

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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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:

JOHN BLAKELEY
CHRISTOPHER BYRNES
DEBRA CARR, Esq., Associate Deputy Staff Director
TERRI DICKERSON, Assistant Staff Director
PAMELA A. DUNSTON, Chief, Administrative Services
and Clearinghouse Division

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STAFF PRESENT CONTINUED:

PATRICIA JACKSON, Chief, Budget and Finance Division

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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P R O C E E D I N G S

(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

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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 7th,
10 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 STAFF DIRECTOR MARCUS: It was a full
16 meeting as opposed to a continuation. But I think
17 Commissioner Braceras is correct that it was not a
18 monthly meeting, and it would be appropriate I think
19 to 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 STAFF DIRECTOR MARCUS: It would be
3 deemed a 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 celebrate
25 National Indian and Alaska Native Heritage Month with

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1 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 II
8 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 briefings,
11 with presentations from experts outside the Agency in
12 order to inform itself and the nation of issues
13 related to civil rights, and this is certainly an
14 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 Madalyn 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 work is entitled, the Uncivil
24 University.

25 And I very much welcome him. But first

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1 I will introduce the other two, and then we will get
2 to you, Dr. Tobin.

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

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

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

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

23 She, along with the American Jewish
24 Congress, has been a moving force behind H.R. 609, a
25 legislative amendment to amend Title VI of the Higher

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1 Education Act.

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

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

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

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

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

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

25 DR. TOBIN: Good morning.

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

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

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

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

24 Not only did we interview Jewish
25 students, we also examined campus media, pamphlets,

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1 flyers. We had some number of researchers who were
2 participant observers on some number of campuses, and
3 found a systemic pattern.

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

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

20 In 2002, 300 college presidents, college
21 and university presidents, signed a statement that
22 said the following: We are concerned that recent
23 examples of classroom and on-campus debate have
24 crossed the line into intimidation and hatred,
25 neither of which have any place on university

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1 campuses. In the past few months students who are
2 Jewish or supporters of Israel's right to exist have
3 received death threats and threats of violence.
4 Property connected to Jewish organizations has been
5 defaced or destroyed. Posters and websites
6 displaying libelous information or images have been
7 widely circulated creating an atmosphere of
8 intimidation.

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

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

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

19 Now it's important to remember that
20 these posters and images are placed on student union
21 facilities, or in dorms, that are part and parcel of
22 the university community, and should be part of
23 university oversight, but in the name of free speech,
24 these anti-Semitic images are portrayed.

25 We have students who are experiencing

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1 Holocaust deniers in the classroom, that the
2 Holocaust did not occur, and if it did occur, it
3 really didn't occur to the extent it did.

4 And by the way, part of this distortion
5 of history is that the Holocaust does not belong to
6 the Jews anyway, because the real Holocaust is being
7 perpetrated against the Palestinians every day.

8 Therefore the Holocaust is a Palestinian
9 legacy, and not a Jewish experience at all.

10 Part of what we found is the distortion
11 of history. This is particularly problematic in
12 institutions that are supposed to be supporting
13 unbiased scholarship, quality scholarship, and
14 presentations in the classroom that encourage open
15 discussion.

16 The distortions of history are used to
17 quash those discussions, and intimidate Jewish
18 students.

19 We have students who are told that if
20 they wish to raise different views that they are to
21 leave the classroom, or in some course descriptions
22 it says that people who do not agree with the point
23 of view of the professor should not take the class at
24 all.

25 Nothing could be more antithetical to

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1 what the university is supposed to be about.

2 We also note in our volume that colleges
3 and universities are part of the public trust, which
4 is why it is vital that sessions such as these be
5 held.

6 State and federal governments are the
7 single largest contributors to higher education, to
8 the tune of over \$160 billion a year.

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

14 And the partnership between the public
15 sector and colleges and universities rests upon those
16 principles.

17 To utilize public monies and endorse
18 through omission or commission the violation of
19 Jewish students' rights on campus seems to be an
20 abuse of the public trust.

21 Many colleges and universities are
22 afraid at administrative and faculty levels, and also
23 trustees, to deal with the issue of anti-Semitism and
24 anti-Israelism on college campus, because they are
25 afraid of going down the slippery slope of violating

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1 academic freedom and freedom of speech.

2 We contend in our volume that academic
3 freedom has always involved academic responsibility,
4 which includes appropriate peer review; the pursuit
5 of honest scholarship; and teaching in a way that
6 does not intimidate students.

7 Academic freedom is used as a threat. I
8 assume that yellow light means the same thing it does
9 in traffic, which is, I'm to begin going very fast.

10 VICE CHAIRPERSON THERNSTROM: You seem
11 to have a minute and a half left.

12 DR. TOBIN: All right. I'm supposed to
13 accelerate now, right?

14 VICE CHAIRPERSON THERNSTROM:
15 Accelerate, but as I said before, I invite you to in
16 effect add to your remarks in the question and answer
17 period.

18 DR. TOBIN: I know this from my son,
19 because when he's driving with me he's learned that
20 red light means stop, green light means go, and
21 yellow light means go very fast.

22 VICE CHAIRPERSON THERNSTROM: Go very
23 fast. Dr. Tobin, go very fast.

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

25 We recommend a variety of approaches to

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

10 We do encourage Jewish students to begin
11 filing complaints, which takes a great act of
12 courage, given the level of intimidation and
13 harassment on campus.

14 It may be appropriate for other
15 congressional oversight committees to be established,
16 for the monies that are coming from the Congress in
17 support of a wide array of academic programs; if
18 colleges and universities cannot handle this issue by
19 themselves.

20 We are also encouraging donors to make
21 colleges and universities more accountable for the
22 tens of millions of dollars of gifts they get every
23 year. And all stakeholders, including
24 administrators, and especially provosts, presidents
25 and others who have positions of authority in the

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1 university to assert their moral leadership and come
2 and condemn anti-Israelism and anti-Semitism on
3 campus for what it is, a pernicious prejudice that
4 has no place in higher education.

5 Thank you.

6 VICE CHAIRPERSON THERNSTROM: You beat
7 the clock. That wasn't what you were supposed to do.

8 And now, onto Ms. Tuchman.

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

12 Anti-Semitism, hatred toward Jews, has
13 been increasing in frequency and severity, and the
14 roots of the problem run deep.

15 This is the assessment of our own
16 government in a report on global anti-Semitism that
17 was issued in January of 2005.

18 The State Department recognized that
19 when we talk about anti-Semitism, we're not just
20 talking about Jews being threatened, assaulted,
21 subjected to name calling and slurs. Certain forms
22 of anti-Israel sentiment are also an expression of
23 anti-Semitism.

24 When Israel is demonized, when its
25 leaders are vilified by comparing them to Nazi

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1 leaders, by using Nazi symbols to caricature them,
2 that, according to the State Department, indicates a
3 bias toward anti-Semitism.

4 It would be unfair and wrong to say that
5 all criticism of Israel and the Israeli government is
6 anti-Semitic. The policies and practices of the
7 state of Israel, like any other country, can and
8 should be open to legitimate criticism, and rigorous
9 scrutiny.

10 But when Israel alone is singled out
11 and condemned, when the criticism uses anti-Jewish
12 images and caricatures to attack Israel and its
13 policies, and when the criticism is factually
14 inaccurate or lacks any semblance of balance; then
15 the criticism indicates a subtle expression of anti-
16 Semitism.

17 However broadly the concept is defined,
18 there is no question that hatred expressed toward
19 Jews causes pain, discomfort and fear, and this is
20 certainly true on our college campuses, where
21 unfortunately anti-Semitism is a growing problem.

22 In my written statement to the
23 Commission I provided examples of the kind of
24 harassment and intimidation that Jewish students have
25 been subjected to. For example, in 2003, swastikas

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1 were spray painted on Jewish-affiliated buildings at
2 Rutgers University in New Jersey.

3 Jewish students have been harassed,
4 physically intimidated, and assaulted at the
5 University of Indiana at Bloomington in 2004 and
6 2005.

7 And there has been a pattern of anti-
8 Semitism at the University of California at Irvine
9 since at least 2002.

10 In 2003, at U.C. Irvine, a Holocaust
11 Memorial was destroyed. During the same time period,
12 when Jewish students were holding a candlelight vigil
13 to commemorate the Holocaust, a swastika was found
14 after the vigil carved into one of the tables nearby.

15 Anti-Semitic speakers have routinely
16 been invited to the U.C. Irvine campus, inciting
17 students there to hate Jews.

18 I have described in detail some of the
19 hateful speech on that campus in my written statement
20 to the Commission.

21 Often these hateful speeches have been
22 delivered from a lectern bearing the U.S. Irvine
23 emblem, suggesting that the speeches bear the
24 imprimatur of the university.

25 One Jewish student at U.C. Irvine who

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1 was frightened by what she was seeing and hearing on
2 campus wrote a heartfelt letter to the chancellor of
3 the university and other administrators. This is
4 back in April of 2002, and I'd like to read an
5 excerpt from her letter.

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

9 Today I felt threatened that if students
10 knew that I am Jewish and that I support a Jewish
11 state, I would be attacked physically. It is my
12 right to walk around this campus and not fear other
13 students and hear condemnation from them. It is my
14 fright for my government to protect me from harm from
15 others. It is my right as a citizen who pays tuition
16 and taxes to be protected from such harm.

17 You may claim the First Amendment. I
18 claim the right to be safe and secure. You cannot
19 use the First Amendment as an argument against my
20 safety.

21 This was written three years ago. This
22 student never even received a response to her letter
23 from the chancellor to whom she wrote it.

24 One administrator who did respond
25 reacted in a telling way. He suggested that this

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1 student visit the counseling center on campus to help
2 her work through her feelings.

3 To me this response epitomizes the
4 problem at U.C. Irvine, and may well be a sign of
5 what is happening elsewhere. The university
6 administration has not viewed the harassment and
7 intimidation of Jewish students as a problem that it
8 has the responsibility to address.

9 It is the Jewish students who have a
10 problem, and they had just better learn to deal with
11 it.

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

16 Tolerating anti-Semitic speech hurts and
17 marginalizes Jewish students beyond the effect of the
18 hateful speech itself. Jewish students perceive the
19 university as taking sides by not taking action. And
20 they are left on their own to deal with the problem.

21 Tolerating anti-Semitic speech is also
22 antithetical to the goals and values of the
23 university. These goals and values include not only
24 encouraging open debate and the rigorous exchange of
25 ideas. Presumably a university's values and goals

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1 also include encouraging respect, tolerance, and an
2 appreciation of our individual differences.

3 When hate speech is not confronted head
4 on, slurs and name-calling can escalate into
5 violence, and that is what happened at U.C. Irvine.
6 In addition to the destruction and defacement of
7 property in 2003, there were several instances of
8 outright violence in 2004, which I have described to
9 the Commission in my written statement.

10 For one victim, the experience made him
11 afraid to wear anything that identified him as a Jew
12 ever again on campus.

13 The other victim ultimately decided that
14 he could no longer tolerate the environment at U.C.
15 Irvine. He left the university to study elsewhere.
16 And he's not the only one.

17 At least one other Jewish student at
18 U.C. Irvine left there because of the hostility and
19 transferred to another university.

20 Colleges and universities that receive
21 funding from the U.S. Department of Education have a
22 legal obligation to ensure that their programs and
23 activities are free from harassment, intimidation and
24 discrimination on the basis of race, color and
25 national origin.

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1 The law is Title VI of the federal Civil
2 Rights Act of 1964. The Office of Civil Rights in
3 the Department of Education is responsible for
4 ensuring that colleges and universities comply with
5 the law.

6 In October, 2004, the ZOA filed a
7 complaint with the Office for Civil Rights under
8 Title VI on behalf of Jewish students at U.C. Irvine.

9 The complaint alleges a pattern of harassment,
10 intimidation and discrimination about which the
11 university was aware but did not take steps to
12 correct.

13 After revealing the allegations of the
14 ZOA's complaint, the Office for Civil Rights
15 determined that an investigation was warranted, and
16 that investigation is underway.

17 It is my understanding that this is the
18 first complaint of anti-Semitism that the Office of
19 Civil Rights has agreed to investigate under this
20 law.

21 I cannot stress enough to the Commission
22 that the complaint does not seek to suppress or
23 restrict offensive and bigoted speech. The ZOA, and
24 the students on whose behalf the complaint was filed,
25 recognize and fully support the protections afforded

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1 to speech and expressive conduct under the First
2 Amendment.

3 But colleges and universities have a
4 clear obligation under Title VI to provide an
5 educational environment that is comfortable and
6 conducive to learning.

7 They also have an ethical and moral
8 obligation to act as leaders, and promote the values
9 of respect, tolerance, and inclusiveness on campus.

10 They should be educating students that
11 with freedom of speech and other freedoms that are
12 afforded to them in this country comes
13 responsibility.

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

16 Respectfully, I'd like to suggest some
17 other steps that the Commission might consider
18 taking.

19 First, the Commission could issue its
20 own report acknowledging that anti-Semitism is a
21 serious problem on our college campuses. Like the
22 State Department's report, a report from the
23 Commission that recognizes the many facets of anti-
24 Semitism would help in educating the public that
25 anti-Semitism can sometimes be expressed in more

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1 subtle but no less damaging ways than name calling,
2 threats, and physical attacks on people and property.

3 It would also be valuable for the report
4 to urge colleges and universities to speak out and
5 condemn hateful speech and conduct before it
6 escalates into violence.

7 Second, the Commission could obtain
8 input from experts who develop remedies for
9 preventing and combating anti-Semitism. Colleges and
10 universities need specific tools for preventing and
11 responding to bigotry, and strategies for building
12 respect, tolerance and an increasing appreciation of
13 our individual differences.

14 Finally, I would ask that the Commission
15 void its concern about anti-Semitism in all its
16 facets to the Office for Civil Rights, and urge that
17 office to conduct a complete and thorough
18 investigation of the complaints against U.S. Irvine.

19 The case focuses on one university, but
20 the problem of anti-Semitism exists elsewhere. And
21 the case therefore has far-reaching implications for
22 colleges and universities across the country.

23 On behalf of the ZOA, I thank you again
24 for the opportunity to participate in the briefing.
25 And thank you so much for focusing your attention on

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1 this important issue.

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

4 MS. STERN: Thank you.

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

8 Natan Sharansky, former prisoner of
9 conscience of the Soviet Union and Minister of
10 Diaspora Affairs for the Israeli government, has
11 referred to the American college campuses as islands
12 of anti-Semitism, and has expressed the fear that,
13 quote, "the next generation of Americans are become
14 the new Jews of silence, because of the atmosphere of
15 fair hatred and intimidation on American college
16 campuses."

17 Said Sharansky, on the college campus
18 Israel is epitomized as the epicenter of everything
19 that is hateful in the universe. From San Francisco
20 State, U.S. Irvine, U.S. Santa Cruz, and Berkeley on
21 the West, to Columbia and Harvard on the East, to
22 virtually hundreds and hundreds of examples in
23 between, excessive fascination with Israel and the
24 tendency to hold it up to disproportionate scrutiny
25 has spilled over into attitudes and acts of hatred

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1 and anti-Semitism on the college campus towards
2 individual Jewish students.

3 Irrespective of the fact that in the
4 darker region of the Sudan Moslems are systematically
5 killing Moslems with more black pigment in their
6 skin, and women who have been raped in Saudi Arabia
7 are routinely killed in honor killings, the single
8 human rights issue that takes up the academy's major
9 focus is the Israeli-Palestinian dispute.

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

12 May 7, 2002, San Francisco State
13 University, 400 Jewish students held an Israeli-
14 Palestinian, quote, sit-in for peace in the Middle
15 East, hoping to engage the pro-Palestinian students
16 on campus in a, quote, dialogue.

17 A Russian emigrant spoke affectionately
18 of his new home in the United States as haven from
19 anti-Semitism. Others spoke of their support for
20 Israel and a hopeful peaceful settlement with the
21 Palestinians.

22 What ensued, as the rally was closing,
23 was nothing more than can be described as a virtual
24 hatefest, in which pro-Palestinian students
25 surrounded the 30 remaining Jewish students while

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1 cleaning up after the rally, screaming, quote, Hitler
2 didn't finish the job, Quote, expletive the Jews.
3 And quote, die racist pigs.

4 University and city police formed a
5 barrier sealing off the Jewish students for more than
6 20 minutes until they finally funneled them out into
7 the plaza.

8 Quote, I felt very threatened, recalled
9 Yitchak Santism, director of Middle East affairs for
10 the Jewish Community Relations Council in San
11 Francisco. Quote: I'm convinced that if the police
12 had not been present there, there would have been
13 violence.

14 In April, a flyer advertising a pro-
15 Palestinian rally at San Francisco State featured a
16 picture of a dead baby, with the words, quote, canned
17 Palestinian children meat, slaughtered according to
18 Jewish rites under American license, thereby
19 reinvigorating the 900-year-old blood libel that Jews
20 kill Gentile children.

21 Passover of that year a brick cinder
22 block was thrown through the glass doors of the
23 University of California at Berkeley's Hillel
24 Building. A week after that two Orthodox Jews were
25 attacked and severely beaten one block from

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1 Berkeley's campus with anti-Zionist relief appearing
2 scrawled on blocks and buildings near the school.

3 During a vigil during Holocaust day,
4 Jewish students were saying the mourners' kaddish,
5 the prayer for the dead, were shouted down by
6 protesting students saying a prayer in memory of the
7 suicide bombers.

8 Heading east to the University of
9 Chicago, an article coming out of the Chicago Maroon
10 of November 1st, 2005, the University newspaper by
11 Abbey Seiff, reported that, quote, last weekend
12 marked the fifth consecutive year when posters
13 advertised a Chicago Friends of Israel event were
14 found defaced. Posters from the University of
15 Chicago have also been defaced with swastikas and
16 anti-Semitic graffiti.

17 Northwestern University's Norris
18 University Center became the home of a three-foot
19 swastika in November of 2003, accompanied by the
20 words, die Jews.

21 St. Cloud University in Minnesota has
22 recently had to pay out over a million dollars in a
23 class action lawsuit because of anti-Semitic
24 practices. Professor Ari Zmora had been a tenure-
25 track professor of history from 1998 until 2000 when

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1 he was suddenly fired.

2 One of the many incidents he points to
3 is when he was about to deliver a talk featuring his
4 mother talking about her experiences during the
5 Holocaust, which he survived in concentration camps,
6 which as he reported, the ex-chair of the department
7 approached me and said, I cannot talk about the
8 Holocaust. When I told her about my mother's
9 survival, and the fact that most of my family were
10 destroyed by the Nazis, she shouted to me, you know,
11 the SS were wonderful people. They did not
12 participate in the Holocaust, unquote.

13 As he was preparing to leave the
14 university, the issue of fumigating his office was
15 brought up in a meeting of the history department
16 faculty, because he was dirty and a practicing Jew.

17 While in the case of St. Cloud, the
18 anti-Semitism took the classic ideological form of
19 denial of the Holocaust and support for the Nazi,
20 however, in most campuses throughout the country, as
21 we have seen, and I will continue to illustrate,
22 anti-Semitism has taken a new form. It is the
23 tendency to exaggerate Israel's weaknesses and
24 mistakes.

25 Israel is a healthy democracy, and like

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1 all democracies is composed of humans, and is
2 therefore, prone to human frailty. A healthy debate
3 about Israeli policy, therefore, is not anti-
4 Semitism. Israeli Jews themselves are constantly
5 debating about Israeli policy, and they certainly
6 can't be accused of anti-Semitism.

7 However, when Israel alone is demonized
8 and made into the sine qua non of all that is evil in
9 the world; when actions that Israel takes to protect
10 its citizens are held up to an egregious double
11 standard; when other countries in that situation
12 might be forced to take those very same measures; and
13 when Jewish students are intimidated and denied the
14 right of political expression or participation in
15 class, that is crossing over the boundary from
16 legitimate policy debate into the domain of anti-
17 Semitism.

18 Returning to the words of Natan
19 Sharansky, quote, one of the major difficulties of
20 grappling with the new anti-Semitism is the ease with
21 which it can be denied. Unlike in the past,
22 postmodern anti-Semitism no longer exclusively
23 involves such phenomena as violence against the Jews,
24 sporting swastikas, and burning synagogues.

25 While these phenomena do exist, and are

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1 even increasing, especially in Europe today, they
2 form only a small part of the problem. Mr. Sharansky
3 continues: the new anti-Semitism with which we have
4 been deluged in recent years hides behind the cloak
5 of political criticism of Israel, in which the state
6 of Israel is discriminated against, held to a double
7 standard, and has doubts cast onto its right for its
8 very existence.

9 As absurd as it may be, anti-Semitism
10 even appears under the banner of human rights and
11 humanism. According to Sharansky, quote, equating
12 Zionism with imperialism, comparing Zionism with
13 Naziism, doubting the right of the Jewish people,
14 unlike other peoples, to a national state, or
15 opposition to the occupation, they must be called by
16 their proper name: anti-Semitism.

17 Anti-Semitism that in the past has been
18 the province of the radical right is gaining more and
19 more ground among organizations and societies which
20 had in the past symbolized the forces of enlightened
21 progress and democracy.

22 Left wing political parties, human
23 rights organizations, academic communities, and
24 antiglobalization movements - those that had been the
25 leaders of the struggle against racism in its various

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1 forms now lead the boycotting of Israel, its
2 ostracism from the family of nations, and accusations
3 against crimes of humanity.

4 The absurdity shouts to the skies - that
5 was a quote from Natan Sharansky.

6 One such example occurred October 20th,
7 2004, when Duke University was home to the fourth
8 national student conference of the Palestinian
9 solidarity movement.

10 This is a very typical campus activity
11 of the Israeli-Palestinian front. Participants
12 portrayed Israel as simple a racist and an apartheid
13 state. Among them were Mazin Qumsiyeh, an associate
14 professor from Yale University whose founder of the
15 radical anti-Israel group, Al-Awda, who called
16 Zionism, quote, a disease.

17 Nassar Aburfarha, a doctoral candidate
18 from the University of Wisconsin, who had reportedly
19 said he supported Palestinian terrorist groups such
20 as Hamas and Al Aksa Martyrs Brigade, as well as a
21 host of others; a revisionist spoke of Zionist
22 collaboration with the Nazis by Lenni Brenner,
23 claiming that the early Zionists formed an alliance
24 with the Nazis, was sold at the conference.

25 There is a question, however, as to

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1 whether or not this sort of activity, although while
2 making campus life quite uncomfortable for Jewish
3 students, constitutes protected speech under the
4 Constitution.

5 Freedom of expression is an integral
6 part of university life. However, one might do well
7 to ask if he would have as much tolerance for seeing
8 the appearance of the large white crosses of the KKK
9 on campus as we apparently achieve with the tolerance
10 of the appearance of the swastika.

11 What is not protected, however, is the
12 suppression of intellectual diversity and open debate
13 on the part of the classroom professor, or of the
14 professor using his desk as a bully pulpit for one-
15 sided political ideology.

16 Perhaps the most well-documented of
17 these cases is that of Columbia University. I want
18 to stress that what happened at Columbia is not
19 unique, but there exists in Columbia a critical mass
20 of Jewish students who have enough group support and
21 knowledge of Jewish history, Jewish culture, and
22 Jewish identity, to be able to respond to the
23 charges.

24 This in no way implies that this problem
25 is unique and is not endemic to college campuses

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1 throughout the country.

2 I see the red light is flashing. Should
3 I continue?

4 VICE CHAIRPERSON THERNSTROM: Do you
5 have just a few more sentences?

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

11 Columbia's MELAC department is funded,
12 along with 17 other Middle Eastern studies
13 departments at American colleges, through Title VI
14 funding at the tune of \$120 million a year. Each
15 university gets approximately \$50 million a year.

16 There was specific legislative intent
17 behind this congressional allocation to the
18 university. That intent was to raise students to be
19 well grounded in a knowledge of foreign languages and
20 cultures so that they can best serve in the national
21 security interests of our nation.

22 During the Q&A I'd like to talk more
23 about this, but I think the original legislative
24 intent of this funding has been turned on its head,
25 and many of these regional studies programs have

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1 actually become hotbeds of both anti-Israel and anti-
2 American radicalism.

3 They are all using one prevalent
4 paradigm, the Edward Said paradigm of Orientalism.
5 And Orientalism, his book which came out in 1978,
6 there is a very, very simple thesis, and the thesis
7 is that the European nations carved up the world
8 right after World War I, the Middle East after World
9 War I. Now America is a hegemonic colonial monster.

10 And unfortunately, this has taken on the
11 aura of scholarship, and has given an intellectual
12 type of patina and validity, authenticity, to an age-
13 old racism, which is called anti-Semitism.

14 Thank you very much.

15 VICE CHAIRPERSON THERNSTROM: Well, I
16 thank all three of you for these incredibly
17 informative remarks on a topic I regard, and I'm sure
18 the rest of the commissioners do, as extremely
19 important.

20 It is a tradition for the chair, and in
21 this case obviously I'm the vice chair substituting
22 for the chair at this meeting, to open with
23 questions. So let me pose a couple of questions to
24 you, and others will obvious have different ones.

25 Something probably the other

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1 commissioners may not or do not know, I was once a
2 Jewish student in a Middle Eastern studies program,
3 this one at Harvard University. I have a Master's
4 degree in Middle Eastern studies, and that was before
5 I moved to the government department, and switched
6 fields, and ended up with a Ph. D. in American
7 Constitutional law.

8 But in any case, I had the experience of
9 being many years ago of course in the context that I
10 just described, and my impression from those years,
11 and kind of watching the scene until now, is that all
12 Middle Eastern studies programs are very much alike;
13 that is, they are violently anti-Israel, very pro-
14 Palestinian, soaked in an ideology that is either
15 borderline or explicitly anti-Semitic.

16 But one, am I wrong on this? And two,
17 I'm not sure what the remedy is. And here is my
18 concern. I am extremely nervous about administrative
19 oversight on university campuses.

20 I mean in so many respects, it's not
21 simply in this respect, that universities are islands
22 of repression in a sea of tolerance in this country.

23 And if we switch contexts for a second, a - the so-
24 called conservatism on race-related issues of a
25 Thomas Sowell or a Shelby Steele are completely

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1 unacceptable on American campuses. Those are two men
2 who left American campuses.

3 Linda Chavez has spoken on campuses, and
4 been hounded off of a platform because of threats to
5 her physical well-being. And I as one am not
6 completely sure of what administrators can or should
7 do. And that is really it seems to me a very
8 difficult issue with respect to what is taught within
9 the classroom.

10 I mean you really do not want university
11 administrators walking into classrooms and deciding
12 whether what the professor is teaching is acceptable
13 or unacceptable.

14 In terms of your statement that there is
15 no such thing as a purely private university, well, I
16 agree with you. On the other hand, it seems to me a
17 tough issue. And because it's a tough issue, there
18 has been no litigation, for instance, involving
19 racial preferences in higher education as a violation
20 of the Fourteenth Amendment; no litigation involving
21 private universities, because there has been a sense
22 that, yes, they receive federal funding, but they are
23 not public.

24 And so a line has been drawn. And
25 finally, on the pain and discomfort issue, it seems

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1 to me one has to separate pain and discomfort from
2 physical fear. That is, I don't want universities to
3 be comfortable places for students, and I think it's
4 part of the psychobabble of our era that we think
5 everybody has to think of every place they go as
6 their living room where they feel safe and
7 comfortable.

8 And in fact at universities, colleges
9 and universities, you want students exposed to the
10 discomfort of dissonant ideas.

11 But physical fear is a completely
12 different matter, and again, where should the
13 universities be drawing the line? And aren't we into
14 when students actually feel physically threatened,
15 we're into a world of completely different sanctions
16 it seems to me than simply a sense of discomfort.

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

19 MS. TUCHMAN: You know, I just, I wanted
20 to address the issue of discomfort, because I do
21 agree with you that there should and needs to be a
22 certain level of discomfort on the college campus,
23 when you're hearing all kinds of divergent
24 viewpoints.

25 When I talked about discomfort, I'm

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1 talking about students avoiding areas of the campus
2 because they are going to hear statements and see
3 conduct that is inciting hatred of Jews. So they may
4 not be in physical fear of their personal safety, but
5 it's uncomfortable enough so that they will afraid to
6 go to the student center. They will take circuitous
7 routes around the campus. They won't be able to get
8 to where they need to go directly because they are
9 going to be confronted with hatred that is expressed
10 toward them as Jewish people.

11 Students who I know who are now afraid
12 to wear a Kippah on their head. Students who are
13 afraid to wear tee shirts that might demonstrate that
14 they are Jewish or they are supporters of Israel,
15 students who are afraid to wear stars of David or
16 anything that would identify them as Jewish. And
17 that may not rise to the level of a fear for physical
18 safety, but I don't think that that should be
19 tolerated on our campuses, that students should be
20 afraid to be who they are, and to be afraid to say
21 what they believe and what they support for fear of
22 consequences; whether there are physical consequences
23 or not.

24 COMMISSIONER BRACERAS: Can I just jump
25 in there for a minute? You know the flip side of

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1 that, though, is that some people, myself included,
2 are actually have their own identity reaffirmed by
3 that type of negativity. In other words, I certainly
4 agree that nobody should feel physically intimidated
5 or afraid that they are going to be physically
6 harmed.

7 But my own experience 20 years ago at
8 the University of Massachusetts at Amherst was one in
9 which the virulent anti-Semitism and anti-Israelism
10 and anti-Americanism of large portions of the student
11 body as well as the faculty really awakened in me a
12 political and ethnic consciousness that frankly I'm
13 grateful for today.

14 And I'm not grateful that anybody holds
15 those hostile views, but I think a lot of people were
16 snapped out of political apathy because of some of
17 the things that they saw. And I think I am who I am
18 today politically in large part because of that.

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

22 So I agree with the vice chair that I
23 have ambivalence about asking the federal government
24 or administrators to impose any sort of speech codes
25 or restrictions.

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1 But it seems to me that at least part of
2 the solution is somehow encouraging universities not
3 to hire professors who promote anti-Semitic
4 viewpoints in the classroom, or who don't allow
5 students with divergent viewpoints to participate in
6 discussions.

7 And so some of the other remedies you
8 spoke about in terms of either withholding dollars or
9 you know organizing politically, seem to me to be the
10 way we have to go.

11 And I don't know how responsive
12 universities are going to be, but it seems to me that
13 the real answer is, not just prohibit people from
14 speaking as guest lecturers, not to prohibit students
15 from saying what they think or putting up posters,
16 but not to give it the cloak of authenticity or
17 credibility by allowing it to come from the
18 professors - not hiring those people to begin with,
19 people who are not serious scholars, people who are
20 using their classrooms as a bully pulpit for these
21 hostile ideas.

22 And somehow I think the universities got
23 off-track in the '70s and '80s and thought that
24 hiring people like this was a way to show sympathy
25 for Third World peoples, quote unquote, and that is

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1 not what it is.

2 And so how do we convince them not to
3 hire these lunatics to begin with?

4 DR. TOBIN: The questions that are being
5 raised go to the heart of reform in higher education.

6 And I'd like to address, you have raised five or six
7 different issues, and I'd like to address each of
8 them. They are the critical issues.

9 And the reason why our work is entitled,
10 The Uncivil University: Politics and Propaganda in
11 Higher Education, and not, Anti-Semitism and Anti-
12 Israelism in Higher Education, because we are dealing
13 with a larger set of issues that go to the heart of
14 what academe is about, and what a good education
15 should be about.

16 So let's look at each of these. First
17 of all, the Middle East Studies Center. There is an
18 excellent book been written by Martin Kramer
19 entitled, Ivory Towers on Sand. It is a good
20 discussion about the descent of these departments in
21 what was a reasonable field of academic inquiry into
22 essentially propaganda machines that are the exact
23 opposite of open and intellectual inquiry; that is,
24 they have a bias from the moment they begin, and they
25 are not interested in open debate and discussion.

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1 This is not what universities are
2 supposed to be about. You say, do we want
3 administrators walking into the classroom? The
4 answer is no, obviously, any more than we want an
5 abrogation of the free exchange of ideas.

6 However, if a sociology department is of
7 low quality, does not have appropriate scholarship,
8 it is within the purview of the provost and president
9 and board of trustees, to have outside oversight of
10 that department and take appropriate actions if
11 necessary.

12 Indeed, in academe we find that
13 sociology departments can be shut down. That is, if
14 they don't serve the purpose of the university any
15 longer, or any department that descends into low
16 quality teaching or research.

17 The mechanisms that universities have to
18 deal with these kinds of issues exist. What we're
19 suggesting is when it comes to Middle East Studies
20 centers, it's hands off. So we don't want people
21 spying on professors, we do want these departments
22 appropriately overseen by outside reviews that don't
23 come from the field.

24 We're even recommending at this point,
25 given the point that you're raising, is that Middle

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1 East Studies programs should not be able to tenure
2 their own faculty at this point. And that does
3 happen in the university.

4 I'm not suggesting that they all be put
5 into receivership immediately, but that might be one
6 of the outcomes. That is point number one about
7 Middle East Studies programs.

8 Number two, - we believe that the best
9 approach so far to the issue of anti-Semitism and
10 anti-Israelism on campus is as much sunlight and
11 exposure as possible. That is, this is the best
12 disinfectant at the moment, before we get the federal
13 government or anyone else involved.

14 Most people do not know what goes on in
15 colleges and universities, and what you suggested
16 about them being bastions of certain kinds of
17 behaviors that are opposite of what is going on in
18 the general society is absolutely so.

19 Indeed, we would argue that levels of
20 anti-Israelism and anti-Semitism on college campus,
21 and their expression, exceed what's going on in the
22 general public.

23 How sad! How sad, that institutions
24 that are supposed to be promoting dialogue and
25 understanding are doing the opposite in this case.

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1 And I'd like to address the point of
2 pain and discomfort. All of us who have been parents
3 know that there is some point at which discipline
4 crosses the line and becomes abuse. And everybody
5 wants to be a good parent, wants to guide their
6 children and discipline them appropriately. But
7 there are rules for the way that parents interact
8 with their children, and when you cross those lines
9 you're no longer being a good parent.

10 Colleges and universities are no
11 different. That is, we should encourage the most
12 difficult issues in - about race, ethnicity and
13 religion. We should talk about them in ways that
14 challenge us, make us uncomfortable, make us think,
15 make us approach ideas in ways we wouldn't have
16 approached them before.

17 The heart and soul of academic discourse
18 should be about making people think about things they
19 wouldn't think about, and interact with people they
20 would not have interacted with.

