?

15 COMMISSIONER YAKI: Hello?

16 VICE CHAIRPERSON THERNSTROM: Yes,
17 Commissioner Yaki, come in.

18 COMMISSIONER YAKI: Yes, okay.
19 Commissioner Thernstrom wanted to know where my
20 First Amendment absolutist came in. It comes in
21 right here.

22 I don't believe that --

23 VICE CHAIRPERSON THERNSTROM: I didn't
24 think this was a First Amendment issue, but
25 whatever.

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1 COMMISSIONER YAKI: Well, it is to the
2 extent that we have reports being made by a
3 government body that if it is, quote unquote, filed,
4 will never see the light of day. And I have a
5 strong objection to the fact that a report that is
6 quote unquote merely filed cannot be accessed by the
7 public in any way whatsoever.

8 I just object during the meeting.
9 Perhaps it could be listed to a link of reports that
10 people could contact us to order rather than simply
11 being hyperlinked to a PDF which is what an approved
12 report would be that was not contained in this
13 motion, and therefore, I cannot support it.

14 VICE CHAIRPERSON THERNSTROM: Since I
15 haven't been part of this working group, say it
16 again: What you are proposing is not a link to a
17 PDF but a --

18 COMMISSIONER YAKI: A link to reports
19 that exist that the public can then contact us to
20 order a copy rather than simply download it. In
21 other words, there would be an additional process
22 for other reports that have been delisted from our
23 website.

24 But I'd rather see them all listed with
25 just a question of whether they were approved or

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1 merely filed. But it's a black hole that they would
2 descend into as a file reporting is something that I
3 cannot support.

4 VICE CHAIRPERSON THERNSTROM:

5 Commissioner Braceras.

6 COMMISSIONER BRACERAS: I just want to
7 say that this isn't a question of quashing a report
8 or killing a report.

9 When our own commission produces reports
10 that we don't think are acceptable, we vote them up
11 or down, and we do so based on the content of the
12 document as well as the quality of the document, or
13 any other reason that we deem to be relevant.

14 So all this motion does is basically ask
15 us to consider the work of the SACs in the same way
16 that we consider the work of our own staff.

17 And to give it a critical eye, and to
18 judge it on its merits. And reports that are not
19 approved by the Commission, be they SAC reports or
20 be they Commission documents, do not go on the
21 website, and do not bear the seal of federal
22 approval.

23 Commissions that are approved by the
24 Commission are then made available to the public,
25 and in the large majority of the cases reports are

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1 approved.

2 But it seems to me unwise to allow the
3 state advisory committees to use our money and our
4 resources to produce reports that a majority of
5 commissioners fundamentally don't - either don't
6 agree with or don't think are of high enough quality
7 to merit our seal of approval.

8 So that is the genesis of this motion,
9 and the reason behind the motion, and the reasons
10 why I support it.

11 COMMISSIONER YAKI: Well, if I could
12 just respond, and don't take it the way it's going
13 to sound, but we haven't had any state advisory
14 committees operating for some time - seen any
15 reports coming out anyway. I was disturbed by the
16 conversations that were had during commission
17 meetings regarding content control.

18 And I believe that if they've done the
19 work, and if we've done our work correctly in
20 selecting the appropriate people who have an
21 interest in these issues - I mean the fact of the
22 matter is that I should be voting for this motion on
23 the off chance that as a new criterion we get some
24 whacky reports coming out from the SACs, I'd kind of
25 like to bury them underneath - in the proverbial

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1 Davy Jones Locker.

2 But the fact is that I think you take it
3 as you see it, and the public has a right to see
4 what it is that's been produced by their - at their
5 cost, and under our auspices.

6 VICE CHAIRPERSON THERNSTROM:

7 Commissioner Taylor has a question, but let me just
8 ask you and the staff director a question here.

9 Is there a distinction between the work
10 by our staff here at the commission - Ken, don't go
11 away; oh, okay - a distinction between the work of
12 our staff here at the Commission with, in place now
13 a process by which we have - we periodically review
14 the process of the work and have a chance to express
15 our views as to how it's shaping up.

16 Is there a distinction between that and
17 the work of the SACs that we have no input into at
18 any stage of the process, and therefore, it seems to
19 me that if there is such a distinction, then that
20 has some implications for our commitment to posting
21 work.

22 Is that an off the wall point on my
23 part?

24 MR. MARCUS: Well, there is certainly a
25 distinction between the status of a national project

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1 that comes to the attention of the Commission and
2 that of the SAC.

3 With respect to the work of a SAC, it is
4 a final complete approved report of a State Advisory
5 Committee where the Commission has an obligation not
6 to exercise undue influence, and not to unduly sway
7 the recommendations of this advisory committee.

8 Whereas with respect to the work of the
9 national offices, they are providing a draft of what
10 will ultimately be a project of the commission, so
11 that on the SAC reports, the commission does not
12 vote to approve the report; only on whether to
13 publish it or not.

14 Whereas for the national projects the
15 vote is on whether to approve or not.

16 I would say that with respect to SAC
17 projects that are not approved, and to the best of
18 my reading of the motion, I don't think there is a
19 change under the motion, the Commission may still
20 have obligations of disclosure under the Freedom of
21 Information Act and may still provide the documents
22 to the public under a FOIA request, even if they are
23 not copied for general distribution or posted on the
24 website.

25 VICE CHAIRPERSON THERNSTROM: Ashley.

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1 COMMISSIONER TAYLOR: I just wanted to
2 pick up on that point, that is, these documents
3 remain public documents. And if a member of the
4 general public requests the document, we have an
5 obligation to provide it even if this motion is
6 accepted by the body.

7 And what I think it does, it makes it
8 clear to the public what documents we approve and
9 stand behind, and what documents are simply lodged
10 or filed with the Commission. And whether it's just
11 perception or reality, I think it's important for us
12 to all feel comfortable with documents that the
13 public may perceive we're standing behind.

