AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FISCAL AND MANAGEMENT PRACTICES OF THE U.S. COMMISSION ON CIVIL RIGHTS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MARCH 17, 2005

Serial No. 109–22

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

20–017 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California
ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

PHILIP G. KIKO, *Chief of Staff-General Counsel*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON THE CONSTITUTION

STEVE CHABOT, Ohio, *Chairman*

TRENT FRANKS, Texas
WILLIAM L. JENKINS, Tennessee
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
STEVE KING, Iowa
TOM FEENEY, Florida

JERROLD NADLER, New York
JOHN CONYERS, JR., Michigan
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
CHRIS VAN HOLLEN, Maryland

PAUL B. TAYLOR, *Chief Counsel*
E. STEWART JEFFRIES, *Counsel*
HILARY FUNK, *Counsel*
MINDY BARRY, *Full Committee Counsel*
DAVID LACHMANN, *Minority Professional Staff Member*

CONTENTS

MARCH 17, 2005

OPENING STATEMENT

	Page
The Honorable Steve Chabot, a Representative in Congress from the State of Ohio, and Chairman, Subcommittee on the Constitution	1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan	3

WITNESSES

Mr. Russell G. Redenbaugh, Commissioner, U.S. Commission on Civil Rights	
Oral Testimony	6
Prepared Statement	8
Mr. Michael Yaki, Commissioner, U.S. Commission on Civil Rights	
Oral Testimony	9
Prepared Statement	10
Mr. Kenneth L. Marcus, Staff Director, U.S. Commission on Civil Rights	
Oral Testimony	13
Prepared Statement	15
Mr. George Harbison, Director of Human Resources, and Acting Chief of Budget and Finance, U.S. Commission on Civil Rights	
Oral Testimony	18
Prepared Statement	35

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of George Harbison, Director of Human Resources, and Acting Chief of Budget and Finance, U.S. Commission on Civil Rights	35
Response to post-hearing questions submitted by Chairman Steve Chabot to Michael Yaki, Commissioner, U.S. Commission on Civil Rights	39
Response to post-hearing questions submitted by Chairman Steve Chabot to Kenneth L. Marcus, Staff Director, U.S. Commission on Civil Rights	43
Response to post-hearing questions submitted by Chairman Steve Chabot to George Harbison, Director of Human Resources, and Acting Chief of Budget and Finance, U.S. Commission on Civil Rights	68
Letter of Resignation from Russell G. Redenbaugh, Commissioner, U.S. Commission on Civil Rights, to Majority Leader Bill Frist	73
Letter to Chairman Steve Chabot from Abigail Thernstrom, Vice Chairman, and Jennifer C. Braceras, Commissioner, U.S. Commission on Civil Rights	74

FISCAL AND MANAGEMENT PRACTICES OF THE U.S. COMMISSION ON CIVIL RIGHTS

THURSDAY, MARCH 17, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:08 a.m., in Room 2143, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order. If somebody wants to get the door back there. Thank you.

First of all, I want to wish everyone here happy St. Patrick's Day, one of the big occasions in our country and world history, and so we appreciate everybody—I even have my green on here today. I'm sure we'll be seeing a lot of folks the rest of the day that are so dressed.

We are here today for our Constitution Subcommittee oversight hearing on the United States Commission on Civil Rights. While this type of agency oversight hearing typically occurs every year, we have not held an oversight hearing for the Civil Rights Commission since 2002. While this gap can be attributed to a number of reasons, the period was not marked by a lack of oversight. In fact, during this time the Government Accounting Office, the GAO, has conducted four investigations on our behalf, and staff of the House and Senate Committees on the Judiciary have been actively engaged in a direct investigation as well. All of these investigations have included looking into allegations of financial and administrative mismanagement by Commission leadership.

We are here today to obtain additional information regarding the current status of the Commission from Commission representatives. I know you have a monthly Commission meeting tomorrow and recognize that your time is precious. So we thank you very much for being here today.

The Civil Rights Act of 1957 established the United States Commission on Civil Rights as a nonpartisan fact-finding agency. The Commission is composed of eight members: four Commissioners are appointed by the President, two by the Speaker of the House, and two by the President pro tem of the Senate. Even though the Commission is an independent agency, its structure was designed to ensure that both Congress and the executive branch are stakeholders and have continued input into the Commission. The Commission has no enforcement power. The Commission fulfills its statutory mission by, first, investigating discrimination claims on the basis

of color, race, religion, sex, age, disability, or national origin; second, collecting and studying information; third, appraising laws and policies of the Federal Government; fourth, serving as a national clearinghouse for information; and, fifth, preparing public service announcements and advertising campaigns. As an agent both of Congress and the executive branch, the Commission must submit reports of its findings to Congress and the President.

Since the Commission's inception in 1957, Congress has extended the life of the Commission nine times. The Commission's latest authorization expired on September 30, 1996. Despite the lack of authority, Congress continues to appropriate the Commission roughly $9 million each year.

I have been personally involved in oversight of the Commission over the last several years in my capacity as Chairman of this Committee. This is my third term as such. I've witnessed the decline in the public's confidence in the Commission's work product under the previous Chair's direction. Nevertheless, I have high expectations for this Commission and for the important work of protecting civil rights. I am concerned, however, with reports that reforms, which were promised, have not yet been undertaken since new leadership has taken charge of the Commission.

I believe that protecting civil rights is vital to protecting all of the rights afforded by the Constitution and codified in the Civil Rights Act. Thus, civil rights must continue to play a prominent role in American society.

In my position as Chairman of the Subcommittee, I'm committed to working to ensure that the Civil Rights Commission does the best work possible, not just for Congress and the President but for the American public.

I look back at how many times I and my Republican and Democratic predecessors were assured that the Commission was going to implement reforms that would allow the agency to function in a credible and efficient manner. I'm to date not at all satisfied with the Commission's reform efforts. Much needs to be done.

As we sit here today, changes have yet to be made. Let me be clear: My concern is not just with the financial and management practices that have been the subject of many investigations. I am also concerned deeply about the project process used by the Commission results in substantive material that does not stand up to academic scrutiny. This means that reports are being issued under the seal of the Federal Government that have not been tested for accuracy of bias. I believe that these practices, along with the financial and management changes, must be made so that the credibility of the Commission can be restored.

The mismanagement that has plagued the Commission for years undermines public confidence in the Commission's work. Unless the Commission institutes reforms to its operating practices, including to the methods that it uses to fulfill its statutory mission, the Commission will not be able to be a serious fact-finding agency that informs the public about the state of civil rights in America. In view of these concerns, I know that all Members look forward to hearing from our witnesses here this morning, and there will be a time for the issuing of subpoenas a bit later when we have a reporting and—a working and reporting quorum, and then there is—

on an unrelated matter, on CIANA, there will be another hearing—actually, not a hearing but a markup later on in this by the same Committee.

Those are my remarks. Mr. Nadler is not yet here, so I don't know if Mr. Conyers or Mr. Watt would like to make an opening statement. Mr. Conyers?

Mr. CONYERS. Yes, thank you, Mr. Chairman. Good morning——

Mr. CHABOT. Good morning.

Mr. CONYERS. —to all of our Committee Members and witnesses. I'd like to welcome you here and just suggest some things that we need to try to put in perspective.

First of all, we have a number of Commissioners that at least I haven't heard from or talked with, and what it suggests to me, Chairman Chabot, is that we may need another hearing just to get the lay of the new Commissioners and what their points of view are and who they are, really. We have missing—or we haven't met with yet Commissioners Kirsanow, McReynolds, Taylor, and Meeks, and I think that that would be important for all of us to begin to get acquainted.

Now, how do we get the Civil Rights Commission on its feet again? Well, they only get $9 million, so this is not one of the world's greatest challenges that the Congress faces. It would seem to me that the unfreezing of the Commission budget would be incredibly important, and probably the sooner the better.

We are going to have a meeting on the issuance of subpoenas, and, of course, the interesting thing is, is it to end the cycle of blame or is it going to continue the cycle of blame? I'd like all of you distinguished people here today to try to make sure I understand what it is—where can we cut it off at from the past and get moving for the present.

In a more perfect world, I would probably like to see an independent manager that would relieve the Commissioners of the responsibility of trying to micromanage and deal with these large issues as well.

The other thing we have to develop is an agenda, Mr. Chairman, or the discussion around an agenda, and for that we probably would need Mr. McReynolds, and we'd like to get ideas from everybody as to what they see as the goal and role of the U.S. Commission on Civil Rights.

Now, let's assume that in the august chambers of the Judiciary Committee we could—we'd come to this wonderful new agreement that I'm trying to outline here. Without State advisory commissions being re-energized, it's going to be very hard to get to the base of your work. So it seems to me that that could be one of the very important things that maybe the independent manager, if there were one, or the Commission itself could quickly take care of.

So that's how I view us starting off, Mr. Chairman, and I hope that we'll be able to work cooperatively toward that goal.

Mr. Keenan Keller suggests that I ask for permission, unanimous consent so that if there are additional questions that we want to send the Commissioners, we'd be able to do that.

Mr. CHABOT. Without objection, so ordered.

Mr. CONYERS. Thank you very much.

Mr. CHABOT. Thank you very much, and I share many of the things which you stated in your opening statement, and I would hope that to the extent possible, although we don't do a lot of things in this august body in a bipartisan manner, with respect to civil rights it ought to be done in a bipartisan manner. And I look forward to working both with Mr. Nadler and yourself and any other Members that would like to do that.

Mr. CONYERS. Thanks so much.

Mr. CHABOT. We thank you as well.

Are there any other Members that would like to make opening statements? If not, we'll proceed with the introduction of the witnesses.

Our first witness here this morning will be Commissioner Russell Redenbaugh, and on a personal note, I'd like to recognize Commissioner Redenbaugh for his contributions to the Commission over the last 15 years. We were, I think, all disappointed to learn of his resignation and wish him the best in his future endeavors.