21 This whole promotion of diversity on
22 campus should be about that. But these have become
23 perverted.

24 We're not necessarily promoting
25 diversity on campus. When it crosses from comfort

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1 into discomfort, and then from discomfort to abuse,
2 are we making people not able to talk about things
3 because they disagree.

4 COMMISSIONER BRACERAS: Sorry, but I
5 agree with you theoretically, but I'm trying to
6 understand where that line is drawn between
7 discomfort and abuse? For example, some of the
8 posters you talked about going up that have extremely
9 offensive things on them, I'm not sure whether I'm
10 comfortable or would be comfortable as a university
11 administer or an official of the federal government
12 demanding that those things be taken down.

13 Yes, they are offensive. But sometimes
14 when offensive posters are put up, it can actually
15 inspire very productive dialogue on campuses about
16 racism and anti-Semitism, and as I said before, you
17 know, sort of encourage useful dialogue.

18 I'm not saying anybody should put those
19 types of things up purposefully to encourage
20 dialogue, but some of these - there are copies in our
21 materials of some of these awful posters.

22 And believe me, I wouldn't want to
23 confront any of them in my dorm room or in the
24 student union, were I a student on any of these
25 campuses. On the other hand the students who put

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1 them up have the right to express their views no
2 matter how hateful and bigoted and awful they may be.

3 So I'm just not sure where that line is
4 drawn.

5 COMMISSIONER TAYLOR: Let me just
6 piggyback on that one second, and then we'll get to
7 all of you.

8 I think there is - both Commissioner
9 Braceras and I agree, and probably other
10 commissioners as well, that universities are a pretty
11 sad scene in many respects.

12 But Dr. Tobin, you said universities
13 should be places of unbiased discussion and
14 instruction. It does seem to me that is an ideal
15 that is not realized in any departments outside of
16 the sciences and math.

17 And in terms of low quality scholarship,
18 if we are going to close departments for low quality
19 scholarship, I would say most English departments, in
20 at least the prestigious universities, deserve to be
21 closed tomorrow.

22 COMMISSIONER BRACERAS: You could
23 probably close the political science departments too.

24 VICE CHAIRPERSON THERNSTROM: I mean
25 this is a bias of mind. But I mean these places are

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1 places of indoctrination instead of your image of
2 what a university image is all about.

3 Let's go to the --

4 MS. STERN: I'd like to respond to a
5 great deal of this. These are really wonderful meaty
6 questions, but it gets right to the heart of the
7 issue.

8 The issue is, when I was a student way
9 back in the dinosaur age, and I went to Boston
10 University, I had a wonderful professor who was not a
11 Marxist. But there was a give and take within the
12 classroom that was a heady experience for me.

13 I think the university classroom should
14 be the first - for many people is the first
15 opportunity to engage in the life of the mind and the
16 free expression of ideas, and it's a wonderful,
17 liberating, exhilarating experience.

18 I'd like to quote from some of the
19 students --

20 VICE CHAIRPERSON THERNSTROM: Wait a
21 minute, the operative word there is "should".
22 Should, sure.

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

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1 Okay, we could certainly aim for that.
2 What is going on right now is nothing short of
3 horrendous. When you have students who raise their
4 hands in class, and say to a professor such as
5 Professor George Saliba of Columbia University, when
6 he said, I wanted to say that the film that you
7 presented without any kind of framing had a very one-
8 sided point of view, it took this woman outside of
9 the classroom, walked and stood on the College Walk
10 at Columbia for about 45 minutes and said, you have
11 no voice in this debate.

12 And she said, of course, I'm allowed to
13 express my opinion. He came really close to me. He
14 moved down his glasses, and he looked right into my
15 eyes, and he said, see, you have green eyes. He
16 said, you're not a Semite. He said, I'm a Semite. I
17 have brown eyes. You have no claim to the land of
18 Israel, as if - and this woman said, as if my
19 ancestors were not there, and I am not allowed to
20 participate in the debate.

21 Also documented in Columbia, On
22 Becoming, I would like - there was a student who
23 raised her hand when there was a class about Israeli
24 atrocities - this was a class by Joseph Mossad. And
25 before she could get her point across, he quickly

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1 demanded and shouted at her, I will not have anyone
2 sit in my class and deny Israeli atrocities.

3 Now, that is not the life of the mind.
4 That is the tyranny of the deaf.

5 COMMISSIONER BRACERAS: But I guess I
6 would draw a distinction between those examples in
7 which the student is being denied the opportunity to
8 participate in the educational program by the
9 professor; the professor is denying them the right to
10 express their views, I would draw a distinction
11 between that on the one hand, and putting up a
12 hateful poster on the other hand.

13 To me the example of the poster, the
14 best way to counter that is through more speech; put
15 up another poster saying that they are racist. Put
16 up another poster saying that they are wrong.

17 MS. STERN: The problem is, Jennifer,
18 that when the classroom has become the battlefield,
19 when the classroom is the place where the professor
20 has controlled the debate, and the student feels
21 intimidated and threatened by retribution in their
22 grades if they come forward - I mean there were many
23 people in the MEALAC program, a Title VI funded
24 program, who have said and are still saying that they
25 are afraid to come forward because of fear of

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1 retribution, because of the film, Columbia
2 Unbecoming, Columbia has instituted a system of
3 grievances.

4 But there are many colleges, and each
5 grievance procedure is different. There is no
6 unanimity in terms of how a student is supposed to
7 petition this.

8 The student cannot come forward with
9 anonymity. The student has got to point to his name,
10 and the name of the professor, and they are very
11 afraid of retribution in terms of their grades.

12 This is a process of intimidation and
13 fear.

14 COMMISSIONER BRACERAS: Oh, I agree.

15 MS. STERN: And the problem is actually
16 the antithesis of what the college experience should
17 all be about. It should be about the life of the
18 mind, and the free exchange of ideas.

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

21 VICE CHAIRPERSON THERNSTROM: Please,
22 yes, of course.

23 COMMISSIONER KIRSANOW: This is
24 Kirsanow. I regret not being there, but I may have
25 to run off to court momentarily, and therefore I

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1 wanted to pose a quick question.

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

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

9 Now you say in your statement that there
10 were a number of presidents who refused to sign the
11 statement, and I'm curious as to what your opinion is
12 as to why that is the case.

13 VICE CHAIRPERSON THERNSTROM: And by the
14 way, who mostly did sign the statement? The major
15 universities?

16 DR. TOBIN: Only one Ivy League
17 president signed it.

18 COMMISSIONER KIRSANOW: Who was that?

19 DR. TOBIN: Ruth Simmons.

20 VICE CHAIRPERSON THERNSTROM: So
21 Bollinger wouldn't sign it?

22 DR. TOBIN: No, and their refusal to
23 sign goes to the heart of your question about
24 posters. And that is that they said that it didn't
25 include all kinds of condemnations about racism and

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1 sexism in general; that is, it should not be about
2 anti-Semitism or anti-Israelism, it should be about
3 all forms of prejudice on campus.

4 And the point is that under both the
5 informal and formal norms on campus, other forms of
6 racism, sexism, are not expressed; that is, this is
7 the one that is slipping under the radar. You don't
8 see anti-Latino, anti-black, anti-Native American,
9 any kinds of such posters on campus. The campus
10 norms wouldn't tolerate them.

11 What we're suggesting is that this
12 prejudice slips under those norms, and that somehow
13 or another putting up other posters does not
14 counteract them.

15 In the same way we would argue that in
16 this environment, good black talk does not counteract
17 black talk, or good Jew talk counteract bad Jew talk.

18 In other words, if this is an
19 environment that is supposed to be teaching about
20 race, ethnicity and religion, we should be doing it
21 in a way that actually teaches.

22 The campus does not tolerate these kinds
23 of expressions, and so the university presidents, in
24 what we consider to be an act of moral cowardice in
25 refusing to sign this, are saying, we've got this

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1 under control. Or if we don't have it under control,
2 we don't want to talk about it specifically.

3 And the issue - the heart of this issue
4 does go to moral leadership; that is, while we don't
5 want administrators spying on faculty, they should be
6 exerting moral leadership, and the trustees should be
7 exerting moral leadership.

8 The alumni should be exerting moral
9 leadership, and while we don't want government
10 regulation, public officials should be exerting moral
11 leadership about this issue.

12 And to say it's wrong, well yes, under
13 freedom of speech one has the right to put such a
14 poster up, but everyone should be saying, it's wrong,
15 it's wrong.

16 MS. STERN: As one would say if there
17 were the large white crosses of the KKK. I mean why
18 is our tolerance for this sort of racism greater than
19 our tolerance for the large white crosses of the KKK?

20 A swastika is a symbol that brings with it a great
21 deal of meaning. Swastikas are all over college
22 campuses today.

23 VICE CHAIRPERSON THERNSTROM:

24 Commissioner Kirsanow, I want to give you a full
25 opportunity to speak before you have to leave.

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1 COMMISSIONER KIRSANOW: Thank you,
2 Commissioner. I do have to leave in about three
3 minutes.

4 Real quick, and I appreciate the answer
5 to that, it seems to me that there are obviously
6 several gradations of issues that maybe can and can't
7 be addressed within the context of the free speech
8 environment which is the academy.

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

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

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1 Does anyone have any ideas?

2 MS. STERN: I think anti-Semitism is a
3 very virulent disease, and it has taken many guises,
4 and it seems to have endured through many
5 generations, and this is just a politically correct
6 form of anti-Semitism. We have yet to figure the
7 antidote for this disease.

8 DR. TOBIN: And I have another response,
9 which is, administrators and trustees, and all those
10 involved in the academy, are afraid of going down the
11 slippery slope of interfering with free speech and
12 academic freedom.

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

23 They are terrific at stiff-arming the
24 rest of the stakeholders in the system, whether they
25 are alumni, donors, administrators, funders, anybody,

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1 by saying, you can't ask that question, you're
2 interfering with academic freedom.

3 COMMISSIONER BRACERAS: Right,
4 condemning the speech is not the same thing as
5 suppressing the speech. And so I fail to understand
6 why they don't have the moral courage to stand up and
7 say, yes, as you say, yes, you have a right to say
8 that, but what you say is repugnant. Why don't
9 university presidents and chairs of departments stand
10 up and say that?

11 MS. TUCHMAN: Because they say that we
12 have to uphold the principles of academic freedom,
13 rigorous exchange of ideas --

14 COMMISSIONER BRACERAS: It doesn't mean
15 you have to agree with them.

16 MS. TUCHMAN: I agree with you. And in
17 the classroom I doubt that our colleges and
18 universities would tolerate professors teaching their
19 students that the world is flat. I don't think that
20 would be tolerated.

21 So why are they tolerating professors
22 teaching that historical inaccuracies about the
23 conflict in the Middle East?

24 VICE CHAIRPERSON THERNSTROM: Well, I do
25 think that there is on campuses an amazing amount -

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1 for good or ill - and I think basically for good,
2 even though much of what is said appalls me - a high
3 degree of tolerance for the world is flat ideas, not
4 literally.

5 MS. STERN: But the very term, academic
6 freedom, is a misnomer when used in this case. This
7 is academic suppression. Academic freedom is the
8 freedom to engage in debate. And when the classroom
9 professor uses his desk as a bully pulpit to suppress
10 the great dialogue of mind, the life of the mind,
11 that is actually the antithesis of academic freedom.

12 But they are using this, and
13 unfortunately, I really do believe that political
14 correctness is a disease of the central nervous
15 system, and it first targets the brain.

16 You know people use this kind of slogan,
17 and when you use the slogan, academic freedom,
18 something goes mushy in everyone's brain. But you're
19 not examining what academic freedom.

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

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1 The college professor has a heady
2 responsibility to try to inform his students about
3 civility and discourse.

4 MS. TUCHMAN: You know, I wanted to go
5 back to what you raised about the signs on campus,
6 because I think we all agree that we cannot - as much
7 as we would like to tear those signs down, we're not
8 able to; that they are protected speech under the
9 First Amendment.

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

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

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1 dollar, knock the Jew in the oven.

2 This was so offensive. It was put in a
3 student publication at Rutgers. But the president of
4 Rutgers reacted to me in a completely appropriate
5 way. He issued a public statement. He said, we
6 recognize your right to publish this, but it was
7 offensive, it was outrageous in its cruelty. It is
8 inconsistent with our values as a university. We
9 hope you will recognize that with freedom comes
10 responsibility. And you will apologize for the hurt
11 that you caused to people.

12 Rutgers Senate also issued a statement
13 distancing themselves from what was done, and lo and
14 behold, the perpetrators apologized.

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

20 VICE CHAIRPERSON THERNSTROM: Are you
21 really comfortable with administrators getting up,
22 saying, students feelings have been hurt and we
23 expect apologies?

24 Now, look, let me give you two other
25 examples. A few years ago at Harvard, some student

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1 put a Confederate flag. His, or her - I can't
2 remember whether it was a his or her dorm - door.

3 There were students who were hurt,
4 students who were offended. Should that student have
5 been in effect forced by the administration to
6 apologize?

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

19 I mean it is going back to Dr. Tobin's
20 larger point about the atmosphere on campus that goes
21 way beyond the issue, specific issue, we're talking
22 about today.

23 But I still find it troubling - I don't
24 want the Rutgers University administration to ask
25 people to apologize. Whatever their views are. I'm

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1 just - I am a slippery slope nervous type in this
2 respect. It feels like a Stalinist apologizing.

3 MS. STERN: I don't think it was a
4 question of forcing an apology. But what I think he
5 effectively did was raise issues, and raise more
6 topics for discussion, and pointing out to people
7 that the implications of what they are saying, and
8 its effect on other people.

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

15 DR. TOBIN: I think --

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

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

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1 The hypocrisy is a little overwhelming.
2 That's number one.

3 And number two, we have to distinguish,
4 and as important as this conversation has veered in
5 this direction, that there are posters on the one
6 hand, but there are also intimidation in the
7 classroom, suppression of ideas, intimidation of
8 students, physical harassment and violence as well.

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

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

24 VICE CHAIRPERSON THERNSTROM: Well, I
25 agree with that. And Commissioner Melendez, I want

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1 to get you in a second.

2 A question again for Braceras, though, I
3 mean I remember a number of years ago a Harvard law
4 school faculty member, I was at a forum, you are a
5 graduate of the Harvard Law School faculty, saying,
6 flatly, okay, if a student comes in with politically
7 incorrect ideas, and those ideas are expressed in the
8 first couple of weeks of the class, all right, I'll
9 tolerate it.

10 But after that, that students gets
11 graded down.

12 Now, I mean --

13 COMMISSIONER BRACERAS: Maybe that
14 explains a few of my grades.

15 (Laughter)

16 VICE CHAIRPERSON THERNSTROM: It is not
17 to me an unfamiliar animal on our university
18 campuses.

19 MS. STERN: This is - intellectuals are
20 not necessarily wise. I mean there is this herd
21 mentality which is really rampant throughout the
22 college campus.

23 And what is extremely pernicious and
24 disturbing is, if there is a body of scholarship that
25 is all predicated upon the same initial biases, and

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1 then it takes on the guise of legitimate scholarship,
2 but it's basically political propaganda wrapped
3 around footnotes and indexes, and it looks like
4 legitimate scholarship, then it is very very
5 pernicious.

6 So then a Halib Rashidi could footnote
7 and Edward Said who could footnote or Joseph Mossad.
8 And what we need is a balance of perspectives. What
9 we need is a Bernard Lewis in there, or a Martin
10 Kramer.

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

17 VICE CHAIRPERSON THERNSTROM: That's the
18 National Defense Education Act.

19 MS. STERN: Exactly. And it's taken on
20 - after September 11, I have to say, the academy went
21 and petitioned the United States Congress and said,
22 because we have got to ground our students in foreign
23 language and cultures for our national security
24 concerns, they had the audacity to take another 20
25 percent - this is \$120 million of taxpayers' money -

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1 and this money has been appropriated to raise a
2 generation of students to be well grounded in
3 languages and cultures to serve the national security
4 interests of this nation.

5 And what they have been getting instead
6 is a pure diet of political propaganda, wrapped in
7 the garb, in the nice clothing, of intellectualism.

8 And this is really wrong. This is just
9 not right.

10 VICE CHAIRPERSON THERNSTROM: Disturbing.

11 COMMISSIONER MELENDEZ: Just a comment.
12 I know that everyone has a certain responsibility to
13 prevent civil unrest, in a time with the things that
14 are happening with France and around the world, I
15 think universities especially have that challenge.

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

25 And the question is, are we leading to

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1 things like that that could happen in the future?
2 And I think the responsibility for university
3 officials we may not be able to mandate totally as
4 far as what the signs should say, but I think there
5 needs to be a raising of the awareness of this issue,
6 and whether or not the commission can help by a
7 report or something like that, that can at least let
8 the general public and America know that this is an
9 issue that needs to be dealt with, and we can't sweep
10 it under the rug.

11 So I just wanted to make that comment.

12 MS. STERN: Thank you very much.

13 I would actually like to make some
14 recommendations to the Commission.

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

22 VICE CHAIRPERSON THERNSTROM: How does
23 the language read?

24 MS. STERN: It's basically - I can
25 actually get the legislation - but it is for a group

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1 of advisers to actually weigh in - the House bill and
2 the Senate bill are two different things. And the
3 House bill is actually a group of advisers or experts
4 who will advise the secretary of education.

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

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

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

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1 prestigious universities, and even Irvine I would
2 point in that category?

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

7 VICE CHAIRPERSON THERNSTROM: But at the
8 end of the day, dollars talk.

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

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

25 This is MESA. MESA is the grandchild of

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1 the Title VI funding, and the Middle Eastern studies
2 - there would be no Middle Eastern studies
3 association, as there would be no African studies or
4 Latin studies associations without this Title VI
5 funding.

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

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

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

22 VICE CHAIRPERSON THERNSTROM: Of the
23 Civil Rights Act, yes. I gathered that.

24 MS. TUCHMAN: Also, if a college or
25 university is found to be in violation of the Title

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1 VI I was referring to, potentially that college could
2 lose its federal funding as well. That would be the
3 penalty.

4 VICE CHAIRPERSON THERNSTROM: Right.

5 COMMISSIONER YAKI: Commissioner
6 Thernstrom?

7 VICE CHAIRPERSON THERNSTROM: Yes?

8 COMMISSIONER YAKI: Commissioner Yaki.

9 VICE CHAIRPERSON THERNSTROM: Hi. Are
10 we allowing you to speak?

11 COMMISSIONER YAKI: May I please be
12 allowed to speak?

13 VICE CHAIRPERSON THERNSTROM: Of course.

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

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

25 Let me first preface this by saying, as

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1 a law student and then as a professional whatever it
2 is I am now, I am pretty much as close to a First
3 Amendment absolutist as you can find. One of my
4 heroes in law school was Thomas Emerson, or he was
5 officially called Tommie the Commie, professor at
6 Yale Law School who really was a First Amendment
7 absolutist.

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

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

21 We see today that certain types of
22 speech or conduct is not tolerated. We have hate
23 crimes legislation. We have legislation on sexual
24 harassment, which is often verbal in nature. And so
25 there are obviously some limitations that we as a

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1 country have decided can and should be put on what
2 people say and do in a way that is offensive or
3 hateful.

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

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

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

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1 But I think the criteria must be very
2 rigid. It cannot be flexible, because when you have
3 flexible criteria, when you have mushy criteria, I
4 think that is when you get into the slippery slope,
5 that is when you get into the problems we had with in
6 the '50s, with people being blackballed from
7 university campuses, when tenure was being denied,
8 for what then was thought to be a hateful idea, and
9 that was, anyone who possibly could and maybe should
10 have, could have, would have, possibly joined,
11 attended, or even any sympathy toward Stalin or
12 communism or what have you.

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

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

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

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1 my words carefully.

2 That I think goes beyond the pale of an
3 open, free, and democratic society. That's all I
4 have to say, and I want to thank the speakers for
5 what they have contributed today.

6 I'm going to have to be jumping off in a
7 few minutes.

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

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

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

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

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

24 COMMISSIONER YAKI: Well, Commissioner
25 Thernstrom, with all due respect, I think that the

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1 major difference is a First Amendment absolutist
2 believes that everyone's ideas are worthy of being
3 heard at one time.

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

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

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

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

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

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1 careful.

2 And I think the First Amendment issue is
3 a very, very important issue. What happens on the
4 campus to me is not nearly as important as what
5 happens inside the classroom. And that is where we
6 really have to put our focus. And that's why I think
7 that this legislation is extremely important. We do
8 need an independent advisory board to look at what is
9 being talked about.

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

19 COMMISSIONER BRACERAS: But others are
20 invigorated by it.

21 MS. STERN: Some are. Some are, that's
22 true.

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

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1 And I don't think it impinges on
2 anyone's free speech rights to say, that's wrong, the
3 Holocaust happened.

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

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

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

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

22 They are separate but they are
23 connected. The remedies for the former should
24 include not only exposure, additional research and
25 the disinfectant that comes from both, but should

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1 also include legal remedies; that is, complaints
2 being filed in the appropriate places, and where
3 Jewish students should be protected by law, they
4 should be protected by law. That is one set of
5 issues.

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

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

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

21 And one learns in the formal settings of
22 the university, and one learns in the informal
23 settings of the university.

24 VICE CHAIRPERSON THERNSTROM: Probably
25 more in the latter; go on.

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1 DR. TOBIN: And probably more in the
2 latter.

3 And therefore, what takes place in
4 university property in the dorms, in the student
5 union, in the lecture halls, where people are
6 watching movies, and does have the endorsement of the
7 university de facto, there should be, and there are
8 rules for formal and informal discourse and activity
9 on campus.

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

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

24 They are separate, but they are not
25 completely unrelated.

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1 VICE CHAIRPERSON THERNSTROM: Have you
2 ever seen a speech code you like?

3 DR. TOBIN: No. I have not ever seen a
4 speech code I liked, and I have not seen a speech
5 code enforced in ways that I like.

6 And speech codes about what one may say
7 and may not say about somebody else is not the best
8 way to approach this.

9 And I think also devolving immediately
10 into speech codes keeps a whole array of other
11 approaches to this off the table. And we don't have
12 to go to that absolute route.

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

20 I mean when these people have made such
21 outrageous claims against Israel and Jewish people, I
22 mean the chairperson, I just would like to read one
23 claim of Middle Eastern Studies Association. Hamid
24 Debashi had written in the Egyptian newspaper, Al
25 Ahram, on September 23rd, 2004, half a century of

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1 systematic maiming and murdering of another people
2 has left is deep marks on the faces of Israeli Jews,
3 the way they talk, the way they walk, and they way
4 they greet each other. There is a vulgarity of
5 character that is bone deep and structure to the
6 skeletal vertebra of its culture.

7 Now this is the chairperson of
8 Columbia's MEALAC department. This is hate speech.
9 This is just unconscionable.

10 VICE CHAIRPERSON THERNSTROM: The staff
11 director, Ken Marcus, has some questions.

12 Deborah, were you about to say
13 something?

14 COMMISSIONER BRACERAS: I just had one
15 brief question, which is a little bit off the topic.
16 But when you raise the point of speech codes being
17 enforced inconsistently, or the tolerance for
18 discriminatory things on campus being inconsistent, I
19 wonder if you also notice hypocrisy when it comes to
20 anti-Catholic statements or speech on campus?

21 Because it seems to me that while it's
22 not cloaked in international politics the way the
23 anti-Semitic speech is, and there aren't on most
24 campuses necessarily departments in which professors
25 are spewing the venom, there does seem to me to be a

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1 tolerance for negative comments about Catholics and
2 Catholic students, and a tolerance for what would
3 otherwise be regarded as hate speech were it to be
4 directed towards African-Americans, Muslims, gays and
5 lesbians, other groups on campus.

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

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

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

20 MS. STERN: I'm not aware, I don't know.
21 I would be surprised, but I haven't studied the
22 issue, to see if the extent and depth of prejudice
23 permeates the college campuses towards Catholics.

24 COMMISSIONER BRACERAS: It may not on
25 the college campuses. I personally see it in the

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1 media a lot. It may not be the same as on college
2 campuses, precisely because you don't have whole
3 departments promoting the hostility.

4 But I was just wondering if you had ever
5 encountered it.

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

8 VICE CHAIRPERSON THERNSTROM:
9 Commissioner Taylor wanted to get in here.

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

19 So that's sort of a global point that I
20 don't understand.

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

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1 On one side of the ledger, I have a very
2 uncomfortable environment, which I think is healthy;
3 on the other hand, I have physical threats, I have
4 hate, I have a situation where speech creates a
5 dangerous environment, I place those on the other
6 side of the ledger.

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

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

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1 the community.

2 And in my experience, although limited,
3 that seems to spark the real debate.

4 (Simultaneous voices)

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

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

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

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

25 MS. STERN: Right, I agree with you 100

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1 percent. The problem is, there are very few profiles
2 in courage on the college campus. I don't know why
3 it is so politically correct to be anti-Semitic.

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

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

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

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

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1 on and so on.

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

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

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

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1 to colleges and universities, have not only the right
2 but the obligation for appropriate oversight, and I
3 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 without 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 to this from a
17 variety of perspectives. I can step out of my role
18 as a researcher. I am the father of an African-
19 American son. I don't want him to be on a college
20 campus and have to deal with posters all over the
21 place proclaiming the genetic inferiority of blacks.

22 I don't want him to have to go in a classroom and
23 defend his race by saying that he is an inferior
24 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 is
5 at one with the political atmosphere on campus with
6 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 of
13 American Jews are Latino, Sephardic, black and Asian,
14 and that Israel is the most racially and ethnically
15 diverse nation on the face of the earth. Forty
16 percent of the population is African, Asian, Latino
17 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, are
11 brown lives worth less than white lives? That is the
12 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 being
2 subjected to those statements, because he would be in
3 the context of David Duke coming to the university?

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

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

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

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

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

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

25 VICE CHAIRPERSON THERNSTROM: Let us, we

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1 do need to wrap this up. But the staff director has
2 some questions.

3 STAFF DIRECTOR MARCUS: Thank you, Madam
4 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 together,
8 especially Chris Byrnes.

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 in
21 which the Department of Education collects hate crime
22 statistics, and the manner in which it is collected
23 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 does
5 not include other forms of anti-Semitic incidents
6 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 some
11 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 really
3 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. It
19 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 many
22 lonely college students there are, Jewish college
23 students, in East Podunk University, you know, who
24 are feeling threatened. We know about Columbia,
25 because there is a critical mass, and they support

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1 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 don't
8 know how many formal written complaints. But there
9 have been meetings upon meetings with administrators
10 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 STAFF DIRECTOR MARCUS: That actually
22 provides a good segue to my next question. Dr.
23 Tobin, I believe earlier you indicated that one of
24 the things that might be done is to encourage
25 students who believe their rights have been violated

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1 to file 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 than 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 their
13 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 the
18 context of the Title VI under the federal Civil
19 Rights Act, and that's because there's been a recent
20 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 is
9 far more than just a religious designation; it's a
10 recognition of one's ethnic identity, one's cultural
11 identity, and that it's completely appropriate to
12 consider Jews as a protected class under Title VI.

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

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

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

25 MS. TUCHMAN: If my complaint had been

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

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

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

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

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

23 STAFF DIRECTOR MARCUS: Since both
24 Columbia University and the University of California
25 at Irvine have been mentioned during the course of

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1 this meeting, I should state for the record that
2 those universities were invited to participate and
3 declined.

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

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

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

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

25 Might it be possible for the Commission

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

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

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

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

22 STAFF DIRECTOR MARCUS: It's certainly
23 something we ought to explore. I can't think of any
24 reason why not. The only limitation would be a
25 budgetary one in terms of how it would be prepared or

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1 disseminated.

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

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

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

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

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

24 MS. STERN: It's a great start, it would
25 be a very tangible and positive thing.

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

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

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

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

18 VICE CHAIRPERSON THERNSTROM: I also
19 like the idea. And I would also like, and we will
20 need to take a vote on this, I would like to put into
21 the record the statement of the Anti-Defamation
22 League that the staff director referred to submitted
23 to the Commission. It's called, Briefing on Anti-
24 Semitic Incidents on College Campuses, dated November
25 18th.

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

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

10 COMMISSIONER BRACERAS: So moved.

11 COMMISSIONER TAYLOR: Second.

12 VICE CHAIRPERSON THERNSTROM: All in
13 favor?

14 (Chorus of ayes)

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

17 STAFF DIRECTOR MARCUS: Commissioner
18 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, and
10 Commission meetings aren't always this interesting,
11 so this is really a pleasure, with many thanks to you
12 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 STAFF DIRECTOR MARCUS: Thank you, Madam
7 Vice 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 First, I'm pleased that we have just
13 been able to issue a new travel policy for the
14 agency. The commissioners will recall that there
15 were approximately nine recommendations from the
16 Government Accountability Office relating to aspects
17 of travel.

18 The policy that we have just issued in
19 the form of AI 3-14 is intended to address all of
20 them. They range from issues such as documenting
21 travel policies, properly using and retaining
22 vouchers to support travel claims, improving travel
23 file maintenance, requiring appropriate travel
24 documentation, et cetera, et cetera.

25 And we are working now to make sure that

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1 this policy now issued will be fully implemented
2 within the agency.

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

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

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

24 They point out that in many cases the
25 standards they used have been more stringent than

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1 other agencies might have liked, and that they do
2 have an extensive backlog dealing with responses from
3 other agencies to the part review.

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

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

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

22 As a part of the strategic plan process,
23 we have been soliciting input from various
24 stakeholders including congressional committees,
25 federal agencies, and staff within the agency.

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

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

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

23 We've also emphasized to them that the
24 current work period ends at the end of this month in
25 November, and will not be extended further, so we

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1 certainly need to get from them whatever it is they
2 are going to provide us within that time period.

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

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

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

18 We have brought this to the attention of
19 the Office of Management and Budget, which has
20 granted us a 60-day extension on our performance and
21 annual report requirement, which includes a
22 requirement to provide the audit. So it will be due
23 now during the middle of January, January 15th, at
24 the Office of Management and Budget.

25 However, as requested, that after we

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1 receive the audit from Williams Adley we provide a
2 corrective action plan describing how we intend to
3 address any weaknesses identified by Williams Adley
4 by February 15th. So that work is also underway.

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

13 That is my report, but I would be
14 pleased to answer any questions that commissioners
15 might have.

16 VI. Management and Operations

17 VICE CHAIRPERSON THERNSTROM: Do any
18 commissioners have any questions?

19 Well, if not we're moving on to a group
20 of motions.

21 I think all of you have copies of those
22 motions. You should have in front of you, the first
23 one which involves the posting of a report to
24 Congress on the Commission website. And I do need a
25 motion to post that report.

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1 So if somebody could find the language,
2 and make a motion.

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

10 VICE CHAIRPERSON THERNSTROM: And do I
11 have a second on that?

12 COMMISSIONER BRACERAS: Second.

13 VICE CHAIRPERSON THERNSTROM: Any
14 discussion?

15 Okay, all in favor by indicating aye.

16 (Chorus of ayes)

17 VICE CHAIRPERSON THERNSTROM: Anybody
18 opposed?

19 (No response)

20 VICE CHAIRPERSON THERNSTROM: Motion is
21 approved.

22 I believe it's Commissioner Braceras who
23 has a message that she would like to read that is
24 from the Chairman Gerald Reynolds.

25 COMMISSIONER BRACERAS: Yes, here is

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1 Chairman Reynolds message. It reads:

2 I have decided to appoint Vice
3 Chairperson Abigail Thernstrom and Commissioner
4 Ashley Taylor to sit on the U.S. Elections Assistance
5 Commission Board of Advisers.

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

14 The board members serve for two-year
15 terms and may be reappointed.

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

22 That is the end.

23 VICE CHAIRPERSON THERNSTROM: That does
24 not need to be voted on.

25 **VII. State Advisory Committees**

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

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

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

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

16 COMMISSIONER TAYLOR: I do.

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

20 I move that the Commission continue its
21 process whereby we vote to publish the state advisory
22 committee reports.

23 However, when the Commission votes on
24 whether to publish a state advisory committee report,
25 commissioners may consider evaluating the quality and

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1 substance of said report.

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

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

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

16 VICE CHAIRPERSON THERNSTROM: Do I get a
17 second to this motion?

18 COMMISSIONER BRACERAS: Second.

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

21 COMMISSIONER MELENDEZ: Commissioner
22 Melendez. How time-consuming is that for us to
23 review these?

24 VICE CHAIRPERSON THERNSTROM: The staff
25 director can maybe - I mean the volume of these

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1 reports has not been huge.

2 STAFF DIRECTOR MARCUS: The volume has
3 varied over time, and regrettably has decreased in
4 recent years as the budget for SAC travel has led to
5 a decrease in SAC reports.

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

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

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

21 I don't think that there has ever been
22 at least in recent years as many as one report per
23 meeting.

24 VICE CHAIRPERSON THERNSTROM: I think
25 that is correct. And the average length of these

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1 reports is not - this is not an onerous job.

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

6 STAFF DIRECTOR MARCUS: And I'm reminded
7 that the administrative instructions of the agency
8 require that commissioners have at least 60 days to
9 review a report before having to vote on it.

10 VICE CHAIRPERSON THERNSTROM: Any
11 further discussion of this motion?

12 COMMISSIONER YAKI: Hello?

13 VICE CHAIRPERSON THERNSTROM: Yes,
14 Commissioner Yaki, come in.

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

19 I don't believe that --

20 VICE CHAIRPERSON THERNSTROM: I didn't
21 think this was a First Amendment issue, but whatever.

22 COMMISSIONER YAKI: Well, it is to the
23 extent that we have reports being made by a
24 government body that if it is, quote unquote, filed,
25 will never see the light of day. And I have a strong

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1 objection to the fact that a report that is quote
2 unquote merely filed cannot be accessed by the public
3 in any way whatsoever.

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

10 VICE CHAIRPERSON THERNSTROM: Since I
11 haven't been part of this working group, say it
12 again: What you are proposing is not a link to a PDF
13 but a --

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

20 But I'd rather see them all listed with
21 just a question of whether they were approved or
22 merely filed. But it's a black hole that they would
23 descend into as a file reporting is something that I
24 cannot support.

25 VICE CHAIRPERSON THERNSTROM:

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1 Commissioner Braceras.

2 COMMISSIONER BRACERAS: I just want to
3 say that this isn't a question of quashing a report
4 or killing a report.

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

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

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

18 Commissions that are approved by the
19 Commission are then made available to the public, and
20 in the large majority of the cases reports are
21 approved.

