

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC COMMISSION MEETING

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MONDAY, APRIL 3, 2006

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WASHINGTON, D.C.

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The Commission convened via teleconference
at 2:00 p.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
JENNIFER C. BRACERAS, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
MICHAEL YAKI, Commissioner
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

CHRISTOPHER BYRNES, Attorney Advisor to the Office
of the Staff Director
DEBRA CARR, ESQ., Associate Deputy Staff Director
PAMELA A. DUNSTON, Chief, Administrative Services
and Clearinghouse Division
SOCK FOON MacDOUGALL
TINALOUISE MARTIN, Director for Management
EMMA MONROIG, Solicitor/Parliamentarian
AONGAS ST. HILAIRE
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
LISA NEUDER
KIMBERLY SCHULD

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P R O C E E D I N G S

(2:06 p.m.)

CHAIRMAN REYNOLDS: Okay, let's start.
This is Chairman Reynolds. We are having a telephonic meeting with all Commissioners participating from different locations. I will call the name of each Commission in order to determine if there is a quorum to hold a meeting.

Vice Chair Thernstrom?

VICE CHAIRMAN THERNSTROM: I'm here.

CHAIRMAN REYNOLDS: Commissioner Braceras?

COMMISSIONER BRACERAS: Here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Mr. Melendez?

COMMISSIONER MELENDEZ: Here.

CHAIRMAN REYNOLDS: Mr. Yaki?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor?

(No response.)

CHAIRMAN REYNOLDS: Is the Staff Director present?

MR. MARCUS: Yes, Mr. Chairman.

CHAIRMAN REYNOLDS: Is the Court Reporter on the line?

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1 COURT REPORTER: Yes, Chairman.

2 CHAIRMAN REYNOLDS: Okay. Whenever a
3 Commissioner wants to make a statement, I would ask
4 that you please identify yourself first by name so
5 that the transcriber can know who is talking. Also,
6 please let's not speak at one time so that we can have
7 a clear transcript.

8 Whenever it is necessary to take a vote,
9 the following procedures will be followed. I will
10 call out the name of each Commissioner. The
11 Commissioner should then answer yes, no, or abstain.
12 After the vote is concluded, I will read out each of
13 you -- I will read out how each of you has voted in
14 order to determine what the tally is.

15 **I. Approval of Agenda**

16 CHAIRMAN REYNOLDS: Okay, may I have a
17 motion to approve the agenda?

18 VICE CHAIRMAN THERNSTROM: So moved.

19 CHAIRMAN REYNOLDS: Second?

20 COMMISSIONER BRACERAS: Second.

21 CHAIRMAN REYNOLDS: Discussion?

22 (No response.)

23 CHAIRMAN REYNOLDS: Okay. Let's vote. All
24 in favor, please vote in the affirmative -- oh, no.
25 I'm sorry. Vice Chair Thernstrom, how do you vote?

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1 VICE CHAIRMAN THERNSTROM: Mr. Chairman, I
2 believe this will probably be unanimous and that we
3 could just do an aye on this. We're just approving
4 the agenda.

5 CHAIRMAN REYNOLDS: Well, I understand
6 that. But --

7 VICE CHAIRMAN THERNSTROM: Okay. Aye.

8 CHAIRMAN REYNOLDS: Okay, Commissioner
9 Braceras?

10 COMMISSIONER BRACERAS: Aye.

11 CHAIRMAN REYNOLDS: Mr. Kirsanow?

12 COMMISSIONER KIRSANOW: Yes.

13 CHAIRMAN REYNOLDS: Okay. And let the
14 record reflect that I, Chairman Reynolds, voted in
15 favor of the agenda as proposed.

16 COMMISSIONER MELENDEZ: Melendez, aye.

17 CHAIRMAN REYNOLDS: Oh, I'm sorry. Okay.
18 Okay.

19 **II. Approval of Findings and Recommendations**
20 **of the Campus Anti-Semitism Briefing**

21 CHAIRMAN REYNOLDS: We have a motion to
22 approve the findings and recommendations of the Campus
23 Anti-Semitism Briefing, which was held in November
24 2005. It has been pending since the December meeting.
25 The original findings and recommendation, which I will

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1 refer to during the call as the December version, were
2 circulated to call Commissioners in advance of the
3 December meeting.

4 These findings and recommendations were
5 made available on an expedited basis in December due
6 to pending legislation. These findings and
7 recommendations have been tabled since the December
8 meeting.

9 In February of '06, a revised set of
10 findings and recommendations, which I will refer to as
11 the February version, was distributed together with a
12 red-line version showing the differences between the
13 original and the new version.

14 At the March 2006 meeting, Commissioner
15 Braceras submitted a third version, which I will refer
16 to as the Braceras version.

17 May I have a -- interesting -- may I have
18 a motion to approve the Campus Anti-Semitism Findings
19 and Recommendations? Let's start -- let's assume that
20 we are talking about the February version. And that
21 way we can get the conversation rolling.

22 VICE CHAIRMAN THERNSTROM: I would -- I
23 think, Mr. Chairman, there may be more support for the
24 Braceras version. And I would rather start with that.

25 CHAIRMAN REYNOLDS: Well, I don't know

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1 what the support is at this point. So let's --

2 COMMISSIONER BRACERAS: I'd like to start
3 with the Braceras version as well.

4 COMMISSIONER YAKI: Hello.

5 CHAIRMAN REYNOLDS: Okay. Well, what I
6 want to do at this point is just start the discussion.

7 VICE CHAIRMAN THERNSTROM: All right. So
8 we can start arbitrarily any place. Why don't we
9 start with the Braceras version.

10 MR. MARCUS: Mr. Chairman, this is the
11 Staff Director speaking. I understand from the
12 operator that Commissioner Yaki may have joined us
13 now. But that Commissioner Taylor will be unavailable
14 to join us.

15 CHAIRMAN REYNOLDS: Commissioner Yaki,
16 hello? Have you joined us?

17 COMMISSIONER YAKI: Yes, I have.

18 CHAIRMAN REYNOLDS: Great.

19 COMMISSIONER YAKI: My life is complete.

20 CHAIRMAN REYNOLDS: Okay.

21 VICE CHAIRMAN THERNSTROM: Well, that's
22 more than any of the rest of us can say about any
23 aspect of our life.

24 CHAIRMAN REYNOLDS: Okay. I'm going to
25 stick with the original -- my original recommendation.

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1 Again, it is arbitrary. This will get the
2 conversation going. And we can vote on it up or down
3 and then if it doesn't have support, we can move on to
4 the Braceras version or even the December version.