Mr. Redenbaugh is a financial and economic strategist, and—excuse me, economic and business adviser in building wealth and power, executive, author, teacher, and Commissioner on the U.S. Civil Rights Commission. He is the managing director of Kairos, Inc., in Philadelphia, PA, which both invests in and advises companies that are undergoing fundamental changes, all of which are producing innovations in either or both their products and business models. He has been a Commissioner, as I mentioned, of the U.S. Commission on Civil Rights for 15 years since being appointed on February 8, 1990. Commissioner Redenbaugh has served as an instructor at the University of Pennsylvania School of Arts and Sciences where he designed and taught a graduate course entitled "Work Process Redesign Theory and New Practices in the Dynamics of Organization Program." He is currently a director of the Joseki Group in Menlo Park, CA, Associated Services for the Blind in Philadelphia, PA, and the Lexington Institute in Washington, D.C. He is a recipient of the Louis Braille Award given by Associated Services for the Blind in Philadelphia, PA. In his spare time, Commissioner Redenbaugh became the 1997 National Jujitsu Federation Champion, the 2003 and 2004 World Jujitsu Federation World Champion, and participated in running the torch across America for the U.S. Olympic Committee in advance of the 2002 Winter Olympics. Finally, Commissioner Redenbaugh is widely published on topics ranging from management reforms to financial strategy to civil rights. He is a chartered financial analyst and a chartered investment counselor and received his MBA from the Wharton School at the University of Pennsylvania and his B.S. from the University of Utah. And we thank you and appreciate your being here this morning, Mr. Redenbaugh.

The second witness will be Commissioner Michael Yaki. Commissioner Yaki was appointed to the U.S. Commission on Civil Rights in February 2005. He is a partner in the San Francisco law firm of Jeffer, Mangels, Butler & Marmo, and prior to joining his present firm was a partner in another law firm. Since 1999, he has been a freelance writer, authoring editorials for the San Francisco Chronicle on sports, politics, and international relations. He has contributed to *The New York Times* Opinion/Editorial section and

has been a commentator on several radio stations. Commissioner Yaki was a member of the San Francisco Board of Supervisors from 1996 to 2001. He was the convener and Chair of the first citywide Summit on Children and Youth in 1996. He also was the Chair of San Francisco Transportation Authority, the director of the Golden Gate Bridge and Highway District, of the California State Association of Counties, of the Bay Area Air Quality Management District, and of the San Francisco Employee Retirement System. He has been a lecturer of political science and urban studies at San Francisco State University. He also was the district director for Congresswoman Nancy Pelosi. Commissioner Yaki received a B.A. from the University of California, Berkeley, a J.D. from Yale Law School, and was a law clerk to the Honorable Harry Low in the California Court of Appeals.

In his spare time, Commissioner Yaki is a director of the San Francisco Zoological Society and was the founder of the Presidio Day Camp for Underprivileged Children, was an elementary school volunteer reader, was the host and a fundraiser for the Tiger Woods Community Foundation Golf Clinic, and was the fundraising campaign Chair for the Say Yes Summer Youth Jobs Program. He is the recipient of the San Francisco Bay Area YMCA Building Strong Kids Award, a two-time recipient of the FDR Club for Persons with Disabilities Legislator of the Year Award, and the Organization of Chinese Americans Community Service Award. And we welcome you here this morning, Mr. Yaki.

Our third witness is the U.S. Commission on Civil Rights Staff Director, Kenneth Marcus. Mr. Marcus was appointed to this position by President George W. Bush with the concurrence of the Commission on December 6th, so he's actually only been in this position for several months now. As Staff Director, he serves as the agency's chief executive officer, responsible for providing leadership and direction to the agency staff. In this position, Mr. Marcus continues his long-time work of combating discrimination and working on behalf of those who have been denied basic constitutional and civil rights. Mr. Marcus is an experienced civil rights attorney, litigator, and leader.

Before assuming his current duties, Mr. Marcus was delegated the authority of Assistant Secretary of Education for Civil Rights and served as the Deputy Assistant Secretary of Education for Enforcement. As head of the Education Department's Office for Civil Rights, Mr. Marcus was the principal civil rights adviser to the U.S. Secretary of Education and oversaw the resolution of approximately 5,000 civil rights cases per year through the office's 12 enforcement offices.

While in this position, he developed and implemented proactive enforcement initiatives and issued policy guidance in several areas. Mr. Marcus also served at the time as a Commissioner on the U.S. Commission on *Brown v. Board of Education.*

Prior to joining the Department of Education, Mr. Marcus served in the U.S. Department of Housing and Urban Development as the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity. As head of HUD's Office of Fair Housing and Equal Opportunity, Mr. Marcus was the principal civil rights adviser to

the U.S. Secretary of Housing and Urban Development and oversaw the work of the office's 54 offices.

As HUD's civil rights chief, Mr. Marcus developed initiatives and oversaw HUD's Office of Departmental Equal Employment Opportunity in its section 3 program office. Before entering public service, Mr. Marcus served as a litigation partner in two law firms, where he successfully represented individuals who had been denied constitutional and civil rights. Mr. Marcus is a graduate of Williams College and the University of California at Berkeley School of Law. We welcome you here this morning, Mr. Marcus.

And our final witness here is George Harbison. Mr. Harbison is the Acting Director of Budget and Finance and is the Director of Human Resources for the Civil Rights Commission. Prior to assuming these positions, he was the Director of Budget and Finance for the Commission for approximately the past 14 years, and we welcome you here, Mr. Harbison.

It's the practice of this Committee to swear in all witnesses appearing before it, so if you would all please stand and raise your right hand.

[Witnesses sworn.]

Mr. CHABOT. All witnesses have answered in the affirmative, and you can all be seated.

We appreciate, as we said, your presence here this morning. I know that you have a meeting tomorrow, so we know it is perhaps inconvenient to do two things of such importance in such close proximity, so we do appreciate your presence. And as I know that you're aware, we have a 5-minute rule here where we would ask each witness to testify for up to 5 minutes. We will give you a little leeway beyond that if you need to wrap up. We have a lighting system. It will be green for 4 minutes, turn yellow when you have 1 minute, and then red when your 5 minutes is complete, and we'd ask that you please wrap up as close to that time as possible.

And, Mr. Redenbaugh, you would be our first witness here this morning, so you are recognized for 5 minutes.

TESTIMONY OF RUSSELL G. REDENBAUGH, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS

Mr. REDENBAUGH. Well, thank you, Chairman Chabot, and Subcommittee Members and staff. Thank you for holding this hearing and for inviting me here.

As you all know, I am resigning from the Commission. What I would like to make clear is I'm resigning not because I object to the particular projects or programs that have been put forward, but because I object to us not making reform our highest and most urgent priority.

In my private life, I advise companies on how to manage themselves. I've managed a half a dozen companies. And I look at organizations through the lens of purpose, processes, and people—the purpose being, you know, that mighty theme or that mighty objective that unifies us. The processes define how we're going to work together to accomplish that purpose. It defines the accountabilities, who will do what by when. And the people, and the people must work through those processes and share that purpose. And an orga-

nization that gets all three of those right can do truly remarkable things.

At the Commission we don't have a clear purpose. We have agendas. As you all know, we don't have processes. We don't have a process for financial accountability. We don't have a process for accountability with respect to our projects. And given that we don't have the purpose or processes, the people can't possibly work together as a team. And, you know, we have never been a team.

But there's something about the design of the organization and of the organization that's even more of a fatal flaw than any of that, and that is, this agency has defined itself as a special independent agency, independent of the executive branch, independent of the Congress, certainly independent of its oversight Committee, independent from GAO recommendations, from OMB, and independent from GPRA, in fact, even independent from some of the civil rights laws that we support. You can see this by examining some of our EEOC cases.

And this independence, the way we've interpreted it, means that we can never reform ourselves because we don't have clients or customers.

Now, I think tomorrow, in tomorrow's meeting, there will be a new enthusiasm for reform, and I suspect there will be a great many reform measures adopted, probably unanimously. But I caution that that which is adopted tomorrow can be ignored next month or unadopted next year.

So if you're inclined to give this Commission yet another chance, my recommendation would be that you collateralize those promises of reform with changes in the statute that give this Commission the accountability that all organizations need to have.

My own recommendation, though, is that you close this Commission and start another one. For far too long, Congress has felt that having a bad Civil Rights Commission was better than having no Civil Rights Commission. And I commend this Subcommittee for not accepting such a low standard. The country does deserve far better.

And I'd take out a blank sheet of paper, and I'd ask you to do this as Congressman Conyers suggested, in a nonpartisan way, and ask the question: What is the purpose of the Civil Rights Commission today? Because when this Commission was originally constituents in the 1950's, its purpose was a mighty one. It was to be the conscience of America, and America needed a conscience. And through the work of many people and this Commission in part, that conscience manifest and produced the civil rights legislation that we have today.

So the situations are very different. We still have discrimination and too much of it. But those of us who are discriminated against have many powerful remedies. We don't need, as one of those remedies, the weak, inconsistent, anemic, conflicted voice of this Commission. We deserve better. The country deserves better.

And so to misquote someone who's a far better communicator than I am, my advice to you would be to "End it, don't mend it."

I'll be happy to answer any of your questions, and I'd like to submit additional written testimony for the record, if I may.

Mr. CHABOT. Without objection, it will be so submitted.

[The prepared statement of Mr. Redenbaugh follows:]

PREPARED STATEMENT OF RUSSELL G. REDENBAUGH

Mr. Chairman, members of the Subcommittee, thank you for holding this hearing and for inviting me to testify today. As you know, I have resigned from the commission. I did this because I became convinced that the problem with this commission is structural and unfixable. I used to believe that the problem was political or based on personalities, but it is neither of those.

Let me say a little bit about my background, I understand organizations. I've studied them for 35 years. I've written widely on them. I've managed several companies and have consulted many on organizational design. I know what it takes to produce remarkable results. Remarkable results are produced by patters of behavior, and it's the organization's structure and processes that determine those patterns of behavior. I know if I want to change the results in a company, I need to change the structure.

In the organizational design business we use the short hand of the 3 p's: purpose, process, people. To be a high performance organization you must get all 3 right. From time to time every organization needs to be reformed, that means a new structure and new processes. In business strong organizations are built by having many satisfied customers and in business the incentive to reform comes from defecting customers.