22 But it seems to me unwise to allow the
23 state advisory committees to use our money and our
24 resources to produce reports that a majority of
25 commissioners fundamentally don't - either don't

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1 agree with or don't think are of high enough quality
2 to merit our seal of approval.

3 So that is the genesis of this motion,
4 and the reason behind the motion, and the reasons why
5 I support it.

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

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

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

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1 VICE CHAIRPERSON THERNSTROM:

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

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

11 Is there a distinction between that and
12 the work of the SACs that we have no input into at
13 any stage of the process, and therefore, it seems to
14 me that if there is such a distinction, then that has
15 some implications for our commitment to posting work.

16 Is that an off the wall point on my
17 part?

18 STAFF DIRECTOR MARCUS: Well, there is
19 certainly a distinction between the status of a
20 national project that comes to the attention of the
21 Commission and that of the SAC.

22 With respect to the work of a SAC, it is
23 a final complete approved report of a State Advisory
24 Committee where the Commission has an obligation not
25 to exercise undue influence, and not to unduly sway

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1 the recommendations of this advisory committee.

2 Whereas with respect to the work of the
3 national offices, they are providing a draft of what
4 will ultimately be a project of the commission, so
5 that on the SAC reports, the commission does not vote
6 to approve the report; only on whether to publish it
7 or not.

8 Whereas for the national projects the
9 vote is on whether to approve or not.

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

19 VICE CHAIRPERSON THERNSTROM: Ashley.

20 COMMISSIONER TAYLOR: I just wanted to
21 pick up on that point, that is, these documents
22 remain public documents. And if a member of the
23 general public requests the document, we have an
24 obligation to provide it even if this motion is
25 accepted by the body.

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1 And what I think it does, it makes it
2 clear to the public what documents we approve and
3 stand behind, and what documents are simply lodged or
4 filed with the Commission. And whether it's just
5 perception or reality, I think it's important for us
6 to all feel comfortable with documents that the
7 public may perceive we're standing behind.

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

17 COMMISSIONER YAKI: I strongly disagree.

18 Simply because a document can be found through the
19 Freedom of Information Act requires that someone
20 knows what the name of the document is in the first
21 place.

22 And I think that what we're doing by
23 simply turning it into essentially the giant vault of
24 nothingness is I think irresponsible, and I think
25 makes it extremely difficult for the public even to

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1 find out what the heck the work may have been done in
2 the first place.

3 I think the idea that a FOIA request is
4 an acceptable substitute for a listing on our website
5 is between night and day, and I simply can't support
6 it.

7 COMMISSIONER TAYLOR: Well, let me
8 address that point. While I may agree with you on
9 that narrow issue, I think we have to balance that
10 against the perceived seal of approval that we give
11 to every report that we accept and publish.

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

14 COMMISSIONER YAKI: The problem is that
15 I offered a compromise that would have shown which
16 ones we approved and which ones we did not but still
17 would have made the report more readily accessible to
18 the public than as a procedure outlined by the staff
19 director.

20 The fact is that these reports were made
21 by an agency under our auspices using taxpayer funds.

22 And I believe that we should not make it a scavenger
23 or treasure hunt for someone to find out what they
24 may or may not have done.

25 VICE CHAIRPERSON THERNSTROM:

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1 Commissioner Braceras.

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

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

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

15 So if we don't do that for our own
16 reports, and I think that we don't - but I'm asking
17 for clarification - it seems reasonable that we
18 wouldn't do that with the staff reports either.

19 And secondly, I would ask in both cases,
20 in the case of a SAC report that we don't approve,
21 and in the case of a commission produced document
22 that we don't approve, to the extent that we do mail
23 it out to system who requests it via FOIA, I would
24 ask whether we shouldn't stamp it unapproved draft,
25 to make clear.

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1 I guess those are two questions.

2 VICE CHAIRPERSON THERNSTROM: No, I
3 think you're right.

4 COMMISSIONER BRACERAS: What happens to
5 commission reports that we don't approve?

6 VICE CHAIRPERSON THERNSTROM: They go
7 into Michael's black hole.

8 COMMISSIONER BRACERAS: Okay, and if
9 somebody FOIAs them, and we send them to them, are
10 they sent out clearly marked as drafts that were
11 unapproved or that were voted down?

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

15 COMMISSIONER BRACERAS: Okay, Michael,
16 what I'm referring to as an unapproved draft is a
17 commission draft that the commissioners didn't
18 approve.

19 In the case of a SAC report it can be
20 labeled unapproved; simply unapproved.

21 So my questions are directed I guess at
22 the staff director as to how we deal with our own
23 reports.

24 And my suggestion is that it makes
25 perfect sense to treat the advisory committee reports

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1 in the same way.

2 STAFF DIRECTOR MARCUS: Commissioner
3 Braceras, I am going to do my best to respond, and
4 may need some help from staff to the extent that some
5 of this may precede my experience.

6 It's my understanding that with respect
7 to drafts of Commission projects, they are considered
8 to be purely internal, and they are not produced
9 subject to FOIA or any other requirement, because
10 they are not completed documents.

11 With respect to SAC reports that are
12 approved by the SAC but not published, it is my
13 understanding they would be considered completed
14 projects. I suspect they would be subject to FOIA.

15 I am not aware of experience of getting
16 a significant number of requests for those documents.

17 Does any member of the staff have anything contrary
18 to add?

19 COMMISSIONER BRACERAS: I guess what I'm
20 saying is, I don't really see much of a substantive
21 difference between a SAC report that a majority of
22 this Commission decides is for one reason or another
23 is unacceptable, or a staff report that a majority of
24 this Commission decides is unacceptable.

25 Those seem to me to be equivalent

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1 documents.

2 STAFF DIRECTOR MARCUS: I would say that
3 there may be some legal distinctions between a report
4 which is final in the sense - a SAC report is
5 considered final when it's approved by a majority of
6 the staff.

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

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

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

21 So we're not going to allow a report to
22 be completed that we can't sign onto. The SAC
23 process is completely different. We are handed
24 finished reports that are the work of a legitimate
25 body.

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1 I frankly am troubled by precisely the
2 issues that Michael Yaki is raising.

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

12 There may have been for instance some
13 nonapproved SAC reports that were actually posted on
14 the website even.

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

20 VICE CHAIRPERSON THERNSTROM: I frankly
21 would like to find a compromise on this, so that
22 there is something between a black hole and
23 endorsement.

24 COMMISSIONER BRACERAS: Well, there was
25 something that we talked about during our working

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1 group meeting was a proposal that I had made to
2 accept the document and publish it, but to make very
3 clear in some sort of disclaimer that this is the
4 independent assessment of the whatever, Arizona SAC
5 committee, and does not reflect the views of the
6 United States or its individual members.

7 VICE CHAIRPERSON THERNSTROM: And what
8 was wrong with that?

9 COMMISSIONER BRACERAS: I don't know, I
10 thought it was a pretty good compromise, but it never
11 seemed to go anywhere.

12 VICE CHAIRPERSON THERNSTROM: I like it
13 just off the top of my head.

14 COMMISSIONER YAKI: I think it just got
15 dropped - as long as it was published and accessible
16 via the website I was for it.

17 COMMISSIONER BRACERAS: I mean part of
18 my problem with approving some of these reports is,
19 as Commissioner Taylor indicated, is that it gives
20 the impression that a federal agency has approved the
21 content and the recommendations contained with the
22 report, and that is misleading, to say the least.

23 So if it can be clearly stated that this
24 is the independent work of a SAC, and we don't
25 necessarily agree or disagree with it, that's fine

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1 with me. I wouldn't necessarily advocate posting it
2 up on the web, because I think then it does continue
3 to give that misleading impression.

4 I don't mind there being a list of such
5 reports on the web that people can request, but to
6 publish it on the web would go farther than I would
7 go.

8 But I would be comfortable publishing
9 the reports with the disclaimer that I outlined, and
10 making a list of those reports available on the
11 website for people who choose to ask for them.

12 I would be comfortable with that
13 compromise.

14 VICE CHAIRPERSON THERNSTROM: And
15 Commissioner Yaki, would you be comfortable with that
16 compromise? That appeals to me a lot. Have a list.

17 People know about it. Not a black hole. But we
18 don't have endorsement of the methodology, the
19 findings.

20 COMMISSIONER BRACERAS: And no press
21 release saying, today the U.S. Commission on Civil
22 Rights released this glorious report.

23 VICE CHAIRPERSON THERNSTROM: But full
24 disclosure that a report was in fact written by a
25 particular SAC and is available for those who are

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1 interested.

2 COMMISSIONER BRACERAS: And the SAC can
3 distribute it as they see fit.

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

6 COMMISSIONER TAYLOR: I'm not opposed to
7 that at all.

8 COMMISSIONER YAKI: How does that work
9 vis-à-vis our website?

10 VICE CHAIRPERSON THERNSTROM: We would
11 have a list.

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

19 VICE CHAIRPERSON THERNSTROM: No, wait a
20 minute, there would have to be a distinction between
21 approved and unapproved.

22 COMMISSIONER YAKI: The approved people
23 should be able to get by simply hyperlinking to a
24 PDF, and I would agree to a different method for
25 obtaining filed but not approved report, as long as

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1 they were listed on the website.

2 That was my proposal to begin with, and
3 I would still agree with that.

4 COMMISSIONER BRACERAS: I guess I'm a
5 little confused, because the original proposal I made
6 during the course of the working group was basically
7 just to accept all SAC reports but put a disclaimer
8 on them saying it doesn't necessarily reflect the
9 views of the Commission or individual commissioners.

10 COMMISSIONER YAKI: I would be
11 acceptable with that, as long as those reports are
12 accessible in some way on our website.

13 COMMISSIONER BRACERAS: And I would just
14 make the list available on the website. Because I
15 think once you get into voting on the substance,
16 approving or disapproving the substance, then there
17 is no need for a disclaimer, we are back to where we
18 were originally. Because some are approved, and
19 those bear our name, and some are not approved, and
20 those don't bear our name.

21 So we're back to the original motion,
22 then.

23 VICE CHAIRPERSON THERNSTROM: Now, look,
24 it seems to me we're not quite back to the original
25 motion. What there is a consensus on here is to have

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1 a link to all SAC reports, to make a distinction
2 between - and somebody correct me if I'm wrong - to
3 make a distinction between those SAC reports that
4 have been approved, and you can click on it and get a
5 PDF version of them, and those SAC reports that have
6 not been approved, but you have been notified that
7 they exist, and if you want them - they are not in a
8 black hole - if you want them you can ask for them.

9 COMMISSIONER BRACERAS: Just to be
10 clear, the unapproved reports will have the
11 disclaimer on them, and there will be a list of them
12 on the website but they will not be accessible
13 through PDF format.

14 VICE CHAIRPERSON THERNSTROM: That's
15 correct, is that correct, Michael Yaki?

16 Commissioner Yaki, do we have an
17 agreement on this?

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

20 COMMISSIONER TAYLOR: Come back from the
21 black hole.

22 VICE CHAIRPERSON THERNSTROM: All right,
23 look, I will repeat this.

24 It seems to me there is a consensus in
25 this room and with you on having a list of the SAC

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1 reports. You click on a link on the website to a
2 list of the SAC reports.

3 They are divided into two categories.
4 Category approved you can get a PDF version off the
5 website. Category not sanctioned by this Commission,
6 nevertheless, you have been notified, it hasn't gone
7 into a black hole, you have been notified that it
8 exists, and you can obtain a copy of it if you wish
9 by requesting it.

10 COMMISSIONER YAKI: I'm agreeing.

11 VICE CHAIRPERSON THERNSTROM: And the
12 SACs themselves are free to do what they want with
13 their own reports, but again, there will be a
14 disclaimer indicating that it did not receive
15 official Commission approval.

16 STAFF DIRECTOR MARCUS: Let me make sure
17 that there's clarity on some of the nuts and bolts of
18 this.

19 As I understand it, and I can be
20 corrected perhaps by staff, the main list that we
21 have on the website of Commission documents is an
22 actual document that we have that is a catalog that
23 is published from time to time, and it includes
24 approved reports.

25 And as I understand this perhaps

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1 consensus, it would be that as we - each time we
2 revise this, we now include within this published
3 document, which is available in hard copy, but it's
4 also on the website, not only the approved documents,
5 but also, under a separate heading in the catalog,
6 those SAC reports that have been approved. And
7 that's what's in the catalog.

8 And then in addition we will have links
9 on the website to those SAC reports that have been
10 approved.

11 Did I get the process right?

12 VICE CHAIRPERSON THERNSTROM: I think
13 that is correct.

14 COMMISSIONER TAYLOR: And then when the
15 unapproved reports are requested through the normal
16 process, and they are sent out by this office, there
17 will be an appropriate disclaimer.

18 VICE CHAIRPERSON THERNSTROM: Yes, that
19 is correct.

20 COMMISSIONER BRACERAS: I don't think
21 the disclaimer should be stamped on it at the time
22 that it is mailed out. I think that it should be
23 part of the publication. It should be on the front
24 actual inside cover of the document itself.

25 VICE CHAIRPERSON THERNSTROM: That's

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1 fine.

2 COMMISSIONER TAYLOR: We could make it a
3 header on the document.

4 STAFF DIRECTOR MARCUS: And just for
5 clarification, in the past, as I understand, the
6 practice with SAC reports that have not been approved
7 is that there is no cover with it, because they are
8 not even published in the sense of being Xeroxed, so
9 there is no version.

10 Now what we are doing is a new process
11 where a document if it is not approved, whether for
12 reasons of substance, quality, procedure, or any
13 other reason, if it is a SAC report and it's not
14 approved for publication, we will nevertheless have a
15 document that is created and Xeroxed, but it will
16 have on its cover this disclaimer that is being
17 discussed.

18 VICE CHAIRPERSON THERNSTROM: I think
19 that is correct, so there is no black hole, and there
20 is access.

21 STAFF DIRECTOR MARCUS: And as I
22 understand it, this would apply regardless of the
23 Commission's reason for voting it down, so now we're
24 doing this also for ones where the problem was with
25 respect to procedure as well.

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1 COMMISSIONER BRACERAS: Yes, because I
2 think that satisfies both the Yaki-Thernstrom-
3 Braceras concern about information not being
4 accessible, but the overall motion addresses the
5 larger concern which was that we felt previously that
6 we had to vote up or down on reports regardless of
7 our substantive concerns with them. And now we have
8 a vehicle to express substantive concerns, which we
9 did not have before, because we had always been told
10 we had to accept reports unless there was a
11 procedural problem.

12 So now we have the ability to express
13 substantive views, and we also have I guess the
14 freedom to make more information accessible.

15 So I think that is a good balance.

16 VICE CHAIRPERSON THERNSTROM: I think we
17 do have consensus on it. I do not have, I have not
18 written out, however, what the motion now looks like.

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

21 COMMISSIONER BRACERAS: Give me two
22 seconds.

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

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1 COMMISSIONER TAYLOR: Madam Chair, let
2 me say to Commissioner Yaki that I consider this a
3 friendly amendment to my motion.

4 VICE CHAIRPERSON THERNSTROM: Right.
5 Commissioner Yaki, this is a friendly amendment to
6 your motion.

7 COMMISSIONER YAKI: No, this is a
8 friendly amendment to his motion.

9 VICE CHAIRPERSON THERNSTROM: Oh, I'm
10 sorry. Actually Taylor's motion.

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

13 VICE CHAIRPERSON THERNSTROM: So
14 Jennifer, you're taking the original language.

15 COMMISSIONER YAKI: In the immortal of
16 that moving airplane, friendly, my name is not
17 friendly.

18 COMMISSIONER TAYLOR: How does he know
19 this stuff?

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

22 COMMISSIONER TAYLOR: Clearly that's my
23 problem.

24 VICE CHAIRPERSON THERNSTROM: That's my
25 problem too.

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1 COMMISSIONER TAYLOR: Cutting against
2 the grain that is my problem.

3 VICE CHAIRPERSON THERNSTROM: That's
4 definitely mine. I just discovered Seinfeld this
5 year. I'm really out of the culture.

6 (Pause)

7 Michael, somebody should send to you by
8 the way, we received from the members of the panel
9 earlier two documents, one a book by Gary Tobin and
10 others called The Uncivil University on propaganda in
11 American education. And the other is also something
12 from Tobin. And somebody should mail these to you.

13 COMMISSIONER YAKI: Okay, thank you.

14 STAFF DIRECTOR MARCUS: Staff director
15 will take care of that.

16 COMMISSIONER BRACERAS: Okay, let me
17 give this a try.

18 The first paragraph of the motion
19 remains the same.

20 The second paragraph of the motion will
21 read as follows: Delete the first sentence of the
22 second paragraph altogether. Start with, all
23 published reports will be available to the public,
24 period.

25 Any report not approved by the

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1 Commission shall be published with a disclaimer
2 indicating that the document does not reflect the
3 views of the Commission, period. It will be
4 available to the public and listed on the Commission
5 website and catalog, but will not be accessible via a
6 link on the Commission website --

7 VICE CHAIRPERSON THERNSTROM: As a PDF
8 document.

9 COMMISSIONER BRACERAS: As a PDF
10 document.

11 VICE CHAIRPERSON THERNSTROM: I think
12 there should be one more sentence.

13 COMMISSIONER TAYLOR: Do we have to
14 clarify the fact that the published documents will
15 indeed be accessible on the website?

16 COMMISSIONER BRACERAS: I don't think we
17 should call them published or nonpublished, because
18 in a sense they're all published. I think we should
19 call them approved and unapproved.

20 So I guess the first sentence of the
21 second paragraph should read, all approved reports
22 will be available to the public via a link on the
23 Commission website. Any report not approved by the
24 Commission shall be published with a disclaimer
25 indicating that the document was not approved and

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1 does not reflect the views of the Commission. It
2 will nevertheless be available to the public and
3 listed on the Commission website and catalog.

4 VICE CHAIRPERSON THERNSTROM: And how
5 about available by request.

6 COMMISSIONER BRACERAS: Yes, by request,
7 correct, it will be available to the public by
8 request.

9 STAFF DIRECTOR MARCUS: I feel I have to
10 indicate to the Commission that if we are using the
11 term, approval, to indicate a vote on the report, as
12 opposed to a decision to publish, that may raise
13 legal issues under the FACA statute which we would
14 want to look into.

15 In general what the Commission has done
16 has not been to approve or disapprove a SAC report,
17 but rather only to publish or not publish a SAC
18 report.

19 COMMISSIONER BRACERAS: And what is the
20 concern about FACA?

21 STAFF DIRECTOR MARCUS: It is a concern,
22 and maybe on this one I could ask the parliamentarian
23 who is also our solicitor, whether there are FACA
24 concerns we need to look at with the question of
25 whether the Commission is saying that it is approving

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1 or disapproving a report.

2 MS. MONROIG: Right. FACA says that the
3 appointing authority, which is the Commission, cannot
4 exercise undue influence. That's why when you take
5 the reports, it's always a vote for the publication,
6 it is not a vote on the substance.

7 COMMISSIONER BRACERAS: Okay, but that
8 brings us back to the original issue, and the
9 original motion.

10 COMMISSIONER YAKI: Just take out the
11 word "approved", substitute the word "published", and
12 in the section about the other reports, just simply
13 say that those that are not published will
14 nevertheless be listed on the website and available
15 to the public.

16 VICE CHAIRPERSON THERNSTROM: And
17 available by request to the public.

18 COMMISSIONER BRACERAS: I think that is
19 fine, but then I think if it's not technically
20 published, quote unquote, it seems silly to list it
21 in a catalog.

22 COMMISSIONER YAKI: A catalog under
23 standard advisory commission reports. We've chosen
24 not to publish it. They have written it; we have not
25 published it.

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1 COMMISSIONER BRACERAS: Right, but this
2 is really sort of Orwellian. I mean what does
3 publish mean? Publish means to print and duplicate
4 and distribute.

5 COMMISSIONER YAKI: Published is just so
6 don't get all FACA'd upped here. (Laughter

7 COMMISSIONER BRACERAS: I know, but the
8 point is, if we're printing it, we're making copies,
9 we're distributing, we are publishing. I don't care
10 what we call it. This is ridiculous to say that just
11 because we don't use the term, published, that we
12 don't run afoul of FACA.

13 If there is a FACA issue here it's
14 substantive; it's not a technical little thing of
15 wording.

16 If there is a FACA issue in us looking
17 at the substance of the report, then there is a issue
18 in the whole motion altogether, and that brings us
19 back to square one, which is, are we as a Commission
20 allowed to consider substance?

21 And I thought we had determined legally
22 that we were allowed to look at substance. Once we
23 made that determination, and maybe it's an incorrect
24 one, but once we made that determination it seems to
25 me ridiculous to argue about whether we use the word

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1 publish or approve.

2 STAFF DIRECTOR MARCUS: As I understand
3 it, and here again I will ask if the solicitor has
4 any supplementation, the Commission has control over
5 the purse strings, and can make a decision whether to
6 use its money to duplicate documents or not duplicate
7 them, or put things on the website or not put them.

8 COMMISSIONER BRACERAS: But we're saying
9 right here that we're going to look at the content.

10 STAFF DIRECTOR MARCUS: That's right.
11 And it can look at content, as I understand it, in
12 making a decision as to which ones are of the caliber
13 that money should be spent on them.

14 But that is different from the question
15 of approval.

16 COMMISSIONER BRACERAS: I think that is
17 really splitting hairs to say we're not going to
18 publish it, because we disagree with the content, but
19 we approve it.

20 VICE CHAIRPERSON THERNSTROM: Jennifer,
21 as a lawyer, you should be used to splitting hairs.

22 COMMISSIONER BRACERAS: Quite the
23 contrary, I think as a lawyer you have to look at the
24 underlying substance and not necessarily just a
25 particular word. But whatever.

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1 So how does it read now?

2 VICE CHAIRPERSON THERNSTROM: Michael,
3 come in on this. How does it read now?

4 COMMISSIONER YAKI: I don't have it.

5 COMMISSIONER BRACERAS: Okay, so now it
6 says, I think, all published reports will be
7 available to the public. Any report not published by
8 the Commission shall be made available --

9 VICE CHAIRPERSON THERNSTROM: By
10 request.

11 COMMISSIONER BRACERAS: -- by request
12 with a disclaimer indicating that the document does
13 not reflect the views of the Commission --

14 VICE CHAIRPERSON THERNSTROM: Of a
15 majority of the Commission. Does not reflect the
16 views of a majority of the Commission.

17 STAFF DIRECTOR MARCUS: May I make a
18 suggestion that when the language is done, instead of
19 approving it - much as I hesitate to suggest a delay
20 - that there be some additional review so that when
21 we have the language, that we're sure that it has
22 been properly reviewed for FACA concerns.

23 COMMISSIONER YAKI: I would say - I
24 would move to continue this motion until the next
25 meeting, and direct the staff directors to take

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1 what's been discussed by the Commission today and
2 harmonize them with any FACA concerns that may be
3 outstanding, and further direct the staff director to
4 come back with proposed language harmonized with
5 FACA.

6 VICE CHAIRPERSON THERNSTROM: You know,
7 I would prefer to have the motion approved today. If
8 it needs to be amended at a subsequent meeting, we
9 can do so. But I don't want to have this whole
10 discussion again.

11 COMMISSIONER BRACERAS: I don't either.

12 VICE CHAIRPERSON THERNSTROM: Because
13 two members are now absent from this. We are going
14 to have to start from ground zero.

15 I think there should be a vote on this
16 motion as amended, friendly amended, amended in a
17 friendly manner. And then we do not have to start
18 the entire debate all over again.

19 COMMISSIONER YAKI: I would amend my
20 amendment to the amendment, to simply agree that an
21 amendment to the friendly amendment is to ask the
22 staff director to ensure that it comports with FACA,
23 and if not come back and report to us on methods of
24 making it so.

25 COMMISSIONER BRACERAS: That's fine.

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1 But you know, I fail to understand how giving
2 something approval is the same thing as exercising
3 undue influence.

4 I mean as a lawyer I do not read
5 approving or disapproving of something as being undue
6 influence. It's completely counterintuitive. So I
7 don't understand how even in the original wording
8 there is a problem. But I'll leave that to other
9 people to analyze.

10 VICE CHAIRPERSON THERNSTROM: Jennifer,
11 we can come back to it. But let us get something
12 approved today. Because otherwise we are going to
13 start from ground zero the next time.

14 COMMISSIONER BRACERAS: Oh, I agree. So
15 shall I read it all the way through?

16 VICE CHAIRPERSON THERNSTROM: Please
17 read it all the way through, and somebody move to
18 accept it.

19 COMMISSIONER BRACERAS: I move that the
20 Commission establish the following policy which will
21 supersede all prior and inconsistent policies
22 previously adopted.

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

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

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

8 All published reports will be available
9 to the public. Any report not published by the
10 Commission shall be made available to the public with
11 a disclaimer indicating that the document does not
12 reflect the views of a majority of the Commission.
13 They will be listed in the Commission catalog and on
14 the Commission website, but not accessible via a link
15 as a PDF.

16 VICE CHAIRPERSON THERNSTROM: And it
17 should be available by request.

18 COMMISSIONER BRACERAS: Just say
19 available by request.

20 VICE CHAIRPERSON THERNSTROM: Michael,
21 are you happy with that?

22 COMMISSIONER YAKI: I'm friendly with
23 that.

24 VICE CHAIRPERSON THERNSTROM: All right,
25 do we have a second to that motion?

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1 Wait a minute, there is an additional
2 sentence that Michael just suggested about, how did
3 you put it, getting the --

4 COMMISSIONER YAKI: Further, that after
5 adoption of this policy the staff director shall
6 ensure that it is in compliance with FACA, and if not
7 report back in a timely and manner suggested in it.

8 COMMISSIONER BRACERAS: I just want to
9 make sure that since I said the nonpublished reports
10 are going in the catalog and on the web, that it's
11 also clear that the published reports are going up.

12 VICE CHAIRPERSON THERNSTROM: Oh, I
13 think that goes without saying.

14 Can we have a second on this motion?

15 COMMISSIONER YAKI: Second.

16 VICE CHAIRPERSON THERNSTROM: Can we
17 have a vote on approval?

18 (Chorus of ayes)

19 VICE CHAIRPERSON THERNSTROM: Any nays?

20 (No response)

21 VICE CHAIRPERSON THERNSTROM: This has
22 been unanimously approved.

23 Okay, let us move on to the SAC reports
24 of Arizona and New Mexico. The New Mexico state
25 advisory committee report entitled, the Farmington

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1 Report: Civil Rights for Native Americans 30 Years
2 Later; and the Arizona state advisory committee
3 report entitled, Civil Rights Along the U.S.-Mexican
4 Border: The Need for Immigration Reform.

5 They were distributed to the
6 commissioners in advance of the July 22nd Commission
7 meeting.

8 At that meeting the chairman announced
9 the consideration of whether to accept the reports
10 for publication could occur as early as the September
11 meeting in accordance with administrative instruction
12 five to seven, Section 13.02, requiring the
13 commissioners receive SAC reports two months before
14 taking action on them.

15 Subsequently during the September
16 Commission meeting, the Commission unanimously
17 approved a motion requiring that a vote on the SAC
18 report be table pending consideration by the SAC
19 working group of the criteria commissioners may
20 consider when voting on whether or not to accept a
21 SAC report for publication.

22 And of course, we have just done that.
23 So we now need a motion to accept for publication the
24 New Mexico state advisory report.

25 COMMISSIONER BRACERAS: So moved.

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1 VICE CHAIRPERSON THERNSTROM: A second,
2 please?

3 COMMISSIONER TAYLOR: Second.

4 VICE CHAIRPERSON THERNSTROM: All in
5 favor, say aye.

6 (Chorus of ayes)

7 VICE CHAIRPERSON THERNSTROM: All
8 opposed?

9 (No response)

10 VICE CHAIRPERSON THERNSTROM: The motion
11 is approved unanimously.

12 Okay, motion to accept for publication
13 the Arizona state advisory committee report. Can I
14 have a motion to accept it?

15 COMMISSIONER TAYLOR: So moved.

16 COMMISSIONER YAKI: Commissioner
17 Thernstrom?

18 VICE CHAIRPERSON THERNSTROM: Yes?

19 COMMISSIONER YAKI: Unfortunately I have
20 not had an opportunity to fully review this report,
21 so I would abstain from it. But I am concerned that
22 if I abstain do we not have a majority for it?

23 COMMISSIONER BRACERAS: For New Mexico?

24 VICE CHAIRPERSON THERNSTROM: No, we're
25 on to Arizona.

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1 COMMISSIONER BRACERAS: I don't think we
2 have a majority for it anyway. I know I'm voting
3 against it.

4 VICE CHAIRPERSON THERNSTROM: And I have
5 not had a chance either to read it.

6 COMMISSIONER BRACERAS: You are free to
7 abstain.

8 VICE CHAIRPERSON THERNSTROM: No, wait a
9 minute, we are going to postpone this. We're
10 postponing this.

11 Can I have a motion to table this?

12 COMMISSIONER MELENDEZ: So moved.

13 VICE CHAIRPERSON THERNSTROM: And a
14 second?

15 COMMISSIONER BRACERAS: Second. Why are
16 we postponing it, may I ask?

17 VICE CHAIRPERSON THERNSTROM: Well, at
18 least two of us haven't looked at it.

19 COMMISSIONER BRACERAS: Oh okay. There
20 is no underlying reason other than --

21 VICE CHAIRPERSON THERNSTROM: I haven't
22 looked at it.

23 COMMISSIONER BRACERAS: You've had it
24 since July, people. Come on.

25 VICE CHAIRPERSON THERNSTROM: I'm sorry

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1 I haven't looked at it. Michael Yaki hasn't looked
2 at it. We're tabling it.

3 I need a vote.

4 (Chorus of ayes)

5 VICE CHAIRPERSON THERNSTROM: Any
6 opposition?

7 (No response)

8 VICE CHAIRPERSON THERNSTROM: We have
9 tabled this motion.

10 Okay, we need from the staff director
11 now, and this is the last business, we need the staff
12 director to report to us on the briefing report
13 first, on the report on the stagnation of the black
14 middle class.

15 **VIII. Briefing Report**

16 STAFF DIRECTOR MARCUS: And that report
17 is now with GPO, which is in the midst of formatting
18 it, and should have it published within 30 days. Our
19 hope is to have it for the next Commission meeting.
20 If not, then for the one after.

21 VICE CHAIRPERSON THERNSTROM: How about
22 a briefing on the reauthorization of the act?

23 STAFF DIRECTOR MARCUS: That's in
24 process, and we may have a document available for the
25 next month. I would remind commissioners, though,

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1 that it is still timely if they choose to prepare
2 comments or statements to that report?

3 COMMISSIONER YAKI: As a matter of fact,
4 Mr. Staff Director, perhaps I just missed it, but I
5 don't recall what the deadline is for submitting
6 statements after a briefing. So if you could give me
7 a deadline for that, for the VRA, that would be
8 helpful for me.

9 STAFF DIRECTOR MARCUS: I'll be pleased
10 to suggest a deadline in a communication that I will
11 send to all commissioners after the meeting.

12 COMMISSIONER YAKI: Thanks.

13 VICE CHAIRPERSON THERNSTROM: Okay,
14 future briefings, the disparity studies. Would the
15 staff director provide us an update on the
16 disparities study briefing?

17 **IX. Future Briefings**

18 STAFF DIRECTOR MARCUS: Yes, I'm pleased
19 that we have a fine panel assembled. Dr. George
20 LaNoue (phonetic), professor of political science at
21 the University of Maryland, Baltimore County, and
22 director of the project on Civil Rights and Public
23 Contracting; Dr. Constant Citro (phonetic), director
24 of the committee on national statistics at the
25 National Academy of Sciences; Mr. Roger Clegg, vice

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1 president and general counsel, the Center for Equal
2 Opportunity; and Dr. David Blanchflowe (phonetic),
3 professor in the department of economics at Dartmouth
4 College are online to participate in the briefing.

5 VICE CHAIRPERSON THERNSTROM: Okay, and
6 I'm sorry I was doing something else here and have
7 lost my place.

8 We move on to the Patriot Act. We need
9 an update on the Patriot Act briefing.

10 STAFF DIRECTOR MARCUS: Yes, Madam Vice
11 Chair. The Commission postponed its briefing on the
12 Patriot Act, asking the staff director to try to
13 assemble under the panel we had before, or a panel of
14 equivalent quality for the briefing, since it is
15 difficult to measure what equivalent quality is. We
16 have been trying to assess the availability of the
17 same panel members during February and March. We've
18 gotten some availability, but other members have not
19 been able to get back to us yet.

20 The Honorable Viet Dinh is currently
21 holding the February date. Mr. Parvez Ahmed of the
22 Counsel on American-Islamic Relations is also
23 available.

24 On the other hand Mr. Michael Ledeen
25 will not be able to get back to us before January on

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1 his availability in either February or March. I
2 understand he has a demanding travel schedule, and we
3 have not yet been able to get responses from either
4 Andrew McCarthy from the Foundation for the Defense
5 of Democracies, nor Mary Rose Oakar at the American
6 Arab Anti-Discrimination Committee as to their
7 availability for either February or March.

8 We will continue first to try with them.
9 And based on my understanding that the Commission was
10 pleased with this group, we may try to see their
11 availability for a date after March is that might
12 make it easier for them.

13 COMMISSIONER BRACERAS: It seems to me
14 that if we have two out of the four, and the other
15 individuals haven't said they can't do it, they just
16 say they didn't know, maybe we should just go ahead
17 and plan, and if they can't fill in with others.

18 VICE CHAIRPERSON THERNSTROM: Let's give
19 them a little more time, and then plan it, it seems
20 to me. A little more --

21 COMMISSIONER BRACERAS: If they don't
22 get back to us, in other words, by a certain date,
23 that would give you enough time. I say we go ahead
24 and have it, and fill in with others.

25 VICE CHAIRPERSON THERNSTROM: I agree

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1 with that.

2 STAFF DIRECTOR MARCUS: So go ahead and
3 try February even if we only have two --

4 VICE CHAIRPERSON THERNSTROM: Well,
5 let's give a little more time to those who have - to
6 the two who haven't responded.

7 I see by the way that I forgot the
8 motion for scheduling our briefing on the Native
9 Hawaiian Government Reorganization Act of 2005.

10 I need a motion to schedule the
11 previously approved briefing concerning the Native
12 Hawaiian Government Reorganization Act.