14 This just gives us the flexibility to
15 make that point clear, and separate the two stacks
16 of documents, while at the same time allowing the
17 SACs to continue to produce their reports, and
18 again, they aren't - they remain public documents,
19 and I suspect that when a SAC produces a report, and
20 it's simply filed, and not published, and they are
21 proud of that report, they will publicize the
22 report, and when requested, will provide copies.

23 COMMISSIONER YAKI: I strongly disagree.
24 Simply because a document can be found through the
25 Freedom of Information Act requires that someone

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1 knows what the name of the document is in the first
2 place.

3 And I think that what we're doing by
4 simply turning it into essentially the giant vault
5 of nothingness is I think irresponsible, and I think
6 makes it extremely difficult for the public even to
7 find out what the heck the work may have been done
8 in the first place.

9 I think the idea that a FOIA request is
10 an acceptable substitute for a listing on our
11 website is between night and day, and I simply can't
12 support it.

13 COMMISSIONER TAYLOR: Well, let me
14 address that point. While I may agree with you on
15 that narrow issue, I think we have to balance that
16 against the perceived seal of approval that we give
17 to every report that we accept and publish.

18 And when balanced against that concern,
19 I fall down in favor of this motion.

20 COMMISSIONER YAKI: The problem is that
21 I offered a compromise that would have shown which
22 ones we approved and which ones we did not but still
23 would have made the report more readily accessible
24 to the public than as a procedure outlined by the
25 staff director.

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1 The fact is that these reports were made
2 by an agency under our auspices using taxpayer
3 funds. And I believe that we should not make it a
4 scavenger or treasure hunt for someone to find out
5 what they may or may not have done.

6 VICE CHAIRPERSON THERNSTROM:

7 Commissioner Braceras.

8 COMMISSIONER BRACERAS: I have a
9 question, and that is, how are commission reports
10 currently dealt with when they are voted down? I
11 mean I know they're not posted on the web.

12 In other words, what I'm getting at, it
13 seems to me, that reports done by our own staff,
14 which we decide not to approve, should be dealt with
15 in the same way as these reports, and there is no
16 link on the website to reports prepared by the staff
17 that were voted down by the full commission.

18 There is no press release that goes out
19 saying there is a report; we just decided not to
20 approve it, but feel free to come and get it.

21 So if we don't do that for our own
22 reports, and I think that we don't - but I'm asking
23 for clarification - it seems reasonable that we
24 wouldn't do that with the staff reports either.

25 And secondly, I would ask in both cases,

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1 in the case of a SAC report that we don't approve,
2 and in the case of a commission produced document
3 that we don't approve, to the extent that we do mail
4 it out to system who requests it via FOIA, I would
5 ask whether we shouldn't stamp it unapproved draft,
6 to make clear.

7 I guess those are two questions.

8 VICE CHAIRPERSON THERNSTROM: No, I
9 think you're right.

10 COMMISSIONER BRACERAS: What happens to
11 commission reports that we don't approve?

12 VICE CHAIRPERSON THERNSTROM: They go
13 into Michael's black hole.

14 COMMISSIONER BRACERAS: Okay, and if
15 somebody FOIAs them, and we send them to them, are
16 they sent out clearly marked as drafts that were
17 unapproved or that were voted down?

18 COMMISSIONER YAKI: First of all, they
19 are not drafts; they are final reports. So for us
20 to lay it on as drafts is completely misleading.

21 COMMISSIONER BRACERAS: Okay, Michael,
22 what I'm referring to as an unapproved draft is a
23 commission draft that the commissioners didn't
24 approve.

25 In the case of a SAC report it can be

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1 labeled unapproved; simply unapproved.

2 So my questions are directed I guess at
3 the staff director as to how we deal with our own
4 reports.

5 And my suggestion is that it makes
6 perfect sense to treat the advisory committee
7 reports in the same way.

8 MR. MARCUS: Commissioner Braceras, I am
9 going to do my best to respond, and may need some
10 help from staff to the extent that some of this may
11 precede my experience.

12 It's my understanding that with respect
13 to drafts of Commission projects, they are
14 considered to be purely internal, and they are not
15 produced subject to FOIA or any other requirement,
16 because they are not completed documents.

17 With respect to SAC reports that are
18 approved by the SAC but not published, it is my
19 understanding they would be considered completed
20 projects. I suspect they would be subject to FOIA.

21 I am not aware of experience of getting
22 a significant number of requests for those
23 documents. Does any member of the staff have
24 anything contrary to add?

25 COMMISSIONER BRACERAS: I guess what I'm

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1 saying is, I don't really see much of a substantive
2 difference between a SAC report that a majority of
3 this Commission decides is for one reason or another
4 is unacceptable, or a staff report that a majority
5 of this Commission decides is unacceptable.

6 Those seem to me to be equivalent
7 documents.

8 MR. MARCUS: I would say that there may
9 be some legal distinctions between a report which is
10 final in the sense - a SAC report is considered
11 final when it's approved by a majority of the staff.

12 COMMISSIONER BRACERAS: Right, so there
13 may be legal distinctions in terms of FOIA, but in
14 terms of how we treat them, and in terms of our
15 concern about making them available, I don't think
16 that there is really any substantive difference. I
17 think if a majority of the Commission finds the work
18 product to be unacceptable, there is no reason to
19 promote that work by putting a link on the website
20 to it.

21 VICE CHAIRPERSON THERNSTROM: You know,
22 it seems to me here that there is a distinction.

23 Our reports, our work products, are not
24 going to end up being voted down simply because we
25 do not have input at every stage of the work.

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1 So we're not going to allow a report to
2 be completed that we can't sign onto. The SAC
3 process is completely different. We are handed
4 finished reports that are the work of a legitimate
5 body.