Now let's talk about the civil rights commission. We don't have a clear purpose, we don't have clear processes, we don't have the minimal financial controls, and our structure is fatally flawed. Our structure allows us to cloak ourselves with the myth of our independence. It's lent some commissioners to believe that we don't have customers. Well if we don't have customers then we don't have any consequences for not reforming or any incentive to make those necessary changes.

The commission has no clear purpose. Purpose, the first of the 3 p's, is the glue that unifies and binds an organization together. An organization's purpose is what we are willing to work hard for in order to produce remarkable results. This commission doesn't have a clear purpose. The conditions that existed in this country when the commission was put in place have changed dramatically. This structure may have been the right structure for dealing with those conditions, which were state supported institutional racism, but the structure does not work for what is needed to combat discrimination and disparities today. Congress tweaked the structure in 1983 but adopted another inappropriate model. We still have much discrimination, but the government now runs a multibillion-dollar apparatus to protect our rights. Think of all the bulwarks against discrimination in the major federal and state agencies and all the volumes of antidiscrimination laws on the books. People who are discriminated against deserve these remedies. They don't deserve the inarticulate, confused, and conflicted voice of the civil rights commission.

The commission's processes are fatally flawed and cannot be reformed. I do not believe that this commission will ever reform itself. The changes that need to be made are structural. The principle structural problem is the claim by some commissioners' that "independence" means that we don't have customers. Another structural problem is that commissioners are appointed by the executive branch and the congress, which leaves the political accountability splintered. The commission is composed of an even number of commissioners; this makes for gridlock. Another problem is that commissioners are part-time and staff is full-time. Given this structure there need to be clear processes that prevent a staff director from hijacking the commissioners' agenda. These processes do not exist at the civil rights commission.

"End it, don't mend it" I could say much more. The mismanagement, the corruption, the arrogance, the disregard of the statute, of GPRA, of OMB, and of GAO recommendations is well documented. This is an agency that considers itself above the law and above civil rights laws, just look at our EEOC record. I believed for many years that these were problems of politics and personalities, but as I said before I am completely convinced that this is a problem of structure and process. That we didn't move immediately to correct these institutional problems convinces me that we never will. I can no longer associate myself with an organization that is both a national and a personal embarrassment. To misquote a far better communicator than myself, "End it don't mend it"

Mr. CHABOT. We appreciate your testimony this morning. Commissioner Yaki, you are recognized for 5 minutes.

TESTIMONY OF MICHAEL YAKI, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS

Mr. YAKI. Thank you very much, Mr. Chair, and I want to thank the Chair and the Ranking Member for inviting me to testify today. As you know, I'm the newest member of the Commission, and I am actually deeply honored to have joined the Commission on Civil Rights last month.

As a first matter of business, I want to thank Commissioner Redenbaugh for his 15 years of service. Although I disagree with his conclusion today, no one can deny that the 15 years of service to the Commission and to this country is beyond reproach, and I just want to thank him for all the inspiration that he has provided to people in this country.

But I disagree with his conclusions because during the past half-century, the Civil Rights Commission has taken its independent fact-finding and recommendation powers seriously and substantively. Its 1961 report was the basis for the landmark 1964 Civil Rights Act. Its hearings on disenfranchisement of African Americans in the South led to the Voting Rights Act of 1965. And over time, the Commission has adapted to the changing face of bias and discrimination in America. Its 1978 Commission report on domestic violence put that issue on the national agenda for the first time, and its 1983 Commission report on the challenges that Americans with disabilities faced led to the adoption of the Americans with Disabilities Act.

Has it been perfect in how and why it addresses certain issues? Absolutely not. But has it provoked debate, discussion, and made policymakers stand up and take notice? Absolutely yes. And that is why I am here today. I'm here to speak on my own behalf as a new Commissioner, to say that while the business of this Committee with respect to ensuring fiscal responsibility and management is important, it is equally important that the business of the Commission be allowed to continue.

I am unable because I am new to substantiate or deny the charges of financial mismanagement at the Commission. I come basically with a clean slate. But I can tell you as a former local legislator who bore responsibility for a $4 billion budget with 25,000 employees, this type of hearing is not unfamiliar to me. It is a very serious responsibility that we undertake to ensure that taxpayer funds are not squandered needlessly, especially during tough budgetary times.

I have read the GAO reports, and I can assure you that as a former congressional aide and a former local legislator that no one takes the GAO lightly. But when faced with these allegations at the local level, it is important to take swift and corrective action, which this Committee is working to do. It is important to ascertain whether it is isolated or systemic. It is important to put in appropriate controls and to assure the public that we responded on their behalf.

But equally important is to understand that the department, agency, or bureau in question still has a public mission to perform. And, therefore, it is important to ensure that any remedial or corrective action be carefully and narrowly tailored to ensure that it does not hinder the public function of that particular agency.

I am not here to understate the GAO or the hearings and intent of this Committee. But I think it's important to put in relative scale that it is going to be far easier to treat the problems of a $9 million Commission than a multi-billion-dollar department. Mr. Marcus to my left has outlined a response, and I will be in support of these reasonable reforms that will put the Commission back on track fiscally and managerial. But consider that just last year the GAO reported that between 1997 and 2003, the Defense Department lost more than $100 million in taxpayer money on unused airplane tickets. Now, let me repeat that. That's $100 million in airplane fares that they could have cashed in, and that is 10 times more than the entire budget of the Commission on Civil Rights.

But just as it would not make any sense to stop the DOD from protecting our homeland simply because they made financial mistakes, albeit on a possibly mind-boggling scale to a taxpayer, it does not make any sense to impose actions or controls on the Commission that hampers its investigative and fact-finding functions. It is, therefore, my plea to this Committee that you recognize that not only must the mission of this Commission go on, but also recognize that the Commission actually needs additional resources, guarded by appropriate and adequate fiscal controls to continue its mission.

In fact, it is astonishing that the Commission and staff have been able to do what they have done over the past few years, given its very low staffing and fiscal constraints.

As an independent agency, the Commission can venture where Department Secretaries and administrative heads fear to tread. It can question the efficacy of existing Government programs, policies, and enforcement. The targets of discrimination, the tools used to discriminate have changed and evolved. But the fact that discrimination remains, as Commissioner Redenbaugh has said, cannot be seriously disputed. And thus the need for the Commission remains.

As a watchdog, fact-finder, and policy conscience, there's much that the Commission can and will do in the future to help Congress and the executive branch and the general public to assure that there is true equal protection under the laws. And while I commend this Committee in protecting the taxpayer dollar and working to reform this Commission, this Commission also has its continuing duty to protect civil rights of our country. These goals are not mutually exclusive, and with mutual cooperation and assistance, we can achieve both these goals. And the Commission will continue, as President Eisenhower's Attorney General said in 1957, to continue to "chart a course of progress to guide us in the years ahead."

Thank you for your time and consideration of my views, and I'm available for your questions.

[The prepared statement of Mr. Yaki follows:]

PREPARED STATEMENT OF MICHAEL YAKI

I want to thank the Chair and the Ranking Member for inviting me to testify today. As a preliminary matter, I am deeply honored to have joined the Commission on Civil Rights last month. The responsibility first placed upon the Commission by President Eisenhower nearly fifty years ago is a mantle I will wear with pride. Briefly, my background includes having recently been a local elected legislator for the City and County of San Francisco for 5 years, overseeing with my colleagues an annual budget of over $4 billion with nearly 25,000 employees. I have also served as a Congressional Staff Director for the Minority Leader and been a practicing se-

curities attorney after completion of my legal education at the Yale Law School and clerkship with California Court of Appeal Judge Harry Low in California. I am now practicing as a partner at a California-based business law firm.

The United States Commission on Civil Rights has been called the "watchdog" of civil rights for this country. Created in the 1957 Civil Rights Act—the first meaningful, if tentative step this country took towards ending the Jim Crow era—it was envisioned by President Eisenhower as a bipartisan, fact-finding panel charged with investigating and making recommendations to the Executive and Legislative branches on how to end discrimination in this country.

Over the past half-century, the Civil Rights Commission has taken its fact-finding and recommendation powers seriously and substantively. Its 1961 Report was considered by the Congress and the Supreme Court as the intellectual and factual grounding for the provisions of the landmark 1964 Civil Rights Act. Its hearings on the blatant, deliberate disenfranchisement of African Americans in southern precincts and parishes formed the basis of the Voting Rights Act of 1965.

Over time, the Commission has helped America recognize the changing face of bias and discrimination. In 1978 a Commission Report challenging law enforcement agencies to recognize domestic violence as a crime put it on the national agenda, and by the late 1980's Congress mandated the Law Enforcement Assistance Administration to focus on the "role of the criminal justice system in preventing and controlling violence and abusive behavior in the home. And the Congress relied on a 1983 Civil Rights Commission report on the challenges disabled persons faced in their daily lives in enacting the Americans with Disabilities Act.

In the 90's and through the dawn of this new century, the Commission has begun tackling many other challenges, including studying civil rights matters facing Native Americans and Native Hawaiians and issuing reports to Congress detailing policy and legislative failures and loopholes that continue to deny equal protection under the law to these most ancient Americans. Has it been perfect in how and why it addresses certain issues? Absolutely not. Has it provoked debate, discussion, and made policymakers stand up and notice? Absolutely yes.

Herbert Brownell, President Eisenhower's Attorney General, summed up the scope of the Commission best when he testified before this very Subcommittee 48 years ago this February in stating that:

> "Above and beyond the need for improving the legal remedies for dealing with specific civil rights violations is the need for greater knowledge and understanding of all of the complex problems involved. . . . [T]here is no agency anywhere in the executive branch of the federal government with authority to investigate general allegations of civil rights. . . . [T]he Commission proposed by the President would present the means of securing this vitally needed information."

The Jim Crow era may have ended, but anyone who believes that we have become a nation completely without malice towards people of color, towards new immigrants, towards those who believe or worship differently is, with all due respect, deliberately hiding their head in the proverbial sand. All we need to do is look at the incredible jump in hate crimes towards Arabs and Muslim Americans since 9/11; but we do not need to confine ourselves to the most obvious victims to know what is true. Neo-Nazism and anti-Semitism still exists; there remain school districts where inequalities remain divided by race; and minority- and women-owned businesses still encounter substantial hurdles to economic parity left over from decades of exclusion.