13 STAFF DIRECTOR MARCUS: For Friday,
14 January 20th, 2006?

15 VICE CHAIRPERSON THERNSTROM: Correct.

16 COMMISSIONER TAYLOR: Second.

17 VICE CHAIRPERSON THERNSTROM: Any
18 discussion?

19 COMMISSIONER YAKI: Is this going to be
20 in Hawaii?

21 VICE CHAIRPERSON THERNSTROM: I think
22 that that should be a separate motion.

23 All in favor?

24 (Chorus of ayes)

25 VICE CHAIRPERSON THERNSTROM: Anybody

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1 opposed?

2 (No response)

3 VICE CHAIRPERSON THERNSTROM: Floor is
4 open for a motion that we meet in Hawaii.

5 STAFF DIRECTOR MARCUS: This might be
6 the appropriate time to indicate in terms of the
7 composition of the panel, the commissioners recall
8 that Commissioner Melendez had suggested that we
9 invite Patricia Zell to participate. She's a very
10 knowledgeable expert on the subject, formerly with
11 the Office of Hawaiian Affairs, and former worked
12 with Senator Akaka.

13 She is very interesting in
14 participating, but has not been able to tell us for
15 sure. She has also been helpful in identifying other
16 prominent supporters and experts of the proposed
17 legislation. Two people that she has mentioned had
18 been former Hawaii Supreme Court Justice Klein, and
19 incumbent Hawaii Attorney General Bennett.

20 Both of them have indicated through her
21 that they are interested in helping the Commission.
22 However, Attorney General Bennett does not appear to
23 be available on the same date as the others, at least
24 at this point, and Justice Klein is a maybe.

25 We also are looking to have a

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1 constitutional expert who may oppose or have concerns
2 about the legality there. Names of experts who have
3 been mentioned to us include Doug Cox, Todd Gaziano,
4 Shannen Coffin, or perhaps the former Solicitor
5 General Ted Olson.

6 In addition our hope is to have at least
7 one attorney if we can find one who has concerns, and
8 who have a local knowledge of Hawaii issues, and
9 names such as Dick Rauland and Bill Burgess have been
10 referred to us.

11 VICE CHAIRPERSON THERNSTROM: Aside from
12 future agenda items, the last item is the scheduling
13 of a briefing on the findings of UCLA Law Professor
14 Richard Sander.

15 He has asked that we schedule that
16 briefing for sometime in the summer, and I would like
17 to have a motion to have it scheduled in June of '06.

18 COMMISSIONER TAYLOR: So moved.

19 VICE CHAIRPERSON THERNSTROM: Why don't
20 you read the motion?

21 COMMISSIONER TAYLOR: I move to have the
22 Commission hold the previously approved briefing
23 concerning the findings of UCLA professor Richard H.
24 Sander in his article, A Systemic Analysis of
25 Affirmative Action in American Law Schools 57

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1 Stanford Law Review, 367 2004 on Friday June 16,
2 2006. The briefing would feature Professor Sander
3 and at least one other academic expert in the subject
4 matter of Professor Sander's article, who can provide
5 a contrary viewpoint.

6 VICE CHAIRPERSON THERNSTROM: Will
7 somebody second the motion?

8 COMMISSIONER BRACERAS: Second.

9 VICE CHAIRPERSON THERNSTROM: All in
10 favor indicate by saying aye.

11 (Chorus of ayes)

12 VICE CHAIRPERSON THERNSTROM: Any
13 opposition?

14 (No response)

15 VICE CHAIRPERSON THERNSTROM: Motion is
16 unanimously approved.

17 **X. Future Agenda Items**

18 Do we have any future agenda items? If
19 not, we are adjourned. Thank you, everybody.

20 Michael Yaki, thank you for sticking
21 with us to the end.

22 COMMISSIONER YAKI: Well done.

23 (Whereupon at 1:32 p.m. the
24 meeting of the President's
25 Commission on Civil Rights was

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adjourned.)

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COLUMBIA UNIVERSITY

IN THE CITY OF NEW YORK

PROVOST

November 15, 2005

Kenneth L. Marcus
Staff Director
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Marcus,

We thank the United States Commission on Civil Rights for giving Columbia University the opportunity to participate in its public briefing about anti-Semitism on college campuses. We recognize the importance of this issue. However, as you know, Columbia president Lee C. Bollinger and I will be unable to attend the November 18th briefing. President Bollinger has asked me to write you on his behalf.

Like the Commission, we at Columbia abhor anti-Semitism or any other form of invidious discrimination. Bigotry has no place in higher education just as it has no place in a democratic society. In fact, universities traditionally have been places where people can learn and inquire free from such discrimination, whether due to the content of their ideas or on the basis of their race, religion, gender, cultural beliefs, or political views.

Columbia is one of the most diverse institutions of higher education in the world and a place where all students can flourish, regardless of their background, race, or religion. Within our community, we are proud to include a very significant population of Jewish students, faculty, and staff.

The University is committed to advancing scholarship on Jewish studies and actively supports Jewish life on campus. Columbia has a large faculty dedicated to Jewish studies and one of the longest and most distinguished traditions in the academic study and teaching of Jewish civilization. The recently created Institute for Jewish and Israeli Studies, which builds on what has long been one of the leading centers of Jewish history in the nation, is currently in the process of recruiting several additional faculty. The Jewish Theological Seminary and the Columbia School of General Studies together offer a joint degree program for seminary undergraduates in Jewish studies and liberal arts, which is now in its 51st year. Columbia was the first secular university in the West to establish a chair in Jewish history and recently established a new chair in Israel and Jewish Studies with a focus on modern Israel.

A-1

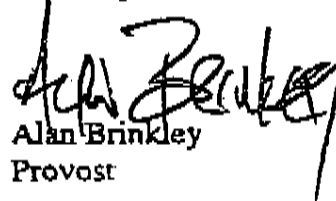
The Kraft Center for Jewish Student Life at Columbia University and Barnard College is perhaps the most visible evidence of the University's multifaceted Jewish life and the many educational, cultural, and religious opportunities that abound. The center is home to Columbia/Barnard Hillel and holds extracurricular classes, as well as programs on religious life, advocacy, and justice.

Last academic year, some of our students raised serious concerns about classroom conduct and how the faculty and its leadership should respond. These concerns were raised in the specific context of teaching and discussion about Israel and Palestine and focused on the conduct of certain faculty members. We instituted a formal University process to respond to the specific grievances of our students and initiated a broader community discussion on the matter. As a self-governing community of scholars, we took appropriate measures to address the concerns that were raised and adjudicated student grievances within the framework of the University's principles and code of conduct.

In the course of responding to our students, inconsistencies and weaknesses in the avenues available for students to raise concerns about faculty conduct and other important matters were exposed. To address these deficiencies, we have clarified and strengthened our procedures for adjudicating grievances and established additional venues for students to discuss issues with the University's top administrators, including the new President's Council on Student Affairs. We also have created more opportunities for students and faculty to engage in free and open discussion on a wide range of sensitive topics through the Kraft Family Fund for Intercultural and Interfaith Awareness, a new program supporting faculty and student discourse on issues of culture and faith identified by the community.

At Columbia, like all universities, faculty and students with differing views, perspectives, and experiences must be free to rigorously and openly engage ideas and issues. Diversity of thought and freedom of inquiry and expression undergird the entire academic enterprise. An atmosphere of mutual respect, civility, and tolerance at our nation's universities must be ensured.

Sincerely,



Alan Brinkley
Provost

COLUMBIA UNIVERSITY

IN THE CITY OF NEW YORK

DEPARTMENT OF ANTHROPOLOGY

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6 JAN 25 P5:37

16 January 2006

To: Kenneth L. Marcus
Staff Director and Acting General Counsel
U.S. Commission on Civil Rights
Washington, DC 20425

From: Nicholas De Genova
Assistant Professor
Department of Anthropology
Columbia University

RE: Opportunity to Comment and Respond to Statements Made at November 18, 2005
U.S. Commission on Civil Rights Hearing regarding Anti-Semitism on College
Campuses

Dear Mr. Marcus,

Thank you for your invitation to respond to the defamatory allegation that my remarks at a protest rally on April 17, 2002 at Columbia University, in support of the Palestinian people's sovereign right to national self-determination, may be somehow construed to have been anti-Semitic.

First, please allow me to emphatically reject the contention that my remarks at the protest rally in question were anti-Semitic. The quote that appears in your transcript does not express any prejudicial opinions about Jewish people, in general or in particular, or about the Jewish religion or culture; indeed, it makes no comment whatsoever concerning Jews. Thus, it is inconceivable and frankly unconscionable to denounce those remarks as anti-Semitic.

Second, please allow me to declare that my remarks were restricted to the state of Israel, the Zionist national project, and its colonialist subjugation of the Palestinian people. Those who have made these allegations against me and other critics of Israel apparently aim to suppress all criticism of Zionism and the Israeli state project as presumptively "anti-Semitic." Such behavior trivializes and cynically manipulates the meaning and significance of the very phrase.

De Genova, 2

Third, it should be noted that the quote in your transcript was taken from the *Columbia Spectator*, a campus-based student newspaper, to which I have already responded in writing. My response appeared as a letter to the editor a few days after the article in question was published, but there appears to be no acknowledgment in your transcript that I ever made such a reply. In my letter to the editor, I clarified that the manner in which I was quoted in the *Columbia Spectator's* article by Xan Nowakowski (April 18, 2002) failed to situate my remarks in their meaningful context, and that this failure constituted journalistic and editorial irresponsibility, at best.

Fourth, please allow me to establish for the record, here and now, as I likewise specified in my original letter to the *Columbia Spectator*, that what I said at the rally was the following: "The heritage of the victims of the Holocaust belongs to the Palestinian people. The state of Israel has no legitimate claim to the heritage of the Holocaust. The heritage of the oppressed belongs to the oppressed – not the oppressor." By choosing to exclude the last sentence, the original *Columbia Spectator* article, and its repetition in the transcript of your hearing, have seriously obscured my political purpose, with consequences that have been predictably inflammatory.

In my letter to the *Columbia Spectator*, I further explained that I do not doubt that my position would be inflammatory for Zionists, in any case. But it is important that my point be clear: the state of Israel's ruthless oppression of the Palestinian people has disqualified any of its pretenses to be the legitimate inheritor of the immense suffering of the Jewish people under the heel of Nazi oppression.

In my letter to the *Columbia Spectator*, finally, I also affirmed that **it is the most insidious lie of Zionism that all Jewish people and all Jewish concerns must be seen as inseparable from the state of Israel.** I never suggested that the heritage of the Holocaust, insofar as it belongs to the Palestinians, does not continue to belong to Jewish people. Indeed, in my speech at the protest, I also saluted the Jewish people who truly honor the legacy of the victims of the Holocaust – the anti-Zionist Jews who have shown the moral integrity and political courage to denounce Israel's oppression of the Palestinian people and to work actively for the material defeat of the occupation. The heritage of the Holocaust is rightfully theirs, just as it belongs to the Palestinians and all oppressed people, just as I claim it as my own heritage.

In conclusion, please allow me to insist that this critical identification and self-affiliation on my part with the Jewish people and their legacy of oppression, especially under German fascism and during the Holocaust, makes me a sincere and devout enemy of anti-Semitism, just as I am a committed enemy of all forms of racial oppression. I repudiate any and all allegations to the contrary, and I find specifically repulsive the cynical and obscene Zionist abuse of the term "anti-Semitism" to silence all of us who denounce the state of Israel and its colonialist project of racial oppression against the Palestinians, whose sovereignty the Israeli state has not ceased to actively and perniciously undermine and obliterate since its inception.

De Genova, 3

I trust that you will amend this testimony to your records, and thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicholas De Genova', written over a horizontal line.

Nicholas De Genova

Mr. Kenneth L. Marcus
 Staff Director and Acting General Counsel
 United States Commission on Civil Rights
 624 Ninth Street, NW
 Washington, DC 20425

Attention: Mr. Bernard A. Quarterman, Jr.

6
 JUN 31 AM 1:09
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20 January 2006

Dear Mr. Marcus:

I have received your letter of 21 December 2005 asking me to respond to statements made at 18 November 2005 United States Commission on Civil Rights Hearing regarding Anti-Semitism on College Campus.

In the statements attached to this letter a certain MS. STERN, whom I do not know, attributes certain sentences to me, which I presume is the reason for your correspondence with me.

I hereby declare that the sentences and the sentiment of anti-Semitism that MS. STERN has attributed to me are categorically false, slanderous, and defamatory.

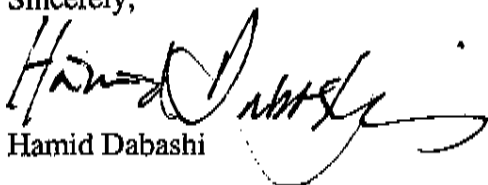
The sentiments that MS. STERN has attributed to me is falsely based on an essay I have published in an Egyptian periodical (al-Ahram) in September 2004, which is a matter of public record. My original essay can be retrieved at <http://weekly.ahram.org.eg/2004/709/cu12.htm>. Even a casual comparison of my original essay and these slanderous remarks shows that my words are being maliciously distorted. Not even once does the phrase "Israeli Jews" appear in the entirety of my essay. Inventing words and putting them in my prose is defamatory and illegal.

Moreover, the whole point of this fallacious attribution is misplaced. What I have published in al-Ahram I have written in my capacity as a free citizen of a free republic, deeply concerned about the future of democracy in my adapted country, namely the United States. The subject of my teaching at Columbia University, comparative literature and politics, has absolutely nothing to do with Arab-Israeli conflict. In more than a quarter of a century of a teaching career I have never ever taught a course on this subject. My political views, as a result, I express as a responsible citizen of a free republic, and never have they had any place in my classroom.

To conclude: I have never uttered, nor have I ever harbored, anti-Semitic sentences or sentiments. A principle point of that al-Ahram essay was the diagnosis of a frightened

people (Jews, Christians, and Muslims), and in complete and unconditional solidarity with the inalienable freedom, human rights, public safety, and categorical dignity of all the citizens of that region.

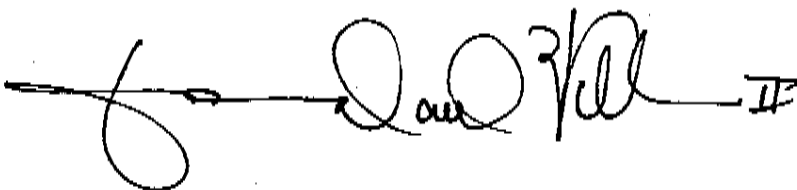
Sincerely,


Hamid Dabashi

Venue: State of New York
County of New York

Jurat: Sworn (or Affirmed) to before
me this 20th day of January 2006

James David Williams II
Notary Public - State of New York
New York County
Registration No. 01W16129609
My Comm. Expires 6/27/2009



COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK
OFFICE OF THE GENERAL COUNSEL

February 6, 2006

Kenneth L. Marcus
Staff Director
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Marcus:

Thank you for your letter of December 21, 2005. We appreciate the opportunity to respond to some of the statements made at the U.S. Commission on Civil Rights hearing regarding Anti-Semitism on College Campuses on November 18, 2005. This letter supplements the letter sent by Alan Brinkley, University Provost, prior to the hearing.

Again let me say that Columbia University shares the Commission's commitment to protecting the civil rights of individuals and eliminating discrimination on the basis of race, color, religion, age, gender, disability, national origin, cultural beliefs, political views, or military status. Columbia is deeply committed to diversity in its workforce, its faculty and student body, and its academic programs. Our goal is to continuously improve our academic environment by fostering a culturally and intellectually vibrant community of scholars that is free from prejudice and respects the rights of all. Columbia is committed to this mission and to the realization of our core values of inclusion and excellence.

The transcript you provided includes third-party testimony recounting some specific student complaints, including public allegations of past faculty misconduct in the classroom. In his letter of November 15, 2005, Provost Brinkley spoke about the work of the ad hoc committee of Columbia faculty that was convened to address these student complaints. Over a nine-week period, the committee met with 62 individuals, including students, alumni, faculty, and administrators, and considered more than 60 written submissions. In its report, which was released on March 28, 2005, the committee addressed particular incidences of faculty misconduct and recommended fortifying student grievance procedures to improve the University's ability to mediate future complaints of this nature.

Some of the comments you forwarded pertain to the new grievance procedures, which we instituted last year. All schools now have grievance procedures that are more robust, better articulated, and more easily accessible.

by students. (The procedures are school- and faculty-specific since our university is formed along the lines of distinct and self-governing faculties.) The procedures provide various informal and formal avenues for students with complaints about faculty conduct, including mechanisms for review at the level of the appropriate deans or vice presidents and a final appeal to the Provost. We are committed to working with our students, faculty, and administrators on an ongoing basis to continuously improve our grievance procedures.

Also, as a point of clarification, the procedures do permit students to maintain their confidentiality if they wish to do so. While such complaints cannot be the subject of a specific disciplinary case against a faculty member for obvious reasons, the University has mechanisms so that anonymous complaints can be part of an overall review or even cause for a specific intervention.

With respect to the more general criticisms, the University has a strong historical and continuing commitment to cultivating a learning environment where free inquiry and civil discourse reign. In that spirit and tradition, President Bollinger, Provost Brinkley, and other senior administrators began meeting with student and faculty groups last year to engage the community in an open dialogue on a range of issues that formed the heart of the student concerns that surfaced last year.

This outreach marked the beginning of an intense institutional effort to promote civil discourse and increase the administration's engagement with students on student affairs. The President's Council on Student Affairs and the President's Student Advisory Committee on Diversity were established to give students new venues to interact directly with President Bollinger, Provost Brinkley, and other senior administrators on important matters of student concern. The newly created Kraft Family Fund for Intercultural and Interfaith Awareness sponsors free and open discussion among students and faculty on issues of culture and faith identified by the community. President Bollinger also has resumed the practice of hosting fireside chats, in which small groups of students meet with the President at his home to raise and discuss issues.

Finally, one commentator cited the absence of President Bollinger's signature on the "Statement of College and University Presidents on Intimidation-Free Campuses," a petition published as an advertisement in *The New York Times* in October 2002. President Bollinger, like many other university presidents, chose not to sign the petition, believing that it was too narrow in its scope. However, after President Bollinger became aware of the specific student complaints of intimidation by Columbia faculty, he made numerous public statements indicating unequivocally that acts of intimidation would not be tolerated at Columbia. I have provided several relevant excerpts below.

We will not tolerate intimidation of students in the classroom for appropriately expressing reasonable and relevant points of view.

Benjamin N. Cardozo Lecture, Association of the Bar of the City of New York, March 23, 2005

Acts of intimidation or discrimination against students or any other members of our community on the basis of ethnicity, gender, political beliefs, race, religion, or for any other reason are antithetical to University policies and principles and are an affront to our community. I am confident that we all agree that such behavior is inconsistent with our values and must not be tolerated under any circumstances.

Convening of Ad Hoc Faculty Committee, December 8, 2004

This is a serious matter. I'm talking about the intellectual climate on a major American campus. We've got to be able to talk about the most controversial subjects of our time and do it in a way that doesn't suppress passion but invites the full range of opinions. And no students should feel intimidated from participating.

"Columbia to Check Reports Of Anti-Jewish Harassment," The New York Times, Oct. 29, 2004

Columbia University does not condone the intimidation of students or discrimination of any kind... I am committed to a University environment where our students can inquire freely, and our faculty can impart their knowledge and wisdom in ways that promote dialogue, civil discourse, and mutual understanding.

Statement on the David Project Film, Oct. 27, 2004

...the principle of academic freedom is not unlimited. It does not, for example, extend to protecting behavior in the classroom that threatens or intimidates students for expressing their viewpoints or that uses the classroom as a means of political indoctrination.

University Policy on Academic Integrity and Freedom of Expression, October 22, 2004

Thank you again for giving us this opportunity to clarify some of the statements made during the Commission's hearing of November 18, 2005. Please do not hesitate to contact me if you have any additional questions or require further information.

Sincerely,

Elizabeth J. Keefer

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 6th day of February in the year 2006, before me, the undersigned Notary Public, personally appeared Elizabeth Keefer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she, being authorized to do so, executed the same in her capacity as the duly appointed General Counsel of THE TRUSTEES OF COLUMBIA UNIVERSITY OF THE CITY OF NEW YORK, and that by her signatures on the within instrument, such individual, and the entity on behalf of which such individual acted, executed the within instrument. Witness my hand and official stamp or seal.

(Signature of Notary Public)
My Commission Expires: 10-21-2006
(affix notary stamp or seal)

CARMEN NIEVES
Notary Public, State Of New York
No. 01N16081998
Qualified in Westchester County
Commission Expires October 21, 2006



San Francisco
State University

Office of the President

1600 Holloway Avenue
San Francisco, CA 94132

Tel: 415/338-1380
Fax: 415/338-6210

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E-018

Response by San Francisco State University to
Statements Made at November 18, 2005 U.S. Commission on Civil Rights Hearing
Re: Anti-Semitism on College Campuses

Robert A. Corrigan
President, San Francisco State University

We appreciate this opportunity to respond to statements made concerning San Francisco State University at the November 18, 2005 hearing. The May 7, 2002 event did, indeed, lead to a confrontation -- noisy but non-violent -- between Hillel students and pro-Palestinian students. That incident became international news almost immediately, with the facts of the event spread electronically, and often inaccurately. Nonetheless, the behavior of some pro-Palestinian students represented a serious breach of campus values, as well as policies. What transpired in the following days, weeks, and months was a comprehensive, thoughtful, and ultimately very positive response by the University to an event that had shaken us deeply.

In the following paragraphs, I will touch on only the highlights of that response. It is detailed in full on the University Web site at this URL: <http://www.sfsu.edu/~news/sfsuresp.htm> I have appended a three-page outline of the response elements to this text. The approach we would take is evident in my initial message, sent by e-mail to all faculty, staff, and students, as well as the thousands of individuals from across the nation and, indeed, around the world, who e-mailed me. I wrote, in part:

"...No love of homeland, no fear or grief for loved ones in the actual area of Middle East conflict, excuses the behavior that has been reported. This is not a war zone. It is a campus, a place where all must feel physically protected even as we engage in the disputation that is part of a teaching and learning environment.

"But when disputation degenerates into bigotry and hate, we must -- and do -- act. We did so in the case of the "blood libel" flier (as I reported several weeks ago), and we are doing so now. The anguish and fear that the May 7th events have caused for members of our community can only intensify our active commitment to making this campus a hate-free zone.

"The vast majority of this campus community would condemn the hateful speech and threatening behavior we saw last Tuesday. It is a very few individuals who are fomenting this discord. Yet, as we see, their impact can be profound -- if we allow it to be. Despite the claims of some, this is not an anti-Semitic campus. But as history shows us, silence and passivity can at times of crisis be very little different from complicity. . . .

A-11

San Francisco State University – January 19, 2006

national conferences. This May, at the invitation of national Hillel, I will participate in their Washington, D.C. Summit on the University and the Jewish Community as a panelist in a plenary session entitled “Individual rights and Communal Responsibilities” – an examination of the complexities of free speech issues on campus.

In the foreword to *The Uncivil University*, a volume that explores anti-Semitism on U.S. college campuses, San Francisco State University Professor Mark Dollinger, holder of an endowed chair in Jewish Studies, writes of his contrasting experiences at two universities, one of them San Francisco State. He says: “Yet San Francisco State University, despite its negative public image on Jewish issues, provides a safer environment for dissent than my former campus ever could. . . . The University links academic freedom to academic responsibility and holds individuals accountable for their words. “

I hope that I have conveyed the seriousness, depth, and effectiveness of San Francisco State University’s efforts to make this campus a safe and sustaining environment for all, with zero tolerance for anti-Semitism, anti-Muslim prejudice, hate speech, or intimidation.

Attachments

I declare under penalty of perjury under the laws of the State of California that the foregoing statement is true and correct, to the best of my knowledge and belief.

Signed at San Francisco, California, the 19th day of January, 2006



Robert A. Corrigan
President, San Francisco State University

A-12

SFSU's Response to Pro-Israel -- Pro-Palestine Tensions on Campus

[News & Events](#)

[More Campus Headlines](#)

[News Archive](#)

[Contact Public Affairs](#)

SUMMARY OF EVENTS

5/16/02 [The University has prepared a Summary of Events, describing recent activities on campus and the University's response to them.](#)

COMPREHENSIVE PLAN

6/21/02 [S.F. State issues comprehensive plan to address inter-group campus tensions](#)

PRESIDENTIAL TASK FORCE

12/16/02 [Task Force's Final Report](#)

10/14/02 [Task Force on Inter-group Relations holds third round of listening sessions](#)

8/09/02 [Task Force Issues Preliminary Recommendations](#)

8/01/02 [Task Force's Preliminary Status Report](#)

7/08/02 [Task Force on Inter-group Relations holds second round of listening sessions](#)

6/20/02 [Community invited to address Task Force on Inter-group Relations](#)

6/14/02 [President Robert A. Corrigan commissions Task Force on Inter-group Relations on campus](#)

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- 09/25/01 Response to tragedy a 'powerful civics lesson for SFSU students'
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OTHER RESPONSES AND ACTIVITIES

- 7/16/02 DA announces decision not to pursue May 7 cases
- 7/16/02 DA Press Release: Offensive Speech Not Deemed Hate Crime
- 6/27/02 S.F. State to strengthen its faculty in Islamic Studies this fall
- 6/27/02 SFSU names Jewish history, ethics scholar Marc Dollinger to endowed Goldman Chair in Jewish Studies and Social Responsibility
- 5/22/02 University forwards cases to DA following May 7 rally
- 5/17/02 Psychology Professor Jamie Newton will moderate a discussion titled "Compassionate Responses to Terrorism in America and Afghanistan: Victims Work for Peaceful Tomorrow s" at 3 p.m. Friday, May 17, in the International Relations Briefing Theater in HSS 362.
- 5/15/02 San Francisco Chronicle publishes op-ed by Professor Mark Phillips: 'Fear and anger -- Raw emotionalism of Mideast comes to San Francisco State rally'
- 5/14/02 Academic Senate unanimously passes a Resolution in Support of Civil Discourse and the Principles of the Academy
- 5/14/02 Academic Senate chair: 'Resolve and action are required'
- 5/07/02 Human Relations dean: 'Individually and collectively we can do much'

4/12/02 Welcoming remarks delivered by President Robert A. Corrigan to the Model Arab League

RESOURCES OF INTEREST

Principles of Conduct for a Multi-Cultural University

SELECTED MEDIA COVERAGE

4/25/03 Jewish Bulletin of Northern California: 'New Jewish studies head foresees SFSU tensions easing'

5/24/02 Jewish Bulletin of Northern California: 'SFSU president deserves praise, not unbridled criticism'

5/19/02 Washington Post: 'On Campus, a Reflection of Middle East Anger' Rally at San Francisco State Leads to Slurs and an Investigation as Tensions Rise at U.S. Universities

5/17/02 Jewish Bulletin of Northern California: 'Crisis on Campus: SFSU president acts after e-mail causes global furor over rally'

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San Francisco
State University

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S.F. State issues comprehensive plan to address inter-group campus tensions

June 21, 2002

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Plan includes Fall 2002 "The Semester on Constructive Civil Discourse," a fall retreat for SFSU student leaders on the theme of improving the campus climate, and sanctions against GUPS and a letter of warning to Hillel

SAN FRANCISCO, CA -- June 21, 2001 -- San Francisco State University President Robert A. Corrigan today announced a university-wide, comprehensive plan that includes both short- and long-term responses to the issues of campus climate, free speech, hate speech, and civility that came to the fore at a May 7 pro-Israel campus rally.

The University's actions include creation of the President's Task Force on Inter-Group Relations: Initial Focus on the Effect of Middle East Issues on Campus Life, a campus-community group that will make its first recommendations by August 1; development of academic programs and special events for a semester devoted to civil discourse; a major retreat for student leaders early in the semester, and the resolution of student discipline issues involving the two student groups involved in the rally.

"We are using all our resources as a university to make the recent tensions, which echo so painfully the whole Middle East situation, an occasion for learning and growth," said President Corrigan. "We believe firmly that the skills and habits of open, yet civil, dissent can be modeled and taught. I can think of no more critical work for us to do."

The University's responses include:

- Establishment of the President's Task Force on Inter-Group Relations: Initial Focus on the Effect of Middle East Issues on Campus Life. This 38-member campus-community group has begun its work and has invited all members of the campus and public to share their concerns or

ideas with the Task Force either in writing or directly at one of the private and confidential "listening group" sessions. The Task Force will make an initial report and recommendations to President Corrigan by August 1, and will continue its work into the Fall 2002 semester.

- Inclusion of the Task Force recommendations into the work of the University-wide strategic planning group. This group will be asked to fold the recommendations of the Task Force into its own efforts to shape a longer-range set of priorities, goals, and activities for the University.
- Academic program development. The Fall 2002 semester has been designated "The Semester on Constructive Civil Discourse," with plans for specific classes focusing on this theme; a film/video series; forums; a major symposium featuring nationally-known experts, and development of a set of campus principles for civil discourse.
- Inclusion of presentations on civility and dissent in orientation sessions for new students and new faculty.
- Workshops presented jointly by the Center for the Enhancement of Teaching and Counseling & Psychological Services to help faculty facilitate classroom discussions prompted by turbulent world issues.
- A meeting between President Corrigan and leaders of the Arab-American and Muslim-American community, paralleling his meeting with members of the Jewish community, to take place early in July.
- A three-day retreat for SFSU student leaders on the theme of improving the campus climate, to be led by the Vice President for Student Affairs/Dean of Students, for leadership including Associated Students, the Student Union Governing Board, Fraternity and Sorority Council, Hillel, Muslim Student Association, General Union of Palestine Students (GUPS), and others.
- A freeze on amplified sound on the plaza used for rallies and on creation of new student clubs until after the student leader retreat.
- Sanctions against the General Union of Palestine Students (GUPS) for actions at the May 7 rally that violated procedures and guidelines for rallies/demonstrations. GUPS has been put on probation for one year, losing its funding and its Web site for the year and facing stronger

sanctions in case of future violations of rally rules or the student code of conduct.

- A letter of warning to Hillel for inability to control its participants in one area of the rally.

- ### -

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San Francisco
State University

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Last modified June 21, 2002, by the [Office of Public Affairs](#)

President's Message: 'Join me in speaking out for this University's true values'

May 13, 2002

Dear Campus Colleagues:

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In my 14 years as president of this university, I have never been as deeply distressed and angered by something that happened on this campus as I am by the events of last week. On Tuesday, a pro-Israel peace rally, thoughtfully organized and carefully carried out by SFSU Hillel members, drawing some 400 participants from both campus and community, evoked strong opinions and strong speech -- some from the free speech platform, much from the nearby pro-Palestinian counter-demonstration. But strong, even provocative, speech is not the problem, nor are strongly held opinions on highly-charged topics. Rather, it was the lack of civility and decency on the part of a very few demonstrators at points during the rally, and much more markedly after it, when rhetoric and behavior escalated beyond what this campus will tolerate.

For the most part, the most objectionable behavior occurred after the rally's organizers brought it to a formal close and a group of pro-Palestinian demonstrators who, in keeping with our student event policy, had been held back by barricades and campus police, moved onto the event site, where a few dozen organizers remained. There, some of the demonstrators behaved in a manner that completely violated the values of this institution and of most of you who are reading this message. Thankfully, I am not speaking about physical violence. The monitoring by University staff throughout the event and the significant police presence we had arranged to have on hand ensured the safety of all involved. Unfortunately, we were not equally able to ensure civil discourse and maintain the sense of security to which every member of this campus is entitled. A small but terribly destructive number of pro-Palestinian demonstrators, many of whom were not SFSU students, abandoned themselves to intimidating behavior and statements too hate-filled to repeat. This group became so threatening in gesture and hostile in language that we interposed a police line between the

groups and eventually escorted the Hillel students, and the faculty with them, from the plaza. No one was physically assaulted, but that encounter puts at risk all that we value and represent as a university community.

The demonstrators' behavior is not passing unchallenged. The University's code of student discipline and event policy allow for individual and group sanctions ranging from warning to suspension to expulsion for certain violations, and some of what took place on Tuesday may well fall within that area. Our videotaped record of the event is being reviewed now by SFSU Public Safety to note violations and identify violators so that the University's disciplinary procedures can begin. In one instance, that of a protestor who seized and stamped on an Israeli flag, the case has already gone forward. I fully expect to see other cases presented. If we identify violations of public law, we will refer cases to the District Attorney, with our strong recommendation for full prosecution. We have requested that the District Attorney assign a member of the hate crime unit to work with us, and our Department of Public Safety is contacting individuals who have reported behavior at the rally which would warrant legal action on our part.

I hope you will agree that no love of homeland, no fear or grief for loved ones in the actual area of Middle East conflict, excuses the behavior that has been reported. This is not a war zone. It is a campus, a place where all must feel physically protected even as we engage in the disputation that is part of a teaching and learning environment. But when disputation degenerates into bigotry and hate, we must -- and do -- act. We did so in the case of the "blood libel" flier (as I reported several weeks ago), and we are doing so now. The anguish and fear that the May 7th events have caused for members of our community can only intensify our active commitment to making this campus a hate-free zone.

We have reviewed, and will continue to review, the policies and procedures that guided our responses during the May 7 event. We may well adjust them. Certainly, we will take steps to ensure that encounters like those I have described will not recur. Nothing justifies such acts of overt hostility, or even the implied threat of physical assault. Such behavior is not an expression of free speech.

The vast majority of this campus community would

condemn the hateful speech and threatening behavior we saw last Tuesday. It is a very few individuals who are fomenting this discord. Yet, as we see, their impact can be profound -- if we allow it to be. Despite the claims of some, this is not an anti-Semitic campus. But as history shows us, silence and passivity can at times of crisis be very little different from complicity. All of us -- and I would say especially members of the faculty, who have the greatest opportunity to educate and influence our students -- have a responsibility to help maintain this as a safe and sustaining environment for the expression and exploration of opposing views.

Many of our best faculty are doing exactly that, consciously and powerfully, every day. We need now to find ways to bring good colleagues together to shape a collective effort. The CUSP II strategic planning process offers us one opportunity; I am looking for others and welcome your thoughts. We need to make what has happened on our campus an occasion for learning, for reflection, for growth.

As you know, since the terrorist attacks on September 11th, I have sent frequent messages to the entire University community calling for peace and tolerance and many of you have responded marvelously, both in words and action; I take great pride in the hundreds of very positive e-mail and letters I have received. But now, as the actions of a small band of bigots threaten to tarnish the reputation of the University as a whole and to discredit all our students, I ask you to join me in speaking out for this University's true values. Show in actions as well as words that you believe not only that "Love is Stronger than Hate" but that hateful actions, threats of violence, outrageous slurs and bigoted statements are rejected and condemned by our entire campus community.