5 Is there a second?

6 COMMISSIONER KIRSANOW: Second.

7 CHAIRMAN REYNOLDS: Discussion?

8 COMMISSIONER BRACERAS: This is Braceras.

9 VICE CHAIRMAN THERNSTROM: No, this not
10 the Braceras version.

11 COMMISSIONER BRACERAS: No, no, I'm
12 identifying myself for the record before I speak.

13 I guess I would start by saying that I was
14 essentially on Board to support the original version
15 which, I guess, is being called the December version,
16 correct?

17 CHAIRMAN REYNOLDS: That's correct.

18 COMMISSIONER BRACERAS: And didn't like
19 some of the changes that were made by the Chair in the
20 February version but also understood some of his
21 concerns. And so the reason I put together the third
22 version, the Braceras version, was an attempt to do
23 two things. Number one, just clean up some of the
24 language. And number two, to try to create a
25 compromise document that would address some of the

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1 concerns that I believe the Chair had.

2 That being said, I'm not even happier with
3 the third version than I was with the original version
4 just because of the way the events unfolded. I think
5 that deals with the facts on the ground, as they are
6 right now.

7 So I intend to vote against all versions
8 but this one, I suppose. All versions but the
9 Braceras version.

10 CHAIRMAN REYNOLDS: Okay. Anyone else?

11 VICE CHAIRMAN THERNSTROM: I also -- this
12 is Commissioner Thernstrom -- I also think that there
13 is a -- that the Braceras version answers the concerns
14 of the Chair as well as being just, you know, cleaner.
15 And I will support only that version.

16 CHAIRMAN REYNOLDS: Okay. Vice Chair
17 Thernstrom, why do you think that it addresses my
18 concerns?

19 VICE CHAIRMAN THERNSTROM: Well --

20 COMMISSIONER BRACERAS: Well, you know,
21 can I speak to that --

22 CHAIRMAN REYNOLDS: Sure.

23 COMMISSIONER BRACERAS: -- since I was the
24 one who crafted it. As I recall from our earlier
25 discussion, the chair was concerned as to whether or

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1 not we were accurately describing the position of the
2 Office for Civil Rights at the Department of
3 Education.

4 And there has been some back and forth
5 with OCR as to what their position is. And I think
6 that the version I put forward was an attempt to
7 basically disembroil ourselves from that debate. And
8 just take an independent position and to stake out the
9 Commission's position without reference to what other
10 government agencies might hold.

11 So I thought I was addressing the Chair's
12 concern that we may be inaccurately describing another
13 government agency's view.

14 To the extent that the Chair was concerned
15 with the substance of the findings, then I make no
16 claims to have done anything to address that because I
17 don't view this as particularly controversial. And,
18 in fact, I would go out on a limb by saying that I
19 find it rather appalling that we have taken this long
20 to put out a document condemning anti-Semitism on
21 college campuses. And I think it should be relatively
22 straightforward and have broad-based support.

23 But that said, I thought I was addressing
24 the procedural concern of the Chair.

25 CHAIRMAN REYNOLDS: Okay. I think that we

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1 are all on the same page -- this is the Chairman -- I
2 think we are all on the same page in terms of the
3 substance. My concern is not the substance. My
4 concern is our characterization of the Office for
5 Civil Rights at the Department of Education, its
6 jurisdiction.

7 We nor the Department of Education can
8 expand or contract the jurisdictions that Congress has
9 provided OCR. Now if we believe that it is a good
10 idea that religion be covered by Title 6 then I think
11 that that should be the recommendation that comes from
12 the Commission.

13 But as of today, Congress has not seen fit
14 to expand OCR's jurisdiction to include religion. We
15 have played an interesting game here in terms of our
16 language. I mean this is not about -- this is not
17 nearly about anti-Semitism since anti-Semitism can
18 take the form of conduct aimed at national origin or
19 religion.

20 COMMISSIONER BRACERAS: Well, could I --
21 this is Braceras -- if I could just be heard. You
22 said a couple of things that I think need responding
23 to. The first is that the briefing we held was
24 strictly about anti-Semitism on college campuses. And
25 our findings and recommendations are appropriately

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1 limited to that topic.

2 The broader question of whether religious
3 discrimination should be prohibited by Title 6 is a
4 much larger question and one which I don't think the
5 Commission is ready to stake out a position on having
6 not heard testimony on that broader issue.

7 CHAIRMAN REYNOLDS: I agree
8 wholeheartedly.

9 COMMISSIONER BRACERAS: But so the
10 findings and recommendations that we are voting on
11 today deal exclusively with anti-Semitism. And as I
12 see the purpose of them, the purpose of them is to
13 clarify existing law, to explain essentially for the
14 uninitiated that Judaism is an ethnicity. And that
15 anti-Semitic conduct does, therefore, violate Title 6.

16 And I specifically --

17 CHAIRMAN REYNOLDS: Commissioner Braceras,
18 would you entertain the possibility that someone would
19 engage -- well, would harass a Jewish student solely
20 on religious grounds? Say a Christian or a Christian
21 arguing that the Jewish student will not or the Jewish
22 student needs to accept Jesus as his or her savior.

23 COMMISSIONER BRACERAS: That's not
24 harassment.

25 CHAIRMAN REYNOLDS: I agree.

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1 COMMISSIONER BRACERAS: That is
2 proselytizing.

3 CHAIRMAN REYNOLDS: Well, no. If a
4 teacher were to again tell someone that they cannot
5 participate in classroom discussion because they have
6 not accepted Jesus Christ as his or her savior --

7 COMMISSIONER BRACERAS: Well, I wouldn't
8 describe that as anti-Semitism per se. That may be
9 intolerance of other sorts because certainly that
10 would apply to ACS --

11 CHAIRMAN REYNOLDS: Commissioner Braceras,
12 let me finish. In my view, that is rank anti-
13 Semitism. However, it is a form of anti-Semitism that
14 is not covered by Title 6 in my opinion.

15 Looking at how OCR has conducted its
16 investigations, we don't have cases where OCR has
17 asserted jurisdiction when an investigation reveals
18 that the conduct, the harassing conduct was aimed
19 solely at religion.

20 OCR doesn't do that. So if you are saying
21 that there was change made in 2004 with a Dear
22 Colleague letter, then I would say that that change
23 has several problems.