And that is why I am here today. I am here to speak on my own behalf, as a Commissioner, to say that while the business of this Committee with respect to ensuring fiscal responsibility is important, it is equally important that the business of the Commission be allowed to continue.

I am unable to substantiate or deny the charges of financial mismanagement at the Commission. I come, if you may, with a clean slate. As a former local legislator in who bore responsibility for a $4 billion dollar city and county budget, this type of hearing is not unfamiliar territory. It is a deep and very serious responsibility to ensure that taxpayer funds are not squandered needlessly at any time, including and especially in pressing budgetary times.

I have read the GAO reports and I can assure you that as a former congressional staffer and a former local legislator that I do not take any GAO report lightly.

I can communicate to you my impression that the present Commission views its duty to ensure fiscal responsibility very seriously. In my very first meetings after being told of my appointment, both the Chairman and the Staff Director were very frank about their intent to hold the agency accountable in the ways detailed in the

GAO reports. In my conversations with my new colleagues, the manner of fiscal accountability is very important.

However, it is equally important to separate the past from the present and the future. Even if there was mismanagement—which I cannot deny nor confirm—the fact is, that these allegations are associated with a regime that no longer exists at the Commission. And, in the interests of full disclosure, I should also state that I am an admirer of Ms. Berry's lifelong commitment to civil rights and to minority communities in this country.

But I understand the scope of this hearing. When I was faced at the local level with allegations of mismanagement of government resources, it was important to take swift corrective action. It was important to ascertain whether it was an isolated, or systemic problem. It was important to put in appropriate controls to ensure that it did not happen again. It was important to assure the public that we had responded on their behalf.

But equally important was to understand that the department, agency, or bureau still had a mission to perform. Missions that were important to members of the public. And, therefore, it was important to ensure that any remedial or corrective action be carefully and narrowly tailored to ensure that it did not hinder the public function that all government agencies perform.

It is easy to punish an entire agency, especially one as small as the Commission. In San Francisco, as with many cities and counties of size in this country, the Commission's $9 million budget would be dwarfed by health, public safety, and other departments. In comparison to the trillion dollar federal budget, $9 million may be barely noticed.

Understanding the scale of the problem—and the scale of the solution—is paramount in this case. The cure cannot kill the patient.

To be perfectly honest, we may go on about lack of controls. We may pontificate about waste of taxpayer assets. But can we honestly say that our concern about misspending in a $9 million dollar agency should outstrip concern for waste that is in the tens, or hundreds of millions? It is not to belittle the findings of the GAO or the hearings of this Committee. It is to put in relative scale, however, that it is far easier to treat the problems of a $9 million dollar Commission than a multi-billion dollar Department.

Just last year the GAO reported that between 1997 and 2003 the Defense Department lost more than $100 million dollars in unused airplane tickets. Let me repeat that. The DoD forgot to cash in more than $100 million dollars in plane fares. For the average taxpayer—the person in whose shoes I stood as a legislator and you stand as Members of this esteemed House—$100 million dollars is waste on a massive scale.

But the ultimate mission, the purpose of the organization must go on. Just as it would not make any sense to stop the Department of Defense from protecting our homeland, or liberating a foreign country from the yoke of tyranny, simply because they made financial mistakes—in the case of airline tickets, on a truly grand and mind-boggling scale—it does not make any sense to impose actions or controls on the Civil Rights Commission that hampers its investigative and fact-finding functions.

It is therefore my heartfelt plea to this Committee that you recognize that not only must the mission of the Commission go on, but also recognize that the Commission needs additional resources—guarded by appropriate and adequate fiscal controls—to continue its mission.

The fact is that as a Commission, we are starved for resources. Let me elaborate, based again only upon my short tenure with the Commission.

Our State Advisory Committees are languishing from neglect, neglect caused by a paucity of funding. The State Advisory Committees are one of the most important means of obtaining information and insight on civil rights issues on the ground. With the number of issues confronting our limited time and agendas, the SACs have produced and will continue to produce some of the most important civil rights reports for this country. Yet we have barely staffing for one or two professional staff responsible for multi-state jurisdictions totaling tens of millions in population. The SAC's can't meet because we can't afford to reimburse them for plane, train, and car fares—the least we could contribute given the volunteer time and commitment of SAC members. When we consider, as Justice Brandeis did, that the states are the "laboratories of democracy," the fact that the Commission, and, therefore, the Executive and Legislative branches of the federal government are deprived of their information, experience, and input due to lack of funding is a loss on a truly national scale. Can we truly say that this programmatic and mission loss is the price we must pay for any past financial transgressions?

I cannot speak for the entire Commission, but I can also say that it is already apparent to me that the agenda of the Commission itself has been affected by the constant demand for documents, the need for retasking already overworked employees. The fact is that attention must be paid to answering complaints, preparing reports, and crafting policy recommendations. But the reality is that critical resources must be diverted just to keep the bare functionality of the Commission. It is somewhat astonishing that the Commission and its staff have been able to accomplish producing reports and conducting hearings given its recent staffing and fiscal constraints.

As an independent agency, the Commission can venture where Department Secretaries and Administrative heads fear to tread—it can question the efficacy of existing government programs and policies. The targets of discrimination, the tools used to discriminate may have changed or evolved. But the fact that discrimination remains cannot be seriously disputed. And thus the need for the Commission remains.

I am hoping the Commission will investigate the collateral damage to civil rights as a result of the Patriot Act, which is up for reauthorization this year. The Voting Rights Act comes up for reauthorization in 2007, and rather than have talking heads trade insults on its continued vitality, we need to take a fact-based look at disenfranchisement issues in all communities of our country. And there are many issues relating to educational and economic equality for minorities, women and the disabled, and other communities that I believe still need to be addressed.

There are issues that some Commissioners will agree with, and others in which we will disagree. Reasonable people can come to different conclusions from the same set of facts and circumstances, but it requires resources to access those facts and circumstances.

I close again with the words of Herbert Brownell. In urging the Senate to pass the Civil Rights Act of 1957, and in specific, to pass Title I creating the Civil Rights Commission, he stated in a letter to the Senate:

> "[W]e must find out all of the facts—the extent, the methods, the result. . . . Civil rights are of primary concern to all our people. To this end, the Commission's membership must be truly bipartisan. . . . The Commission will have authority to hold public hearing. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult problems facing our country. . . . Investigation and hearings will bring into sharper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead."

As watchdog, fact-finder, and policy conscience, there is much that the Commission can and will do in the future to help Congress, the Executive Branch and the general public ensure that there is true equal protection under the laws of our country for all Americans. While I commend the zeal of this Committee in protecting Americans' tax dollars, this Commission also has a duty to protect the civil rights of our country. These goals are not mutually exclusive and with mutual cooperation and assistance, we can achieve both these goals. And the Commission will continue to chart a course of progress to guide us in the years ahead.

Thank you for your time and consideration of my views. I am available for your questions.

Mr. CHABOT. Thank you very much, Commissioner Yaki. We appreciate your testimony.

Mr. Marcus, you are recognized for 5 minutes.

TESTIMONY OF KENNETH L. MARCUS, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

Mr. MARCUS. Thank you, Mr. Chairman, Mr. Ranking Minority Member. I am also delighted to have an opportunity to address you today, and I am also saddened that this will be one of my last opportunities to work with Commissioner Redenbaugh, whose departure I am sad to acknowledge. On the other hand, we are certainly delighted to have Commissioner Yaki now on board to join us.

Many have found fault with the Commission's management and finances, and I certainly join in acknowledging that there are

many, many respects in which the Commission requires very substantial systematic reform. I would like to emphasize, though, by way of preface that this agency has over a period of nearly 50 years had extraordinary accomplishments in bringing public attention to matters which otherwise in many instances would not have received attention. In all of the 50 States and at a national level, the U.S. Commission on Civil Rights has countless times over the decades reminded us of our basic obligations under the Constitution and laws of the United States.

At the same time, the present is a very difficult time for the Commission on Civil Rights. Those of us who are new to the Commission have inherited an agency in crisis with profound management and financial challenges as well as challenges regarding project planning that we must face in short order. Many of the challenges have been well documented over a period of years by the Government Accountability Office in the reports to which the Chairman made reference earlier this morning. These challenges include weak internal financial and project planning controls as well as an unsustainable budgetary situation.

At the same time, we have a committed staff which is working very hard under difficult circumstances based on their commitment to civil rights and their belief that it is important that they work as hard as they can, even under these uncertainties, to try and protect those who would otherwise face discrimination, hatred, and injustice.

The GAO reports which have been referenced have described a lack of good project management and transparency in contracting procedures and elsewhere, have referred to weaknesses in the way in which resources have been used, have described a lack of strategic planning, and have in general painted a portrait of an agency that has had little financial control, weak management, and little accountability.

Those reports go to a period of time at which I was, of course, not present at the agency, and I cannot speak to things that happened before I was here. What I can say is that it is clear to me, as to the Commissioners, that fundamental changes do need to be made, need to be made deliberately, need to be made thoughtfully, and need to be made quickly.

We have already in a short 3 months begun to tackle the task of solving the problems that developed over a period of years and even decades. But it is a process that will take some time, both because the problems are difficult and also because the body is, of course, a deliberative one which works as a panel.

Some of the changes that we have looked at and even instituted involve implementation of GAO recommendations. For instance, we have already implemented or issued directives to implement over 20 of the recommendations that GAO has made, even within the first couple of months. It is certainly my highest priority to reform the management and financial structure of the Commission starting with those challenges which have been identified by the GAO and the Office of Personnel Management, and I think that we have at least made a step forward in addressing those.

Commissioner Redenbaugh also indicated that there are other reforms which have been discussed and may be raised during the

meeting tomorrow. The Commission, as one of its very first acts, established a working group on reform to address internal and external communication matters and project planning. Commissioner Redenbaugh has chaired the meetings of that body, and I expect that through the working group on reform there will be additional substantial reforms that are recommended to the full Commission, which I hope will address many of the concerns that have been raised today.