6 I frankly am troubled by precisely the
7 issues that Michael Yaki is raising.

8 MR. MARCUS: I think that for clarity I
9 need to indicate that there has been differences
10 over history, over time, as to the treatment of SAC
11 reports that were not approved by the agency,
12 particularly prior to this new leadership. And I
13 think we would probably need to do a little bit more
14 research to give a full answer as to what has become
15 of some of the ones that were not approved.

16 There may have been for instance some
17 nonapproved SAC reports that were actually posted on
18 the website even.

19 COMMISSIONER BRACERAS: Okay, well, I
20 was just curious. I'm not requesting that it be
21 researched, or that we impose any additional burdens
22 on the staff in that regard. I just thought if
23 there was a quick answer, it might inform the
24 discussion.

25 VICE CHAIRPERSON THERNSTROM: I frankly

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1 would like to find a compromise on this, so that
2 there is something between a black hole and
3 endorsement.

4 COMMISSIONER BRACERAS: Well, there was
5 something that we talked about during our working
6 group meeting was a proposal that I had made to
7 accept the document and publish it, but to make very
8 clear in some sort of disclaimer that this is the
9 independent assessment of the whatever, Arizona SAC
10 committee, and does not reflect the views of the
11 United States or its individual members.

12 VICE CHAIRPERSON THERNSTROM: And what
13 was wrong with that?

14 COMMISSIONER BRACERAS: I don't know, I
15 thought it was a pretty good compromise, but it
16 never seemed to go anywhere.

17 VICE CHAIRPERSON THERNSTROM: I like it
18 just off the top of my head.

19 COMMISSIONER YAKI: I think it just got
20 dropped - as long as it was published and accessible
21 via the website I was for it.

22 COMMISSIONER BRACERAS: I mean part of
23 my problem with approving some of these reports is,
24 as Commissioner Taylor indicated, is that it gives
25 the impression that a federal agency has approved

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1 the content and the recommendations contained with
2 the report, and that is misleading, to say the
3 least.

4 So if it can be clearly stated that this
5 is the independent work of a SAC, and we don't
6 necessarily agree or disagree with it, that's fine
7 with me. I wouldn't necessarily advocate posting it
8 up on the web, because I think then it does continue
9 to give that misleading impression.

10 I don't mind there being a list of such
11 reports on the web that people can request, but to
12 publish it on the web would go farther than I would
13 go.

14 But I would be comfortable publishing
15 the reports with the disclaimer that I outlined, and
16 making a list of those reports available on the
17 website for people who choose to ask for them.

18 I would be comfortable with that
19 compromise.

20 VICE CHAIRPERSON THERNSTROM: And
21 Commissioner Yaki, would you be comfortable with
22 that compromise? That appeals to me a lot. Have a
23 list. People know about it. Not a black hole. But
24 we don't have endorsement of the methodology, the
25 findings.

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1 COMMISSIONER BRACERAS: And no press
2 release saying, today the U.S. Commission on Civil
3 Rights released this glorious report.

4 VICE CHAIRPERSON THERNSTROM: But full
5 disclosure that a report was in fact written by a
6 particular SAC and is available for those who are
7 interested.

8 COMMISSIONER BRACERAS: And the SAC can
9 distribute it as they see fit.

10 VICE CHAIRPERSON THERNSTROM: And the
11 SAC can distribute it. What do you think?

12 COMMISSIONER TAYLOR: I'm not opposed to
13 that at all.

14 COMMISSIONER YAKI: How does that work
15 vis-à-vis our website?

16 VICE CHAIRPERSON THERNSTROM: We would
17 have a list.

18 COMMISSIONER BRACERAS: There would be a
19 list of SAC reports on the website that somebody
20 could click on that link, it would say SAC reports.
21 You'd click on it. It'd have a list of all the
22 reports done by the SACs and which SACs did them,
23 and a phone number, an address, to let people know
24 whom they should contact to get a copy of the
25 report.

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1 VICE CHAIRPERSON THERNSTROM: No, wait a
2 minute, there would have to be a distinction between
3 approved and unapproved.

4 COMMISSIONER YAKI: The approved people
5 should be able to get by simply hyperlinking to a
6 PDF, and I would agree to a different method for
7 obtaining filed but not approved report, as long as
8 they were listed on the website.

9 That was my proposal to begin with, and
10 I would still agree with that.

11 COMMISSIONER BRACERAS: I guess I'm a
12 little confused, because the original proposal I
13 made during the course of the working group was
14 basically just to accept all SAC reports but put a
15 disclaimer on them saying it doesn't necessarily
16 reflect the views of the Commission or individual
17 commissioners.

18 COMMISSIONER YAKI: I would be
19 acceptable with that, as long as those reports are
20 accessible in some way on our website.

21 COMMISSIONER BRACERAS: And I would just
22 make the list available on the website. Because I
23 think once you get into voting on the substance,
24 approving or disapproving the substance, then there
25 is no need for a disclaimer, we are back to where we

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1 were originally. Because some are approved, and
2 those bear our name, and some are not approved, and
3 those don't bear our name.

4 So we're back to the original motion,
5 then.

6 VICE CHAIRPERSON THERNSTROM: Now, look,
7 it seems to me we're not quite back to the original
8 motion. What there is a consensus on here is to
9 have a link to all SAC reports, to make a
10 distinction between - and somebody correct me if I'm
11 wrong - to make a distinction between those SAC
12 reports that have been approved, and you can click
13 on it and get a PDF version of them, and those SAC
14 reports that have not been approved, but you have
15 been notified that they exist, and if you want them
16 - they are not in a black hole - if you want them
17 you can ask for them.

18 COMMISSIONER BRACERAS: Just to be
19 clear, the unapproved reports will have the
20 disclaimer on them, and there will be a list of them
21 on the website but they will not be accessible
22 through PDF format.