24 COMMISSIONER BRACERAS: Well, no. Frankly
25 two things. First of all, I specifically took out of

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1 my version any reference to OCR so as not to get into
2 this debate about what they did and when they did it.
3 But putting that aside, it is clear to me that what
4 OCR did do in 2004 was to clarify the law and not to
5 change the law. Clearly only Congress can do that.

6 They were clarifying their enforcement
7 approach. And that seems to me to be absolutely
8 appropriate that they did that. But that is not what
9 I think we are here to debate today. We are an
10 independent agency capable of analyzing the law and
11 capable of coming to our own conclusions as to what
12 that law intends to prohibit.

13 And in my view, anti-Semitic harassment is
14 prohibited by the statute as it currently reads.

15 CHAIRMAN REYNOLDS: The statute does not
16 make reference to anti-Semitism. The statute makes
17 reference to race, color --

18 COMMISSIONER BRACERAS: Yes, if I may
19 finish --

20 CHAIRMAN REYNOLDS: And to the extent
21 anti-Semitism falls within one of those three buckets,
22 it is covered. To the extent anti-Semitism is
23 directed to something outside those three categories,
24 it is not covered.

25 COMMISSIONER BRACERAS: Right. And that

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1 is why the findings and recommendations that I
2 circulated that this is a clarification that needs to
3 be communicated to students who may not know their
4 rights. And the final recommendation that I included
5 in my version says, "Congress should amend Title 6 to
6 make clear that discrimination on the basis of Jewish
7 heritage constitutes prohibited national origin
8 discrimination."

9 CHAIRMAN REYNOLDS: Jewish heritage?

10 COMMISSIONER BRACERAS: Excuse me, let me
11 finish -- lest there be any more confusion about this.
12 Now all I can say to you, Chairman Reynolds, is that
13 to me, and I believe to most Jews, ethnicity and
14 religious belief are inseparable in this context, in
15 this unique context.

16 CHAIRMAN REYNOLDS: Is that true for the
17 atheist who is Jewish?

18 COMMISSIONER BRACERAS: Excuse me?

19 CHAIRMAN REYNOLDS: Is that true for the
20 atheist who is Jewish?

21 COMMISSIONER BRACERAS: I don't know. I
22 am sure there are many people we can ask about that.
23 But yes, for the atheist who is Jewish, they are still
24 Jewish. Absolutely. Absolutely.

25 CHAIRMAN REYNOLDS: Culturally you can be

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1 a Jewish culturally. You can be a Jewish, in a
2 religious sense.

3 COMMISSIONER BRACERAS: You can be a
4 convert to Christianity and still be a Jew.

5 CHAIRMAN REYNOLDS: That's right. And
6 that is why OCR investigates allegations of anti-
7 Semitism to determine whether the conduct is covered.

8 COMMISSIONER BRACERAS: But let me
9 clarify. You can be an atheist and be a Jew. And you
10 can be a convert to Christianity and still be an
11 ethnic Jew.

12 On the other hand, there can be harassment
13 of somebody based on their religious beliefs --

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER BRACERAS: -- in Judaism
16 which is inseparable --

17 CHAIRMAN REYNOLDS: That's right.

18 COMMISSIONER BRACERAS: Let me finish
19 please. Which is inseparable --

20 CHAIRMAN REYNOLDS: I'm agreeing with you.

21 COMMISSIONER BRACERAS: Excuse me. I am
22 speaking. It is inseparable, the harassment --
23 religious harassment of a Jew is inseparable from
24 ethnic harassment of that Jew. And I'm not sure that
25 there -- I don't know of any Jews that would make that

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1 distinction.

2 And so all I'm saying is that these
3 findings and recommendations should not be
4 controversial. We should take a firm stand against
5 anti-Semitism on college campuses and inform students
6 of their rights to file complaints if they are subject
7 of such conduct.

8 COMMISSIONER KIRSANOW: This is Kirsanow.
9 I'm perfectly willing to sign on to the proposition
10 that anti-Semitism is a function of both ethnic
11 heritage and religion. I am perfectly comfortable
12 with clarifying at least where we stand on things.
13 And I think it is imperative that we have a finding
14 condemning anti-Semitism on campus.

15 The one question I have, and it is a
16 concern is I'm not sure the briefing that we had
17 addressed whether -- addressed to the point of being
18 able to have a finding as to the marriage of ethnicity
19 and religion as part of anti-Semitism.

20 COMMISSIONER BRACERAS: You know what? I
21 don't -- I've got to be honest with you here. This is
22 basic to me. I don't think there needs --

23 COMMISSIONER KIRSANOW: If you could hold
24 on one second, I just have a question. I don't know.
25 I've gone through the briefing materials -- maybe not

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1 with a fine-tooth comb -- but the findings and
2 recommendations should flow from what the testimony
3 was --

4 COMMISSIONER BRACERAS: Yes, but Pete --

5 COMMISSIONER KIRSANOW: -- and everything
6 else that was presented to us.

7 COMMISSIONER BRACERAS: But Pete, there
8 are certain things that you can take judicial notice
9 of. There doesn't have to be testimony on this
10 particular point that Judaism is both an ethnicity and
11 a religion. That is something that is a given.

12 COMMISSIONER KIRSANOW: But we are a fact-
13 finding agency. I'm perfectly willing to do that.
14 And I'm saying heck, if we have other people come
15 testify, I'm perfectly willing -- I don't have an
16 objection to that. But what we are doing there is
17 simply opining or injecting our own set of facts into
18 the discussion.

19 I think we have to be careful about that.
20 I think we have to take what we have on the ground in
21 terms of what people testified to. And I don't know.
22 I'm just saying I don't recall -- and I don't recall
23 after having reviewed the material there being any
24 testimony as to the aspects of anti-Semitism that deal
25 both with religion and ethnicity as being intertwined.

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1 I don't recall that.

2 COMMISSIONER BRACERAS: But -- well, I'm
3 not sure that that was explicitly stated. But it was
4 inherent in the entire discussion.

5 VICE CHAIRMAN THERNSTROM: I mean it was a
6 given. There weren't findings -- there wasn't
7 testimony on that question simply because the question
8 was not even raised. Nobody thought it was a question
9 that was necessary to raise.

10 COMMISSIONER BRACERAS: It was an
11 assumption. All of the panelists assumed basic
12 knowledge.

13 COMMISSIONER KIRSANOW: See, I don't like
14 making assumptions.

15 COMMISSIONER BRACERAS: Well, look --

16 COMMISSIONER KIRSANOW: I don't recall
17 there being an assumption as to that. And I have no
18 problems with coming to that conclusion if the
19 question is asked and if there is testimony or other
20 evidence on that particular issue.