In general, I would say that the challenges that we have in terms of our internal structure are very serious ones, but there is a very strong commitment by the Commissioners that I share to acknowledging those problems, identifying them, and solving them deliberately but quickly.

In addition to the structural problems, we also, of course, have very serious budgetary constraints within this fiscal year. We had been spending money at a pace which is unsustainable within our current appropriations. In fact, as of the time that I arrived, we were spending money at a pace which would exhaust our budget far before the end of the fiscal year. So our most urgent concern is to establish cost-cutting constraints to make sure that we live within our budget. Beyond that, we are very highly focused on establishing reforms to make sure that we are functioning properly as an agency not only because it's required by law and by the GAO recommendations, but also because our commitment is to ensuring that this agency is able managerially and financially to achieve its mission.

We all believe that the mission of this agency is vitally important, and I am dedicated to ensuring that we have the level of management necessary in order to meet that mission.

I thank you for the opportunity to speak and, of course, will be available to answer questions.

[The prepared statement of Mr. Marcus follows:]

PREPARED STATEMENT OF KENNETH L. MARCUS

Thank you, Mr. Chairman. I am Kenneth L. Marcus, and I have served as Staff Director of the United States Commission on Civil Rights since mid-December 2004. The Commission is an independent bipartisan agency established by Congress in 1957 to investigate complaints alleging that citizens are being deprived of their right to vote for reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of the same bases; to appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of the same bases; to serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of the same bases; to submit reports, findings, and recommendations to the President and Congress; and to issue public service announcements to discourage discrimination or denial of equal protection of the laws. The Commission has been called the "conscience of the Nation" on civil rights matters, and our recommendations to Congress have often led to the enactment of critical legislation.

I would like to preface my remarks today by thanking the Chairman and the Subcommittee for the opportunity to address today the challenges we face as an agency and the internal reforms we are implementing at the Commission. As you are certainly aware, the Commission has some extraordinary organizational and financial challenges to address.

CURRENT CHALLENGES

Those of us who are new to the Commission have inherited an agency in crisis, with profound management and financial challenges that we must face in short

order. Many of these challenges have been well documented, over a period of years, by the Government Accountability Office, the Office of Personnel Management, and other entities. The challenges include weak internal, financial and project planning controls, as well as an unsustainable budgetary situation. These challenges pose a need for serious and significant reform. The GAO has issued three reports on the Commission since 1997 that bring a number of problem areas into focus—most notably management, financial accountability, and the quality and integrity of Commission projects.

The July 1997 GAO report, *U.S. Commission on Civil Rights: Agency Lacks Basis Management Controls* (GAO/HEHS–97–125), found broad management problems at the Commission, including limited awareness of how its resources were used. The GAO used blunt language to describe the status of this agency announcing, "the Commission appears to be an agency in disarray with limited awareness of how its resources are used." At the time, the GAO reported that the Commission could not provide key cost information for its regional offices, complaints referral process, clearinghouse, public service announcements, and at least one project. It also reported that the Commission had not established accountability for resources and did not maintain appropriate documentation of agency operations.

An October 2003 GAO report, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed* (GAO–04–18), found that the Commission lacked good project management and transparency in its contracting procedures. This report also found that the Commission had made a number of management improvements, including establishing policies that clarify the roles of senior management, preparing more detailed budget information for better fiscal administration, and instituting various project management procedures to meet target deadlines, since the GAO's last report in 1997.

The October 2004 GAO report, *U.S. Commission on Civil Rights: Management Could Benefit From Improved Strategic Planning and Increased Oversight* (GAO–05–77), found that the Commission had not fully complied with the requirements of the Government Performance and Results Act (GPRA). For example, the report had found that the Commission had not updated or revised its strategic plan since 1997. This report recommended improved strategic planning and increased oversight.

In general, the GAO's reports paint a portrait of an agency that was run out of control with little financial control, weak management, and little accountability. They are a wake-up call for this agency that we must implement substantial change and reform in order to meet our fiscal responsibilities and to restore public trust and confidence in us as "the conscience of the Nation" on civil rights.

When I arrived at the Commission in December 2004, I found little that was inconsistent with the GAO's highly critical assessment. The Treasury Department's Bureau of Public Debt previously provided accounting services to the Commission, but terminated its relationship with the Commission effective fiscal year 2004, citing concerns regarding the agency's financial responsibility.

A September 9, 2003 letter from the Department of Treasury to my predecessor, the Honorable Leslie Jin, provided to me by the Department of Treasury, reads in part as follows:

> As an accounting service provider, we are assuming a high level of responsibility for management and control of federal government resources. To effectively perform our services, we must rely upon a strong system of internal controls, which includes prudent oversight and management of budgetary resources by our customer agencies . . . Based upon our experience in servicing your agency, we believe there is inadequate management and control oversight of your agency's funds.

At the time, the Department of the Treasury was particularly concerned about the Commission's over obligation of its fiscal year 2003 budget authority and its failure to take adequate corrective action to avoid violating the Anti-Deficiency Act. In short, the Commission's financial controls had deteriorated to the point last fiscal year that another agency of the federal government refused to continue to service its account.

My predecessor was forced to seek a new accounting services provider in the midst of these challenges. The agency entered into an agreement with Booth Management Corporation in the middle of the fiscal year. That contractor is a small company seriously challenged by the difficulties of entering into a relationship in the midst of a fiscal year. Compounding this difficulty is the limited experience that it has with providing full service accounting to a federal agency and the difficult relationship that it had developed with Commission staff and other contractors.

Additionally, the Commission had not had an independent audit of its books for many years. The agency now finally is currently in the process of obtaining its first independent audit. The Parker, Whitfield firm is conducting the limited scope audit of the agency's balance sheet. Mr. Ernest Parker of the Parker, Whitfield firm has taken charge of the audit personally. This audit, originally scheduled for completion within a three to four-week time frame, is now in its fourth month, and his firm is not able to predict the length of time required to conclude the audit. Mr. Parker has attributed this difficulty in completing the audit to the Commission's failure to be forthcoming with financial records prior to my arrival. He has not leveled this charge specifically at any employee of the Commission but to at least one outside firm working on behalf of the Commission. More troubling, this independent audit informed me that, as of fall 2004, the Commission's financial records were in such disarray that it had no financial ledger whatsoever. This has since been remedied, but many other accounting practices are difficult or impossible to reform during the middle of a fiscal year.

As a result of the lack of accountability and transparency, the financial condition of the agency has been a substantial challenge for quite some time. The Commission's current budget for fiscal year 2005 is $9,023,232. This is essentially unchanged from the prior fiscal year and has been held flat now for many years. At the same time, our primary expenses, specifically salaries and benefits, have continued to rise. Moreover, we are saddled with various expenses incurred during prior fiscal years but not yet paid. For example, the Commission's prior management deferred payment of approximately $75,000 for 2004 rent, which we must pay this year. Similarly, we are now obligated this year to pay approximately $188,000 in equal employment opportunity claims against the Commission's former management out of $355,000 in civil rights claims resolved against or settled by prior management over the last five years. As of my arrival, the spending plans and assumptions of the Commission placed the agency on course to overspend its appropriations by a considerable sum. We are now working on cost-cutting measures to close this gap and provide us with a sufficient cushion against unexpected costs that we can assure that we are living within our means.

CURRENT REFORMS

Administrative Instructions Addressing Integrity and Accountability

The Commission has begun to implement many reforms to strengthen accountability and transparency at the Commission, as well as address GAO recommendations in those areas. In my short time at the Commission, I have already issued three administrative instructions (AIs) that begin the long process of curing the substantial deficiencies at the Commission.

These administrative instructions—AI's 3–15, 3–16 and 4–21, all issued on March 11, 2005—implemented 29 GAO recommendations with respect to financial accounting and expense tracking, with AI 3–16 alone implementing approximately 21 of those 29.

AI 3–15 establishes guidelines to ensure that the Commission recognizes payroll expenses in the proper period for accounting purposes. Specifically, AI 3–15:

- Asks Commissioners to submit timesheets to the Commission tracking their billable hours, either on a once-per-pay-period or monthly basis;
- Provides for submission of the timesheets to the Office of the Staff Director for signature in a timely fashion and eventual submission of the signed timesheet to the Human Resources Division; and
- Requires the Executive Secretary for the Staff Director to follow up on Commissioners' timesheets that have not yet been received by the second Thursday of a pay period.

AI 3–16 embraces a wide variety of reforms to ensure that non-salary expenditures have proper authorization, approval, and supporting documentation. Among other things, these reforms direct the Chief of the Budget and Finance Division to:

- Periodically review accounts to identify unusual balances;
- Keep appropriate documentation in transaction files to support accounting entries made to adjust or write off assets and liabilities;
- Retain sufficient evidence in transaction files to show that all transactions have been properly approved for payment;
- Prepare purchase authorizations in advance of the expenditure to be approved;
- Have evidence of receipt of goods and services prior to approving transactions of payment;

- Provide travel vouchers and ensure that travelers provide documentation to indicate the trip was taken; and
- Require that all financial transactions be properly approved and supported before being processed.

This particular administrative instruction implements approximately 21 of the GAO's recommendations.

AI 4–21 directs the Chief of the Administrative Services and Clearinghouse Division to:

- Prepare and maintain contract files to document the basis for Commission decisions in acquiring good and services;
- Ensure that all statements of work contain a provision on organizational conflict of interest;
- Provide training to appropriate employees on federal procurement rules, regulations, procedures, and issues;
- Require that all aspects of the Commission's procurement be documented in accordance with Federal Acquisition Regulations; and
- Report fiscal year procurement data for fiscal years 2003 through 2005 into the Federal Procurement Data Center and, going forward, to report such data annually into the Center.

These are the first in what will be a lengthy series of reforms that we will adopt in order to ensure that the Commission complies with all legal requirements and that its management is sound. Between now and February 2006, we plan to implement GAO's pending recommendations and to establish significantly stronger internal controls and project planning procedures.

CONCLUSION

The U.S. Commission on Civil Rights has an illustrious history and a deeply important mission. As we approach the vital task of reform, our challenge is to establish the controls that are necessary to ensure the success of our mission. It is important that we carry out this mission with a high degree of integrity in order to ensure public confidence and trust in the Commission as "the conscience of the Nation" on civil rights matters.