Sincerely yours,



Robert A. Corrigan
President

President's Message: 'Hate speech is not free speech'

April 12, 2002

Dear Campus Colleagues:

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A week ago, I wrote the campus to acknowledge the particular challenges of dealing with emotions aroused by the tragic and terrifying Middle East situation and to express the hope that we would -- as we did so well after Sept. 11 -- express our differences respectfully, seeing individuals, not stereotypes or, worse, enemies.

Earlier this week, major campus rallies dealing with the Israeli-Palestinian conflict drew audiences as large as 1000 to Malcolm X Plaza. We had on and off-campus speakers, strong and often hostile words, and a march. In marked contrast to events on other campuses, these were non-violent -- a tribute to many people of differing views who united to make sure this was so.

There was, however, one absolutely unacceptable action. Some of you have heard of it, and I am writing to let you know what happened and how we have responded. A flier put out by several student groups promoting one of the rallies contained an ugly, anti-Semitic section. I do not want to give its words or images further visibility by describing them in detail; suffice it to say that they referred to the ritual slaughter of babies. I have written individual letters to each of the groups and University Dean of Human Relations Ken Monteiro is meeting with them as well. We are repeating a familiar message: Hate speech is not free speech. Anti-Semitism is as ugly and unallowable as racism or scapegoating of Muslims, Arabs, or any other group. None are protected unless all are protected. We remain wholly committed to maintaining this campus as a place where all feel safe and supported.

The following paragraphs are drawn from the letters I sent to the groups:

"I write in disappointment and dismay after seeing the flier promoting the April 8 campus rally. . . The flier contains a particularly repellent example of anti-Semitism. I am referring, of course, to the 'Made in Israel' inset. Its obvious unreality makes it the more

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resident's Message: Hate speech is not free speech

inflammatory. This is no political statement. It is hate speech in words and image. In particular, the phrase 'Jewish rites' echoes a type of ugly myth that has been used through the centuries specifically to generate hatred. I understand that when the deep offensiveness of the phrase was pointed out, some members of a sponsoring club did attempt to eradicate the words from already-posted fliers. Nonetheless, hurt and harm had already been done.

"The flier was much more than an offense to the Jewish community; it was an offense to the entire University community and to all that we stand for -- most especially our ability to see the humanity in those with whom we disagree. With communications such as this flier, your group defiles itself, dampens its voice, and distracts attention from the very cause you want to espouse.

"... Here, on this multicultural and international campus, you have an unparalleled opportunity -- and, I would say, a particularly strong responsibility -- to show that passion, and passionate differences, can coexist with decency and recognition of our common humanity. In speaking as strongly as I have in this letter, I am doing no more than you asked -- working to eliminate discrimination and combat racism. And this is just as much a protection for Muslims, Arabs, and Palestinians as it is for Jews and Israelis.

"I recognize that these are times of great anguish, as well as anger, and I know that one moment, one flier, does not define this group or its individual members. I have confidence that we can restore the kind of communication that so positively marked the campus [after September 11]."

Sincerely yours,



Robert A. Corrigan
President

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U.S. Commission on Civil Rights
Page 2

Beyond the classroom, Jewish students and supporters of Israel also encounter challenges on the quad that are by their very nature threatening. In some instances, extremist speakers have been brought to campus at the behest of students, academic departments, and/or the university to spew venomous attacks on Jews, Israel, and other supporters of Israel. History teaches that violent words have the dangerous potential of creating a climate for violence.

On other campuses, students and faculty have embraced calls for university divestment from corporations doing business with Israel. This so-called divestment movement is a thinly veiled and politically motivated attempt to delegitimize Israel and marginalize Jewish students and other supporters of Israel. We are pleased to report that, to date, divestment efforts have been resoundingly defeated and dismissed out of hand by university presidents nationwide.

As you know, anti-Semitism, like all forms of bigotry and racism, victimizes not just an individual but an entire community. Whether it rears its ugly head in a neighborhood, a school or on campus, anti-Semitism causes pain and brings a level of insecurity to the Jewish community similar to the impact of any other form of bigotry on its intended victim. Yet, anti-Semitism has a unique feature in that it can also be motivated by a disdain for Israel, the Jewish State, and a belief that it has no right to exist.

Established in 1948, Israel is the realization of the Jewish people's aspiration for a homeland. It is the source of strength and security for Jewish people everywhere that ensures that never again will Jews face persecution in any country in which they reside. It is the source of pride for a people in constant pursuit of dreaming the impossible and achieving the impossible dream.

People throughout the United States, including those represented within this Coalition, may at times call into question certain policies of any democratically elected government of Israel. This right is enshrined in the U.S. Bill of Rights and is a shared democratic value between the U.S. and Israel. However, when individuals or organizations attempt to delegitimize the existence of the Jewish state, it is tantamount to anti-Semitism and is nothing more than an effort to deny the Jewish people the right to self-determination.

All of these events have forced university administrations to grapple with two primary issues. First, how do they balance both the right of the professor to teach and the right of the student to learn with their own responsibility to create and maintain a tolerant environment that encourages the unbridled pursuit of knowledge? Second, can universities effectively overhaul antiquated grievance procedures that do not provide students with adequate redress of problems in the classroom or on the campus?

These issues are deserving of vigorous examination and should be an integral part of any discussion on anti-Semitism at American universities. We are enclosing additional background material in the form of the *2005 Israel on Campus Yearbook*, which provides

U.S. Commission on Civil Rights
Page 3

detailed information on each of the aforementioned issues. We are also pleased to offer ourselves as a future resource in addressing campus issues and would look forward to working with this distinguished Commission in confronting some of the most important issues facing our nation's youth, the Jewish community and supporters of Israel across the country.

Please feel free to contact ICC Associate Director Aaron Goldberg at (202) 449-6581 at any point in the future.

Sincerely,

ICC Steering Committee

Elliot Mathias
Aish Hatorah

Jonathan S. Kessler
American Israel Public Affairs Committee

Gary Levin
Anti-Defamation League

Lisa B. Eisen
Charles and Lynn Schusterman Family Foundation

Carolyn Greene
Conference of Presidents of Major American Jewish Organizations

Wayne L. Firestone
Hillel: The Foundation for Jewish Campus Life

Tara Silver
Jewish Council for Public Affairs/United Jewish Communities

Naomi Karp
University of Michigan, Ann Arbor, 2007

Ben Sak
University of Central Florida, 2006

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Minnesota
STATE COLLEGES
UNIVERSITIES

January 20, 2006

Attn: Mr. Bernard A. Quarterman, Jr.
Kenneth L. Markus
Staff Director and Acting General Counsel
United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: Opportunity for Comment and Response to Statements Made at November 18, 2005 United States Commission on Civil Rights Hearing regarding Anti-Semitism on College Campuses

Dear Mr. Quarterman and Mr. Markus:

Thank you for the opportunity to respond to statements made at a hearing held by the United States Commission on Civil Rights (Commission) on November 18, 2005, regarding anti-Semitism on college campuses in America. By cover letter dated December 21, 2005, Mr. Marcus invited St. Cloud State University to respond to statements made in reference to the university. St. Cloud State University is part of the Minnesota State Colleges and Universities System, a public higher education system in Minnesota made up of 32 colleges and universities. This response is on behalf of the university.

I first note the System's support for addressing anti-Semitic behavior wherever it occurs, and for taking steps to prevent such behavior in the first place. Minnesota State Colleges and Universities, and all of its member colleges and universities, take extremely seriously the prevention of discrimination. The System's Board of Trustees has had in place since the creation of the System in 1995 an anti-discrimination policy and complaint procedures, available at: <http://www.mnscu.edu/board/policy> (see Board Policy 1B.1 and System Procedure 1B.1.1). Diversity training is provided to students, faculty, and staff throughout these colleges and universities, and investigation and decision-making training are required for staff responsible for enforcing our anti-discrimination policies. Fostering diversity in every aspect of our college and university communities has been and continues to be a top goal of the Board of Trustees and our System.

Bernard Quarterman, Jr.

January 20, 2006

Page 2

At the Commission's November hearing, one witness described her understanding of allegations of anti-Semitism occurring at St. Cloud State University.¹ Claims of discrimination based on anti-Semitism and retaliation were brought in 2001 against St. Cloud State University, the System, the faculty union, and several individuals. In addition to the claims by the named plaintiffs, the lawsuit was brought as a class action. Individuals with no direct involvement in the litigation also voiced concerns about perceptions of anti-Semitism on the campus.

Ultimately, none of the claims in the lawsuit were either adjudicated or proven. The parties entered into a settlement early in the litigation, before the development of discovery or a trial. Since the claims were never tried before an adjudicative body, where the veracity of those claims could be tested and decided, we think it is inappropriate for those allegations to now be brought before the Commission through even the most sincere testimony, when that testimony is at best anecdotal and unverified.

The university entered into a settlement agreement because it concluded that a trial in this case would be divisive and alienating for the university community. St. Cloud State University had (and has) no desire to be in opposition to either its Jewish faculty or students. Instead, the university sought to ensure that it offered a welcoming environment for its increasingly diverse faculty and student body, including current and future Jewish faculty and students. A careful review of the settlement agreement reached in the case demonstrates that desire. While the named plaintiffs received some monetary payments under the settlement, the bulk of the settlement was directed to establishment of a Jewish Studies and Resource Center at the university, staffed with a faculty position designated half-time as the resource center coordinator, and half-time teaching Jewish studies. The University's goals through that center are to provide education opportunities to the university community and the local community alike, and to provide opportunities for Jewish students and faculty to connect.

St. Cloud State University and the entire Minnesota State Colleges and Universities System strive to provide the best possible higher education opportunities to all students. We believe that includes educating all the members of our college and university communities on diversity issues, as well as helping to educate the broader community on these issues. It is our deepest hope that through these educational efforts and the inclusion of all people, we will one day be able to eliminate the

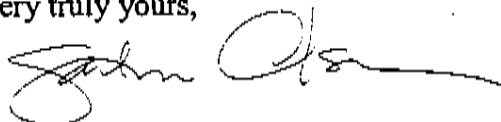
¹ Certain information supplied by the witness was incorrect or uncorroborated. Arie Zmora served two years as an instructor in a non-tenure track (fixed term) position at St. Cloud State University. He raised allegations of discrimination after an unsuccessful bid for a tenure-track position.

Bernard Quarterman, Jr.
January 20, 2006
Page 3

expression of hatred or discrimination against anyone because of their religion, their color, their ethnic origin, their gender, or other characteristics that have necessitated the protection of the law. Until that day, however, we remain committed to vigilantly addressing any act of discrimination that occurs. The settlement agreement in the *Zmora* lawsuit was directed precisely to that end, and helped set the tone for conciliation on St. Cloud State's campus. In a letter to President Roy Saigo dated August 22, 2005, the Executive Director of the Jewish Community Relations Council Minnesota & The Dakotas, Stephen Silberfarb, lauded the university's actions, noting "real progress has been made" and President Saigo's "commitment and effort to improve campus relations and create lasting, positive change at SCSU and in the local community."

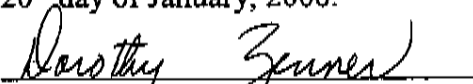
Again, thank you for the opportunity to comment on the remarks made at the hearing. Please feel free to contact me if you would like additional information.

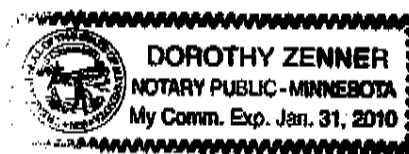
Very truly yours,



Gail M. Olson
General Counsel
651/296-6216

Subscribed and sworn before me this
20th day of January, 2006.


Dorothy Zenner, Notary Public



Todd County, Minnesota
My commission expires Jan 31, 2010

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February 6, 2006

Mr. Kenneth L. Marcus
Staff Director and Acting General Counsel
United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, DC 20425

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Attn: Bernard A. Quarterman, Jr.

Re: Opportunity for Comment and Response to Statements Made at the November 18, 2005
United States Commission on Civil Rights Hearing regarding Anti-Semitism on College
Campuses

Dear Mr. Marcus:

Please accept UC Berkeley's campus response to statements made at the November 18, 2005 United States Commission on Civil Rights Hearing regarding Anti-Semitism on College Campuses.

The University of California, Berkeley does not condone anti-Semitism, or any other form of intolerance. The university condemns acts of intolerance and those individuals who perpetrate them. As a leading institution of higher education, society looks to us for leadership, analysis and understanding. The University of California, Berkeley is a composite of numerous nationalities, cultures, religions and creeds. As an institution, we are, in microcosm, a mirror of the world itself. However, precisely because we are a center of higher learning, we must not become a mirror of the kind of intolerance and suspicion that would most often occur during times of unsettling events both here and abroad.

This letter will address the specific references made to the Berkeley campus and acts that occurred near the campus during spring 2002.

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From the November 18, 2005 United States Commission on Civil Rights Hearing regarding Anti-Semitism on College Campuses testimony:

"Passover of that year a brick cinder block was thrown through the glass doors of the University of California at Berkeley's Hillel Building."

Campus Response

A piece of concrete was thrown through the door window of the Berkeley Hillel organization near the campus. This was accompanied by anti-Semitic graffiti on nearby garbage cans. The City of Berkeley Police handled this case. The day of the occurrence, the Associate Chancellor and the Dean of Student Life attended a meeting called by students at Hillel to address this situation. The students were assured that the campus police would assist with the investigation, that police patrol near Hillel would be increased, and that the campus police would respond immediately should any other incident occur. Typically, off-campus policy matters are handled by the City of Berkeley Police Department. The UC Police Department provides assistance when requested.

From the November 18, 2005 United States Commission on Civil Rights Hearing regarding Anti-Semitism on College Campuses testimony:

"A week after that two Orthodox Jews were attacked and severely beaten one block from Berkeley's campus with anti Zionist relief appearing scrawled on blocks and buildings near the school."

Campus Response

According to press reports, two Orthodox Jews were attacked near the campus during the first week of April 2002. There is no indication that the victims, nor the assailants, were formally affiliated with the University. The City of Berkeley Police Department handled this case. It was determined that the motive was robbery and was not classified as a hate crime by the police.¹ Anti-Semitic graffiti appeared on the wall of a local church that has no affiliation with the campus. When the campus became aware of the graffiti, we asked our physical plant personnel to offer assistance in removing it.

From the November 18, 2005 United States Commission on Civil Rights Hearing regarding Anti-Semitism on College Campuses testimony:

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

¹ According to the City of Berkeley Police Department and the University of California, Berkeley Police Department, the categorization of certain acts as hate crimes is complicated. In this incident, there were no racial slurs. The appearance of the victims may lead one to believe that it was a hate crime. Unless a suspect is identified and evidence is presented that the perpetrator harbored ill will against Jews, then it would be difficult for the District Attorney to charge under the Hate Crimes ...

Campus Response

Although we have no information about the described occurrence specifically, on April 9, 2002, there was a large pro-Palestinian protest that led to a sit-in in Wheeler Hall. At the same time on Sproul Plaza, there was an annual Jewish commemoration of the Holocaust. In extensive meetings with both sides conducted by the Dean of Students, every effort was made to work with the groups to avoid violent confrontations. The day prior to the protest, the campus issued a formal statement that follows below. This statement by the Chancellor was issued as a press release, distributed to the campus via email, appeared in the Daily Californian (the University of California, Berkeley student newspaper) on April 5, and was read at the April 2 ASUC (Associated Students of the University of California) Senate meeting.

The continuing unfolding of violence in the Middle East and the absence of any plausible approach to peace have alarmed the world. Many members of our campus community have direct ties to that region and we feel for them, recognizing their great anxiety and concern. Our greatest contribution to the resolution of this conflict is reasoned thoughtful interaction based on compassion for one another. Deplorable acts of hate, like the recent vandalism of Hillel and the threatening letters to Chicano groups, only perpetuate a downward spiral of conflict and violence, the antithesis of a University community. Our community must stand in opposition to such acts and in favor of reasoned, civil approaches to the resolution of conflict.

Report of Acts on or near Campus

I believe the record shows that, on the campus proper, there has been very little anti-Semitic violence: one case of physical assault involving individuals with no affiliation with the Berkeley campus, and a physical altercation between two students.

There is no evidence that any student or employee has participated in anti-Semitic activity that would be classified as a hate crime. There has been documented anti-Semitic activity in the neighboring community but no suspects have been identified. Some Jewish students and Arab students at Berkeley report that they fear for their safety as a result of the events of September 11, the escalating violence in the Middle East, and protests accompanying these matters on and off the campus. This is deeply regrettable and I and my staff are doing everything possible to address their concerns and provide the safest and most supportive environment possible.

Demonstrations: Policies and Procedures

It is important to understand that the Israeli – Palestinian conflict has been a cause of protest on the Berkeley campus for many years. The heightened nature of the protest varies depending on the political situation in the Middle East at any given time.

The Dean of Student Life and her staff have regular, ongoing communication with the Director and other staff and students at Hillel. The same is the case for the Associate Chancellor. In the year these specific cited incidents took place, former Chancellor Berdahl attended a Hillel board meeting to address their concerns and he participated in a Seder. Chancellor Berdahl

made every effort to be personally available to Jewish students and to address their concerns about safety on the Berkeley campus as the Dean has with Arab students and Hispanic students who expressed concern for their safety. Since I became Chancellor in 2004, I have both attended services at Hillel and hosted iftars during Ramadan.

Additionally, the Berkeley campus has a long standing Operations Committee that manages protests on the campus. The Assistant Chancellor has chaired this committee for 18 years. The committee includes the UCPD Police Chief, the Dean of Student Life, the Executive Director of the Berkeley Academic Senate and others. Part of the committee's responsibility is to review at least annually the policies and practices dealing with student protest. A member of the City Manager's office serves on the committee.

The campus has a long-standing Events Management Committee that meets weekly during the academic year to review and advise appropriate units on campus with regard to controversial events. The Dean of Student Life and the UCPD Chief of Police are members of this committee.

If individuals or groups believe that their free speech rights are being violated, or that they are the targets of hateful speech, there are grievance procedures to address these concerns. Of course, as I mentioned above, all members of the campus community are routinely reminded about the importance of civility and tolerance.

The following policies and procedures apply to conduct and activities on campus:

- *Berkeley Campus Regulations Implementing University Policies* defines regulations governing the time, place, and manner of public expression and use of University facilities.
- *The Berkeley Campus Code of Student Conduct* details the standards for student conduct and behavior on campus.
- *The Berkeley Campus Student Grievance Procedures* provides students an opportunity to resolve complaints alleging discrimination.

Orientation Programs and Student Services

Orientation sessions for new students routinely deal with expectations regarding civility, tolerance and the student conduct code. We address these themes in speeches to various student groups and through advertisements in *The Daily Californian*. This is standard practice on the Berkeley campus.

The orientation sessions also include information on services available through the Office of Student Life, University Health Service, University Police Department, Residential and Family Living, and other campus units to assist students. These services are promoted throughout the year on the campus website, in publications, and at events.

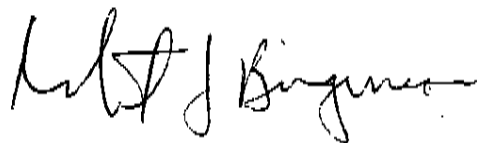
The University of California, Berkeley Police Department publishes annually *Safety Counts*, which is the campus' compliance document for the Jeanne Clery Campus Safety Act². Crime statistics, the role of the Police Department in providing public safety, and the programs and services they offer are covered in this booklet. All hate crimes and the bias for them are detailed for three years in the statistics section of this document. Page 24 specifically addresses hate crimes by defining them and indicating how a victim should deal with them. This booklet is sent to every student, staff and faculty member on the campus.

Proactive Measures

I have already made reference to many of Berkeley's programs, services, and resources dedicated to promoting tolerance, understanding, and civil discourse on campus. The UC Berkeley campus does not condone hate speech, anti-Semitism, or any other form of intolerance. The University will not tolerate harassment, in any form, against any members of its community. We have always been and continue to be committed to fostering dialogue on these critical issues. Thank you for the opportunity to provide information on this very important matter.

With warm regards.

Yours sincerely,



Robert J. Birgeneau

² Jeanne Clery, a 19-year-old Lehigh University freshman, was assaulted and murdered in her dorm room in April 1986. The Jeanne Clery Act was enacted in the belief that crime awareness can prevent campus victimization. The law requires colleges and universities receiving federal funding to prepare, publish, and distribute, by October 1 of each year, campus security policies and crime statistics. "Safety Counts" serves as the campus security report for the UC Berkeley Campus.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

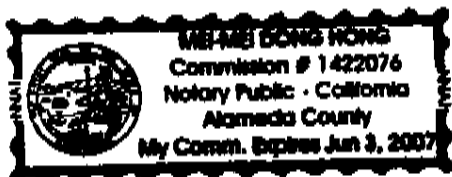
State of California

County of Alameda

On February 6, 2006 before me; Mei-Mei Dong Hong
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Robert J. Burgneaux
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Mei-Mei Dong Hong
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: letter of comment & response to 11/15/05 Civil Rights Hearing on Anti-Semite.com or any sites

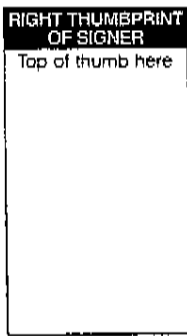
Document Date: February 6, 2006 Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert J. Burgneaux

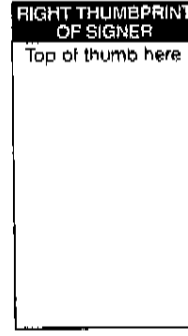
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:
himself

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

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SANTA BARBARA • SANTA CRUZ

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February 3, 2006

Mr. Kenneth L. Marcus
 Staff Director and Acting General Counsel
 United States Commission on Civil Rights
 624 Ninth Street, N. W.
 Washington, D.C. 20425

U.S.C.C.R.
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Dear Mr. Marcus:

Thank you for your December 21, 2005, letter to Chancellor Drake inviting UC Irvine to respond to testimony regarding the university presented at the November 18, 2005 hearing on anti-Semitism on college campuses in America. We appreciate the opportunity to assist in ensuring that the Commission's transcript and record are accurate and complete. First, this letter will provide background about UC Irvine and context for these issues. Then, we will provide additional facts which correct Ms. Tuchman's mischaracterization of both the events on our campus and the legal ramifications of those events.

Introduction

UC Irvine is one of the ten campuses of the University of California. Founded in 1965, it is ranked among the top fifty universities nationally and in the top ten of all public universities. UC Irvine's nearly 24,000 students are among the most accomplished and diverse in the country.

In the last three or four years, Israeli, Palestinian and general Middle East issues have led to a continuing and often contentious dialogue between some Muslim and Jewish students on campus. UC Irvine has taken numerous steps in an attempt to maintain a civil and informative dialogue. For example, early in 2004, UC Irvine began coordinating with the Orange County Human Relations Commission to develop "Shades of Hate," a series of lectures, panel discussions and workshops that address hate incidents from legal, social, educational and other perspectives. "Shades of Hate" events were held throughout the 2004-2005 academic year. In April 2005, UC Irvine hosted The Daniel Pearl Dialogue for Muslim-Jewish Understanding, a presentation featuring Professor Akbar Ahmed, Ibn Khaldun Chair of Islamic Studies and Professor of International Relations at American

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University, and Professor Judea Pearl, Director of UCLA's Cognitive Systems Laboratory and father of the slain journalist. More recently, UC Irvine has received a prestigious grant from the Ford Foundation to establish a program titled "Imagining The Future." "Imagining The Future" is a unique combination of academic courses, a university-sponsored group research competition and community dialogues and education forums that raises awareness within the campus and surrounding community of options for resolving the difficult issues that frustrate a just and lasting solution to the Israeli-Palestinian conflict. These and countless other similar programs are university-planned and university-sponsored and send an important message that the university values dialogue and respect, not hateful propaganda. Indeed, we know our students are learning to distinguish for themselves between hateful propaganda and factually verifiable statements because at least one UC Irvine Jewish student leader has recently and publicly declared that the campus community largely ignores the inflammatory Muslim speakers who visit our campus.

Nonetheless, some outside organizations have demanded that UC Irvine silence this important dialogue. The Zionist Organization of America of New York ("ZOA") has joined these ranks, demanding – via a Title VI claim filed with the Department of Education's Office for Civil Rights ("OCR") – that UC Irvine silence just one side of the dialogue: the Muslim side. Along the way, ZOA has publicly disparaged UC Irvine, accusing it of anti-Semitism in press releases that appear to be designed to ruin the reputation of one of the nation's finest universities. Not only is UC Irvine constitutionally prohibited from silencing the dialogue (or any side of it), but doing so would prevent UC Irvine from performing its primary mission of education.

ZOA's latest attack on UC Irvine occurred when its Director, Susan Tuchman, testified before the Commission on November 18, 2005. We appreciate the Commission's invitation to clarify the statements made by Ms. Tuchman. We were provided with pages 22-30 and 100 of the transcript of the hearing, page 1 of Sarah Stern's written statement and pages 1-17 of Ms. Tuchman's written statement. Ms. Stern's reference to UC Irvine was so general that it did not contain any specific information to which we can respond. However, we have responded to Ms. Tuchman's testimony so that the Commission's transcript and record can be as thorough and accurate as possible. Unfortunately, we were not provided with the entirety of the transcript and so cannot respond to any statement that appears in a part of the transcript that has not been provided to us.

Conflict on Campus

Elements of our diverse student body often mirror world opinions on politically sensitive issues. This phenomenon has heightened since the terrorist attacks on the United States on September 11, 2001. Those events had a chilling effect on the world, and UC Irvine was not immune. Immediately after 9/11, some UC Irvine Muslim students expressed concern about walking alone on campus and often felt that their cultural dress made them more visible and, perhaps, more vulnerable. Similarly, some Jewish students expressed heightened concern for their own welfare.

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The UC Irvine leadership was aware that the international climate of political unrest and distrust could affect the campus climate. In response, in 2002, UC Irvine assessed its policies and procedures governing communications and materials on the campus climate and free speech and demonstration protocols. A number of actions were taken, including:

- Reviewing all reported acts of policy violations to assess potential concerns.
- Reviewing all policies and procedures related to use of University property and speech and advocacy. Facility managers and campus scheduling personnel received refresher training on these policies and procedures.
- Identifying event planning protocols and communications for scheduled and spontaneous events. This included meeting with student and outside groups prior to events to discuss potential concerns.
- Dean of Students Sally Peterson convened a council of student presidents, comprised of the registered clubs and organizations that have been most active on campus and any new registered clubs and organizations expected to hold events, to promote communication and understanding among student groups. Appropriate University policies and procedures also were discussed.
- Dean Peterson implemented a mandatory fall orientation for all leaders of registered clubs and organizations to promote civil discourse among new students and student groups.
- Former Chancellor Ralph Cicerone and Vice Chancellor for Student Affairs Manuel Gomez issued statements promoting the values of civility, tolerance and understanding to the campus community that were published in the campus newspapers and sent via e-mail to the campus.
- The UC Irvine Police Department developed a "hate crime" web site (building on a brochure produced in September 2001), including information on how to identify and file a report with campus police.

Of the almost 400 clubs and organizations on campus, fifteen are registered Jewish, Muslim or Arab student groups. These student groups have been and continue to be active, holding club programs and meetings. There has been no indication that any group or individual has been intimidated, harassed or prevented from pursuing all the educational and extracurricular activities available to UC Irvine students.

UC Irvine supports students' right of expression, including cultural and religious expression. In the process, sometimes one group will perceive offense by another. Words are powerful, and sometimes they can be hurtful. Although there have been occasions where

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emotions have escalated to heightened levels between a small number of students, the campus has successfully averted acts of violence, discrimination or harassment while upholding First Amendments rights of free speech. Many University officials have stated multiple times in meetings, publications, editorials, campus wide communications and informal exchanges that UC Irvine will not tolerate any threat or act of violence against any individual and that any such allegations will be thoroughly investigated and aggressively prosecuted.

Dialogue on Campus

The exercise and protection of the rights of freedom of speech and expression are at the core of the University's response to these types of campus climate issues. The tenuous political and social environment in the Middle East, along with the familial connections and religious affiliations that many UC Irvine students have with this region, have raised tensions between some students and student groups. Relationships between peers have on occasion become tense.

In recent years, it has been the highest priority for a number of University officials to continue to foster dialogue among these few students. Considerable attention has been devoted to reaching out to individuals and small groups for the purpose of opening communication and breaking down personal barriers of bias. However, the ebb and flow of a student's academic, family or work responsibilities has impeded the University's ability to sustain efforts designed to bring students together. At times students can be influenced by recent news reports from the Middle East, off-campus advisors or a recent interpersonal exchange on campus, and we find the need to regularly re-address the importance of open dialogue.

Dean Peterson's staff has worked on two parallel tracks with Jewish and Muslim students to address the climate of distrust between this small number of students. Track one is a series of meetings between student leaders for the purpose of building trust among these groups. Track two consists of educational programs open to the entire campus community.

Track one involves university officials from the Ombudsman's Office, the Office of Equal Opportunity and Diversity and the Dean of Students Office, who have been engaged in an ongoing process to de-escalate emotions, reduce tensions among student leaders and sustain dialogue. A key effort has been the "Jews/Muslims/Christians In Dialogue" forum. At Dean Peterson's invitation, the student leaders of Muslim Students Union ("MSU"), Anteaters for Israel ("AFI"), Hillel, Society of Arab Students ("SAS") and the Jewish-based Greek organizations have begun to participate in a series of dialogues designed to build trust and mutual understanding. We have had varying levels of success and have tempered and in some cases resolved the intense feelings, tensions and emotions experienced by individual students involved.

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Track two involves a broader effort by UC Irvine's administrators, who offer training programs and academic programs to help address the campus climate and civility. For example:

- UC Irvine has held numerous formal meetings of faculty, students, administrators and community leaders to respond to concerns, bridge communication, open dialogue and identify actions for addressing the campus climate and to help assess the issues and create solutions for bringing the students into dialogue.
- Dean Peterson's team is in continuous, informal contact with Muslim and Jewish students in an effort to keep communication open and productive.
- Vice Chancellor Gomez and Dean Peterson's team have, in meetings and in informal settings, repeatedly requested that students and student group leaders provide immediate and specific information on any actions of intimidation, violations of University policies or harassment.
- The Free Speech and Advocacy Team continues to ensure that the rights of all individuals are respected and the Conflict Escalation Team brings UC Irvine student groups into dialogue.
- UC Irvine Police Department continues to work on campus and in the local community to prevent hate crimes and promote tolerance.

In addition, UC Irvine has a full range of training programs in conflict mediation and resolution, leadership and diversity, civility and cultural awareness, and student development offered through multiple offices including the Cross Cultural Center, Dean Peterson's Office, the Office of Equal Opportunity and Diversity, the Office of the Ombudsman, Student Housing complexes, Greek Life and the Counseling Center.

Moreover, UC Irvine has a strong academic foundation in Middle East studies and offers a diverse array of over sixty academic courses in religion, political science, economics, art history, the social sciences, women's studies, humanities, Jewish studies and Islamic studies. UC Irvine is home to the Teller Family Chair in Jewish History in the school of Humanities and has a number of research centers, including the Center for the Study of Democracy, Center for Global Peace and Conflict Studies, the Interdisciplinary Center for the Scientific Study of Ethics and Morality, the UC Humanities Research Institute, the Center for Unconventional Security Affairs and the Program in International Studies. In the past two years, over thirty academic events, programs or symposia on Middle Eastern and other related topics that included national and international scholars have been held on campus, including a recent visit by the dean of students at the University of Haifa to discuss the "Jewish State in Multi-Cultural Israel."

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Nonetheless, the pressure from external organizations, as well as the media attention, has continued even though there have been no formal complaints from our students in either the 2004-2005 or 2005-2006 academic years. The recent media and Internet exposure has added a layer of complexity to the relationships between Muslim and Jewish students that is new to our campus. For the first time, we are facing external influences that have impeded our efforts to build trust and create open dialogue among our students. Unfortunately, UC Irvine has no control over these external influences, which seem to be using the student groups to further their objectives. Our focus has been and remains on the personal safety and well-being, and the educational experiences, of all our students while enforcing and complying with federal and state laws and University policies. UC Irvine officials continue to work diligently to reduce any real or perceived tension, bring student groups together and protect both the free speech and safety of the entire community. Ms. Tuchman's testimony ignored both that work and its results.

The Testimony Before The Commission

As the previous discussion illustrates, the testimony regarding UC Irvine that Ms. Tuchman provided to the Commission must be addressed in context. Moreover, each factual allegation must be scrupulously studied for accuracy and completeness. As John Adams noted two centuries ago, "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence." UC Irvine here responds to the factual allegations made against it.

Holocaust Memorial

Ms. Tuchman testified:

"In 2003, at UC Irvine, a Holocaust Memorial was destroyed. During the same time period, when Jewish students were holding a candlelight vigil to commemorate the Holocaust, a swastika was found after the vigil carved into one of the tables nearby."

"These anti-Semitic incidents . . . were reported to the UCI administration and the campus police, but the University never even acknowledged to the UCI community that the incidents had occurred."

November 18, 2005 Hearing (Tuchman testimony) at 22 : 12 – 16 and Tuchman written statement at 5.

The facts tell a different story. Members of Hillel, a Jewish student group at UC Irvine, built a Holocaust Memorial in honor of Holocaust remembrance week. It was nearly 10,000 square feet and included signs staked into the ground, mock tombstones ringed by barbed wire and a mound of shoes. On the evening of May 5, 2003, at approximately 9 p.m.,

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a member of Hillel found some of the stakes and barbed wire pulled up and the mound of shoes partially scattered. After determining that nothing had been damaged or destroyed, the Hillel student decided that he would deal with the situation the next morning.

On the morning of May 6, 2003, the same Hillel member returned to the memorial site, after contacting other members of Hillel and the Dean of Students office. Representatives from the Dean of Students office rushed to the site, as did Vice Chancellor Gomez. Marti Barmore, the Director of Campus Organizations and Community Service and a staff member in the Dean of Students office, called the UC Irvine Police Department to report the incident. Members of the Police Department, including former Chief of Police Al Brown, arrived at the site moments later. By that time the students had already put the display back together, making it difficult for the police to look for and gather possible evidence such as how the display had been disturbed, finger prints, etc. The police did take a statement and determined that there were no witnesses to the incident. (Similarly, there were no witnesses to the swastika found drawn on a nearby table at the candlelight vigil held later that evening. Indeed, the University was unable to find any witnesses or suspects for either incident.) The University did increase security for the remainder of the display.