23 VICE CHAIRPERSON THERNSTROM: That's
24 correct, is that correct, Michael Yaki?

25 Commissioner Yaki, do we have an

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1 agreement on this?

2 COMMISSIONER YAKI: It just clicked in
3 and cancelled out about five seconds. I apologize.

4
5 COMMISSIONER TAYLOR: Come back from the
6 black hole.

7 VICE CHAIRPERSON THERNSTROM: All right,
8 look, I will repeat this.

9 It seems to me there is a consensus in
10 this room and with you on having a list of the SAC
11 reports. You click on a link on the website to a
12 list of the SAC reports.

13 They are divided into two categories.
14 Category approved you can get a PDF version off the
15 website. Category not sanctioned by this
16 Commission, nevertheless, you have been notified, it
17 hasn't gone into a black hole, you have been
18 notified that it exists, and you can obtain a copy
19 of it if you wish by requesting it.

20 COMMISSIONER YAKI: I'm agreeing.

21 VICE CHAIRPERSON THERNSTROM: And the
22 SACs themselves are free to do what they want with
23 their own reports, but again, there will be a
24 disclaimer indicating that it did not receive
25 official Commission approval.

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1 MR. MARCUS: Let me make sure that
2 there's clarity on some of the nuts and bolts of
3 this.

4 As I understand it, and I can be
5 corrected perhaps by staff, the main list that we
6 have on the website of Commission documents is an
7 actual document that we have that is a catalog that
8 is published from time to time, and it includes
9 approved reports.

10 And as I understand this perhaps
11 consensus, it would be that as we - each time we
12 revise this, we now include within this published
13 document, which is available in hard copy, but it's
14 also on the website, not only the approved
15 documents, but also, under a separate heading in the
16 catalog, those SAC reports that have been approved.

17 And that's what's in the catalog.

18 And then in addition we will have links
19 on the website to those SAC reports that have been
20 approved.

21 Did I get the process right?

22 VICE CHAIRPERSON THERNSTROM: I think
23 that is correct.

24 COMMISSIONER TAYLOR: And then when the
25 unapproved reports are requested through the normal

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1 process, and they are sent out by this office, there
2 will be an appropriate disclaimer.

3 VICE CHAIRPERSON THERNSTROM: Yes, that
4 is correct.

5 COMMISSIONER BRACERAS: I don't think
6 the disclaimer should be stamped on it at the time
7 that it is mailed out. I think that it should be
8 part of the publication. It should be on the front
9 actual inside cover of the document itself.

10 VICE CHAIRPERSON THERNSTROM: That's
11 fine.

12 COMMISSIONER TAYLOR: We could make it a
13 header on the document.

14 MR. MARCUS: And just for clarification,
15 in the past, as I understand, the practice with SAC
16 reports that have not been approved is that there is
17 no cover with it, because they are not even
18 published in the sense of being Xeroxed, so there is
19 no version.

20 Now what we are doing is a new process
21 where a document if it is not approved, whether for
22 reasons of substance, quality, procedure, or any
23 other reason, if it is a SAC report and it's not
24 approved for publication, we will nevertheless have
25 a document that is created and Xeroxed, but it will

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1 have on its cover this disclaimer that is being
2 discussed.

3 VICE CHAIRPERSON THERNSTROM: I think
4 that is correct, so there is no black hole, and
5 there is access.

6 MR. MARCUS: And as I understand it,
7 this would apply regardless of the Commission's
8 reason for voting it down, so now we're doing this
9 also for ones where the problem was with respect to
10 procedure as well.

11 COMMISSIONER BRACERAS: Yes, because I
12 think that satisfies both the Yaki-Thernstrom-
13 Braceras concern about information not being
14 accessible, but the overall motion addresses the
15 larger concern which was that we felt previously
16 that we had to vote up or down on reports regardless
17 of our substantive concerns with them. And now we
18 have a vehicle to express substantive concerns,
19 which we did not have before, because we had always
20 been told we had to accept reports unless there was
21 a procedural problem.

22 So now we have the ability to express
23 substantive views, and we also have I guess the
24 freedom to make more information accessible.

25 So I think that is a good balance.

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1 VICE CHAIRPERSON THERNSTROM: I think we
2 do have consensus on it. I do not have, I have not
3 written out, however, what the motion now looks
4 like.

5 We ought to have some very clear
6 language here that encompasses what we've agreed on.

7
8 COMMISSIONER BRACERAS: Give me two
9 seconds.

10 VICE CHAIRPERSON THERNSTROM: Michael
11 Yaki, can you stay with us for a couple of seconds
12 more? Jennifer is writing this out.

13 COMMISSIONER TAYLOR: Madam Chair, let
14 me say to Commissioner Yaki that I consider this a
15 friendly amendment to my motion.

16 VICE CHAIRPERSON THERNSTROM: Right.
17 Commissioner Yaki, this is a friendly amendment to
18 your motion.

19 COMMISSIONER YAKI: No, this is a
20 friendly amendment to his motion.

21 VICE CHAIRPERSON THERNSTROM: Oh, I'm
22 sorry. Actually Taylor's motion.

23 COMMISSIONER YAKI: Friendly, we'll just
24 call it friendly, how about that.

25 VICE CHAIRPERSON THERNSTROM: So

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1 Jennifer, you're taking the original language.

2 COMMISSIONER YAKI: In the immortal of
3 that moving airplane, friendly, my name is not
4 friendly.

5 COMMISSIONER TAYLOR: How does he know
6 this stuff?

7 VICE CHAIRPERSON THERNSTROM: How does
8 he know it? He's with the culture.

9 COMMISSIONER TAYLOR: Clearly that's my
10 problem.

11 VICE CHAIRPERSON THERNSTROM: That's my
12 problem too.

13 COMMISSIONER TAYLOR: Cutting against
14 the grain that is my problem.

15 VICE CHAIRPERSON THERNSTROM: That's
16 definitely mine. I just discovered Seinfeld this
17 year. I'm really out of the culture.