I would be happy to answer any questions you may have.

Mr. CHABOT. Thank you very much. We appreciate your testimony.

[The Subcommittee proceeded to other business, to reconvene at the conclusion of that business.]

Mr. CHABOT. At this time we will go back into our hearing relative to the Civil Rights Commission, and Mr. Harbison, you are recognized for 5 minutes.

TESTIMONY OF GEORGE HARBISON, DIRECTOR OF HUMAN RESOURCES, AND ACTING CHIEF OF BUDGET AND FINANCE, U.S. COMMISSION ON CIVIL RIGHTS

Mr. HARBISON. Mr. Chairman, honorable Members of the Subcommittee, good morning. My name is George Harbison, and I appear here today in acceptance of your invitation to express my thoughts relative to the fiscal and management practices of the United States Commission on Civil Rights. I have approximately 30 years of service in the Federal sector in the areas of financial management. From 1989 to 2005, I served with the Commission on Civil Rights as Chief of the Budget and Finance Division. Since February of 2005, I am currently serving as the Director of Human Resources and Acting Director of Budget and Finance.

During this time span, this 30-year time span, I also served——

Mr. WATT. Mr. Chairman, we are having a little trouble hearing him, if he could pull his——

Mr. CHABOT. Could you pull the mike a little bit closer, Mr. Harbison? Thank you very much.

Mr. WATT. Thank you so much.

Mr. HARBISON. During the 30-year career that I've had so far, I've also held other positions to include auditor, senior auditor, audit manager, and acting chief of an area audit office.

Upon my arrival here at the Commission, the Budget and Finance Division consisted roughly of four professional staff. This staff was responsible for managing the day-to-day fiscal activities of the Commission, and more specifically the division prepared, presented, justified, and executed the annual budgets of the Commission. We ensured preparation of required financial reports. We prepared ad hoc reports necessary for internal financial management. We implemented procedures as required by the Office of Management and Budget, the Department of Treasury, General Services Administration, and other agencies relative to financial management. We received certified payment and monitored invoice payments. We received certified and monitored travel for the Commission on Civil Rights. We ensured the establishment of a system of accounts compliant with Federal guidelines to account for all Commission expenditures.

I also served as security officer to safeguard individual privacy and agency financial information. At the same time I was serving as Commission liaison to Federal and private sector industries in matters related to finance and budget.

During the same period of time, from the period 1989 to 2005, staffing within the division dwindled from four to three in 1989, from three to two in 2001, and from two to one in 2005, and currently consists of one individual, who is me, in fact, for 2005.

With regards to the fiscal practices, the Commission on Civil Rights uses a centralized budgeting concept, meaning that essentially while budgeting, reporting, and monitoring of expenditures are done internally at the individual cost center level, control of the budget has rested with the Office of Staff Director, where all expenditures are approved, contractual arrangements negotiated, contractual contracting officer responsibilities are handled, contractor invoices are received, and contractor payments certified.

When the Commission changed the accounting service providers in fiscal year 2004, much of the accounting and reporting and monitoring functions previously done by the Budget and Finance Division were accomplished by a new contractor. This contractor also reported directly to the Office of the Staff Director. In essence, the Budget and Finance Division essentially became an instrument for processing travel documents, agenda payments, and related documents, and to answer questions related to these various issues.

Issues related to contractor performance and most liaison functions were handled by the Office of the Staff Director. As a result, the historical knowledge base relative to contractor performance rested with the Office of the Staff Director as well. The downside to a centralized budget is that it limits accountability of office heads to be responsible for the operation of their programs.

May I continue?

Mr. CHABOT. Yes. Could you wrap up, though? Because your 5 minutes are up.

Mr. HARBISON. In summary, the Commission on Civil Rights is a viable organization, and while no one has specifically questioned my professional qualifications, I would say that 30 years' background in fiscal management as well as auditing multi-billion-dollar contracts and multi-system weapons system well establishes my qualifications and credentials.

I think that, in summary, the Commission can best move forward through a systematic process of planning, obtaining human capital, inclusion of all stakeholders in its decisionmaking processes, and being provided with sufficient fiscal resources, i.e., money, to get the job done.

That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Harbison was not available at the time of the hearing but is printed in the Appendix.]

Mr. CHABOT. Thank you, Mr. Harbison.

Members of the panel now have 5 minutes each to ask questions, and I recognize myself for 5 minutes for that purpose.

Mr. Marcus, if I could start with you, as you know, I had an opportunity to stop down and visit your headquarters this past week, and you were kind enough to take me around the office and introduce me to some folks and see the space that is occupied. And as you know, a fair amount of the appropriations that your office receives is for rent, and one of the things that we had discussed was the three floors that you're on. And there are a fair number of, a pretty significant number of empty offices in there because of staff turnover and reductions of staff and for various reasons. And the actual layout of the office itself is probably not terribly efficient. And I would be interested to know what plans you have for maybe formulating for being more efficient in that area. And would you agree there's a considerable amount of waste in so much vacancy within the area?

Mr. MARCUS. Yes, Mr. Chairman, I would agree, and let me say we were delighted to welcome you, and it was very good to see the Chairman of the Subcommittee actually coming over and being interested enough to look in detail at the facility and what's going on at the Commission. So I was delighted by your interest.

One of the first things that occurred to me as I took the position, looking around the agency, is that when I looked at the offices of the Congressional Affairs Unit and saw that we had offices but no staff, when I looked at the offices of the Public Affairs Unit, we have offices but no staff; similarly for many other parts of the organization. Our staffing has dwindled to the point that some of our divisions or subdivisions are entirely empty of staff, and yet we are paying rent both at headquarters and in some of our regions for space that is not being used or not being used as efficiently as we could. I think we need to change that.

Now, one of the ironies that we have in terms of fiscal management is that when we make a move, we have immediate costs during the current fiscal year; the savings, of course, will be appreciated in future years. For fiscal year 2005, I don't believe that we can afford to make any moves right now because the costs would exceed our ability to pay. But I do think that at least with headquarters, we will need in the next fiscal year to seriously look at either consolidation of offices within our current space or, alter-

natively, with occupying a different space which is more appropriate to our staff size.

Mr. CHABOT. You also have, for lack of a better term, satellite offices around the country, and you have five—actually, six, counting one that's within the same plan here in Washington.

Mr. MARCUS. Yes, Mr. Chairman, that's exactly right.

Mr. CHABOT. And do you have any thoughts relative to that, as to whether that's necessary or is an area that should be looked into as to the necessity for that many branches and whether or not it might be easier to occupy the folks in one location?

Mr. MARCUS. The number of offices that we have had has expanded and contracted over the years. There have been times where we have had as few as three regional offices and times where we have had many more offices than we currently have.

The main work of our regional offices is to work closely with the State advisory committees in each of the States to enable them to be the eyes and ears of the Commission. They prepare reports and analyses that are close to the ground, as it were, in States around the country.

That work is mandated by our statute, and it does have to be done. There is no legal reason why we need to have field offices, and certainly no reason why we need to have the number of offices that we have now.

Mr. CHABOT. And you're, for example, paying rent at those various locations and——

Mr. MARCUS. We are paying rent at those locations, and so as we make difficult decisions regarding how we can live within our financial means, even in the very short term, of course, we will have to ask questions about whether we can continue to afford the number of offices that we have now.

Mr. CHABOT. Okay. Thank you.

Mr. Redenbaugh, let me shift over to you, if I can. Again, I want to say that, you know, we were disappointed to hear about your resignation, and we're very grateful to the 15 years that you put in at the Commission. We really appreciate it, and we've heard many good things about you in particular.

I know you've tried to propose a number of reforms and met with some opposition. Could you describe for us why you think there is opposition to some of the common-sense financial and managerial reforms that you proposed? And what type of reforms did you propose that were rejected?

Mr. REDENBAUGH. Well, the more recent round of reforms were proposed by Commissioner Kirsanow and myself, and they really went to the—I think five areas, perhaps four: the need for a full audit, the need for an Inspector General, a change in the way we do our program policies is another area. But I think that what I came to realize—and I'm a little bit embarrassed to admit it took me 15 years to figure this out—that the problem of the Commission is not a problem of partisanship or personalities. It's a problem of accountability, and no organization will ever reform itself voluntarily. It is just far too painful to do that. You know, organizations that lose customers or lose clients are compelled to change. The structure of incentives works that way. But an agency that has no customers and is so independent exempts itself from the necessity

of reform. And I think it doesn't matter who the people are or their ideology. It's the nature of human beings to resist change.

Mr. CHABOT. Thank you. My time has expired.

The gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you. I'd like to continue this line of questions to Commissioner Redenbaugh for a couple of minutes.

Yes, people resist change. That's human nature, except for certain individuals. Most people resist change. But when you get a Commission even without customers and so forth and wholesale change in who the Commissioners are, for the new Commissioners that's not change. They come in. They want to clean house, et cetera. So why do you think that that can't happen?

Mr. REDENBAUGH. You mean why do I think it hasn't been happening?

Mr. NADLER. Well, recently there's been a rather wholesale change in the Commission membership, a change in orientation, a change in—why do you think that that new Commission membership is unamenable to the kind of change you think is necessary?

Mr. REDENBAUGH. Well, you know, actually I don't know that the newest Commissioners are not amenable to that, and I suspect perhaps that they are. It's some of my longer-standing colleagues that have been reluctant, but I suspect they will now be more enthusiastic about that.

Mr. NADLER. So why do you think it is impossible to reform the Commission, as you stated, the new Commission—the current one is impossible?

Mr. REDENBAUGH. Because anything we do to adopt motions tomorrow, for example, can be ignored next month or, as I said, unadopted next year. That's a change but not a difference.

Mr. NADLER. But what I don't understand is—yes, that is possible, obviously. Anybody can do something today and ignore it next month.

Mr. REDENBAUGH. Right.

Mr. NADLER. But you said, I think, in your testimony that you think it is necessary to have a Civil Rights Commission, you'd like to start over again.

Mr. REDENBAUGH. Yes.