21 COMMISSIONER BRACERAS: Look, all we are
22 doing in these findings and recommendations is saying
23 number one, we oppose anti-Semitism on campus, number
24 two, it is prohibited by law and students should be
25 made aware of their rights, and number three, to the

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1 extent that there is a gray area where, you know,
2 where certain conduct may be religious in nature but
3 not ethnically based, we would like Congress to
4 clarify and state specifically that Title 7 prohibits
5 discrimination on the basis of Jewish heritage, be
6 that Jewish faith or be that Jewish ethnicity.

7 VICE CHAIRMAN THERNSTROM: Title 6 you
8 mean.

9 COMMISSIONER BRACERAS: I'm sorry, what
10 did I say?

11 VICE CHAIRMAN THERNSTROM: Title 7.

12 COMMISSIONER BRACERAS: Oh, yes. Of
13 course I meant Title 6.

14 The point being that the Commission
15 occupies a place of moral leadership or at least
16 should. And we should be willing to stake out this
17 position without having to, you know, make further
18 investigation. I mean this is a simple thing. It is
19 taking a moral stand against anti-Semitism.

20 I don't think it requires anything more
21 than what we have already heard.

22 COMMISSIONER KIRSANOW: Kirsanow. I don't
23 think anybody is objecting to taking a moral stand
24 against anti-Semitism. I'm simply saying that the
25 findings that we render should be based on what the

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1 evidence is.

2 And not any assumptions. Otherwise we
3 start -- and I don't have -- look, if we want to go
4 out and solicit something from somebody -- if we want
5 to reopen the record where someone then in a position
6 of authority or a position of -- well, a position of
7 authority, I suppose, being somebody who has some
8 background in this says yes, it is both a function of
9 ethnicity and of religion. That's fine. I don't have
10 a problem with that.

11 COMMISSIONER BRACERAS: Well, I think if
12 that is the case, all we have to do is reopen the
13 record for a week. And I'm sure Susan Tuchman would
14 be happy to submit a letter stating just that. I mean
15 --

16 CHAIRMAN REYNOLDS: But what happens if
17 someone else submits a letter and takes a different
18 position?

19 VICE CHAIRMAN THERNSTROM: Look I would
20 like to know from Commissioner Kirsanow exactly what
21 sentence in these findings and recommendations he is
22 staring at that poses a problem in this regard for
23 him.

24 For instance, the last sentence of Finding
25 No. 1 in the Braceras version is when severe

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1 persistent or pervasive, this behavior may constitute
2 a hostile environment for students in violation of
3 Title 6 of the Civil Rights Act of 1964. May
4 constitute a hostile environment.

5 COMMISSIONER BRACERAS: Right. We're not
6 saying it automatically does.

7 VICE CHAIRMAN THERNSTROM: Right.

8 COMMISSIONER BRACERAS: It requires
9 investigation by the fact-finding agency.

10 VICE CHAIRMAN THERNSTROM: Right. I want
11 to know where the language is that you find
12 objectionable here. This seems to me extremely
13 cautiously written.

14 We are not going out on any legal limb
15 here. And indeed the last recommendation is for
16 further clarification from the legislative branch of
17 government that is responsible for going out on legal
18 limbs if they want to.

19 CHAIRMAN REYNOLDS: Okay. Well this is
20 the Chairman and in response to that question, we can
21 start with, I guess, it is my recommendation -- it is
22 number ten but it is the first recommendation.

23 It says OCR should protect college
24 students from anti-Semitic and other discriminatory
25 harassments by vigorously enforcing Title --

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1 VICE CHAIRMAN THERNSTROM: Wait a minute.
2 I'm looking only at the Braceras version. And my
3 question to you was what in the Braceras version
4 specifically do you still find offense or in any way
5 troubling? And it was a question directed to
6 Commissioner Kirsanow.

7 CHAIRMAN REYNOLDS: Well, I've taken the
8 liberty to put in my two cents. And I am reading from
9 the Braceras version.

10 VICE CHAIRMAN THERNSTROM: Well there is
11 no recommendation six in what I've got in my Braceras
12 version.

13 COMMISSIONER BRACERAS: Yes, there is --

14 VICE CHAIRMAN THERNSTROM: I mean there is
15 no recommendation ten. The last one is six. Congress
16 should amend Title 6 to make clear that discrimination
17 --

18 CHAIRMAN REYNOLDS: Okay. Let me read it
19 for you. It is the first one. OCR should protect
20 college students from anti-Semitic --

21 VICE CHAIRMAN THERNSTROM: I thought you
22 just said ten.

23 CHAIRMAN REYNOLDS: Yes, and I also
24 pointed out that I believe that that is wrong.

25 COMMISSIONER BRACERAS: Okay. All right.

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1 So go ahead, Gerry. The first recommendation, tell us
2 what is troubling you.

3 CHAIRMAN REYNOLDS: What concerns me is
4 the fact that it is not tethered to the statutory
5 language, the magic language, race, color, national
6 origin.

7 If it is tethered to those three
8 categories, then it is clear, at least in my mind, it
9 makes a distinction and it recognizes the fact that
10 there will be an investigation to determine if the
11 harassing behavior is aimed solely at religion. If it
12 is a mixed question, then the investigation goes on.

13 That has been OCR's position all along.
14 And that continues to be its position.

15 But if it is directed, the harassing
16 conduct is directed solely at religion, then it is not
17 covered. The investigation ends. The case is closed.
18 And that has been OCR's position and it continues to
19 be OCR's position.

20 COMMISSIONER BRACERAS: I don't think that
21 --

22 CHAIRMAN REYNOLDS: Let me finish. The
23 only thing I am asking for is that we tighten up the
24 language so that it tracks the statute.

25 VICE CHAIRMAN THERNSTROM: Well, the

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1 statute obviously has been open to a variety of
2 interpretations. It seems to be -- I mean we have a
3 declared OCR policy still on its website. That has
4 not been changed.

5 CHAIRMAN REYNOLDS: Why do you pick what
6 is on the website versus the recent letter from the
7 Assistant Secretary from OCR?

8 VICE CHAIRMAN THERNSTROM: That letter was
9 a private letter to us only. It wasn't in any sense a
10 revision of policy that is being publicly issued.

11 CHAIRMAN REYNOLDS: And you believe that
12 the 2004 letter is revision of policy. And because it
13 was one the website that that trumps what --

14 VICE CHAIRMAN THERNSTROM: Well, I don't
15 think it was a revision. I think it was a
16 clarification. But in any case, a private letter to
17 this agency only is not a policy statement.