Although the incident was not characterized as a hate crime because no crime had been committed, Chief Brown did believe that bigotry was a motivating factor. The Executive Director of the Anti-Defamation League also indicated at the time that the ADL would not treat the incident as a hate crime -- because it was unclear who was responsible and what the motive was -- but did consider it a "hate incident." The ADL publicly stated that "UCI did a great job of taking it seriously and we hope that they come out with a statement against what happened." *New University*, May 12, 2003 at 3 (quoting Gary Levin, Assistant Director, ADL of Orange County and Long Beach). Indeed, in a letter to Jeffrey Rips, Executive Director of Hillel, Former Chancellor Cicerone shared his concern and gave assurances that appropriate action would be taken if the culprits were found.

At the time of the incident involving the Holocaust memorial, none of the Jewish students complained about how the incident was treated. They decided to let the matter wait until the morning because nothing had been damaged or destroyed, and it was a Dean of Students staff member who called the police to investigate. The matter was treated with all due seriousness -- including a police investigation, increased security at the University's expense, statements reported in the press and a personal letter from the former Chancellor to Hillel expressing concern about the incident.

Anti-Semitic Speakers

Ms. Tuchman testified:

"Anti-Semitic speakers have routinely been invited to the UC Irvine campus, inciting students there to hate Jews."

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November 18, 2005 Hearing (Tuchman testimony) at 22 : 17 – 19 and Tuchman written statement at 5, 7 – 8.

In fact, the speakers about whom Ms. Tuchman appears to be testifying (although she does not identify any by name) are invited to speak on campus by student groups. For example, the Muslim Student Union routinely invites Amir Abdel Malik Ali to speak at its events on campus. As discussed in more detail below, UC Irvine may not stop the students from inviting these speakers. We may not prevent the speakers from speaking on campus, nor may we regulate the content of their speech.

Instead, UC Irvine has chosen to sponsor numerous programs that promote a civil dialogue on these difficult issues. These university-sponsored (as opposed to student-sponsored) events send the important message that the university values respectful debate, not hate speech. We know our students are learning to distinguish for themselves between factually verifiable statements made in the context of respectful dialogue and hate speech because at least one UC Irvine Jewish student leader has recently and publicly declared that the campus community largely ignores the inflammatory Muslim speakers who are invited to our campus by the Muslim Student Union.

Ms. Tuchman invokes Professor Matsuda's article in an effort to condemn UC Irvine for not "confronting" protected speech. Tuchman written statement at 8 – 9. Professor Matsuda nowhere argues that the *only* acceptable way for a university to "confront" hate speech is to explicitly condemn specific speakers by, for example, releasing a statement from the Chancellor each time that speaker visits the campus (as ZOA has insisted UC Irvine do). Rather, Professor Matsuda focuses on universities' responsibilities to both educate and support students instead of refusing to "take sides through inaction" or "leave [students] to their own resources in coping with the damage" of hate speech. Mari J. Matsuda, *Legal Storytelling: Public Response to Racist Speech*, 87 Mich. L. Rev. 2320, 2371 (Aug. 1989). As demonstrated above, UC Irvine has taken extensive actions, in numerous contexts, toward what Professor Matsuda describes as "the goals of inclusion, education, development of knowledge, and ethics that universities exist and stand for." *Id.* In other words, contrary to Ms. Tuchman's claim, UC Irvine has done exactly what professor Matsuda advocates.

Student Letter

Ms. Tuchman further testified:

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

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

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

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

This was written three years ago. This student never even received a response to her letter from the chancellor to who [sic] she wrote it.

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

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

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

November 18, 2005 Hearing (Tuchman testimony) at 23 - 24 : 2 - 13 and Tuchman written statement at 7.

The facts tell a different story. This student's email was addressed to four UC Irvine officials: the former Chancellor, the Dean of Students, the Executive Associate Dean of Students and the Assistant Vice Chancellor of Counseling and Health Services. Her email addressed a march by Muslim students protesting Israel that she had attended on campus. Her email acknowledged that police had been present at the march, but it did not identify a single threat or act of violence. Rather, it addressed the offensive nature of the speech she had witnessed. The Assistant Vice Chancellor of Counseling and Health Services responded

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to the student's email. A copy of both the student's email and the Assistant Vice Chancellor's response (redacted to protect the student's identity) is attached to this letter.

In addition to inviting the student to visit the Counseling Center, the Assistant Vice Chancellor acknowledged the student's reaction to the event, acknowledged that the speech also was offensive to him, noted the police attention to safety and crowd control and expanded on the importance of free speech. In other words, this UC Irvine official turned a difficult experience into a "teachable moment," while simultaneously supporting the student emotionally. That is precisely the role of our university: to educate in a supportive environment.

2002 Article

Ms. Tuchman further testified:

"In 2002, an article appeared in a UCI student publication that repeatedly emphasized the Nazi-like notion that Jews are genetically different and separate from non-Jews."

November 18, 2005 Hearing, Tuchman written statement at 4 - 5.

Although Ms. Tuchman's testimony is not specific, we assume she is addressing the content of a Muslim student newspaper, *Alkalima*. *Alkalima* is one of twelve student-run alternative media publications and is represented on the UC Irvine Alternative Media Board. The Board is all-volunteer and student managed, with over twenty-three years of publication experience. It describes itself as a long-standing, strong student community without institutional structure that provides an alternative editorial voice and news for students. Over 100 students are involved in the various publications that are represented on the Board. The Board receives funding for its member publications from the Associated Students of UC Irvine. Although entitled to do so, *Alkalima* has never requested or received any of those funds.

The only support provided to the Board by the University is the time of a staff person to ensure proper handling of bills and payments because funds are in University accounts. As with *The New University*, the mainstream student newspaper on campus, the University does not exercise any control over the content of the alternative publications.

When Jewish students complained about *Alkalima*, the most that the University could do and did do was: (1) work with the Muslim students to make them aware of how offensive the presentation of their views was to the Jewish students; (2) work with and encourage the Jewish students to present their views of the issues with their own speakers, programs and

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displays (such as Bus 19),¹ and (3) attempt to bring the two groups together in informal meetings designed to help them understand the other's positions.

Anti-Zionist Week

Ms. Tuchman testified:

"Every year at UCI, a registered student group on campus sponsors a weeklong event that, over the years, has been given a variety of titles. At one point, the event was called 'Anti-Zionist Week.' Then, the title was change[d] to 'Zionist Awareness Week.' Most recently, in 2005, the title of the event was "Israel Awareness Week." But whatever the title, the event has been about attacking Jews, Zionists and those who believe that the State of Israel has the right to exist."

November 18, 2005 Hearing, Tuchman written statement at 6.

The facts tell a different story. Ms. Tuchman herself identifies these events as student-sponsored. As discussed below, UC Irvine may not prevent these speakers from speaking on campus, nor may we regulate the content of their speech. Instead, following the guidance of *Corry v. Leland Stanford Junior University*, Santa Clara Superior Court Case No. 740309 (February 27, 1995 Order) (striking Stanford's hate speech code as overbroad, impermissibly content-based and not the least restrictive alternative), we have "through various campus media or sponsorship of events . . . promote[d] diversity and tolerance among students." *Corry*, at 19-20.

Rock Throwing Incident

Ms. Tuchman testified:

"In January 2004, a Jewish student who was wearing a tee shirt that said, 'Everybody loves a Jewish boy,' was walking by a table on the campus where members of a student group were distributing flyers. Rocks covered the flyers to keep them from blowing away. As the Jewish student passed the table, a rock flew in front of his face, barely missing him. The student turned and saw a student holding a young child and saying to the child, in a very sarcastic voice, 'Don't do that, that's not right!' – as though the child had thrown the rock. The Jewish student said nothing and just kept

¹ On January 29, 2004, the passengers aboard Bus 19 in Jerusalem became victims of a heinous act of terror. The bomb killed 11 people and injured more than 50. On January 31, 2005, the student group Anteaters for Israel brought Bus 19 to UC Irvine for public display.

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walking. But the experience made him afraid to wear anything that identified him as a Jew ever again on campus.”

November 18, 2005 Hearing, Tuchman written statement at 9 – 10.

The facts tell a different story. Early in Winter Quarter of 2004 (which began in January), a UC Irvine student was walking on campus. He had on a t-shirt with the words “Everyone loves a Jewish boy” on it. As he passed a table sponsored by the MSU, a rock was thrown in his direction. He turned and looked and noticed a woman reprimanding a small child with the words, “That’s not nice,” which he later described as sounding sarcastic.

The student did not report this incident until several weeks later, around mid-February. He told Byron Breland in the Dean of Students’ Office that something had happened several weeks before and he thought it important for the Dean of Students office to know about it. He described the incident as above. He also told Mr. Breland that: (1) he recognized the MSU students at the table but did not know their names; (2) he did not think he was in any danger when the rock was thrown; and (3) he could not distinguish whether the child was just playing with the rock or intentionally threw it at him.

When Mr. Breland asked him if he wanted to pursue the matter by pointing out the woman who appeared to be responsible for the child, the student said that he did not want to do that and that he did not think his safety was in question while on campus. The student told Mr. Breland that he just wanted the incident on record with the Dean of Students office. He indicated to Mr. Breland that he was upset that the rock had been thrown and that it was an act of disrespect. However, when Mr. Breland asked him why he had not reported the incident when it occurred, the student responded that he did not think that it was a “big deal” at the time but had later talked about it at a Jewish group meeting and had been encouraged to report it.

Mr. Breland was not sure who the woman was, and the student would not identify her. Mr. Breland was aware that one of the Muslim students frequently brought a child to school, but he was not sure who the student was because different students were involved in looking after the child while on campus. Accordingly, Mr. Breland respected the student’s wishes to leave the matter alone.

Then, at a meeting on May 25, 2004, with Jewish student groups, Dean Peterson heard that a Jewish student had had a rock thrown at him. The students at the meeting would not identify the victim, so she asked them to have the person contact her. On June 15, 2004, the same student sent Dean Peterson an email about the same incident. The description of the incident and his reaction to it was quite different from what he had told Mr. Breland four months earlier. This time the “rock flew right in front of [his] face, nearly hitting [him]” and after that day he has been “literally scared” to wear a Jewish or Pro-Israel t-shirt. _____

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Upon receiving the email, Dean Peterson called the student and left a voicemail message for him to call her because she was concerned about the incident and the fear he expressed and wanted to follow up with him. He never returned her call. The student made it clear that he was only making a record and did not want the University to do anything further.

Threat or Harassment of Student

Ms. Tuchman testified:

“In February 2004, a Jewish student, who is of Sephardic descent and speaks and understands Arabic, was walking toward the Dean of Students’ office with a box of office supplies. He was wearing a pin on his sweatshirt that said, ‘United We Stand,’ with an imprint of the American and Israeli flags. He passed two students who stared at his pin and said, ‘Ee Bakh al Yahud,’ which means ‘Slaughter the Jews’ in Arabic. The Jewish student ignored the comment and kept walking. A heated dialogue ensued, and the Jewish student was surrounded and threatened.

In or about March 2004, this same Jewish student was wearing a yarmulke and carrying a prayer book while walking toward UCI’s science library. He walked by a familiar-looking student and said, ‘What’s up?’ The student made an obscene gesture toward the Jewish student and his prayer book. They began to argue and the Jewish student was subjected to threatening language and hurtful ethnic slurs, including being called a ‘dirty Jew.’ This student could no longer take what he felt was a hostile environment for Jewish students at UCI, and he left to study elsewhere. He is not the only one; at least one other Jewish student left UCI because of the hostile environment he experienced there and transferred to another university.”

November 18, 2005 Hearing, Tuchman written statement at 10.

Again, the facts tell a different story. A UC Irvine Jewish student filed a police report with the UC Irvine Police regarding an incident in which between two and five apparently Muslim males confronted him, surrounded him and threatened to beat him near the Dean of Students office. The incident occurred on February 13, 2004, and the student reported it to the police on February 25, 2004. After taking the report, the police contacted the student several times in order to follow-up with one of the detectives who would be investigating the case. The student failed to show up for his appointment or respond to written and telephonic inquiries by the police.

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The university believes this is the same incident that the student had reported to Byron Breland when it occurred. The Jewish student came to Mr. Breland's office to report that two students had just threatened him. Mr. Breland asked the Jewish student who and where the other students were and why they had threatened him, but the student did not know the answers; he did know that one was an MSU member. Mr. Breland took the Jewish student to go look for the other student immediately. They went through the Student Center, and Mr. Breland told the Jewish student to let him know if he spotted the other student. The Jewish student did not. Mr. Breland told the student to come get him if he spotted the other student because Mr. Breland would be in his office.

About twenty minutes later, the Jewish student returned to Mr. Breland's office to report that he had found the other student. Mr. Breland followed the Jewish student and found the other student coming from the restroom. The Jewish student began to approach the other student, yelling at him in Arabic. Mr. Breland separated them and told the Jewish student to wait in another area.

The Muslim student complained that the Jewish student always wore a t-shirt that referred to the 1967 Six-Day War, in which Israel defeated the Arab states of Egypt, Syria and Jordan and conquered what became known as the Occupied Territories. The Muslim student felt that the Jewish student's t-shirt was derogatory. He said that the Jewish student always seemed to engage in behavior that appeared intended to provoke the Muslim students. Mr. Breland ultimately told both the Jewish student and the Muslim student that they should avoid each other at all costs, but he did not reprimand either one because the students told such conflicting stories.²

The University did all that it could to respond to this complaint. Upon hearing of the incident, Mr. Breland twice and immediately left his office to find the students involved, and the UC Irvine Police attempted to follow up with the student several times without any success. The student refused to pursue the matter further. Moreover, UC Irvine has no

² This particular Jewish student is known to act provocatively. At one MSU event, he handed out fliers that included the words:

YOU HAVE JUST BEEN KILLED BY A PALISTINIAN SUICIDE BOMBER

* * * * *

HEY, AT LEAST THE KILLER WILL BE COZY WITH 72 VIRGINS!

Although this student's words were inflammatory and potentially offensive, UC Irvine never interfered with his right to express them. Nonetheless, at a Spring 2004 event at the UC Irvine Cross Cultural Center, this student became upset about what a speaker had said. He approached Mr. Breland and said, "You people are doing a crappy job," and then spat at Mr. Breland's feet.

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record of this student requesting that his transcript be forwarded to any other university, thus suggesting that Ms. Tuchman's testimony concerning his transfer may be inaccurate.

We had the opportunity to address the Jewish students' concerns in June 2005 during two days of mediation to resolve the OCR complaint. The parties were preparing for a third day of mediation when ZOA unilaterally terminated this face-to-face dialogue. UC Irvine was both surprised and disappointed that ZOA chose to terminate what we thought had been a productive conversation.

Although we can only speculate about why ZOA withdrew from the mediation, at least one UC Irvine Jewish student leader has said "ZOA's insistence upon filing this claim [with OCR] perturbs me most because I feel that if the Jewish students at UCI (a group I am part of) felt the need to do something to stop the constant anti-Semitism on our campus, we would be capable of doing the research and going through the proper channels." (A copy of this student leader's editorial is attached to this letter.)

Although we are not at liberty to discuss the substance of the mediation discussions, which were conducted before former federal judge Layn Phillips, we vehemently disagree with Ms. Tuchman's mischaracterization of our campus -- at the mediation, before OCR and before this Commission. Her testimony about UC Irvine is inaccurate and incomplete. Contrary to the hate-filled environment Ms. Tuchman describes from second- and third-hand accounts, UC Irvine is a vibrant and rich university environment, the same environment cultivated on the campuses of all truly great research universities.

Ms. Tuchman's "Suggestion" Concerning Title VI

Finally, Ms. Tuchman testified:

"Third, I would suggest that the Commission voice its concern about campus anti-Semitism, in all its facets, to OCR, and urge OCR to conduct a thorough investigation of the complaint against UCI, with consideration of all of the available evidence. It is my understanding that the complaint against UCI is the first case of anti-Semitism that OCR has agreed to investigate. Although it is a complaint about anti-Semitism at only one university, the problem is not unique to UCI. Whatever the outcome of OCR's investigation, the case will hopefully send a message to colleges and universities across the country: While our government stands behind the principles of free speech and open debate, it is also committed to ensuring that students are not subjected to hostility, harassment and intimidation on the basis of their race or ethnicity. A message from this Commission to OCR, urging a complete and thorough investigation, has implications not only for the UCI case,

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but for other colleges and universities where anti-Semitism is a problem.”

November 18, 2005 Hearing, Tuchman written statement at 17. Ms. Tuchman similarly testified that the complaint ZOA filed with the Office for Civil Rights against UC Irvine:

“is the first complaint of Anti-Semitism that the Office of Civil Rights has agreed to investigate under this law [Title VI].”

November 18, 2005 Hearing, Transcript at 26 : 19 – 22 and written statement at 10 – 11. She also specifically testified that:

“It is consistent with United States Supreme Court decisions that recognize that being ‘Jewish’ is not simply a religious characteristic; it is also a racial and ethnic characteristic.”

November 18, 2005 Hearing, Tuchman written statement at 11.

In fact, Title VI does not apply to allegations of anti-Semitism. The relevant language of Title VI reads:

No person in the United States shall, on the ground of *race, color, or national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.³

42 U.S.C. § 2000d (2005) (emphasis added). Notably, *religion is not a protected class for purposes of Title VI*. Thus, by definition, OCR lacks jurisdiction over claims of anti-Semitism and other religious discrimination.

Nonetheless, both ZOA and OCR have asserted that OCR has jurisdiction over claims of religious discrimination under Title VI -- even though no court has held that claims of “Jewish discrimination” can be prosecuted under Title VI. Although Ms. Tuchman never identified the “Supreme Court decisions that recognize that being ‘Jewish’ is not simply a religious characteristic; it is also a racial and ethnic characteristic” (Tuchman written statement at 11), OCR has argued that the Supreme Court held, in *Shaare Tefila Congregation v. Cobb*, that “Jewish may be interpreted as an ethnic or racial category.”

³ Of course, Jewish is not a “national origin.” See e.g., *Lapine v. Boehm, Inc.*, 1990 WL 43572 (N.D. Ill. Mar. 28, 1990) (“[S]tating that one is Jewish gives no indication of that individual’s country of origin. Nor does it indicate the country of origin of one’s ancestors or suggest the physical or cultural characteristics of a national origin group. Indeed, Jews, like Catholics and Protestants, hail from a variety of different countries.”). Neither is Jewish a “color.” Individuals from a variety of races, colors and national origins can be and are Jewish.

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October 22, 2004 Letter of Kenneth L. Marcus, Assistant Secretary for Civil Rights, to Sid Groeneman. In fact, the Supreme Court's holding in *Shaare Tefila* was much more limited than OCR portrays it: the Court held simply that for purposes of § 1982 claims, "Jewish" constitutes a "race." *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 618, 107 S. Ct. 2019, 2022 (1987). The Court specifically rested its holding on the fact that when the Civil Rights Act of 1866, of which § 1982 is part, was enacted, "Jews . . . were among the peoples then considered to be distinct races and hence within the protection of the statute." *Shaare Tefila*, 481 U.S. at 617-618, 107 S. Ct. at 2022. The plaintiff in *Shaare Tefila* did not allege violations of Title VI. Thus, the Court's holding in that case does not apply in the Title VI context.

Moreover, the Civil Rights Act of 1964, of which Title VI is part, was enacted a century after §§ 1981 and 1982, when race theory had developed dramatically. As the Supreme Court noted in 1987, "Jews today are not thought to be members of a separate race." *Shaare Tefila*, 481 U.S. at 617, 107 S. Ct. at 2021. In contrast to Title VI, Title VII -- also part of the Civil Rights Act of 1964 -- specifically prohibits employment discrimination based on religion. 42 U.S.C. § 2000e ("race, color, religion, sex, or national origin") (2005). Congress's inclusion of religion as a protected class in Title VII indicates that had Congress desired to also make religion a protected class under Title VI, it knew that it needed to do so specifically. Instead, it limited Title VI to protected classes other than religion.

In any case, UC Irvine would never discriminate against a student -- or tolerate discrimination against a student -- on the grounds of religion or any other basis protected by law or university policy.

Freedom of Speech

Civil discourse, the free exchange of ideas and the respectful consideration of divergent viewpoints are essential to the life of a university community. UC Irvine has a long-standing tradition of supporting these values and educating the community about their importance. This tradition is consistent with the July 28, 2003 open "Dear Colleague" letter, in which Gerald A. Reynolds, the Assistant Secretary of the Office for Civil Rights of the U.S. Department of Education, reminded colleges and universities that OCR regulations "do not regulate the content of speech" and that OCR does not "require or prescribe speech, conduct, or harassment codes that impair the exercise of rights protected under the First Amendment."

UC Irvine Must Comply With Both The United States Constitution And The California Constitution

The First Amendment to the Constitution provides, "Congress shall make no law . . . abridging the freedom of speech . . ." U.S. Const. amend. I. The Fourteenth Amendment makes the First Amendment applicable to state and local governments. U.S. Const. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the

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privileges or immunities of citizens of the United States.”). The California Constitution provides even broader protection for speech. Cal. Const. art. I, § 2(a) (“Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”).

The University of California must comply with both constitutions. *Greenya v. George Washington University*, 512 F.2d 556, 559 (D.C. C.) (“constitution . . . only places limitation on actions undertaken by governmental entities”) (holding that George Washington University is not a state actor and thus is not required to comply with First Amendment), *cert. denied*, 423 U.S. 995, 96 S. Ct. 422 (1975). See also *Corporation of Haverford College v. Reeher*, 329 F. Supp. 1196, 1209 (E.D. Pa. 1971) (“Since a private University is not bound by the Fourteenth Amendment to refrain from interfering with First Amendment freedoms, a University regulation which prohibits a student from engaging in activities which would be constitutionally protected from state interference may be lawful.”); Cal. Educ. Code § 66301 (“Neither the [sic] Regents of the University of California . . . nor . . . shall make or enforce any rule subjecting any student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus . . . , is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.”).

Both Constitutions Protect The Speech About Which Ms. Tuchman Testified

Under the First Amendment and its California parallel, state actors may not regulate speech in public forums unless the regulation is subject matter neutral, viewpoint neutral and is a time, place or manner restriction that serves an important government interest and leaves open for communication adequate alternative places. Moreover, a law regulating speech cannot be overbroad or vague.

Although the Supreme Court has held that some categories of speech deserve a lesser amount of protection, hate speech (*i.e.*, the kind of speech about which Ms. Tuchman testified) remains fully protected by the First Amendment and its California parallel. Indeed, courts have struck down numerous hate speech regulations, including many campus hate speech codes, as unconstitutional. See *Saxe v. State College Area School District*, 240 F.3d 200 (3d Cir. 2001) (“That speech about ‘values’ may offend is not cause for its prohibition, but rather for its protection.”); *Corry v. Leland Stanford Junior University*, Santa Clara Superior Court Case No. 740309 (February 27, 1995 Order) (striking Stanford’s hate speech code as overbroad, impermissibly content-based and not the least restrictive alternative); *Pyle v. South Hadley School Committee*, 861 F. Supp. 157 (D. Mass. 1994) (striking code that prohibited clothing “directed toward or intended to harass, threaten, intimidate, or demean” certain groups), *clarified*, 667 N.E.2d 869 (Mass. 1996); *Iota XI Chapter of Sigma Chi Fraternity v. George Mason University*, 993 F.2d 386 (4th Cir. 1993) (“The University certainly has a substantial interest in maintaining an educational environment free of discrimination and racism, and in providing gender-neutral education. Yet it seems equally apparent that it has available numerous alternatives to imposing punishment on students

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based on the viewpoints they express.”); *R.A.V. v. St. Paul, Minnesota*, 505 U.S. 377, 112 S. Ct. 2538 (1992) (“The point of the First Amendment is that majority preferences must be expressed in some fashion other than silencing speech on the basis of its content.”); *UMW Post, Inc. v. Board of Regents of the University of Wisconsin System*, 774 F. Supp. 1163 (E.D. Wis. 1991) (hate speech code overbroad because it prohibits more than mere “fighting words”); *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989) (free speech “principles acquire a special significance in the University setting, where the free and unfettered interplay of competing views is essential to the institution’s educational mission.”).⁴

Because Any Hate Speech Code Would Be Stricken As Unconstitutional, UC Irvine Has Taken Other Steps To Promote Dialogue And Diversity

The *Corry* court specifically noted that universities have a plethora of less restrictive alternatives available to promote diversity and avoid discrimination. “For example, [the University] could continually press upon their students through their school calendars and handbooks, etc., the need to be respectful of each other. [The University] could implement programs to educate students against discrimination. [The University] also might through various campus media or sponsorship of events, i.e., guest speakers, movies, book readings and reviews, roundtable discussions, forums, panels, field trips, essay contests, etc., promote diversity and tolerance among students.” *Corry*, at 19-20. Consistent with the *Corry* court’s instruction, UC Irvine is modeling respectful dialogue and debate through numerous university-sponsored programs. In fact, UC Irvine is doing all that the constitutions allow it

⁴ To the extent Ms. Tuchman proposes that UC Irvine regulate hate speech as “fighting words (a lesser protected category of speech), UC Irvine is precluded from doing so. “Fighting words” describes “words that by their very utterance tend to incite an immediate breach of the peace,” that “naturally tend to provoke violent resentment” and that are “directed at the person of the hearer.” *UMW Post, Inc.*, 774 F. Supp. at 1170. Stanford’s hate speech code was explicitly based on the “fighting words” doctrine, and it did not survive judicial review. *Corry*, February 27, 1995 Order at 2 (code prohibited speech that “makes use of insulting or ‘fighting’ words or non-verbal symbols”).

To the extent Ms. Tuchman proposes that UC Irvine regulate this speech under the *Tinker* doctrine, UC Irvine also is precluded from doing so. Under the *Tinker* doctrine, student speech may be regulated if there is evidence that it would substantially disrupt or interfere with the work of the school or the rights of other students. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733 (1969) (holding that policy that students wearing anti-Vietnam War armbands would be suspended is unconstitutional). But the *Tinker* doctrine does not apply at the college and university level. *DiBona v. Matthews*, 220 Cal. App. 3d 1329, 1345 (“Numerous cases have considered the question under what circumstances school officials may regulate the performance of dramatic productions or the availability of written materials on grounds of inappropriate language or content. Nearly all these cases, however, have involved minors rather than adult college students.”), *cert. denied*, 498 U.S. 998, 111 S. Ct. 557 (1990). Even if *Tinker* did apply at the college or university level, there is no indication that the speech here has disrupted or interfered with the work of the school or the rights of other students.

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to promote dialogue and diversity. UC Irvine has regularly and continually reinforced civility and free speech by:

- Adopting the *UCI Principles of Community* (1996). This document is regularly published, distributed, and made available to all members of the University community.
- Reviewing and updating our policies and procedures related to free speech, student demonstrations, police and administrative response during campus unrest, and use of University facilities by student groups and non-University groups.
- Creating (in 2002) the WATCH Team, renamed in 2003 the Free Speech Advocacy Team (FAST), to provide a presence at campus protests, demonstrations and events to ensure all rights are observed.
- Creating (in 2004) the UCI Conflict Escalation Prevention Team (CEPT) to bring groups and students into dialogue.
- Addressing the importance of civil discourse at the New Student Convocation and orientation programs every fall.
- Distributing annually a guide to exercising free speech rights at the mandatory orientation for all registered clubs and organizations.
- Sponsoring workshops and forums on specific topics in such areas as leadership and diversity, ethical leadership, culture clash, First Amendment and freedom of speech rights throughout the year and at the annual All-University Leadership Conference for students.
- Issuing statements from the Chancellor and the Vice Chancellor for Student Affairs published in the campus newspaper, by e-mail and in speeches to the campus community promoting the values of civility, tolerance, and understanding.

Despite such initiatives, UC Irvine, like many universities, has had to respond to and address the controversy between a small number of individual students and student groups over Israeli, Palestinian and Middle East issues. We have responded to and addressed that

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controversy directly, clearly and within the bounds of the Constitution – while both modeling respectful dialogue and educating, supporting and protecting our students and the community.

We appreciate this opportunity to clarify the testimony and to assist in ensuring that the record and transcript of the Commission's November 18, 2005 Hearing are accurate and complete.

Sincerely,



Diane Fields Geocaris
Counsel for The University of
California, Irvine

Enclosures

DFG: leh

Thomas Parham, 4/8/02 5:09 PM -0700, Re: Anti-Semitic protest at UC Irvine**1**

X-From: taparham@uci.edu Mon Apr 8 17:10:12 2002
X-Sender: taparham@pop.uci.edu
Date: Mon, 08 Apr 2002 17:09:46 -0700
To: ,edu
From: Thomas Parham <taparham@uci.edu>
Subject: Re: Anti-Semitic protest at UC Irvine
Cc: Manuel Gomez <mngomez@uci.edu>, speterso@uci.edu

Thank you for your note expressing your views and opinions about the demonstration on Thursday. I very much appreciate the time you took and the passion and emotional intensity reflected in your e-mail message. I want to begin my response by acknowledging the anger and anxiety you express in your note, and let you know that I and we take your physical and emotional safety very seriously, and want to do whatever we can, within our power and reason, to address your discomfort. If you continue to experience these strong, uncomfortable feelings in the aftermath of the demonstration event, I would like to invite you to visit our Counseling Center on campus. There, you will find a group of highly trained, professional, and compassionate individuals who would be more than pleased to help you work through the emotional distress you report experiencing. Having said that, let me address your other issues in the e-mail.

You are correct in identifying me as one administrator who was present at the march and demonstration. I arrived on scene about 12:45, approximately 45 minutes after the march began, and about 2-3 minutes before I encountered you and your question. I too had come to observe and monitor the situation after hearing the chants from the marchers from inside my office. The march was indeed loud, and the marchers very boisterous and vociferous in their chanting. I too found some of the content offensive.

Beyond the marchers, I also observed and had conversations with several campus police officials who were present. They walked adjacent to the marchers, spaced in appropriate intervals at the front, side, and end of the group demonstrating, monitoring the situation. I observed them attending to crowd safety and control, attending to the demonstrators to ensure that their protest did not get out of hand, and attending to the crowd and adjacent buildings to, I suspect, ensure that the marchers could hold their protest with the same guarantee of safety. Despite the content of the marcher's message and the volume of their chants, at no time did I believe that the march was anything other than peaceful, in the time that I was present. The demonstrators were organized, stayed within what seemed to be pre-arranged (by them) boundaries and positions, destroyed no property, did not threaten or assault any persons, and were otherwise orderly. There was no riot or anything close to disorderly conduct, in my opinion. I completely understand your objection to the content, and perhaps, even their right to demonstrate. I do not agree however, that the climate was unsafe. I and other campus officials are concerned about providing a safe environment for you, your peers, and the entire campus community. If there are instances where you feel that you have been directly threatened, assaulted, etc., please let us know.

Your e-mail also addresses a question you commented on, which I would like to speak to. I do remember you asking me something like "who planned this march or who authorized this?" You also asked within a matter of seconds, that if the marchers were demonstrating against Black people, would I allow it to take place? I answered "yes" to the latter query. Let me explain. Protest and demonstrations are a vehicle people in this country can use to voice their opposition to or support of an idea, person, or place. They are part of the fabric of this nation's struggle for democracy and equal rights, and are, in fact, constitutionally protected. In celebrating my rights as a citizen of this country, I must recognize some individual or group's right to advocate at the top of their lungs that which I would spend a lifetime opposing at the top of mine. Rather than allowing "ignorance in education" as you claim, our campus does recognize students rights to voice their opinions on a range of local, national, and global issues, as long as the demonstrations adhere to particular guidelines. We do not side with terrorist, and our allowing the demonstration to take place does not indicate that we agree with the messages being delivered. On these latter issues, I respectfully, but firmly, disagree with your assertions.

My status as an African American does provide me with a keen sensitivity and a unique vantage point to view the march last week. I suspect that is what you were referring to in your comment to me. However, because I am of African descent, that does not allow me to consider restricting other's rights because their views differ significantly from my own. So, no matter how unpleasant or distasteful I might find someone's message, free speech does allow them to express it. As a matter of fact, I have seen demonstrations where particular groups and/or elements in our society did and do demonstrate against people of African descent and issues that significantly impact their lives. That

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Thomas Parham, 4/8/02 5:09 PM -0700, Re: Anti-Semitic protest at UC Irvine

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is part of the legacy we inherit as citizens of this great nation, and part of the duality of our democratic ideals.

Ultimately, the Jewish-Palestinian question/issue will not be won or lost in marches or demonstrations, and certainly will not be resolved on the battlefield. I deplore violence of any kind and hope for a speedy resolution on both sides to the horrific loss of life and liberty. I do hope that individuals and groups who feel passionately about issues can learn to sit at the table and discuss their views and identify where opinions converge and diverge. I also believe that university campuses are places where issues such as these should become topics of critical discourse and analysis. Only then do we think more clearly about these subjects and work to dissipate some of the ignorance that is so pervasive in our society, especially when it comes to understanding each other across boundaries of race, ethnicity, gender, religion, and even national homelands and people's rights to exist in places where freedom ought to reign.

Thank you again for your response.

Thomas A. Parham, Ph.D

At 12:07 AM 4/5/02 -0800, you wrote:

April 4, 2002

Dear Dr. Cicerone, Dr. Peterson, Dr. Lewis and Dr. Parham:

My name is () and I am a graduate student in the Department of in the School of

I am writing because I want to share my thoughts with you on the anti-Israel/anti-Semitic protest that UC Irvine allowed to happen today on campus.

I do not know if all of you were there. I know that Drs. Lewis and Parham were there, I spoke with them. I will share with you all what they said in a later part of this letter. If you were not at the protest, I will tell you what happened.

A large group of Middle Eastern students, probably more than 200, plus a smaller group of students of other backgrounds marched against Israel. They carried signs and screamed, "Zionism is racism", "Sharon is Hitler", "Zionism is Nazism", "Down with Israel", "Israelis kill Palestinian babies", etc. I took pictures of these signs and of these students who stood proudly with the signs. They were screaming. The present administrators did nothing. The police did nothing. One of the Muslim students confided in me that it was supposed to be a silent march and she did not know what was happening. Regardless, to have a sign or to have 200 rioting undergraduates screaming that Jews kill babies and that the leader of the Jewish state is a Nazi is offensive and worse, it is anti-Semitism. Anti-Semitism refers to the Jews only, it does not refer to Muslims. When the term was created, it was created as an expression directed against Jews, no other group or religion.