18 (Pause)

19 Michael, somebody should send to you by
20 the way, we received from the members of the panel
21 earlier two documents, one a book by Gary Tobin and
22 others called The Uncivil University on propaganda
23 in American education. And the other is also
24 something from Tobin. And somebody should mail
25 these to you.

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1 COMMISSIONER YAKI: Okay, thank you.

2 MR. MARCUS: Staff director will take
3 care of that.

4 COMMISSIONER BRACERAS: Okay, let me
5 give this a try.

6 The first paragraph of the motion
7 remains the same.

8 The second paragraph of the motion will
9 read as follows: Delete the first sentence of the
10 second paragraph altogether. Start with, all
11 published reports will be available to the public,
12 period.

13 Any report not approved by the
14 Commission shall be published with a disclaimer
15 indicating that the document does not reflect the
16 views of the Commission, period. It will be
17 available to the public and listed on the Commission
18 website and catalog, but will not be accessible via
19 a link on the Commission website --

20 VICE CHAIRPERSON THERNSTROM: As a PDF
21 document.

22 COMMISSIONER BRACERAS: As a PDF
23 document.

24 VICE CHAIRPERSON THERNSTROM: I think
25 there should be one more sentence.

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1 COMMISSIONER TAYLOR: Do we have to
2 clarify the fact that the published documents will
3 indeed be accessible on the website?

4 COMMISSIONER BRACERAS: I don't think we
5 should call them published or nonpublished, because
6 in a sense they're all published. I think we should
7 call them approved and unapproved.

8 So I guess the first sentence of the
9 second paragraph should read, all approved reports
10 will be available to the public via a link on the
11 Commission website. Any report not approved by the
12 Commission shall be published with a disclaimer
13 indicating that the document was not approved and
14 does not reflect the views of the Commission. It
15 will nevertheless be available to the public and
16 listed on the Commission website and catalog.

17 VICE CHAIRPERSON THERNSTROM: And how
18 about available by request.

19 COMMISSIONER BRACERAS: Yes, by request,
20 correct, it will be available to the public by
21 request.

22 MR. MARCUS: I feel I have to indicate
23 to the Commission that if we are using the term,
24 approval, to indicate a vote on the report, as
25 opposed to a decision to publish, that may raise

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1 legal issues under the FACA statute which we would
2 want to look into.

3 In general what the Commission has done
4 has not been to approve or disapprove a SAC report,
5 but rather only to publish or not publish a SAC
6 report.

7 COMMISSIONER BRACERAS: And what is the
8 concern about FACA?

9 MR. MARCUS: It is a concern, and maybe
10 on this one I could ask the parliamentarian who is
11 also our solicitor, whether there are FACA concerns
12 we need to look at with the question of whether the
13 Commission is saying that it is approving or
14 disapproving a report.

15 MS. MONROIG: Right. FACA says that the
16 appointing authority, which is the Commission,
17 cannot exercise undue influence. That's why when
18 you take the reports, it's always a vote for the
19 publication, it is not a vote on the substance.

20 COMMISSIONER BRACERAS: Okay, but that
21 brings us back to the original issue, and the
22 original motion.

23 COMMISSIONER YAKI: Just take out the
24 word "approved", substitute the word "published",
25 and in the section about the other reports, just

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1 simply say that those that are not published will
2 nevertheless be listed on the website and available
3 to the public.

4 VICE CHAIRPERSON THERNSTROM: And
5 available by request to the public.

6 COMMISSIONER BRACERAS: I think that is
7 fine, but then I think if it's not technically
8 published, quote unquote, it seems silly to list it
9 in a catalog.

10 COMMISSIONER YAKI: A catalog under
11 standard advisory commission reports. We've chosen
12 not to publish it. They have written it; we have
13 not published it.

14 COMMISSIONER BRACERAS: Right, but this
15 is really sort of Orwellian. I mean what does
16 publish mean? Publish means to print and duplicate
17 and distribute.

18 COMMISSIONER YAKI: Published is just so
19 don't get all fogged up here.

20 COMMISSIONER BRACERAS: I know, but the
21 point is, if we're printing it, we're making copies,
22 we're distributing, we are publishing. I don't care
23 what we call it. This is ridiculous to say that
24 just because we don't use the term, published, that
25 we don't run afoul of FACA.

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1 If there is a FACA issue here it's
2 substantive; it's not a technical little thing of
3 wording.

4 If there is a FACA issue in us looking
5 at the substance of the report, then there is a
6 issue in the whole motion altogether, and that
7 brings us back to square one, which is, are we as a
8 Commission allowed to consider substance?

9 And I thought we had determined legally
10 that we were allowed to look at substance. Once we
11 made that determination, and maybe it's an incorrect
12 one, but once we made that determination it seems to
13 me ridiculous to argue about whether we use the word
14 publish or approve.

15 MR. MARCUS: As I understand it, and
16 here again I will ask if the solicitor has any
17 supplementation, the Commission has control over the
18 purse strings, and can make a decision whether to
19 use its money to duplicate documents or not
20 duplicate them, or put things on the website or not
21 put them.

22 COMMISSIONER BRACERAS: But we're saying
23 right here that we're going to look at the content.

24 MR. MARCUS: That's right. And it can
25 look at content, as I understand it, in making a

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1 decision as to which ones are of the caliber that
2 money should be spent on them.

3 But that is different from the question
4 of approval.

5 COMMISSIONER BRACERAS: I think that is
6 really splitting hairs to say we're not going to
7 publish it, because we disagree with the content,
8 but we approve it.