18 COMMISSIONER BRACERAS: But again, I don't
19 think it is necessary to have this discussion. I
20 think the discussion should be about our own
21 interpretation of Title 6. And what we are saying in
22 recommendation number one is that OCR should protect
23 students on college campuses from anti-Semitic
24 harassment under Title 6. It is tethered to the
25 statute.

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1 And we don't say that all anti-Semitic
2 conduct is necessarily a violation of the law. Or
3 that all negative conduct towards a student who
4 happens to be Jewish is necessarily a violation of the
5 law. We simply want to make clear to Jewish students
6 that they may have a right to redress under the
7 statute. That they are included within the scope of
8 the statute.

9 CHAIRMAN REYNOLDS: Yes, they are.

10 COMMISSIONER BRACERAS: And we want to
11 make that clear.

12 CHAIRMAN REYNOLDS: Well, I mean there is
13 a lot of consensus despite our going back and forth.
14 I think that it is clear that everyone opposes anti-
15 Semitism. For me the question comes down to
16 jurisdiction.

17 I think that it is important that our
18 passions and our beliefs are tethered to the law. And
19 in this particular case, despite my personal feelings
20 about anti-Semitism and anti-Semitism that is directed
21 towards religion solely, despite my personal feelings
22 about it, my personal feelings don't trump the law.
23 It doesn't trump jurisdiction.

24 And to say that OCR's interpretation of
25 its own rules don't matter, I don't understand that.

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1 Why not?

2 COMMISSIONER BRACERAS: Well, first of all
3 we are not -- I don't want to get into the debate of
4 what the current head of that office happens to think
5 right now as compared to the prior head of that
6 office. That is irrelevant. We are an independent
7 agency. We can come to our own conclusions.

8 CHAIRMAN REYNOLDS: What is the basis -- I
9 mean what you have is a clear line of interpreting
10 Title 6 in the fashion that I have laid out. You are
11 hanging your hat on a single letter that is on the
12 website.

13 COMMISSIONER BRACERAS: No, I'm not
14 because, in fact, I care not either about the letter
15 on the website or about the subsequent letter we
16 received. I simply want to make our own statement
17 irrespective of what OCR has said in the past.

18 I don't care about that. That is why my
19 version takes out references to OCR policy.

20 CHAIRMAN REYNOLDS: Well, if we are not
21 talking about Title 6 and we are not talking about
22 jurisdiction, if we are just solely making a point --
23 if we are just registering our opposition to anti-
24 Semitism on college campuses, that is easy.

25 But if we are talking about what the law

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1 protects, if we are talking about jurisdiction --

2 COMMISSIONER BRACERAS: We are saying that
3 the -- look, I don't understand why there is a
4 jurisdictional problem. I really don't. If somebody
5 is harassing a Jewish student on campus, calling them
6 a stupid Jew or they can't participate in class
7 because they are Jewish, that is ethnic
8 discrimination. That has nothing to do with religion.

9 I mean they may also have something to do
10 with religion but it is ethnic discrimination. If in
11 your example a professor is proselytizing from the
12 podium and saying that unless you accept Jesus Christ
13 as your personal savior you can't participate in
14 class, that is not discrimination on the basis of
15 Jewish heritage or anything else.

16 That is discrimination against atheists
17 and Jews and a whole host of other people who may not
18 accept Jesus Christ as their personal savior. But I
19 agree with you that that would not, under the current
20 language of Title 6, classify as prohibited conduct.

21 Now I don't think we disagree about that.
22 But I simply am trying to clarify that when you are
23 singling out somebody because they are a Jew and even
24 if the religion -- I'm sorry -- even if the statement
25 appears to be based solely on that personal religion,

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1 it is still ethnic origin discrimination.

2 If you are not singling out Jews per se
3 and you are launching your attacks against Jews and
4 atheists and Buddhists and all sorts of other people,
5 then that is not discrimination on the basis of Jewish
6 heritage. But any time you single out Jews as Jews,
7 be it because of what they look like or what synagogue
8 they go to, that is ethnic origin discrimination.

9 CHAIRMAN REYNOLDS: Well, let me take it
10 from a somewhat different angle. Would you agree that
11 no American regardless of religion is protected under
12 Title 6 when it comes to religious harassment? So the
13 Christian who is --

14 COMMISSIONER BRACERAS: No, they are not
15 currently. I agree with you. That is not what the
16 statute prohibits.

17 VICE CHAIRMAN THERNSTROM: Gerry, what
18 language specifically in the first recommendation do
19 you object to? We are saying -- or Jennifer is saying
20 OCR should -- should protect college students from
21 anti-Semitic and other discriminatory harassment. Do
22 you object to that?

23 CHAIRMAN REYNOLDS: My objection -- my
24 concern is the fact that the recommendation is not
25 closely tied to the statute. It doesn't recite the

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1 magic language. The way this is written now, anti-
2 Semitic harassment is broad. It could be pointed to -
3 -

4 COMMISSIONER BRACERAS: I guess my
5 question is what type of anti-Semitic harassment do
6 you think doesn't fall under Title 6?

7 CHAIRMAN REYNOLDS: I'm sorry. Please
8 repeat that question.

9 COMMISSIONER BRACERAS: What type of anti-
10 Semitic harassment -- and I'm not talking about the
11 severe pervasive question or any of that -- but what
12 type of anti-Semitic harassment would not be covered
13 by Title 6.

14 CHAIRMAN REYNOLDS: The only thing that is
15 not covered in my opinion by Title 6 is something --

16 COMMISSIONER BRACERAS: But give me an
17 example because if you --

18 CHAIRMAN REYNOLDS: I'm trying to.

19 COMMISSIONER BRACERAS: -- if you draw
20 swastikas all over a synagogue, that is anti-Semitic
21 harassment on the basis of religion and race.

22 CHAIRMAN REYNOLDS: Are you going to
23 answer your own question or are you going to allow me
24 to answer it?

25 The only anti-Semitic conduct in my view

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1 that is not covered by Title 6 is harassment that is
2 grounded solely in religion.