Not only do I feel scared to walk around proudly as a Jewish person on the UC Irvine campus, I am terrified for anyone to find out. Today I felt threatened that if students knew that I am Jewish and that I support a Jewish state, I would be attacked physically. It is my right to walk around this campus and not fear other students and hear condemnation from them. It is my right for my government to protect me from harm from others. It is my right as a citizen who pays tuition and taxes to be protected from such harm.

This happened simultaneously while campus tours were taking place. If I had seen a riot, or even a silent demonstration like this, while I was visiting this graduate school, I would not have come. I am sure that you will lose many prospective students because of what happened today.

A-57

Thomas Parham, 4/8/02 5:09 PM -0700, Re: Anti-Semitic protest at UC Irvine

3

Had I been aware at that point that my school would not protect me and make me feel safe and welcome on campus, I would not have attended this university. I know that there are Jewish, non-Jewish, and students from Israel at this campus who feel the same way. At the very least, I pay for this right to feel safe. If I am harmed or hurt, my tuition money will have been for waste. As a public university, you have the right and obligation to protect me from harm. You may claim the first amendment. I claim the right to be safe and secure. You cannot use the first amendment as an argument against my safety. MY SAFETY SUPERCEDES FIRST AMENDMENT RIGHTS.

At the march the police did nothing. Drs. Lewis and Parham did nothing.

I confronted the administrators,. They claimed according to the first amendment, the students can march. I identified myself as a Jewish person and that I am highly offended by the rioting. They did nothing. I asked Dr. Parham if he would support a group of students protesting against black people. He said that he would. If you do not know, Dr. Parham is black. Dr. Lewis said nothing and passively stood there, therefore implying his agreement that he would also support a march against black people as well as against Jewish people.

My undergraduate university, ; never allowed for a student group to protest against another student group. While I was in college, the Intervarsity Christian Fellowship protested against homosexuals in one of their meetings. Once the administrators found out, the prevented the group from ever doing it again. would never allow an anti-Semitic or anti-black protest to occur, unlike UC Irvine. UC Irvine even supports it, according to Dr. Parham.

A student riot like this one portrays UC Irvine in a negative light. It shows that UC Irvine gives a low quality education. What do I mean? The students who march do not know the facts or history of the region to even know what they are marching about. They are ignorant. They do not bother to educate themselves and UC Irvine does not bother to educate them or encourage them to educate themselves. UC Irvine encourages ignorance and prejudice by allowing a riot to take place. That is how UC Irvine appears: an institution of ignorant students taught by ignorant staff.

By allowing these marches, the school itself shows its ignorance and lack of knowledge. A university should be a place for knowledge. How can there be knowledge when the administrators themselves have no knowledge? The administrators allowed this protest and have allowed all protests in the past. UC Irvine administrators need to learn that this protest was anti-Semitism in the purest form. It is the same anti-Semitism that has been occurring for thousands of years. UC Irvine is a vehicle for anti-Semitism.

By allowing this march, UC Irvine is siding with a group of people who support terrorism, a group that includes Hussein and bin Laden. The students wore the same green bands that Hamas wear. The UC Irvine students moved the green Hamas headbands to their arms and wore them proudly. Moving the band from one part of the body to another does not change the meaning of the bands. If UC Irvine lets a march like this take place, it shows its support for the Hamas. At the very least, it allows a safe haven for a group of students who support terrorism.

I filed a complaint with the Anti-Defamation League against UC Irvine.

I am ashamed of this school. I am horrified that this took place. I am shocked that this took place. I am terrified to admit my religion or my support for a Jewish state to anyone. I do not feel safe here.

I would like to know if you, the UC Irvine administrators, will allow anti-Semitism and support for terrorism on campus to continue. I would

A-58

Thomas Parham, 4/8/02 5:09 PM -0700, Re: Anti-Semitic protest at UC Irvine

4

like to know if you will demand its cessation. What will you do to make me safe? What will you do to prevent marches against Israel and against Jews from happening again? Would you, Dr. Parham, really allow a protest against black students to take place? I expect all of you to protect me from discrimination and to make all students welcome.

Here are my demands. I demand that you not allow anymore discriminatory protests or riots. I demand that if one occurs without your prior knowledge, you will stop it immediately rather than passively, and possibly happily, standing with the group watching. By merely watching, as administrators, you are supporting. I demand that you use the police to stop it if you cannot.

I expect that you, Drs. Cicerone, Peterson, Parham, and Lewis, will contact me immediately. I expect an apology and a promise from each of you to protect my basic right of safety. I expect you to apologize to the entire student body for allowing this to happen.

(949)

A-59

ZOA's Strategy is the Wrong One

BY: ALEX CHAZEN

September 26, 2005

I used to hate it when my mom would go into my room and clean it for me. Something perturbed me about someone else taking care of my dirty work.

I had this same feeling when I found out last year, and read about in last week's New University, that the Zionist Organization of America had decided that it would be in the best interest of the organization and the Jewish students at UC Irvine to file a complaint with the Department of Education's Office of Civil Rights.

The ZOA's insistence upon filing this claim perturbs me most because I feel that if the Jewish students at UCI (a group I am a part of) felt the need to do something to stop the constant anti-Semitism on our campus, we would be capable of doing the research and going through the proper channels.

I appreciate the ZOA's interest in our campus, and its desire to help the students who feel that their right to be who they are was infringed upon, but I am not sure that the filing of an OCR claim does anything to help the students here.

Rather, it only serves to attack the university, and by association the university community, of which we are all members.

In researching the investigation, I have found that the claim does not release the names of those students who feel that they were in some way harmed by being on the UCI campus.

If the ZOA truly wanted to make the campus better for Jewish students, it might have considered letting the university know who was having a problem so that the proper people could get in contact with the students.

It might then find out more about the problem and try to rectify it while making sure that similar incidents don't occur in the future.

The university has made many strides in order to accommodate all groups of students, and I think most students appreciate that.

The ZOA is correct, however, that more needs to be done for students: not just Jewish students, but all students.

Jewish and Muslim students who follow the dietary laws of their cultures can't eat many of the foods served in the dining halls of the housing complexes, yet freshmen students of both religious affiliations must pay for the meal plan that may often go unused.

It is time for the university to look into this, as it is forcibly taking money for a service that it does not adequately provide.

This is just one of multiple transgressions that need to be fixed, but not by an outside organization.

Students should meet with administrators and find a solution that is fair and agreeable, as this is how one should deal with problems inside a community.

The ZOA did get one thing right: Students on the UCI campus are often discriminated against, and speakers on the campus use hate speech as a rhetorical device, which makes many students feel uneasy.

However, I think that as a community, the students of UCI, not an outside organization, need to band together to stop hate speech.

But, if we as a community decide not to bring hate speech to campus, then there won't be a need for the administration to step in.

A-60



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

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080 RECEIVED
JAMES MOESER
Chancellor

103 SOUTH BUILDING T 919.9
CAMPUS BOX 9100 F 919.9
CHAPEL HILL, NC 27599-9100 www.un

January 20, 2006

Bernard A. Quarterman, Jr.
United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Dear Mr. Quarterman:

I write in follow-up to a December 21, 2005, letter I received from Kenneth L. Ma
Staff Director and Acting General Counsel of the United States Commission on
Rights. The letter offered the University of North Carolina at Chapel Hill
opportunity to comment and respond to materials provided at the Commiss
November 18, 2005, hearing regarding anti-Semitism on college campuses.

The University of North Carolina at Chapel Hill is committed to providing an incl
and welcoming environment for all members of our community and to ensuring
educational and employment decisions are based on individuals' abilities
qualifications. Consistent with this principle and applicable laws, it is the Univer
policy not to discriminate in offering access to its educational programs and activiti
with respect to employment terms and conditions on the basis of age, gender, race,
national origin, religion, creed, disability, veteran's status or sexual orientation.¹

The materials you sent us referenced an incident that occurred on our campus on M
31, 2005, in which a masked man threw a balloon filled with red paint at a represent
of the Israel Defense Forces who was speaking during an event sponsored by Car
Students for Israel. The masked man then escaped on a bicycle.

Both our Campus Police Department and our Vice Chancellor for Student Affairs
immediately advised of this incident by the Executive Director of North Carolina I
Campus police investigated, but their investigation did not develop leads as to
identity of the masked assailant. Student Affairs immediately offered its support an
support of our campus counseling services in assisting individual students and
community in general to think through their reactions to the incident.

¹ The University's policy prohibiting discrimination on the basis of sexual orientation does n
apply to the University's relationships with outside organizations, including the federal government,
military, ROTC, and private employers.

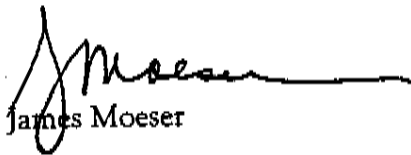
Bernard A. Quarterman, Jr.
January 20, 2006
Page 2

The Executive Director of North Carolina Hillel indicated to the University that he did not consider the incident an anti-Semitic event, but understood it to be "a political statement (albeit a violent one) against the Israel Defense Forces."

To my knowledge, there have been no similar incidents on campus. You have my assurance that this University is committed to having a campus culture where all feel welcome and all feel their voices can be heard and respected.

Thank you for giving the University the opportunity to comment.

Very sincerely,

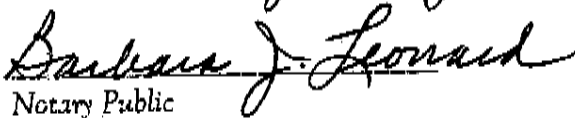

James Moeser

JM:bl

Moeser/quarterman

Subscribed and sworn to before me

This the 20th day of January 2006.


Notary Public

My commission expires July 8, 2007

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



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SANTA BARBARA • SANTA CRUZ

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OFFICE OF THE CAMPUS PROVOST AND EXECUTIVE VICE CHANCELLOR

1156 High Street, Santa Cruz, CA 95064
Phone (831) 459-3885 • FAX (831) 459-2760

January 20, 2006

United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Attention: Bernard A. Quarterman, Jr.

RE: University of California Comment and Response to Statements Made at November 18, 2005
United States Commission on Civil Rights Hearing Regarding Anti-Semitism on College
Campuses

Dear Mr. Quarterman:

I am writing on behalf of Chancellor Denice Denton in response the December 21, 2005 letter from Staff Director and Acting General Counsel Kenneth L. Marcus, which notified us of the opportunity to respond to statements about the University of California, Santa Cruz (UCSC) that were included in testimony at the November 18, 2005 United States Commission on Civil Rights hearing regarding anti-Semitism on college campuses. Upon review of the partial transcript that was provided to us, we find the testimony only mentions UC Santa Cruz and does not identify specific conduct, actions or events pertaining specifically to this campus. While we appreciate the opportunity to respond, the reference to our campus is so non-substantive that we would not know how to respond.

As a campus community, we value free speech, open dialogue, respectful debate, as well as our policies and practices of non-discrimination. When we are informed of any instance in which an individual's right of expression might have been violated, UC Santa Cruz investigates the matter promptly and takes corrective action as appropriate. In all cases we engage in efforts to educate individuals about appropriate ways to express disagreement.

Students, staff, and faculty of UC Santa Cruz have agreed to "Principles of Community" that include a commitment to demonstrate respect, tolerance and patience in our communications. Although we do not claim to always agree with each other, we strive to embrace diversity and to create an open environment in which the free exchange of ideas requires mutual respect and consideration for our differences. A copy of our "Principles of Community" is enclosed for your reference.

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Sincerely,

David S. Kliger
Campus Provost and
Executive Vice Chancellor

A-63

(Enclosure/Attachment)

Selected Policies / Guidelines
Principles of Community

"We are a community living and learning together. Certainly, we cannot expect to always agree with each other on every matter. Yet, we must unfailingly demonstrate respect, tolerance and patience in our communications."

*M.R.C. Greenwood, Chancellor
April 24, 2000*

UCSC Principles of Community

The University of California, Santa Cruz is committed to promoting and protecting an environment that values and supports every person in an atmosphere of civility, honesty, cooperation, professionalism and fairness.

UCSC expects that every campus member will practice these Principles of Community.

We strive to be:

Diverse: We embrace diversity in all its forms and we strive for an inclusive community that fosters an open, enlightened and productive environment.

Open: We believe free exchange of ideas requires mutual respect and consideration for our differences.

Purposeful: We are a participatory community united by shared commitments to: service to society; preservation and advancement of knowledge; and innovative teaching and learning.

Caring: We promote mutual respect, trust and support to foster bonds that strengthen the community.

Just: We are committed to due process, respect for individual dignity and equitable access to resources, recognition and rewards.

Disciplined: We seek to advance common goals through reasonable and realistic practices, procedures and expectations.

Celebrative: We celebrate the heritage, achievements and diversity of the community and the uniqueness and contributions of our members.

We accept the responsibility to pursue these principles in an atmosphere of personal and intellectual freedom, security, respect, civility and mutual support.

UCSC is committed to enforcement of policies that promote the fulfillment of our principles of community. These policies include but are not limited to: University of California Personnel Policies for Staff Members; applicable University Collective Bargaining Agreements; Academic Personnel Manual O15-University of California Policy on Faculty Conduct and the Administration of Discipline; UCSC Policy on Student Conduct and Discipline; UCSC Sex Offense Policy; UCSC Hate Bias Incident Policy. For further information or inquiries, contact the Directors of Academic and Staff Human Resources; Director of EEO/Affirmative Action Office; Director, Student Judicial Affairs; Sexual Harassment Officer; and Campus Ombudsman.

REFERENCE

Official Principles of Community Website (updated 12/04)
http://www.ucsc.edu/about/principles_community.asp

Mr. Kenneth L. Marcus
 Staff Director and Acting General Counsel
 United States Commission on Civil Rights
 624 Ninth Street, N.W.
 Washington, DC 20425

Attn: Bernard A. Quaterman, Jr.

February 15, 2006

Dear Mr. Marcus,

Thank you so much for bringing to my attention the correspondence of Mr. Hamid Dabashi of Columbia University.

Mr. Dabashi alleges that I purposefully misquoted his article in order to slander and defame him. I took the quote from his article from two separate sources, The David Project, <http://www.columbiaunbecoming.com/script.htm>, and New York magazine, <http://newyorkmetro.com/nymetro/urban/education/features/10868/>.

After reviewing the original source, which is at <http://weekly.ahram.org.eg/2004/709/cu12.htm>, Mr. Dabashi is correct that the article does not use the term "Israeli Jews", but uses the term "these people"

However, upon reading the essay in its entirety, one realizes that the whole of this treatise is far worse than the sum of its parts. It is surprising that a professor of "literature and politics" does not realize that one should read for context, and not simply take a few words out of context, which is the basis for his entire defense.

The paragraph to which I referred, and which Mr. Dabashi says is "fallacious, defamatory and illegal" reads as follows

"I sat on the edge of the counter and awaited my fate. I looked around me. The place had an uncanny similarity to an airport. but the garrison was a fully fortified barrack. with its battalion of security forces treating all the transient inmates with equal banality. It was not just coloured Muslims like me that they treated like hazardous chemicals. It was everyone. "One," as in our quintessential humanity, melted in this fearful furnace into a nullity beyond human recognition. What they call "Israel" is no mere military state. A subsumed militarism, a systemic mendacity with an ingrained violence constitutional to the very fusion of its fabric, has penetrated the deepest corners of what these people have to call their "soul." What the Israelis are doing to Palestinians has a mirror reflection on their own soul -- sullied, vacated, exiled, now occupied by a military machinery no longer plugged to any electrical outlet. It is not just the Palestinian land that they have occupied: their own soul is an occupied territory, occupied by a mechanical force geared

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on self-destruction. They are on automatic piloting. This is they. No one is controlling anything. Half a century of systematic maiming and murdering of another people has left its deep marks on the faces of these people, the way they talk, the way they walk, the way they handle objects, the way they greet each other, the way they look at the world. There is an endemic prevarication to this machinery, a vulgarity of character that is bone-deep and structural to the skeletal vertebrae of its culture. No people can perpetrate what these people and their parents and grandparents have perpetrated on Palestinians and remain immune to the cruelty of their own deeds."

Mr. Dabashi insults the reader's intelligence when he does not acknowledge that the use of the term "these people" refers to the Israeli Jews which is the subject of his diatribe.

Additionally, as well articulated by Paul Gorski in a publication from the University of Dayton School of Law, in an article entitled "Language of Closet Racism", he writes, "Closet racists tend to avoid owning their views on race. They often point to other groups, using terms such as "they," or "those people," instead of referring to themselves." <http://academic.udayton.edu/race/01race/whiteness02.htm> .

As noted by Scott Sherman in The Nation, (emphasis is mine),

"Dabashi correctly insists that the David Project mangled the quote--inserting the phrase "Israeli Jews" where he had "these people"--and took the entire passage out of context. (The context was his description of a five-hour ordeal in Ben Gurion Airport, during which time Dabashi was searched and detained by Israeli security officials.) "The phrase 'Israeli Jews' never ever appears in that entire essay. That is not my vocabulary," he says. "I was referring to citizens of a militarized state, both its victims and its victimizers. I could have written that passage about Americans in Iraq or Janjaweed in Darfur. **What's troubling about the passage is its sweeping characterization of an entire people--"Israeli Jews" or not--as vulgar and domineering in their very essence. The passage can easily be construed as anti-Semitic.** Dabashi, at a minimum, is guilty of shrill and careless writing. In panning for gold, his critics discovered a precious nugget, one that he would do well to disown." <http://www.thenation.com/doc/20050404/sherman>

It is quite clear from reading Mr. Dabashi's piece that he does not feel that Israel has any right to exist, irrespective of whether the Israelis go back to the 1967 borders or the 1949 armistice lines. Mr. Dabashi will not even refer to the land that is internationally recognized as Israel, as such. Throughout this treatise, he only refers to Israel as "Palestine", and constantly speaks of its airport as "Ben Gurion checkpoint."

In an article in the New York Daily News, Douglas Feidin notes:

"In the world of Hamid Dabashi, supporters of Israel are "warmongers" and "Gestapo apparatchiks." The Jewish homeland is "nothing more than a military base for the rising predatory empire of the United States." <http://www.nydailynews.com/front/story/254925p-218295c.html>

It is disingenuous when Mr. Dabashi hides behind the American liberties that we enjoy here to write about his trip to the Middle East in an Egyptian newspaper, al-Ahram. The

subject matter of his treatise has nothing, what-so-ever, to do with "the future of democracy in his adapted country, namely the United States." It is, rather a polemic about the Palestinian cause and a eulogy for a lost friend.

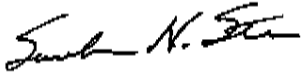
Mr. Dabashi's asserts that he is simply exercising his right as an American citizen to free speech, which is nowhere challenged in my remarks. He has every right to publish or speak about whatever he chooses.

It is disingenuous of him, however, to say that he has not had his political views enter his professional life, when he has used his position to intimidate students who disagree with them. I would refer the reader to the article published in the Columbia Spectator, by Columbia student Victor Luria, "Student Intimidation Here and Now", <http://www.columbiaspectator.com/vnews/display.v/ART/2005/01/26/41f711a7e9fac>, and "Columbia University's Hysterical Professor", by Daniel Pipes, published in FrontPageMagazine.com <http://www.frontpagemagazine.com/Articles/Printable.asp?ID=16163>.

Additionally, in a move which some of his students found intimidating, Mr. Dabashi cancelled classes and subtly encouraged students to attend an anti-Israel rally, http://www.columbiaspectator.com/vnews/display.v/ART/2002/04/18/3cbe8e3d6a634?in_archive=1.

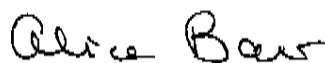
Mr. Dabashi's writing certainly demonstrates that he has a large degree of animus and considerable biases against the Jewish people and the Jewish state. If this is what he submits in his defense, one does well to ask himself what it is that he says when he is in a position of unchecked power, to students inside his classroom.

Sincerely,



Sarah N. Stern

ALICE BAER
NOTARY PUBLIC
Montgomery County, Maryland
My Commission Expires January 1, 2010



2/21/06



UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

February 9, 2005

Ms. Sarah Stern
700 Stonington Road
Silver Spring, MD 20902

RE: Opportunity of Witness/Speakers to respond to comments regarding the statements, testimony or evidence Presented at November 18, 2005 United States Commission on Civil Rights Hearing on Anti-Semitism on College Campuses

Dear Ms. Stern:

On November 18, 2005, the United States Commission on Civil Rights (Commission) held a briefing on anti-Semitism on college campuses in America. You were invited to speak at this briefing. During the course of this briefing, you made various statements regarding Anti-Semitism on various campuses. The Commission, pursuant to its rules and regulations on potentially defamatory testimony, offered individuals - which includes universities - the opportunity to respond before the record was closed. Pursuant to those same rules, the Commission is now offering you the opportunity to respond to statements that individuals or universities made regarding you.

Enclosed please find responses from individuals or university officials to statements or evidence made by you or presented by you at the briefing. You are by no means obligated to respond to their responses. However, if you feel it necessary to respond to statements concerning you or your institution or employees which are raised by the institution(s), please send your sworn statements within thirty (30) days of the date of this letter to the following address:

United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425
Attn: Bernard A. Quarterman, Jr.

If you have any questions or concerns regarding this matter, you may call Mr. Quarterman at 202-376-8371. Thank you in advance for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Marcus", written over a horizontal line.

Kenneth L. Marcus
Staff Director and Acting General Counsel

Enclosures



Founded 1897

ZIONIST ORGANIZATION OF AMERICA

4 EAST 34TH STREET 3RD FLOOR, NEW YORK, N.Y. 10016

TEL: (212) 481-1500 | FAX: (212) 481-1515 | WWW.ZOA.ORG

SUSAN B. TUCHMAN, ESQ.

Director of the Center for Law and Justice

March 20, 2006

BY FAX (202) 376-7672) AND FEDERAL EXPRESS MAIL

Mr. Kenneth L. Marcus
Staff Director and Acting General Counsel
United States Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Re: Response to Comments Regarding the Information Presented to the United States Commission on Civil Rights at the Hearing on Anti-Semitism on College Campuses on November 18, 2005

Dear Mr. Marcus:

I am the Director of the Zionist Organization of America's Center for Law and Justice, and was one of the panelists at the Commission's briefing on campus anti-Semitism on November 18, 2005. Counsel for the University of California, Irvine (UCI) sent a detailed letter to you dated February 3, 2006, in response to the information that I provided to the Commission at the briefing. This letter will clarify and correct representations in UCI's letter, to help ensure that the Commission's record is accurate and complete.

At the outset, I should note that UCI has incorrectly identified the name of my organization. Its name is not and has never been "the Zionist Organization of America of New York." It is the Zionist Organization of America, a national organization with offices all over the country, including in California. The ZOA is the oldest pro-Israeli organization in the U.S., and is a charter member of the Conference of Presidents of Major American Jewish Organizations. Our past presidents include U.S. Supreme Court Justice Louis Brandeis, Rabbi Dr. Abba Hillel Silver, and Rabbi Stephen Wise.

I must also correct the university's erroneous and unsubstantiated assertion that the ZOA's conduct has been "designed to ruin the reputation" of UCI (see UCI's letter at page 2). The ZOA's sole goal has been to ensure that Jewish students receive the educational environment to which they are entitled by law – one that is free from harassment, intimidation and discrimination. When the ZOA filed a complaint on behalf of Jewish students at UCI under Title VI of the federal Civil Rights Act of 1964, it was

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Mr. Kenneth L. Marcus
United States Commission on Civil Rights
March 20, 2006
Page 2

done with the full support of the students themselves. The complaint was filed in October 2004, after Jewish students had complained for years to numerous senior members of the UCI administration about feeling harassed and intimidated on campus, and after the administration had failed to address their concerns and rectify the problem.

I must also correct UCI's erroneous contention that the ZOA is seeking to silence or suppress speech on campus. That is not what the ZOA is seeking, and my statements to the Commission could not have been more clear on this point. The ZOA has consistently contended that UCI's violation of the law is based on its pattern of not only tolerating and accepting the harassing, intimidating and discriminatory environment for Jewish students on campus, but in many ways participating in and contributing to the problem. Specific examples of UCI's wrongful conduct were already presented to the Commission and are also described here.

UCI's letter is quite lengthy and, in parts, reads like a legal brief. But it is important to note what the letter did not refute:

First, UCI has not denied that anti-Semitism (including speech and conduct that delegitimizes and demonizes the State of Israel, and vilifies its leaders – which have been recognized by the U.S. State Department as an expression of anti-Semitism), is a problem on campus, and that the problem has existed for years.

Second, UCI has not denied that Jewish students have repeatedly complained about the problem to senior members of the administration.

Third, other than to identify some sporadic programming – much of which UCI instituted only after the ZOA filed its complaint under Title VI, and after the Office for Civil Rights (OCR) initiated its investigation into UCI's conduct – and to describe some token steps that have been taken (e.g., adopting the Principles of Community and “reviewing and updating” UCI policies and procedures), UCI has not developed and implemented any concrete and concerted long-term strategy for rectifying the hatred, hostility and intimidation that Jewish students have repeatedly reported to the university administration.

Finally, UCI has not denied that it has not once come out and condemned the anti-Semitic speech and conduct on campus, though the administration has publicly condemned hatred and bigotry expressed against other groups.

It is equally important to note what UCI did say in the letter:

First, despite repeated complaints of harassment, intimidation and discrimination by numerous Jewish students since at least 2002, which eventually led to the Title VI complaint filed on their behalf by the ZOA, UCI continues to contend that “[t]here has been no indication that any group or individual has been intimidated, harassed or

Mr. Kenneth L. Marcus
United States Commission on Civil Rights
March 20, 2006
Page 3

prevented from pursuing all the educational and extracurricular activities available to UC Irvine students" (see page 3 of UCI's letter).

Second, though OCR, the agency which enforces Title VI with regard to recipients of funding from the U.S. Department of Education, has already confirmed that Title VI protects against anti-Semitism, UCI has the temerity to state exactly the opposite: "In fact, Title VI does not apply to allegations of anti-Semitism" (see page 16 of UCI's letter).

That UCI continues to deny knowledge of a repeatedly reported problem on campus, as well as any legal responsibility to rectify the problem, should demonstrate to the Commission the enormous hurdles that Jewish college students are facing in combating campus anti-Semitism.

UCI's remaining misstatements and mischaracterizations will now be addressed in the order in which they were made.

UCI's "Introduction"

Although UCI has described a few programs it has run "in an attempt to maintain a civil and informative dialogue" (see page 1 of the UCI letter), it has failed to describe how these programs have reduced the hatred and hostility that is routinely expressed on campus toward Jews and toward Israel. Indeed, according to Jewish students, these programs have not had that effect. Those who perpetrate the hate rarely, if ever, attend such programs.

Though there may be a Jewish student who believes that the campus community ignores the hateful and inflammatory speakers who routinely visit the UCI campus (see page 2 of the UCI letter), many other Jewish students have been significantly affected and harmed by the conduct. Some have felt so frightened and intimidated that they do not wear Stars of David or anything that might identify them as Jewish or supporters of Israel. Some Jewish students have been reluctant to attend and affiliate with Jewish-sponsored programs and activities, for fear of the repercussions. Some Jewish students have altered their usual routes on campus because they are afraid of coming into contact with hateful speech and conduct about Jews, Zionists and Israel. At least two students left UCI to study elsewhere because they could no longer tolerate the hostile environment on the UCI campus.

Despite UCI's suggestion that numerous Jewish-affiliated student groups are registered at the university (see page 3 of the UCI letter), the university could only possibly be referring to four groups: a fraternity, a sorority, Hillel and a pro-Israel group on campus called Anteaters for Israel (named for the UCI mascot), though this last group is actually nonpartisan and non-sectarian. Leaders of all four groups have been complaining to senior members of the administration for years about the hatred and

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hostility directed against Jews on campus, and about the feelings of harassment and intimidation that have been engendered in many Jewish students. The failure of the administration to address these problems triggered the Title VI complaint that the ZOA filed on Jewish students' behalf.

Dialogue on Campus

UCI acknowledges that its efforts to create dialogue on campus have been ad hoc and inconsistent (see page 4 of the UCI letter), rather than the sustained, consistent, directed and long-term efforts that are sorely needed. Indeed, UCI has itself characterized the results of its efforts as far less than stellar. According to Jewish students, the efforts have been ineffective.

UCI has also touted its "strong academic foundation in Middle East studies," including Jewish studies (see page 5 of the UCI letter). Although UCI lists "Judaica Studies" among the departments in its catalogue, not a single course is offered in the department, and according to students, this has been true for years. Jewish students have repeatedly requested that Hebrew be offered at UCI. This year (perhaps not coincidentally after OCR initiated its investigation into UCI's conduct in response to the ZOA's Title VI complaint), UCI is finally offering introductory Hebrew – although oddly it is being taught in the Spanish department.

UCI may have sponsored some programs and symposia on Middle Eastern and other related topics at UCI, but Jewish students have complained about the lack of balance in the presentations. For example, at a forum called "Visions of Justice and Peace" held in the fall of 2002, a Jewish student complained that while a pro-Palestinian view was presented, there was no voice in support of the State of Israel. A professor leading the forum gave the incredible response that no one was present from Hamas either – as if a mainstream, pro-Israel speaker and a representative from a terrorist group could be considered equivalent on the political spectrum.

In the spring of 2002, at another UCI forum, one of the panelists spent his allotted time justifying suicide bombings against civilians. Both the then-Chancellor of UCI and the Vice Chancellor attended that forum, though neither of them distanced themselves from that horrific view either then or later. There is little, if anything, to suggest that this forum, or any of the other UCI programs and symposia, have had any impact on the hostility and intimidation that Jewish students have experienced on campus. Indeed, the administration's failure to speak out at the forum in the spring of 2002 is an example of the way in which the administration's conduct actually increased the alienation and discomfort that Jewish students were feeling.

UCI alleges that there have been "no formal complaints" in the 2004-2005 and 2005-2006 academic years" (see page 6 of the UCI letter). The ZOA's Title VI complaint on behalf of Jewish students at UCI was filed in October 2004, and OCR's investigation

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of the complaint is still in progress. That there have been no other formal complaints in the 2004-2005 year is likely a testament not to an improved environment on campus, but rather to Jewish students' understanding, born of experience, that complaining to the UCI administration accomplishes little, if anything, and that the Title VI proceeding would produce more effective results.

The Testimony Before the Commission

Holocaust Memorial

As UCI acknowledges, Jewish students had carefully and painstakingly constructed the Holocaust memorial in 2003. They had been assured by the administration that security would be provided. UCI's security was wholly inadequate: one of the students who discovered that the memorial had been vandalized found the one security guard in his car, fast asleep.

How UCI could question whether the destruction of that memorial was a hate crime, and how it could deny that any crime at all was committed (see page 7 of the UCI letter), is curious. The incident fell directly within the definition of a hate crime under UCI's own policies, i.e., vandalism motivated by hatred or bias against Jews. It occurred at or about the time that a swastika was found carved into a table at the candlelight vigil for Holocaust victims. Furthermore, the university should not feel equipped to reach any conclusions at all about whether a hate crime was committed, since UCI never completed an investigation of the incident.

In fact, the administration never even acknowledged to the UCI community that the incident occurred. As UCI itself admits, the Assistant Director of the local Anti-Defamation League (ADL) office urged the university to come out with a statement against what happened (see page 7 of the UCI letter), and reportedly offered to prepare a statement for the administration to issue. But the administration apparently did not accept his offer and never issued any statement at all.

The administration's response to these anti-Semitic incidents stands in stark contrast to its response when a mural built by a registered student group, the Society of Arab Students, was destroyed on campus in 2004. The administration instituted an immediate investigation of the incident and classified it as a hate crime, apparently even before the police had made that classification. In addition, the Chancellor posted a message about the destruction of the mural on the university's website and e-mailed the message to the entire UCI community, condemning the incident and emphasizing "in no uncertain terms that there will be consequences for anyone who initiates such activities on this campus."

UCI says that "appropriate action" would have been taken had the perpetrators of the anti-Semitic vandalism been caught (see page 7 of the UCI letter). But the university

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is primarily responsible for the failure to apprehend the culprits. The administration's failure to publicly condemn or even simply to disseminate information to the UCI community about the incident helped to ensure that the perpetrators would never be caught. In addition, UCI's silence sent a message to those Jewish students hurt and unnerved by the incident, as well as to the rest of the university community -- that this type of behavior was not worthy of acknowledgement or condemnation, and that anti-Semitic conduct would be tolerated on the UCI campus.

Anti-Semitic Speakers

The ZOA has already provided examples of some of the hateful and bigoted statements that are routinely made about Jews on the UCI campus. UCI has noted one of the speakers -- a frequent guest at UCI -- but he is not the only one.

According to UCI, it cannot prevent or regulate the content of the speakers' speech (see page 8 of UCI's letter). But what UCI has failed to address is the fact that its own conduct connotes acceptance and endorsement of the hateful speech, and that this has exacerbated the hostile environment that Jewish students have faced on campus. For example, in violation of university policy, the anti-Semitic speeches at UCI have routinely been delivered from lecterns bearing the UCI emblem, thus implying that the university endorses the speech. Though several Jewish students repeatedly complained to the UCI administration about the emblem's display, the administration did not remove it. Eventually the administration responded by covering up the logo at one event for one day. But after that, the administration ignored the problem. A Jewish student again complained to both Dean of Students Sally Peterson and Michael Chennault of the Ombudsman Office. Both administrators told the student that having to cover the university emblem was inconvenient. An easily correctable problem that was making Jewish students feel uncomfortable and sending the wrong message to the university community was deemed to be simply too much trouble for UCI to fix.

Furthermore, UCI has failed to explain why it has never criticized or denounced the anti-Semitism on campus, especially knowing that Jewish students have felt intimidated and afraid. Speaking out against hateful and bigoted speech is not a controversial notion. The American Association of University Professors (AAUP) has long stressed that colleges and universities should "be free (indeed encouraged) to condemn manifestations of intolerance and discrimination, whether physical or verbal." According to the AAUP, "[t]he governing board and the administration have a special duty not only to set an outstanding example of tolerance, but also to challenge boldly and condemn immediately serious breaches of civility." The AAUP has also emphasized that student personnel administrators -- who are described as having in some ways the most demanding role of all -- "should set high standards of their own for tolerance and should make unmistakably clear the harm that uncivil or intolerant speech inflicts."