9 VICE CHAIRPERSON THERNSTROM: Jennifer,
10 as a lawyer, you should be used to splitting hairs.

11 COMMISSIONER BRACERAS: Quite the
12 contrary, I think as a lawyer you have to look at
13 the underlying substance and not necessarily just a
14 particular word. But whatever.

15 So how does it read now?

16 VICE CHAIRPERSON THERNSTROM: Michael,
17 come in on this. How does it read now?

18 COMMISSIONER YAKI: I don't have it.

19 COMMISSIONER BRACERAS: Okay, so now it
20 says, I think, all published reports will be
21 available to the public. Any report not published
22 by the Commission shall be made available --

23 VICE CHAIRPERSON THERNSTROM: By
24 request.

25 COMMISSIONER BRACERAS: -- by request

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1 with a disclaimer indicating that the document does
2 not reflect the views of the Commission --

3 VICE CHAIRPERSON THERNSTROM: Of a
4 majority of the Commission. Does not reflect the
5 views of a majority of the Commission.

6 MR. MARCUS: May I make a suggestion
7 that when the language is done, instead of approving
8 it - much as I hesitate to suggest a delay - that
9 there be some additional review so that when we have
10 the language, that we're sure that it has been
11 properly reviewed for FACA concerns.

12 COMMISSIONER YAKI: I would say - I
13 would move to continue this motion until the next
14 meeting, and direct the staff directors to take
15 what's been discussed by the Commission today and
16 harmonize them with any FACA concerns that may be
17 outstanding, and further direct the staff director
18 to come back with proposed language harmonized with
19 FACA.

20 VICE CHAIRPERSON THERNSTROM: You know,
21 I would prefer to have the motion approved today.
22 If it needs to be amended at a subsequent meeting,
23 we can do so. But I don't want to have this whole
24 discussion again.

25 COMMISSIONER BRACERAS: I don't either.

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1 VICE CHAIRPERSON THERNSTROM: Because
2 two members are now absent from this. We are going
3 to have to start from ground zero.

4 I think there should be a vote on this
5 motion as amended, friendly amended, amended in a
6 friendly manner. And then we do not have to start
7 the entire debate all over again.

8 COMMISSIONER YAKI: I would amend my
9 amendment to the amendment, to simply agree that an
10 amendment to the friendly amendment is to ask the
11 staff director to ensure that it comports with
12 FACA, and if not come back and report to us on
13 methods of making it so.

14 COMMISSIONER BRACERAS: That's fine.
15 But you know, I fail to understand how giving
16 something approval is the same thing as exercising
17 undue influence.

18 I mean as a lawyer I do not read
19 approving or disapproving of something as being
20 undue influence. It's completely counterintuitive.

21 So I don't understand how even in the original
22 wording there is a problem. But I'll leave that to
23 other people to analyze.

24 VICE CHAIRPERSON THERNSTROM: Jennifer,
25 we can come back to it. But let us get something

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1 approved today. Because otherwise we are going to
2 start from ground zero the next time.

3 COMMISSIONER BRACERAS: Oh, I agree. So
4 shall I read it all the way through?

5 VICE CHAIRPERSON THERNSTROM: Please
6 read it all the way through, and somebody move to
7 accept it.

8 COMMISSIONER BRACERAS: I move that the
9 Commission establish the following policy which will
10 supersede all prior and inconsistent policies
11 previously adopted.

12 I move that the Commission continue its
13 process whereby we vote to publish the state
14 advisory committee reports. However, when the
15 Commission votes on whether to publish a state
16 advisory committee report, commissioners may
17 consider evaluating the quality and substance of
18 said report.

19 The Commission will not, however,
20 attempt to engage in any undue influence regarding
21 the content of the state advisory committee reports,
22 including the findings and recommendations.

23 All published reports will be available
24 to the public. Any report not published by the
25 Commission shall be made available to the public

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1 with a disclaimer indicating that the document does
2 not reflect the views of a majority of the
3 Commission. They will be listed in the Commission
4 catalog and on the Commission website, but not
5 accessible via a link as a PDF.

6 VICE CHAIRPERSON THERNSTROM: And it
7 should be available by request.

8 COMMISSIONER BRACERAS: Just say
9 available by request.

10 VICE CHAIRPERSON THERNSTROM: Michael,
11 are you happy with that?

12 COMMISSIONER YAKI: I'm friendly with
13 that.

14 VICE CHAIRPERSON THERNSTROM: All right,
15 do we have a second to that motion?

16 Wait a minute, there is an additional
17 sentence that Michael just suggested about, how did
18 you put it, getting the --

19 COMMISSIONER YAKI: Further, that after
20 adoption of this policy the staff director shall
21 ensure that it is in compliance with FACA, and if
22 not report back in a time and manner suggested in
23 it.

24 COMMISSIONER BRACERAS: I just want to
25 make sure that since I said the nonpublished reports

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1 are going in the catalog and on the web, that it's
2 also clear that the published reports are going up.

3 VICE CHAIRPERSON THERNSTROM: Oh, I
4 think that goes without saying.

5 Can we have a second on this motion?

6 COMMISSIONER YAKI: Second.

7 VICE CHAIRPERSON THERNSTROM: Can we
8 have a vote on approval?

9 (Chorus of ayes)

10 VICE CHAIRPERSON THERNSTROM: Any nays?

11 (No response)

12 VICE CHAIRPERSON THERNSTROM: This has
13 been unanimously approved.

14 Okay, let us move on to the SAC reports
15 of Arizona and New Mexico. The New Mexico state
16 advisory committee report entitled, the Farmington
17 Report: Civil Rights for Native Americans 30 Years
18 Later; and the Arizona state advisory committee
19 report entitled, Civil Rights Along the U.S.-
20 Mexican Border: The Need for Immigration Reform.