3 VICE CHAIRMAN THERNSTROM: And how would
4 you know that?

5 COMMISSIONER BRACERAS: And give me an
6 example of that kind of harassment.

7 VICE CHAIRMAN THERNSTROM: I can't imagine
8 it, Gerry. I don't know what you are talking about.

9 CHAIRMAN REYNOLDS: Well, OCR has a ton of
10 cases. They looked at, I believe, several hundred
11 cases in response to a FOIA request submitted by
12 Irvine and we can't do that now but there are -- there
13 have been instances where OCR has terminated an
14 investigation because it had gathered sufficient facts
15 to convince it that the conduct was aimed solely at
16 religion.

17 VICE CHAIRMAN THERNSTROM: Well, talk
18 about things that were not on the record in our
19 briefing, that wasn't on the record. And it doesn't
20 seem to me -- I don't understand how you can find
21 objectionable the sentence OCR should protect college
22 students from anti-Semitic and other discriminatory
23 harassment by vigorously enforcing Title 6 against
24 recipients that deny equal educational opportunities
25 to all students? That seems to be boilerplate

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1 language.

2 CHAIRMAN REYNOLDS: The only thing I am
3 requesting is that it be tied to the statute. That's
4 all.

5 COMMISSIONER BRACERAS: It is tied to the
6 statute.

7 CHAIRMAN REYNOLDS: Color, national
8 origin.

9 COMMISSIONER BRACERAS: Right. And my
10 only point -- and I believe the point of the people
11 who came to testify before us and the point of these
12 findings and recommendations is that any harassment of
13 Jews as Jews is harassment on the basis of ethnic
14 origin. Even if it is aimed at a synagogue. That's
15 the whole point.

16 If it is broad-based criticism of people
17 who don't accept Jesus, that is not harassment of Jews
18 as Jews. But any harassment of a Jew as a Jew is
19 inherently ethnically based. And it may also be
20 religiously based. But it is always ethnically based.

21 CHAIRMAN REYNOLDS: Well, that is not a
22 position that has been -- that position has not been
23 accepted by the agency that has been charged with
24 enforcing Title 6.

25 VICE CHAIRMAN THERNSTROM: Well, that is a

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1 matter --

2 COMMISSIONER BRACERAS: And we are saying
3 that whether or not it has been accepted by OCR, it
4 should be. And it is common sense that it should be.
5 And it is outrageous that it hasn't been.

6 VICE CHAIRMAN THERNSTROM: And that
7 distinction was not made, Gerry, at the briefing that
8 we held nor did you raise the question at that
9 briefing to my knowledge.

10 CHAIRMAN REYNOLDS: Much of the things
11 that we have been discussing haven't been -- weren't
12 discussed.

13 VICE CHAIRMAN THERNSTROM: All right but I
14 just heard from Commissioner Kirsanow that he is
15 uncomfortable with going beyond the briefing. You are
16 going beyond the briefing, Gerry.

17 CHAIRMAN REYNOLDS: No, I'm not.

18 VICE CHAIRMAN THERNSTROM: This statement
19 does not go beyond our briefing.

20 CHAIRMAN REYNOLDS: Vice Chairman
21 Thernstrom, when you have the time, look at the
22 transcript. You will see that my comments are
23 directed -- well, they are made in response to a
24 question.

25 VICE CHAIRMAN THERNSTROM: I'm sorry. You

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1 comments at the time of the briefing -- what are you
2 saying?

3 CHAIRMAN REYNOLDS: My comments, the
4 comments now that you say don't fall within the ambit
5 of the briefing, those comments were made in response
6 to a question posed by either Commissioner Braceras or
7 you.

8 You asked me a question, I answered it.

9 VICE CHAIRMAN THERNSTROM: I'm sorry. I
10 still don't understand what you are saying but it
11 doesn't matter. I still am back to the point that all
12 we are doing here on this first recommendation is
13 saying what OCR should do. It is so innocuous. It is
14 so low level, as I said kind of a boilerplate
15 statement of taking a moral stance. I can't
16 understand your discomfort with it. I'm lost.

17 CHAIRMAN REYNOLDS: Well, let me see if I
18 can help. If all we are doing is just registering our
19 moral outrage at anti-Semitism in general, I am
20 comfortable with that and I support it wholeheartedly.

21 But if we are talking about the
22 jurisdiction of OCR, then we have a fundamental
23 disagreement of --

24 VICE CHAIRMAN THERNSTROM: I don't think
25 we are talking about its jurisdiction. We are saying

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1 OCR should -- should -- protect all students --

2 CHAIRMAN REYNOLDS: I support that.

3 VICE CHAIRMAN THERNSTROM: Well, then you
4 support this first sentence which is what you said you
5 were having trouble with. I cannot figure out where
6 you could be running into trouble on this first
7 sentence. OCR should protect college students from
8 anti-Semitic and other discriminatory harassment.

9 CHAIRMAN REYNOLDS: Let me -- well, if
10 this statement is merely about registering our outrage
11 at anti-Semitism, then with your clarification, I can
12 accept that. But if that sentence is intended to
13 describe the jurisdiction of OCR --

14 VICE CHAIRMAN THERNSTROM: It is a
15 recommendation.

16 CHAIRMAN REYNOLDS: I'm sorry?

17 VICE CHAIRMAN THERNSTROM: It is a
18 recommendation. It doesn't describe jurisdiction. It
19 is a recommendation from this independent agency.

20 COMMISSIONER BRACERAS: And, Gerry, to the
21 extent that OCR does not currently have that
22 jurisdiction, which I disagree with, recommendation
23 number 6 clearly says Congress should amend Title 6 to
24 make sure that discrimination on the basis of Jewish
25 heritage constitutes prohibited national origin

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1 discrimination.

2 So we are saying, you know, we think that
3 there is a good argument to be made that under the
4 statute as it is currently written, anti-Semitic
5 harassment is prohibited by Title 6. However, if we
6 are wrong, Congress please act.

7 CHAIRMAN REYNOLDS: Well, when the issues
8 are presented in that light, I think that we have a
9 whole lot less disagreement. If we are saying the
10 Congress should clarify this issue, I would support
11 that recommendation.

12 VICE CHAIRMAN THERNSTROM: Well, but that
13 is exactly --

14 COMMISSIONER BRACERAS: But we are saying
15 we think it is clear but if we are wrong and we have
16 been wrong before, Congress should take action.

17 CHAIRMAN REYNOLDS: Well --

18 COMMISSIONER BRACERAS: -- that is all we
19 are saying.

20 CHAIRMAN REYNOLDS: -- if we are seeking a
21 clarification for Congress, I support that. I don't
22 think it is clear that --

23 COMMISSIONER BRACERAS: Well, that is why
24 we wanted to start with the Braceras version because
25 the Braceras version does ask for that at the end.