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Likewise, the American Civil Liberties Union, one of this country's fiercest protectors of the right to free speech, has encouraged campus administrators to "speak out loudly and clearly" against bigotry. OCR has also advocated speaking out in its guide on how to respond to sexually offensive speech, which is no more hurtful or harmful than anti-Semitic speech. According to OCR, schools can and should "denounce such opinions."

Other colleges and universities in this country have recognized anti-Semitism when it occurs and have spoken out and condemned it. But UCI has steadfastly maintained its silence. Speakers are invited to the UCI campus who repeat such hateful and bigoted ideas as the Jewish lobby is a "den of spies;" the Jews control the world, the U.S. government, and the media; and the Jews are responsible for 9/11. Yet UCI has stayed quiet. Posters are displayed on campus equating the Star of David with the swastika, and depicting the Star of David dripping with blood. Still, UCI has remained silent. Fabricated quotes are attributed to Jewish and Israeli leaders with the clear purpose of invoking hatred of Jews and Israel. Though the fabrications have been brought to the attention of UCI administrators, and though UCI's clearly worded policies make such conduct subject to discipline, UCI has remained quiet.

UCI's failure to speak out sends the message to the perpetrators of the hate that they can get away with their anti-Semitic speech and conduct. For the victims, the message is that by saying nothing, the university is accepting and tolerating the hate, and has in effect taken the side of those who are perpetrating the hate. Unwittingly or not, UCI has helped to make Jewish students feel more isolated, marginalized, and afraid. It is exactly this result that Professor Matsuda cautioned against (see page 8 of the UCI letter) when a university like UCI tolerates hateful speech.

Student Letter

UCI does not dispute the fact that the student wrote a heartfelt letter to the Chancellor of UCI, describing that she felt frightened and physically threatened at UCI because she was Jewish. UCI also does not dispute that the Chancellor never responded to her letter. This student did not "attend" the anti-Semitic event, as UCI contends; she could not help but be subjected to it, because it took place near the Student Center, where students eat and otherwise conduct their normal daily business.

UCI may try to characterize the administrator's response to the student's letter, which advised her to seek counseling, as a "teachable moment," but it in no way functioned as a teachable moment for the student herself. Indeed, she found the administrator's response insulting and almost more upsetting than the anti-Semitic incident itself. The university's message to her was that she had the problem, not that there was a problem on campus that the university had the responsibility to address.

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2002 Article

In responding to the article in *Alkalima* that repeatedly emphasized the Nazi-like notion that Jews are genetically different and separate from non-Jews, UCI has again not addressed the most salient points. The first is that the anti-Semitic article was published by a UCI student newspaper that is entitled to funding from UCI, and it does in fact receive support from the university. Indeed, UCI minimized the amount of support in its letter; I have been informed that the university's computer store placed advertisements in *Alkalima* at least twice. Second, UCI failed to address the fact that the *Alkalima* article made hateful and Nazi-like statements about Jews being genetically different and separate from non-Jews, which no doubt functioned to marginalize and alienate Jews from the rest of the campus community. Finally, UCI did not address the fact that the university administration did not condemn or criticize the article as factually inaccurate, bigoted and hateful. UCI's failure to respond to the anti-Semitic article connoted acceptance of it.

That UCI attempts to equate the publication of this hateful, factually distorted and plainly anti-Semitic article by Muslim students, with the Jewish students' display of Bus 19 (see pages 10-11 of UCI's letter), demonstrates the university's utter failure to appreciate what Jewish students have been upset about on campus. Bus 19 was a commuter bus in Jerusalem and the target of a terror attack in January 2004, resulting in the murder of 11 people and the wounding of over 50. There was no hateful or factually inaccurate rhetoric involved in the display of the bus; the burned skeletal remains of the bus spoke for themselves. Jewish student groups did not and have not engaged in vicious attacks on Muslims, their religious symbols, or their beliefs and aspirations.

Anti-Zionist Week

UCI does not dispute that this weeklong event, which has also been called Zionist Awareness Week and most recently, Israel Awareness Week, has nothing to do with truthfully educating students about Zionism or Israel. The event is an opportunity to incite hatred of Jews, Zionists and the State of Israel. UCI has also not disputed the fact that it has never once condemned or criticized the event, though it occurs on an at least annual basis on campus. It is difficult to conceive of the university remaining silent in the face of a KKK rally inciting hatred of African Americans, or a hateful rally against Hispanics or other ethnic minority group.

Rock-Throwing Incident

My statements about this incident were based on information from the Jewish student at whom the rock was thrown, and I stand by my statements. My statements are also corroborated by the e-mail message that the student sent to Dean of Students Sally Peterson after the incident occurred.

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UCI has acknowledged that the administration was notified of the incident and that it left the student terrified; in the e-mail, the student told Ms. Peterson that "I have always felt a little nervous about wearing a 'Jewish' or Pro-Israel tshirt [sic] but after that day I've been literally scared to."

According to the Jewish student, Ms. Peterson responded to the e-mail and said that she would talk to the Chancellor about the rock-throwing incident. The student never heard from her again. He did not receive a voicemail message from Ms. Peterson, or any other response from the university.

The student does not recall ever talking to Byron Breland about the rock-throwing incident. He is certain, however, that contrary to UCI's assertions (see page 12 of the UCI letter), the student holding the child was a man, not a woman.

The student does not recall exactly when he reported the incident, though he did not report it immediately. He was upset and unsure of how to handle the situation; as is not unusual for young victims of an assault, he did not want to make a "big deal" about the incident, especially since he did not see who threw the rock at him. Once the student decided to come forward and report the assault to the administration, he is certain that the administration never responded to his complaint.

Threat or Harassment of Student

Based on the information provided to me by the victim, I stand by my statements to the Commission.

UCI has misstated the facts. The Jewish student was surrounded by not just two to five students, but by at least six to 12 students. He recognized them as members of the Muslim Student Union, a registered student group on campus.

After this Jewish student was threatened and assaulted, he reported the attack to the UCI police department, either the day of the incident or the day after. The police officer with whom he spoke told him that without the attacker's identification, there was nothing that the police could do. The student does not recall any appointment being scheduled thereafter with the police, and he never received any letters or telephone inquiries from the police. There was no other follow-up.

The student also reported the attack to Byron Breland. He did not know the names of his attackers, nor did he know why he was attacked, because he had neither done nor said anything to provoke it. Mr. Breland told the Jewish student that if he saw his attackers, he should tell Mr. Breland. The student then left Mr. Breland's office.

After he left, the student walked through Crystal Cove and saw the individual who had instigated the attack against him. The attacker saw him, and came toward him,

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screaming and cursing, "You told the Dean, you b ___ h!" and other epithets. The Jewish student yelled back, and the attacker screamed, "Let's go talk to the Dean, you little b ___ h!" Cursing, the attacker walked in front of the Jewish student and opened and then slammed a glass door in his face, almost hitting him.

The two students found Byron Breland who might have been coming out of the bathroom. The attacker continued to curse and use epithets. Byron Breland did not separate the students. The attacker pointed to the Jewish student's tee shirt, which depicted the Star of David and a phrase in Arabic (the Jewish student is of Sephardic descent and speaks Arabic) that acknowledged Israel's victory in the 1967 war in the Middle East. The attacker called the Jewish student a "f___king racist." Byron Breland took the attacker in his office and told the Jewish student that he could leave.

Later, Byron Breland told the Jewish student that he had given both the Jewish student and his attacker a warning, although the Jewish student had done nothing to warrant one. No disciplinary proceedings were instituted against the perpetrator of the attack against the Jewish student, and no investigation was conducted to determine who else was involved in the attack. Without the basis or authority to do so, Byron Breland told the Jewish student not to wear such tee shirts anymore.

Rather than condemn the attack on the Jewish student and those who perpetrated it, UCI has instead maligned the victim, alleging that he is "known to act provocatively," and that he used, at an anti-Israel event, words that "were inflammatory and potentially offensive" (see page 14 n.2 of the UCI letter). UCI has also falsely accused the Jewish student of spitting at Byron Breland (*id.*).

UCI's allegations are completely inappropriate. This student was repeatedly subjected on campus to signs equating the Star of David with the swastika; speakers equating Jews with Nazis and claiming that the Jews caused the Holocaust; and speakers who voiced their support of terror groups and suicide bombings against Jewish Israelis. The student refused to remain silent and vigilantly countered this hateful rhetoric. UCI is apparently now personally attacking him for exercising his constitutional right to free expression, while standing behind those students who initiate and repeatedly engage in hateful conduct toward Jews and supporters of Israel. In fact, when this Jewish student was handing out fliers that condemned suicide bombings (see page 14 n.2 of UCI's letter), Byron Breland asked the student to stop doing so, in violation of his rights.

The Jewish student may in fact have criticized how the administration was responding to the anti-Semitic rhetoric, in angry words to Byron Breland (*see id.*). His criticism was justified. At the spring 2004 anti-Israel event, Jewish students were holding up signs supporting the State of Israel and condemning suicide bombings. Certain students deliberately stood in front of these signs and blocked others from viewing them. Byron Breland was present when this occurred, but did nothing about it,

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which engendered this Jewish student's understandable anger toward the administration's passivity and inaction.

This Jewish student left UCI because of the hostility he encountered there and went to study in Israel. He did not feel safe at UCI, and he had lost all confidence in the university to ensure his safety. He is not the only one; at least one other Jewish student left UCI and transferred to another university because he could no longer tolerate the hostile environment on the UCI campus.

UCI has purportedly expressed surprise and disappointment that the mediation to resolve the claims alleged in the Title VI complaint was terminated (see page 15 of UCI's letter). The ZOA's reasons for withdrawing from the mediation were made clear to UCI then, and should be clear based on the positions UCI has taken in its letter to the Commission. UCI has steadfastly refused to acknowledge that Jewish students have been harassed, intimidated or discriminated against on the campus, and has refused to acknowledge that the university has any obligation to address the problem.

UCI relies exclusively on the opinion of one Jewish student to disparage the Title VI complaint (see page 15 of UCI's letter). But it is important to note that this UCI student acknowledged "the constant anti-Semitism on our campus" (see Alex Chazen's article attached to the UCI letter); he also noted that students on campus "are often discriminated against, and speakers on the campus use hate speech as a rhetorical device, which makes many students feel uneasy."

This student's sole objection was to filing the Title VI complaint as a means of rectifying the anti-Semitic harassment and intimidation on campus. But when this student expressed his views, he had just completed his freshman year at UCI and thus lacked any knowledge of all the many efforts that Jewish students had made, without success, to work with the UCI administration before the Title VI complaint was ultimately filed. Also, this student did not speak for everyone. One Jewish student leader, who had been intimately involved with trying to work directly with the administration to resolve the problems of harassment and intimidation, disagreed with his assessment. She said that the freshman student's opinion was "misguided because years and years of experiences and frustrations prove that the UCI administration won't or can't address these problems on their own." This more experienced Jewish student leader also pointed out that many UCI students "were and are fully behind the [Title VI] complaint because we're the ones who tried for so many years to get the university to address our concerns, and we're the ones who saw that they weren't responding."

Likewise, the lay chairperson of the Orange County Israel on Campus Coalition (comprised of such organizations as the American Jewish Committee, the American Jewish Congress, the Anti-Defamation League, and Hillel, to name a few) disagreed with the freshman student and applauded the ZOA's legal action. He noted that it came after "[s]tudents and organizational members of the Israel on Campus Coalition had repeatedly

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asked UC Irvine officials to refrain from taking actions that showed university endorsement of hateful speech and conduct, and also to speak out against such expressions of hate."

The Israel on Campus Coalition (ICC) lay chairperson acknowledged some of the administration's more recent actions that he characterized as "welcome, though sorely belated." He also suggested that "the university's new willingness to show some awareness of the problem is a direct consequence of the filing of the complaint with the OCR."

Both the ICC letter and the Jewish student leader's letters are attached hereto.

Ms. Tuchman's "Suggestion" Concerning Title VI

UCI argues that Title VI does not apply to allegations of anti-Semitism. UCI is wrong. OCR, which is charged with the responsibility of enforcing Title VI, has already clarified that Jews are a protected class under Title VI. OCR's interpretation of Title VI is supported by the statute's legislative history. OCR's policy is also supported by Supreme Court and other federal court decisions that have examined the scope of the protections afforded under our civil rights laws.

Even though "religion" is not expressly included in the language of Title VI, the legislative history of the statute suggests that Congress intended that religious discrimination be included. The House of Representatives' bill became Title VI and the General Statement in the bill is instructive as to Congress' intentions in passing the law.

The General Statement recognized that "[i]n various regions of the country there is discrimination against some minority groups." Civil Rights Act of 1964, H.R. Rep. 88-914, 88th Cong. (2nd Sess. 1963). Among other things, the House bill "would open additional avenues to deal with redress for denials of equal protection of the laws on account of race, color, religion, or national origin by State or local authorities." *Id.* (emphasis added). The House Report noted that the bill "is a constitutional and desirable means of dealing with the injustices and humiliations of racial and other discrimination." *Id.* (emphasis added). The legislative history of Title VI thus recognizes that religious discrimination is among the injustices that need to be corrected in this country, and that Title VI would be a means of dealing with those injustices.

There is also evidence that the Senate understood that Title VI was intended to include protection against religious discrimination. In discussing the legislative history of the statute and the evidence that Congress intended a flexible definition of the term "discrimination," the Supreme Court included the remarks of then-Senator Ervin about the meaning of the term. Regents of University of California v. Bakke, 438 U.S. 265, 338 (1978). Senator Ervin noted that discrimination under Title VI occurred when an individual was "treated unequally or unfairly because of his race, color, religion, or

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national origin." *Id.* (emphasis added). The legislative history thus suggests that despite the language of the law, Congress intended that Title VI would protect against, among other things, religious discrimination.

Indeed, the United Supreme Court seems to have assumed that Title VI protects victims of discrimination on the basis of their religion. In Cannon v. University of Chicago, 441 U.S. 677 (1979), a woman who was denied admission to the medical schools of two private universities brought a sex discrimination action under Title IX of the Civil Rights Act. Noting that "Title IX was patterned after Title 'VI' (*id.* at 694), the Supreme Court discussed Title VI in detail. Among other things, the Court stated that "victims of discrimination on the basis of race, religion, or national origin have had private Title VI remedies available at least since 1965 . . ." *Id.* at 709 (emphasis added). The Supreme Court thus understood that victims of religious discrimination were protected under Title VI.

Lower federal courts have also acknowledged that Title VI protects against religious discrimination. See Carmi v. Metropolitan St. Louis Sewer Dist., 620 F.2d 672, 680 n.11 (8th Cir.) ("Title VI prohibits discrimination based on race, national origin and religion") (McMillian, J., concurring), cert. denied, 449 U.S. 892 (1980); Oti Kaga, Inc. v. South Dakota Housing Development Authority, 188 F. Supp. 2d 1148, 1167 (D.S.D. 2002) (noting that Title VI "prohibits the exclusion of anyone in a federally-assisted program on account of race, religion, national origin, and color"), *aff'd*, 342 F.3d 871 (8th Cir. 2003).

Jews are also a protected class under Title VI on the basis of their national origin, a category (unlike religion) that is expressly included in the language of the law. Relying on a decision from more than 15 years ago, UCI has argued that "national origin" refers only to an individual's country of origin (see page 16 n.3 of UCI's letter). But as one federal court pointed out, "[r]ecent cases have . . . used a broader definition of national origin" than the country from which an individual was born or from which the individual's ancestors came. Almendares v. Palmer, 2002 WL 31730963 at *9-10 (N.D. Ohio Dec. 3, 2002). In Almendares, the plaintiffs in a Title VI action did not allege the countries of their birth or of their ancestors; they only identified themselves as limited English proficient and persons whose primary language was Spanish. *Id.* at *9. But the court concluded that because the plaintiffs had linguistic characteristics of a particular national origin group, they sufficiently pled a claim of national origin discrimination under Title VI. *Id.* at *10.

In fact, the courts have overwhelmingly adopted a broad definition of national origin, rejecting an understanding of the term based narrowly on an individual's country or nation of origin. See, e.g., Kanaji v. Children's Hospital of Philadelphia, 276 F. Supp. 2d 399 (E.D. Pa. 2003), and numerous cases cited therein at 404.

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In a discrimination case brought under Title VII, persons of "Gypsy" descent fell within the definition of "national origin" for purposes of the law – even though the term "Gypsy" is not related to a particular nation or region. Janko v. Illinois State Toll Highway Auth., 704 F. Supp. 1531 (N.D. Ill. 1989). See also Bennun v. Rutgers State University, 941 F.2d 154, 173 (3d Cir. 1991) ("We think unlawful discrimination must be based on [plaintiff's] objective appearance to others, not his subjective feeling about his own ethnicity."), cert. denied, 502 U.S. 1066 (1992); Harel v. Rutgers, 5 F. Supp. 2d 246, 269 (D.N.J. 1998) (noting "the amorphous concept of national origin," and determining that "emphasis should be placed on the plaintiff's objective appearance to others, not necessarily on his ancestry or birthplace"), aff'd, 191 F.3d 444 (3d Cir. 1999), cert. denied sub nom. Harel v. Lawrence, 528 U.S. 1117 (2000).

The broad definition of "national origin" has been applied in cases alleging discrimination under Title VI. For instance, in Atakpa v. Perimeter Ob-Gyn Associates, P.C., 912 F. Supp. 1566 (N.D. Ga. 1994), the court noted that "[t]o establish national origin discrimination under Title VI, plaintiff must prove [among other things, that] . . . she is a member of an ethnic minority . . ." Id. at 1574. The court did not require a showing of a particular nation or region of birth in order to establish national origin discrimination under Title VI; rather, a showing of one's ethnicity was enough. See also Chowdhury v. Northwest Airlines Corp., 238 F. Supp. 2d 1153 (N.D. Cal. 2002) (Bangladeshi American citizen's claim sustained under Title VI based on his ethnicity).

All of these cases establish that UCI's definition of "national origin" is overly restrictive. Jews are not only a religious group but also an ethnic group, sharing a common ancestry and language, and a national and cultural heritage. They should thus have the right to allege a discrimination claim under Title VI based on their national origin.

Jews should also be protected under Title VI as victims of racial discrimination, another class that is specifically protected in the language of the law. UCI has stated that in 1987, the Supreme Court "noted . . . that 'Jews today are not thought to be members of a separate race.'" See UCI's letter at p. 17. UCI has misrepresented the Supreme Court's decision in Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987). In fact, the Court in that case made no such notation, determining instead that for purposes of the civil rights protections afforded under 42 U.S.C. §1982, Jews could state a claim for racial discrimination. Id. at 617-18.

On the same day that the Supreme Court reached this conclusion, it came to the identical conclusion with respect to Arab Americans, determining that persons of Arab ancestry are protected from racial discrimination under 42 U.S.C. § 1981. Saint Francis College v. Al-Khazraji, 481 U.S. 604, 613 (1987).

In reaching these conclusions, the Supreme Court adopted an expansive definition of racial discrimination. The Court rejected "whether or not [racial discrimination]

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would be classified as racial in terms of modern scientific theory." *Id.* at 613. The Court's focus was on protecting from discrimination "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." *Id.*

Federal court decisions have applied this expansive definition of what constitutes discrimination based on race. In Bisciglia v. Kenosha Unified School Dist. No. 1, 45 F.3d 223, 229-30 (7th Cir. 1995), the Court of Appeals for the Seventh Circuit concluded that "Italians" might be considered "an identifiable 'race'" for purposes of Section 1981. Likewise, in Oranika v. City of Chicago, No. 04 C 8113, 2005 WL 2663562, at *4 (N.D. Ill. Oct. 17, 2005), the court concluded that a plaintiff's claims that he was discriminated against on the basis of his being Nigerian would be considered claims of discrimination based on race and color.

The same expansive interpretation of race has been applied in Title VII and Title cases. In Sinai v. New England Tel. and Tel. Co., 3 F.3d 471, 474-75 (1st Cir. 1993), cert. denied, 513 U.S. 1025 (1994), the court affirmed a jury's findings of race discrimination under Section 1981 and Title VII; the plaintiff had established that he was Jewish and of Israeli origin, and the court concluded that the jury could have found that Israel's populace was primarily Jewish. Recently, one court assumed, without deciding, that a plaintiff who alleged discrimination on the basis of his "Greek ancestry, Greek race, and Greek ethnicity" was in a class of persons protected not only under Section 1981, but also under Title VI. Langadinos v. Appalachian School of Law, No. 1:05CV00039, 2005 WL 2333460, at *1, 5 n.12 (W.D. Va. Sept. 25, 2005).

As one federal court observed after the Supreme Court's decision in Shaare Tefila, Jews have been viewed as a race well into the 20th century, and have been subjected to discrimination on that basis, not just based on their religion. Bachman v. St. Monica's Congregation, 902 F.2d 1259, 1260-61 (7th Cir. 1990). The court in Bachman recognized "the dual character of anti-Semitism," pointing out that "[t]here is religious anti-Semitism, typified by the attitude of the medieval Roman Catholic Church, and racial anti-Semitism, typified by Hitler. The one objects to Jews because of their religion, the other objects to Jews because they are descended from Jews, even if they are converts to other faiths." *Id.* The court also noted that historically, the term "race" was used broadly, "to denote groups having common ancestry or even a common culture (or, as often, both). And in this sense Jews are members of a distinct race." *Id.* at 1261.

Consistent with all these federal court decisions, Jews must be considered a racial class protected from discrimination under Title VI. Giving that protection is recognizing that to be Jewish includes more than a religious identity; it also means sharing a common ancestry, culture and ethnic background, and in this sense Jews are part of a distinct ethnic and racial category. UCI's characterization of Title VI is inconsistent with the case law interpreting the protections afforded under our civil rights laws, and also inconsistent with OCR's policy for enforcing Title VI.

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Freedom of Speech

UCI spends significant time discussing the constitutional constraints on restricting speech and other forms of expression on campus. But neither the First Amendment nor any other legal principle precludes UCI from forcefully criticizing and condemning the hateful lies and anti-Semitic speech and conduct toward Jews when it occurs. This would send the message to the campus community that such forms of expression are inconsistent with the university's values. It would also help Jewish students feel less marginalized, because it would show them that the university does not support or accept the hate and bigotry expressed toward them.

There is also nothing in the First Amendment that prevents UCI from enforcing, fully and fairly, its own policies and protocols when they are violated. This would remedy some of the hostility and harassment that Jewish students have suffered on the campus. Finally, there is no constitutional principle that precludes UCI from developing and implementing a consistent and long-term campus-wide initiative directed toward decreasing the hostility toward Jews and Israel, and creating a more tolerant, respectful and inclusive environment. First Amendment protections must be upheld and enforced, and neither the ZOA nor Jewish students at UCI have ever suggested otherwise. But nothing in the Constitution ties UCI's hands and prevents it from living up to its obligation under Title VI to provide an educational environment for Jewish students that is safe, comfortable and conducive to learning.

Although the Title VI complaint against UCI does not seek to suppress speech, the university has devoted considerable space in its letter to discussing the scope of the constitutional protection of speech. It is thus important to note that the United States Supreme Court has recognized that "[t]he right of free speech is not absolute at all times and under all circumstances." Spence v. Washington, 418 U.S. 405, 417 (1974) (Rehnquist, J., dissenting) (quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 571 (1942)). For example, there are limitations on committing perjury, on libeling others, on infringing copyrights, on inciting riots, and on unduly interfering with passage through a public thoroughfare. Id.

In the school setting, a university's mission is not solely the free exchange of ideas and debate. Its most fundamental concern should be to provide optimal conditions for learning. See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ., 993 F.2d 386, 396 (4th Cir. 1993) (concurring opinion). The university has a "substantial interest" in maintaining an educational environment that is free of discrimination. Id. at 393. Accordingly, First Amendment rights are protected, as long as the speech does not materially and substantially interfere with or invade the rights of others. Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 512-13 (1969). See also Healy v. James, 408 U.S. 169, 189 (1972) ("In the context of the 'special characteristics of the school environment,' the power of the government to prohibit 'lawless action' is not

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limited to acts of a criminal nature. Also prohibitable are actions which 'materially and substantially disrupt the work and discipline of the school.'").

In addition, although the campus of a public university has been recognized as sharing many of the characteristics of a public forum, the two are not equivalent. The Supreme Court has recognized that a school environment has "special characteristics," and is significantly different from streets, parks, municipal theaters and other public forums. Widmar v. Vincent, 454 U.S. 263, 267 n.5 (1981). According to the Court, the university bears a unique character, which permits reasonable regulations that support its mission to educate: "A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities." Id.

According to the Supreme Court, "[a]ssociational activities need not be tolerated where they infringe reasonable campus rules, interrupt classes or substantially interfere with the opportunity of other students to obtain an education." Healy, 408 U.S. at 189. Accord Widmar, 454 U.S. at 277 (affirming that universities have the right "to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education").

Based on these principles, UCI cannot simply ignore Jewish students' repeated complaints of harassment and intimidation, and use the First Amendment as a convenient shield for its failure to respond and rectify the problems. The harassment and intimidation have interfered with Jewish students' right under Title VI to an educational environment that is free from harassment, intimidation and discrimination, and under the law, UCI must remedy the problems and ensure that they do not recur.

UCI has touted its policies and procedures as evidence of its efforts to promote dialogue and civility. But in fact, UCI has failed and refused to enforce these policies and procedures. At times, the administration has enforced policies and procedures in a selective and discriminatory way, to the detriment of Jewish students.

For example, university policies prohibit the use of the university's name, insignia and seal for, among other things, political purposes or activities. In addition, the policies make the display of the name "University of California" in connection with any meeting, assembly or demonstration, without the written permission of the Regents of the University of California, a misdemeanor. Yet these policies have been routinely violated when anti-Semitic and anti-Israel speeches are delivered from lecterns bearing the UCI emblem, thus implying that the university endorses the speech. Though Jewish students repeatedly complained to members of the administration about this infraction, the problem was not corrected.

UCI policies specifically require that to become a registered UCI campus organization, a group must, among other things, file a Principles of Community

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Compliance Form. The Principles of Community emphasize "our acceptance of one another," and "an atmosphere of positive engagement and mutual respect." They stress "tolerance, civility and mutual respect for diversity of background" and for "diversity of political beliefs." There is a registered student group on campus that has regularly sponsored and supported anti-Semitic speakers and programs on campus, degraded Jewish religious symbols, delegitimized the State of Israel, and demonized Jewish leaders – thus plainly not acting in compliance with the Principles of Community. Yet the university has taken no action with regard to this group's violation of UCI policies or its status as a registered student group on campus.

UCI policies specifically provide for discipline to be imposed for the commission or attempted commission of certain infractions by students, including dishonesty and the fabrication of information. The policies prohibit not only "all forms of academic misconduct," including fabrication and academic dishonesty, but also "other forms of dishonesty including but not limited to fabricating information [and] furnishing false information." Students have fabricated information about Jews and Israel on campus and disseminated it, plainly to incite hatred. Though Jewish students have made administrators aware of these infractions, the university has not initiated any investigation or disciplinary proceedings, despite what is required by its own policies.

University policies prohibit the posting of literature on the ground, paths, and walkways. Yet when a student group staging an anti-Israel protest violated this provision in the presence of several administrators, the group suffered no repercussions. This same student group also violated the UCI policy that requires that campus walkways not restrict movement or impede traffic. Again, several members of the administration were present when the infraction occurred, but none of them said a word and no action was taken to enforce the policy. In contrast, the Jewish fraternity was fined for violating the provision prohibiting the posting of literature on the ground. When the disparity in treatment was brought to the attention of the Dean of Students, she did not ensure that the university's policies were fully and fairly enforced; she simply recommended that the fraternity seek a refund of the fine it had paid.

Finally, UCI's policies expressly provide for the imposition of discipline for physical assault or other conduct that threatens the health or safety of any person. The policies also state that discipline may be imposed for harassment, which includes "the use or display of words, gestures and imagery on the basis of national or ethnic origin and religion (among other things) that has the effect of creating a hostile and intimidating environment that impairs a reasonable person's participation in University programs and activities, or the use of University facilities." Yet UCI took no action in response to the physical assaults, threats and harassment that Jewish students have reported to the administration for years.

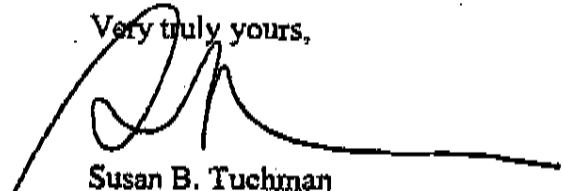
University policies and protocols are ineffectual and meaningless if they are not enforced. The examples of the university's failure to enforce them, fully and fairly, are

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an illustration of how UCI has for the most part ignored a long and pervasive pattern of anti-Semitic behavior on campus that has demeaned, marginalized and excluded Jewish students and made them feel threatened, intimidated and afraid.

I have not responded to each and every one of UCI's misstatements and mischaracterizations, but rather to the most egregious among them. Thank you for giving me the opportunity to clarify the situation for Jewish students at UCI, and to assist in ensuring that the Commission's record is accurate and complete.

Very truly yours,



Susan B. Tuchman

Attachments

New University UC IRVINE

Originally Published in the Opinion Section of the New University on October 3, 2005

BY MERAV CEREN

ZOA Took Legal Action on Behalf of Jewish UCI Students

Alex Chazen's recent opinion piece, "ZOA's Strategy is the Wrong One," printed last week in the New University, reflects a perhaps understandable but definitely misguided wish that something short of a civil rights suit can significantly alleviate the harassment, intimidation and discrimination faced by many Jewish students here at UC Irvine. This is understandable since nobody wants to create an uncomfortable scandal; nobody wants to embarrass their own school. But it's misguided because years and years of experiences and frustrations prove that the UCI administration won't or can't address these problems on their own.

What Chazen's article leaves out is that Jewish students have been petitioning the UCI administration for help against harassment, intimidation and discrimination for many years. This isn't an intentional oversight on his part—Chazen has only been on the campus a year, and most of these things happened before his time. Over the years, Jewish groups have had meeting upon meeting with senior administrators trying to make the university comfortable for everyone. They have repeatedly tried to engage in dialogue with other student groups to increase tolerance and understanding. They have asked experts from organizations like the Anti-Defamation League to come in and try to help. At one point, the situation became so absurd that Aryeh Green, the top adviser to former Israeli Minister Natan Sharansky, came to petition university administrators to make the campus safer for Jewish students. That meeting was deemed unsuccessful by most of the participants. Chazen wishes that Jewish students would use "proper channels," but I'm not sure what other "proper channels" they could possibly have availed themselves of.

So when years and years of effort through "proper channels" didn't help, when professors kept denigrating Jewish history, when student clubs kept sponsoring speakers and programs inciting hatred and calling for violence against Jews, the Zionist Organization of America filed the current complaint with the Office for Civil Rights in the U.S. Department of Education. It's very important to understand that the complaint was not filed on behalf of ZOA or its members; it was filed on behalf of Jewish students at UCI, with their approval and support—the evidence was students' testimony, based on their experiences going back years.

While Chazen may not feel that the complaint was appropriate or necessary, many Jewish students at UCI thought it was appropriate, and they've devoted much time and effort to assisting in the Office for Civil Rights' investigation. Those students were and are fully behind the complaint because we're the ones who tried for so many years to get the university to address our concerns, and we're the ones who saw that they weren't responding. As UCI students, of course we would have preferred that things had never come to this; but they have, and the only hope now is that the Office for Civil Rights' investigation, triggered by the ZOA's efforts on our behalf, can force UCI to live up to its legal and ethical obligation: to provide a safe and comfortable environment for all students, regardless of their race or ethnicity.

New University UC IRVINE

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Official Efforts Exhausted

With great interest and frustration, I read the Sept 19. article entitled "Zionists Allege Discrimination." It is imperative that the actions taken by the Zionist Organization of America be viewed within the proper context. The involvement of the ZOA and the submission of a complaint to the U.S. Department of Education's Office for Civil Rights in October 2004 was precipitated by Jewish students at UC Irvine who, over the course of more than two years, had repeatedly complained to the UCI administration that they were being subjected to harassment, intimidation and discrimination on campus.

Students and organizational members of the Israel on Campus Coalition had repeatedly asked UC Irvine officials to refrain from taking actions that showed university endorsement of hateful speech and conduct, and also to speak out against such expressions of hate. The officials consistently refused to do so, stating that they could not act because the First Amendment protects speech and conduct. While it may be true that the university cannot restrict the speech and conduct under the First Amendment, there is no reason why UCI cannot exercise its own free speech rights and condemn the speakers and programs on campus that incite hatred of Jews and of Israel. UCI's Principles of Community state that "acts of bigotry and abusive behavior will not go unchallenged within the university. Tolerance, civility and mutual respect for diversity of background, gender, ethnicity, race and religion are as crucial within our campus community as are tolerance, civility and mutual respect for diversity of political beliefs, sexual orientation, and physical abilities." The university is having tremendous difficulty recognizing that the speakers and programs that demonize Jews and delegitimize Israel are an expression of anti-Semitism.

It must be made clear that those who initiated the complaint to the OCR support First Amendment rights. At no time has any party asked the university to limit the content of speech. We have asked the university not to endorse such speech and also to condemn expressions of anti-Semitism, much like presidents of other great universities (Harvard and the university of Michigan) have done. The university has an obligation to speak out against hate, and indeed has done so on occasions when the hate was directed at other groups. Vice Chancellor Manuel Gomez continues to view the situation as a free speech issue. His disappointment with the OCR proceeding is matched by those who are equally disappointed by the intransigence of the administration in refusing to exercise its own freedom of speech by reminding the UCI community that there is no place for anti-Semitism on this campus.

A welcome move by the administration took place last April, when Dean of Students Sally Peterson, Gomez and other UCI officials attended an academic conference regarding the Middle East. It should be pointed out that this conference was triggered in part by the complaint that the ZOA filed. Peterson approached several of the distinguished faculty at the conference, and invited them to teach courses on modern Israeli history as visiting professors. Grant funding is being sought. The administration has also fostered attempts at dialogue between Jewish and Muslim students. These actions are welcome, though sorely belated. In fact, one might speculate that the university's new willingness to show some awareness of the problem is a direct consequence of the filing of the complaint with the OCR. Litigation is often necessary when other less formal efforts have been tried and failed. At the very least, some good has already come out of the actions of the ZOA, and I and many others are hopeful that more good will follow as the OCR investigation proceeds.