21 They were distributed to the
22 commissioners in advance of the July 22nd Commission
23 meeting.

24 At that meeting the chairman announced
25 the consideration of whether to accept the reports

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1 for publication could occur as early as the
2 September meeting in accordance with administrative
3 instruction five to seven, Section 13.02, requiring
4 the commissioners receive SAC reports two months
5 before taking action on them.

6 Subsequently during the September
7 Commission meeting, the Commission unanimously
8 approved a motion requiring that a vote on the SAC
9 report be table pending consideration by the SAC
10 working group of the criteria commissioners may
11 consider when voting on whether or not to accept a
12 SAC report for publication.

13 And of course, we have just done that.
14 So we now need a motion to accept for publication
15 the New Mexico state advisory report.

16 COMMISSIONER BRACERAS: So moved.

17 VICE CHAIRPERSON THERNSTROM: A second,
18 please?

19 COMMISSIONER TAYLOR: Second.

20 VICE CHAIRPERSON THERNSTROM: All in
21 favor, say aye.

22 (Chorus of ayes)

23 VICE CHAIRPERSON THERNSTROM: All
24 opposed?

25 (No response)

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1 VICE CHAIRPERSON THERNSTROM: The motion
2 is approved unanimously.

3 Okay, motion to accept for publication
4 the Arizona state advisory committee report. Can I
5 have a motion to accept it?

6 COMMISSIONER TAYLOR: So moved.

7 COMMISSIONER YAKI: Commissioner
8 Thernstrom?

9 VICE CHAIRPERSON THERNSTROM: Yes?

10 COMMISSIONER YAKI: Unfortunately I have
11 not had an opportunity to fully review this report,
12 so I would abstain from it. But I am concerned that
13 if I abstain do we not have a majority for it?

14 COMMISSIONER BRACERAS: For New Mexico?

15 VICE CHAIRPERSON THERNSTROM: No, we're
16 on to Arizona.

17 COMMISSIONER BRACERAS: I don't think we
18 have a majority for it anyway. I know I'm voting
19 against it.

20 VICE CHAIRPERSON THERNSTROM: And I have
21 not had a chance either to read it.

22 COMMISSIONER BRACERAS: You are free to
23 abstain.

24 VICE CHAIRPERSON THERNSTROM: No, wait a
25 minute, we are going to postpone this. We're

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1 postponing this.

2 Can I have a motion to table this?

3 COMMISSIONER MELENDEZ: So moved.

4 VICE CHAIRPERSON THERNSTROM: And a

5 second?

6 COMMISSIONER BRACERAS: Second. Why are

7 we postponing it, may I ask?

8 VICE CHAIRPERSON THERNSTROM: Well, at

9 least two of us haven't looked at it.

10 COMMISSIONER BRACERAS: Oh okay. There

11 is no underlying reason other than --

12 VICE CHAIRPERSON THERNSTROM: I haven't

13 looked at it.

14 COMMISSIONER BRACERAS: You've had it

15 since July, people. Come on.

16 VICE CHAIRPERSON THERNSTROM: I'm sorry

17 I haven't looked at it. Michael Yaki hasn't looked

18 at it. We're tabling it.

19 I need a vote.

20 (Chorus of ayes)

21 VICE CHAIRPERSON THERNSTROM: Any

22 opposition?

23 (No response)

24 VICE CHAIRPERSON THERNSTROM: We have

25 tabled this motion.

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1 Okay, we need from the staff director
2 now, and this is the last business, we need the
3 staff director to report to us on the briefing
4 report first, on the report on the stagnation of the
5 black middle class.

6 VIII. Briefing Report

7 MR. MARCUS: And that report is now with
8 GPO, which is in the midst of formatting it, and
9 should have it published within 30 days. Our hope
10 is to have it for the next Commission meeting. If
11 not, then for the one after.

12 VICE CHAIRPERSON THERNSTROM: How about
13 a briefing on the reauthorization of the act?

14 MR. MARCUS: That's in process, and we
15 may have a document available for the next month. I
16 would remind commissioners, though, that it is still
17 timely if they choose to prepare comments or
18 statements to that report?

19 COMMISSIONER YAKI: As a matter of fact,
20 Mr. Staff Director, perhaps I just missed it, but I
21 don't recall what the deadline is for submitting
22 statements after a briefing. So if you could give
23 me a deadline for that, for the VR8, that would be
24 helpful for me.

25 MR. MARCUS: I'll be pleased to suggest

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1 a deadline in a communication that I will send to
2 all commissioners after the meaning.

3 COMMISSIONER YAKI: Thanks.

4 VICE CHAIRPERSON THERNSTROM: Okay,
5 future briefings, the disparity studies. Would the
6 staff director provides us an update on the
7 disparities study briefing?

8 **IX. Future Briefings**

9 MR. MARCUS: Yes, I'm pleased that we
10 have a fine panel assembled. Dr. George LaNoue
11 (phonetic), professor of political science at the
12 University of Maryland, Baltimore County, and
13 director of the project on Civil Rights and Public
14 Contracting; Dr. Constant Citro (phonetic),
15 director of the committee on national statistics at
16 the National Academy of Sciences; Mr. Roger Clegg,
17 vice president and general counsel, the Center for
18 Equal Opportunity; and Dr. David Blanchflowe
19 (phonetic), professor in the department of economics
20 at Dartmouth College are online to participate in
21 the briefing.

22 VICE CHAIRPERSON THERNSTROM: Okay, and
23 I'm sorry I was doing something else here and have
24 lost my place.

25 We move on to the Patriot Act. We need

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1 an update on the Patriot Act briefing.

2 MR. MARCUS: Yes, Madam Vice Chair. The
3 Commission postponed its briefing on the Patriot
4 Act, asking the staff director to try to assemble
5 under the panel we had before, or a panel of
6 equivalent quality for the briefing, since it is
7 difficult to measure what equivalent quality is. We
8 have been trying to assess the availability of the
9 same panel members during February and March. We've
10 gotten some availability, but other members have not
11 been able to get back to us yet.