Mr. NADLER. Okay. I don't understand how—let's assume you abolish this Commission and set up a new one. How do we set it up differently so it wouldn't have the same problems as opposed to simply making a change in who the Commissioners are to change it in any event? I don't understand the difference there. In other words, what would change? Why would one method work and not what has just been——

Mr. REDENBAUGH. Well, I think you'd want to do three things differently: have a clear purpose that was really understood, specify the processes by which people would work and the accountability, and that then would attract people who shared that purpose and would work through those processes.

Mr. NADLER. You're saying that the statutory purpose is not sufficient or is not clear enough?

Mr. REDENBAUGH. I think it's not clear enough, and I think the line of accountability and responsibility is very unclear.

Mr. NADLER. All right. But lines of responsibility and accountability can be changed without a statutory change. That can be changed within an existing Commission by the Commissioners if they want to. What you're really saying is that what is fundamentally wrong with the current Commission is that the statutory purpose is not sufficient.

Mr. REDENBAUGH. I think the statutory purpose is not sufficient and the line of authority to Congress is not sufficient.

Mr. NADLER. Okay. Thank you very much.

Mr. Harbison, there's been a lot of criticism of the Commission for lack of financial controls, accountability, and so forth. You've heard all that. You stated that as the person in charge of the department in charge of finances, your staff has gone from three to zero, that is, from four to one, you being the one.

Is that—do you think that it would be fair to say that the problems with financing are because there's essentially no financing staff? Or was financing staff reduced because the financing function was parceled out to somebody else? I mean, which is first? What do you think is the problem?

Mr. HARBISON. I think the problem, or at least a semblance of the problem, you've hit on both. You can't run a division without fiscal resources, without the people resources. You cannot do that. It's just too much. Even with three staff on—three people on staff, we were working 14-, 15-hour days, and on Saturdays and Sundays.

Mr. NADLER. Let me ask you a different question because my time is going to run out. When you had that full staff of four people prior to whenever you said it changed, would it be fair to say that there were no—that there were not greatly expressed concerns about financial accountability and practices? Did these problems or the perception of these problems arise after the staff was decimated?

Mr. HARBISON. I would say that is correct. However, in the same breath, I would say that we have always been concerned with fiscal management.

Mr. NADLER. Physical or fiscal?

Mr. HARBISON. Fiscal management. We are very much aware of the interest that Congress and the various Subcommittees have taken in the Commission on Civil Rights. So many of the things——

Mr. NADLER. No, no, but let me just, if I may for one further moment. I hope and I presume that the department of fiscal affairs, or whatever the title is, would be very concerned with fiscal affairs. My question is: Do you think that—and do you think—do you think that it is true that and do you think it is perceived from the outside that prior to the great reduction in staff that you had the fiscal affairs relatively well in hand and that—and, in effect, what I'm asking, I suppose, is: Did the problems or the perceived problems arise because there was no longer an adequate staff to handle it? Or was there some other problem?

Mr. HARBISON. Yes.

Mr. NADLER. Yes to the first?

Mr. HARBISON. Yes.

Mr. NADLER. Okay. Thank you very much.

Mr. CHABOT. The gentleman's time has expired.

Okay. The gentleman from Arizona, Mr. Franks, is recognized for 5 minutes.

Mr. FRANKS. Thank you, Mr. Chairman. And thank you, gentlemen, for coming before the Committee.

Commissioner Redenbaugh, I know that, you know, this is kind of a unique day for you in that it perhaps it may be the last time you will speak before the Congress as the member of the Commission, and certainly many of us are very disappointed in your resignation and appreciate your efforts to try to reform the Commission. And I guess with 15 years of perspective, sometimes, you know, we like to just say to a person like that, if you were emperor for a day, what are the changes that you would make? And I know you've stated in your testimony that the Commission should be shut down and perhaps restarted. But if you had the opportunity to rewrite the statutory mission of this Commission and to rewrite or restructure it entirely and to be the one to suggest what the funding of the Commission should be, how would you as emperor for the day fix this thing?

Mr. REDENBAUGH. You know, that is a very large and important question, and I don't think I can do it justice in the time we have. I'd be happy to continue the discussion with you later. I think that's the right question: How would you—if you didn't have this one, how would you create the right one? And I'd be happy to continue later with that.

Mr. FRANKS. All right. Well, perhaps I could try to narrow it just a little bit. If you could make just one change—sometimes, you know, we get so caught up in the inertia of an organization, especially with new members and the changes in personnel, and, of course, pressures from the outside and the inside. If you could just make one critical change to the Commission that you think would give it the best chance of fulfilling its ostensible purpose, what would that one change be?

Mr. REDENBAUGH. Rethink the purpose and have the purpose be endorsed and shared by the eight Commissioners.

Mr. FRANKS. And not to be insistent here, but if you were to write—or just to say what you think the purpose should be, how would Commissioner Redenbaugh write that purpose?

Mr. REDENBAUGH. Well, rather than what I think it should be, it needs to be generated by the sitting Commissioners.

Mr. FRANKS. You think that the sitting Commissioners should just come together and find some sort of new collective approach or new collective mission that they could all buy into and that somehow that would create the continuity and the commonality among the members that would help it go forward in——

Mr. REDENBAUGH. If you're limiting me to one thing, that's the one thing, because Staff Director Marcus is a good manager. He does know how to put those processes in place. But in the absence of a clear and shared purpose, it'll be difficult.

Mr. FRANKS. That's always one of the great challenges in life, is to not know what you want and breaking your neck to get it. But thank you, Mr. Commissioner, and thank you all.

Mr. CHABOT. Does the gentleman yield his time back?

Mr. FRANKS. Yes, I do.

Mr. CHABOT. Okay. Thank you. The gentleman's time has expired.

It's my understanding that the gentleman from North Carolina, Mr. Watt, has to go to another Committee, so Mr. Conyers is okay with calling on Mr. Watt next. So we will do so. The gentleman is recognized.

Mr. WATT. Thank you, Mr. Chairman. Actually, I just had my staff person tell me that they're about to shortly take up the Congressional Black Caucus' budget on the floor, so I would just say that the questions that have been directed to Mr. Marcus and Mr. Harbison, while critically important from a management perspective, I would not even go into the micromanagement at that level about whether you've got too much office space or, you know, those kinds of things.

I think the more important questions really are the ones that have been pursued by my colleague who just got through asking questions, and that's the important debate—and I'm not sure it's a debate—between Commissioner Redenbaugh and Commissioner Yaki, both of whom, it seems to me, agree that there needs to be something, whether it's the existing Civil Rights Commission or some successor to the Civil Rights Commission with a different portfolio structure mechanism.

And I think we probably benefit more from allowing and asking Commissioner Redenbaugh and Commissioner Yaki to give us their vision. I'm not sure that we have the luxury of saying to the Commission you can write your own charter, because the Commission was a creation of the Congress and the executive branch at some point. And Commissioners don't sit down and decide what they are going to do. There is a mission here, and I think what has happened with this Civil Rights Commission and predecessor Civil Rights Commissions, whatever their composition, is much of what has happened in this Congress.

We've got a wonderful purpose. We have some wonderful people. But the processes have just—you know, and we had—we could sit here and blame the Commission for that, but we had a tremendous meltdown in our process just yesterday in this very Judiciary Committee, where we sat from 10 o'clock in the morning until 5:30 yesterday afternoon going through a charade. That doesn't mean that we should do away with the Judiciary Committee. We have meltdowns in the processes of the House that deprive us of being able to participate effectively in the democratic process. It doesn't mean we ought to do away with the House. The purpose, the democratic purpose of the House is one that people around the world fight, die, and, you know, bleed for. But the processes have fallen prey to partisan divides and philosophical divides that have made it impossible for us to talk to each other and honor the processes that should be in place to facilitate our talking to each other.

And so I'm hopeful as a result of this we won't get so tied up on what document we are subpoenaing and whether we got too much office space or, you know, whether this comma or that period fits in the right place. I hope we can spend some time focusing on this broader debate that Commissioner Yaki and Commissioner Redenbaugh have opened for us, and if we do a better job in this Committee of creating a bipartisan perspective on the mission and

purpose of the Civil Rights Commission, I suspect that the Civil Rights Commission can do a better job of playing out what that mission is.

And while I'm disappointed that the Commission has reached this fork in the road, I'm no more disappointed about that and the $8 million that we have at risk there and at stake there than I am disappointed about our own failings in our own institution here, where we have much, much, much more financially and philosophically and image-wise at risk.

So, with that, Mr. Chairman, I will yield back.

Mr. CHABOT. Thank you. The gentleman yields back, and I think the gentleman makes some very good points, and I would agree that we should spend time looking at the overall picture.

I do believe that looking at how resources are being allocated, including office space, and the money that's being spent there when it could be perhaps better spent toward working toward improving civil rights in this country is important as well.

[Whereupon, at 10:31 a.m, the Subcommittee proceeded to other business, and reconvened at 10:48 a.m.]

Mr. CHABOT. Again, we apologize for any inconvenience on having markups, but we have to do it while we have sufficient Members here to actually record the vote.

The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. I thank the Chairman and the panel for their testimony this morning.

Just to make a few remarks to Mr. Redenbaugh with regard to your testimony, I would tell you, Commissioner, that I was impressed with your testimony. It was concise, it was emphatic, it was clear, it showed conviction, and it was without notes. And all of those things add up to tell me that this is something, a decision and an opinion that you've come to after long deliberation and long service to your country. And I appreciate the brief recommendations that you have made with regard to how the Commission might be reformed into an effective body. And I wanted to make sure that that observation is on the record, but I'd like to direct my questions to Mr. Marcus, at least in the interim here.

That is, Mr. Marcus, I know you haven't been on task here very long, just a few months, and yet you walked into an environment that was a fiscal and policy mess, I think it's clear from this testimony and much documentation. And we apparently are not going to have access to the financial records up to that point that you stepped into this, so I would ask you: Have you prepared—I'm not going to ask you what steps you've taken because you said you've taken some of the 20 recommendations, the GAO's recommendations. But have you prepared a written document that would be a road map or a plan to get the fiscal and the policy house in order?