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1 And we asked for it as a clarification by Congress
2 because we believe that the statute already does just
3 that.

4 But again, we put that provision in to, as
5 a sort of safe harbor, if you will, in case we are
6 wrong in our interpretation.

7 CHAIRMAN REYNOLDS: Okay. I mean we are
8 within our -- we are well within our rights to ask
9 Congress to amend the jurisdiction --

10 COMMISSIONER BRACERAS: I'm not asking
11 them to do that. I'm saying look, that's why -- you
12 know, we need to look at the document and you can
13 either support the document or not support the
14 document. But the document speaks for itself.

15 CHAIRMAN REYNOLDS: Well --

16 VICE CHAIRMAN THERNSTROM: I mean if you
17 go through the recommendations, Jerry, the six
18 recommendations here ending with Congress should amend
19 Title 6 to make clear that discrimination on the basis
20 of Jewish heritage constitute prohibited national
21 origin discrimination.

22 If you go through these recommendations, I
23 just can't -- I mean it seems to me you are not
24 disagreeing with them. There is nothing here that is
25 in any way -- should in any way make you

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1 uncomfortable.

2 CHAIRMAN REYNOLDS: Well, obviously there
3 is something that does.

4 VICE CHAIRMAN THERNSTROM: Well, I still
5 haven't been able to pin it down since, you know, I
6 read you the first sentence I think now three times
7 and I have asked you what actually is wrong with that
8 very innocuous statement. OCR should protect college
9 students -- should OCR not protect college students?

10 CHAIRMAN REYNOLDS: Let me -- OCR should
11 do what it is permitted to do under the law.

12 VICE CHAIRMAN THERNSTROM: Right.

13 CHAIRMAN REYNOLDS: And it can't do
14 anything more.

15 COMMISSIONER BRACERAS: And you agree that
16 anti-Semitic harassment, when it is found to
17 constitute national origin discrimination violates the
18 statute. We agree about that. So --

19 CHAIRMAN REYNOLDS: It is the import and
20 should be investigated.

21 COMMISSIONER BRACERAS: Right. And so the
22 only place we differ is in my statements to you that
23 discrimination on the basis of Judaism is almost
24 always national origin discrimination. It seems to me
25 that that is the only place -- that that is the place

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1 where we disagree.

2 VICE CHAIRMAN THERNSTROM: And we do not
3 enter into that -- or Jennifer did not enter into that
4 dispute in these recommendations.

5 CHAIRMAN REYNOLDS: It is implicit -- it
6 is a collapsing of categories. It is collapsing
7 religion and national origin. That is my concern.
8 And just by way of background, there are -- I mean
9 there is a concerted effort to collapse the concept of
10 religion -- Judaism with national origin.

11 There are advocates who are pushing that
12 position. And I think that they are well within their
13 right to do that in their capacity as advocates. But
14 in my capacity, in terms of describing the extent of
15 the law, the extent of jurisdiction as it exists today
16 as opposed to what I want it to be or as opposed to
17 what I feel that it should be, I just don't think that
18 -- I just can't support the collapse of these two
19 concepts.

20 COMMISSIONER BRACERAS: But, Gerry, we are
21 not describing what the law -- we are making a
22 recommendation about enforcement. We are not -- we
23 are making a recommendation. And to the extent that
24 the law doesn't currently today support that position,
25 we are asking that the law be changed.

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1 VICE CHAIRMAN THERNSTROM: Yes, and we are
2 also -- certainly we are within our right as an
3 independent agency --

4 CHAIRMAN REYNOLDS: May I --

5 VICE CHAIRMAN THERNSTROM: -- to say --

6 CHAIRMAN REYNOLDS: -- finish?

7 VICE CHAIRMAN THERNSTROM: -- what we
8 recommend.

9 CHAIRMAN REYNOLDS: May I finish my
10 thoughts?

11 VICE CHAIRMAN THERNSTROM: All right.

12 CHAIRMAN REYNOLDS: Okay. Language.
13 Language is important. And what I see is language
14 that is ambiguous. For example, the use of the term -
15 - the phrase Jewish heritage, the statute is more
16 specific.

17 VICE CHAIRMAN THERNSTROM: What
18 recommendation or finding are you looking at?

19 COMMISSIONER BRACERAS: The one I added,
20 number six.

21 VICE CHAIRMAN THERNSTROM: Six, okay.

22 CHAIRMAN REYNOLDS: The statute is more
23 specific. The statute is more precise. The statute -
24 - the precision contained in the statute suggests
25 strongly to me that they -- or that Congress did not

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1 want to include religion.

2 VICE CHAIRMAN THERNSTROM: So but this is
3 a recommendation that if it doesn't, that if there is
4 a collapsing of categories here, that Congress should
5 amend the act to make clear that discrimination on the
6 basis of Jewish heritage. It doesn't say that that is
7 what is clearly in Title 6 today. It simply says, as
8 Jennifer has said, if it is not in Title 6, then
9 Congress should amend the law. That's all it says.

10 CHAIRMAN REYNOLDS: Could we amend it
11 slightly then? Just ask Congress to decide whether --
12 ask for a resolution -- asking --

13 COMMISSIONER BRACERAS: No, we don't want
14 them to decide. We think there is a moral clarity to
15 this issue. We think we know what the right answer
16 is. I don't --

17 CHAIRMAN REYNOLDS: No, no, no, no, the
18 issue that I am referring to is jurisdiction. I agree
19 with you --

20 COMMISSIONER BRACERAS: I don't want them
21 to decide anything. I want them to state that OCR has
22 jurisdiction to address claims of discrimination on
23 the basis of Jewish heritage. And frankly I think
24 Jewish heritage is the best way to say it because you
25 could be a practicing Jew or a non-practicing Jew but

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1 you still have Jewish heritage.

2 CHAIRMAN REYNOLDS: Yes but if the conduct
3 -- I mean the focus is on the conduct and the intent
4 of the harasser. If the harasser's intent is to
5 harass solely based on religion, then once OCR obtains
6 sufficient facts to make that conclusion, the
7 investigation should end.

8 COMMISSIONER BRACERAS: You know what?
9 There is only one circumstance where I can see that
10 ever happening. And that is in the case of somebody
11 who may not have been born Jewish but converted to
12 Judaism. That is the only case where I can see that
13 happening.

14 Anybody who is born Jewish, any harassment
15 against them whether it is based on their religion or
16 what they look like is ethnic origin harassment
17 because their religion is their ethnicity. That's the
18 whole point.