12 The Honorable Viet Dinh is currently
13 holding the February date. Mr. Parvez Ahmed of the
14 Counsel on American-Islamic Relations is also
15 available.

16 On the other hand Mr. Michael Ledeen
17 will not be able to get back to us before January on
18 his availability in either February or March. I
19 understand he has a demanding travel schedule, and
20 we have not yet been able to get responses from
21 either Andrew McCarthy from the Foundation for the
22 Defense of Democracies, nor Mary Rose Oakar at the
23 American Arab Anti-Discrimination Committee as to
24 their availability for either February or March.

25 We will continue first to try with them.

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1 And based on my understanding that the Commission
2 was pleased with this group, we may try to see their
3 availability for a date after March is that might
4 make it easier for them.

5 COMMISSIONER BRACERAS: It seems to me
6 that if we have two out of the four, and the other
7 individuals haven't said they can't do it, they just
8 say they didn't know, maybe we should just go ahead
9 and plan, and if they can't fill in with others.

10 VICE CHAIRPERSON THERNSTROM: Let's give
11 them a little more time, and then plan it, it seems
12 to me. A little more --

13 COMMISSIONER BRACERAS: If they don't
14 get back to us, in other words, by a certain date,
15 that would give you enough time. I say we go ahead
16 and have it, and fill in with others.

17 VICE CHAIRPERSON THERNSTROM: I agree
18 with that.

19 MR. MARCUS: So go ahead and try
20 February even if we only have two --

21 VICE CHAIRPERSON THERNSTROM: Well,
22 let's give a little more time to those who have - to
23 the two who haven't responded.

24 I see by the way that I forgot the
25 motion for scheduling our briefing on the Native

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1 Hawaiian Government Reorganization Act of 2005.

2 I need a motion to schedule the
3 previously approved briefing concerning the Native
4 Hawaiian Government Reorganization Act.

5 MR. MARCUS: For Friday, January 20th,
6 2006?

7 VICE CHAIRPERSON THERNSTROM: Correct.

8 COMMISSIONER TAYLOR: Second.

9 VICE CHAIRPERSON THERNSTROM: Any
10 discussion?

11 COMMISSIONER YAKI: Is this going to be
12 in Hawaii?

13 VICE CHAIRPERSON THERNSTROM: I think
14 that that should be a separate motion.

15 All in favor?

16 (Chorus of ayes)

17 VICE CHAIRPERSON THERNSTROM: Anybody
18 opposed?

19 (No response)

20 VICE CHAIRPERSON THERNSTROM: Floor is
21 open for a motion that we meet in Hawaii.

22 MR. MARCUS: This might be the
23 appropriate time to indicate in terms of the
24 composition of the panel, the commissioners recall
25 that Commissioner Melendez had suggested that we

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1 invite Patricia Zell to participate. She's a very
2 knowledgeable expert on the subject, formerly with
3 the Office of Hawaiian Affairs, and former worked
4 with Senator Akaka.

5 She is very interesting in
6 participating, but has not been able to tell us for
7 sure. She has also been helpful in identifying
8 other prominent supporters and experts of the
9 proposed legislation. Two people that she has
10 mentioned had been former Hawaii Supreme Court
11 Justice Klein, and incumbent Hawaii Attorney General
12 Bennett.

13 Both of them have indicated through her
14 that they are interested in helping the Commission.

15 However, Attorney General Bennett does not appear
16 to be available on the same date as the others, at
17 least at this point, and Justice Klein is a maybe.

18 We also are looking to have a
19 constitutional expert who may oppose or have
20 concerns about the legality there. Names of experts
21 who have been mentioned to us include Doug Cox, Todd
22 Gaziano, Shannen Coffin, or perhaps the former
23 Solicitor General Ted Olson.

24 In addition our hope is to have at least
25 one attorney if we can find one who has concerns,

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1 and who have a local knowledge of Hawaii issues, and
2 names such as Dick Rauland and Bill Burgess have
3 been referred to us.

4 VICE CHAIRPERSON THERNSTROM: Aside from
5 future agenda items, the last item is the scheduling
6 of a briefing on the findings of UCLA Law Professor
7 Richard Sander.

8 He has asked that we schedule that
9 briefing for sometime in the summer, and I would
10 like to have a motion to have it scheduled in June
11 of '06.

12 COMMISSIONER TAYLOR: So moved.

13 VICE CHAIRPERSON THERNSTROM: Why don't
14 you read the motion?

15 COMMISSIONER TAYLOR: I move to have the
16 Commission hold the previously approved briefing
17 concerning the findings of UCLA professor Richard H.
18 Sander in his article, A Systemic Analysis of
19 Affirmative Action in American Law Schools 57
20 Stanford Law Review, 367 2004 on Friday June 16,
21 2006. The briefing would feature Professor Sander
22 and at least one other academic expert in the
23 subject matter of Professor Sander's article, who
24 can provide a contrary viewpoint.

25 VICE CHAIRPERSON THERNSTROM: Will

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1 somebody second the motion?

2 COMMISSIONER BRACERAS: Second.

3 VICE CHAIRPERSON THERNSTROM: All in
4 favor indicate by saying aye.

5 (Chorus of ayes)

6 VICE CHAIRPERSON THERNSTROM: Any
7 opposition?

8 (No response)

9 VICE CHAIRPERSON THERNSTROM: Motion is
10 unanimously approved.

11 **X. Future Agenda Items**

12 Do we have any future agenda items? If
13 not, we are adjourned. Thank you, everybody.

14 Michael Yaki, thank you for sticking
15 with us to the end.

16 COMMISSIONER YAKI: Well done.

17 (Whereupon at 1:32 p.m. the
18 meeting of the President's
19 Commission on Civil Rights was
20 adjourned.)

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