19 CHAIRMAN REYNOLDS: I mean Ashkenazi,
20 Sephardic --

21 COMMISSIONER BRACERAS: It makes no
22 difference.

23 CHAIRMAN REYNOLDS: How they look. I'm
24 not sure that I can look at someone and conclude that
25 they are Jewish. I don't have that skill.

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1 VICE CHAIRMAN THERNSTROM: Yes, but people
2 who harass --

3 COMMISSIONER BRACERAS: But people who
4 harass are basing their harassment on stereotypes.
5 There was testimony about just that. That you have
6 comments being made on the basis of someone's, you
7 know, the size of their nose, or the color of their
8 hair, or the color of their eyes. I mean there are
9 stereotypes. But clearly Jews come in all colors --

10 VICE CHAIRMAN THERNSTROM: Or the way they
11 talk, the way, you know, whatever.

12 COMMISSIONER BRACERAS: But that's not the
13 point --

14 VICE CHAIRMAN THERNSTROM: Their manner,
15 their personality.

16 CHAIRMAN REYNOLDS: But the bottom line --
17 and I think that we should get around to voting on
18 this, the bottom line for me is it is a rule of law
19 question. Either we are going to respect the limits
20 placed on federal agencies by Congress or we won't.
21 Either we are going to try to expand jurisdiction
22 through regulatory actions and hope that a court
23 doesn't strike it down or we are not.

24 VICE CHAIRMAN THERNSTROM: Where is the
25 disrespect here?

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1 COMMISSIONER BRACERAS: Look, you know
2 what, we are never going to come to terms on this. I
3 can see that. And it's fine. I respect your right to
4 disagree and to see it in the light that you see it
5 in, Gerry. But I disagree. And you are right. I
6 think we should just vote.

7 CHAIRMAN REYNOLDS: Okay. Well then --

8 COMMISSIONER BRACERAS: But I think that
9 the version that is currently on the table is not the
10 version I wish to support. So you can call the
11 question on that and then I'll make a motion to put
12 the Braceras version forward.

13 CHAIRMAN REYNOLDS: Okay. Well, why don't
14 we do that now. I mean after this motion.

15 COMMISSIONER BRACERAS: Go ahead.

16 CHAIRMAN REYNOLDS: I move to vote on the
17 Braceras motion.

18 COMMISSIONER BRACERAS: Well, you guys --

19 VICE CHAIRMAN THERNSTROM: Are you
20 withdrawing the previous motion?

21 CHAIRMAN REYNOLDS: Yes.

22 VICE CHAIRMAN THERNSTROM: All right. You
23 need to state that as such.

24 CHAIRMAN REYNOLDS: Yes, the idea is to
25 withdraw the -- I believe the February version and

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1 replace it with the Braceras version. Is there a
2 second?

3 VICE CHAIRMAN THERNSTROM: I second that.

4 CHAIRMAN REYNOLDS: Okay. Brief
5 discussion. Commissioners Yaki and Melendez and -- we
6 haven't heard from you. Do you have a position that
7 you would like to make?

8 COMMISSIONER MELENDEZ: This is
9 Commissioner Melendez. You know my main, I guess, is
10 the discrimination in anti-Semitism. I know that this
11 issue on jurisdiction is not real clear to me. But
12 you know my main point is that we, you know, support
13 the issue broadly. And so I don't have a problem with
14 the Braceras -- I guess the version. So that is just
15 my comment.

16 CHAIRMAN REYNOLDS: Okay. Commissioner
17 Yaki?

18 COMMISSIONER YAKI: I just will say that
19 from the testimony that we have heard, there is an
20 issue out there on our university and college campuses
21 --

22 CHAIRMAN REYNOLDS: Yes, there is.

23 COMMISSIONER YAKI: -- that must be
24 addressed. And I believe that the Braceras version
25 sends a strong signal from the committee that it

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1 should be dealt with.

2 CHAIRMAN REYNOLDS: Okay. And did
3 Commissioner Taylor join us?

4 VICE CHAIRMAN THERNSTROM: No, he can't
5 join us.

6 CHAIRMAN REYNOLDS: Okay. All right. All
7 in favor? I'm sorry. Let me go down the list here.
8 Bear with me. Vice Chair Thernstrom?

9 VICE CHAIRMAN THERNSTROM: Yes. This is
10 yes I support the Braceras version. I am voting for
11 the Braceras version.

12 CHAIRMAN REYNOLDS: Commissioner Braceras,
13 should I assume that you support your version?

14 VICE CHAIRMAN THERNSTROM: Yes, I vote in
15 favor of my own version.

16 CHAIRMAN REYNOLDS: Okay. Commissioner
17 Kirsanow? Commissioner Kirsanow?

18 (No response.)

19 CHAIRMAN REYNOLDS: Okay. Commissioner
20 Melendez?

21 COMMISSIONER MELENDEZ: Yes, I vote yes.

22 CHAIRMAN REYNOLDS: Commissioner Yaki?

23 COMMISSIONER YAKI: Aye.

24 CHAIRMAN REYNOLDS: Okay. And I vote
25 against it. Not on the merits. Strictly on the

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1 jurisdictional concerns that I have.

2 Commissioner Kirsanow?

3 (No response.)

4 CHAIRMAN REYNOLDS: Okay. I guess we have
5 lost Pete.

6 Okay, that being the only issue that we
7 were going to discuss --

8 VICE CHAIRMAN THERNSTROM: I think you
9 should announce the total vote.

10 COMMISSIONER BRACERAS: So the motion
11 carries?

12 CHAIRMAN REYNOLDS: Oh, I'm sorry, yes.
13 The motion carries with Vice Chair Thernstrom,
14 Commissioners Braceras, Thernstrom, Melendez, and Yaki
15 voting in favor. The Chairman voting against, and
16 Commissioner Kirsanow not voting. Apparently we have
17 lost Mr. Kirsanow.

18 VICE CHAIRMAN THERNSTROM: Well, he's not
19 present.

20 CHAIRMAN REYNOLDS: So the motion carries.
21 Is there any other business?

22 VICE CHAIRMAN THERNSTROM: I move to
23 adjourn the meeting.

24 CHAIRMAN REYNOLDS: Second?

25 COMMISSIONER BRACERAS: Second.

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1 CHAIRMAN REYNOLDS: All in favor?

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: All right. No
4 objections? We conclude this meeting.

5 (Whereupon, the above-entitled Commission
6 meeting was concluded at 2:56 p.m.)

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