Mr. MARCUS. Thank you, Congressman. We have developed a plan with respect to 20-odd recommendations which we are now implementing. With respect to the other reforms, we are taking as our road map for at least the beginning phases the recommendations of the Government Accountability Office beginning with the most recent reports, including the report which has not yet been formally issued. Our intent is to start with those findings that have already been made where we know what the problem is and where

it's been documented and where we have recommendations which appear to be sound.

That will take some year to accomplish. Those recommendations incorporate by reference additional recommendations by the OPM. So our starting point is with the recommendations that have already been made by the GAO in roughly reverse chronological order, including the OPM recommendations. I suspect that we will need substantial additional changes during what I would call the second year of reform, but the beginning phase is with the documents that are already publicly available from the GAO.

Mr. KING. Mr. Marcus, if this Congress were to have sufficient patience and lend itself to the plan that you would bring forward, what would be a specific date that you would ask for to present the changes before this Committee and demonstrate that the entire task of fiscal and policy and functional organization had been—would you be willing to put this back before the scrutiny of this Committee? What would be an appropriate time?

Mr. MARCUS. For problems that have built up over a period of many years, things can't be turned around in a day. I would think for a complete turnaround of the institution, it's hard in less than 2 years to do that. But I would say——

Mr. KING. That's sufficient. It gives me a sense. And I didn't want to nail you down to a specific date, but I get a general idea. The task is large. How many staff now work for the Commission?

Mr. MARCUS. The number fluctuates slightly, but it's approximately 67, including the 8 Commissioners and their 8 assistants.

Mr. KING. Have any been hired since you came on board?

Mr. MARCUS. Yes. I have hired one and, in addition, there is, I believe, one who was hired subsequent to my—excuse me, was hired prior to my arrival but who arrived subsequent.

Mr. KING. So what would be full staffing, then, to fill those offices, if that's the intent?

Mr. MARCUS. Oh.

Mr. KING. I mean, I had understood that about 70 maybe was about full staff, but apparently in this testimony today, it might be more?

Mr. MARCUS. Well, we have some 37 vacant offices. As for the number of positions that we have that are vacant, I'm not sure of the number, but it's a substantial number. We certainly would need to have a larger number of people than we have now. Whether that number is equal to the number of formal vacancies, I'm not sure.

Mr. KING. More money, more people. And who hired the staff that's there today?

Mr. MARCUS. Some of them have been around for over 30 years and were hired by the staff directors from the seventies or the sixties. Most, and in particular, most in headquarters, were hired during the nineties and in the first few years of—since 2000, so most was my immediate predecessor and his predecessor.

Mr. KING. Thank you. I'd ask unanimous consent for one more minute.

Mr. CHABOT. Without objection, so ordered.

Mr. KING. I thank the Chairman. I'd just direct the question to Mr. Harbison. Mr. Harbison, you've been involved in financial man-

agement for 30 years, and you spoke to your professionalism in your testimony and 14 years there with the Commission. And I'd ask you, do you believe it was your fiduciary responsibility to have a general ledger and keep track of that? And if—you know, yes or no on that one, and maybe some opinion, but also where is the general ledger?

Mr. HARBISON. The first question is yes, I do believe it. And the second question is that I'm advised that a general ledger does exist and has existed and has been provided to the auditors.

Mr. KING. But you as the financial officer do not have access to the general ledger and you've been there 14 years?

Mr. HARBISON. I am limiting those—the comments previously to the last year. Prior to that, yes, I did have access to the general ledger.

Mr. KING. Thank you, Mr. Harbison.

Thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much.

Just to be clear, did you say you haven't had it for the last year?

Mr. HARBISON. That is correct, sir.

Mr. CHABOT. Where has it been?

Mr. HARBISON. It has been with the previous staff director and the contractor who's doing our accounting systems.

Mr. CHABOT. And to your knowledge, it's still with him or them?

Mr. HARBISON. It's with the accounting service provider that's doing—that's contracted to do our accounting.

Mr. CHABOT. Okay. But you haven't seen——

Mr. HARBISON. They maintained——

Mr. CHABOT. You haven't seen it or had access to it within the last year; is that correct?

Mr. HARBISON. That is correct.

Mr. CHABOT. Okay. Thank you very much.

The gentleman from Michigan, the distinguished Ranking Member of the full Judiciary Committee, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Thanks, Mr. Chairman.

Let me ask our four witnesses if they have any free advice they would want to give us. I think I'm probably the last person that will be asking you questions. Is there—well, maybe there's only—I am the last.

Let me start with Mr. Yaki. You're the most free of any past activities with this Committee, so you're considered the innocent witness.

Mr. YAKI. Thank you. [Laughter.]

Mr. CONYERS. What are you—now that you've got the flavor of here in Congress, nobody got their hides skinned off, and there was no emotional outbursts, and everybody was pretty rational, what free advice would you leave the Members of the Committee and the Chairman and Ranking Member Nadler and the rest of us to think about as we move forward?

Mr. YAKI. Thank you very much, Congressman Conyers, for asking that question, and in deference to Congressman King, I threw away my notes so he'd be more impressed with what I'd say.

I think it's very important that we recognize that if there were sins of the past, that they not go toward shackling of the future of

this Commission. I think it's important that the kind of oversight that this Commission or any agency needs or requires from the Congress is done in a way that ensures that our mission must go forward.

I would say this: One of the things that struck me as the idea that was advanced by Mr. Redenbaugh about the clear purpose, I would disagree. I believe we have a clear purpose. I think that purpose is the general investigatory and fact-finding function in enforcing and examining civil rights in America. I think that is sufficiently clear. I think what perhaps is not so clear is that as we move forward, we are looking at individual agendas. And I would submit—and I am going to suggest this to the entire Commission tomorrow—that we should look at a way to try and re-energize the agenda and the scope of the Civil Rights Commission and have national open hearings where people can come and talk and discuss and tell us what is going on out there, what are the new things that are happening, what things may not have been picked up on, are being underreported, overreported, not reported at all, so that we may begin to look at that and from the ground up fashion a truly national civil rights agenda. I think that is an important component of what we want to do going forward.

But as for what this Committee does, I would hope that being someone who comes from Government and from a local legislature, I would hope that our staff director would work closely with the Chairman and the Ranking Member to apprise them of the reforms that are going on so they are comfortable moving forward to allow us to continue the important mission of protecting civil rights in this country.

Mr. CONYERS. Commissioner Redenbaugh, have you reconsidered your resignation based on the wonderfully warm reception you've received here in the Judiciary Committee?

Mr. REDENBAUGH. What I have considered is I'd rather come here than there. [Laughter.]

It's much more collegial here. I was touched, Congressman Conyers, by what you said and particular thank you, but no, I have not.

Mr. CONYERS. Well, I have the suspicion you're going to try to help out and when people come to you, even Commissioners, for counsel that you'll probably give it anyway, even though you're not on it. And I want to encourage you to continue to look at it and also feel free to consult with a number of us here on the Committee, because, you know, let's face it, there's a certain amount of politicalization of the process that is unavoidable.

Mr. REDENBAUGH. Right.

Mr. CONYERS. I wish it weren't. Our votes frequently come in the floor, they're quite partisan. I mean, the D's vote one way, the R's vote another way, and yet we say but this issue is not a matter of Republicans or Democrats, but that's the way the vote goes.

So I don't feel—I mean, I would like that to be minimized, the partisanship, but the fact that it exists in a subject as prickly as civil rights is not shocking to me. The question is can we all get it together, and this Committee plays a huge role in helping you facilitate that. And that's what we want to do.

We're hoping that you'll avoid a lot of—as much partisan rancor as possible because it does, as everyone here has said so well, take away from the projects, the goals of the Commission itself. And we want to make sure that that continues.

For example, we've got the Cato Institute, the Heritage Foundation, which now seem to be weighing in, Mr. Marcus, in big time on the opinions. Now, maybe they were all the time, anyway. I know there are very few subjects that they decline to get into. But we've got to make sure that this thing comes off right. For us to be investigating whether privatizing Social Security is going to shortchange African Americans, for example, Chairman Chabot, is a subject that is being gone into by the Ways and Means Committee and numerous experts.

Mr. CHABOT. The gentleman's time has expired, but if I could just comment. I don't know that anybody's talking about privatizing Social Security. There are some that are talking about personal savings accounts.

Mr. CONYERS. Personal savings accounts, okay. Same thing. [Laughter.]

Right?

Mr. CHABOT. I thought you might think that, but I think there's a difference.

Mr. CONYERS. Okay. But even so, the President is on a 60-day tour. Members of Congress have been urged to hold town hall meetings. But one of the—I haven't heard anybody suggest we ought to check with the U.S. Civil Rights Commission to see what they think about this.

So, anyway, let's try to keep it down, ladies and gentlemen. Let's try to keep this thing on a realistic basis so that the cries of partisanship won't continue to arise again. And I want to thank all of you for coming here. I'm hoping that the Chairman of the Committee will see it in his interest to get the rest of the Commissioners up here and continue this kind of dialogue.

Mr. CHABOT. We're certainly willing to do everything that we can to make sure that all the information that this Committee needs to get adequate oversight of the Civil Rights Commission is done, and we would consider future hearings, and we would work with the minority staff to accomplish that, if it's deemed necessary and appropriate.

We thank the gentleman for his comments, and I would now recognize the gentleman—is the gentleman from Indiana—did he leave? Okay.

At this time if there are—we were going to go into a second panel. This has gone off—let me ask—I recognize myself for a couple of follow-up questions. If any other Members want to do that in the short time that we have.

Let me ask, Mr. Marcus, just following up on some of the comments that Mr. Harbison had made in his testimony, relative to the ledger and the books and Booth and that sort of thing. Would you explain the duties of the Commission, the contracts to Booth Management, and could you explain—you know, you have the Director of Budget and Finance, and then you have Booth that apparently has a lot of the books. Would you explain whether the new director, who would be a GS–15 level Federal employee, would be respon-

sible for the duties currently being performed by Booth Management?

Mr. MARCUS. Yes, Mr. Chairman. The accounting and financial functions as well as related administrative and management functions are within the Office of Management and under the responsibility of the Director of Management, Tina Louise Martin. The position of Director of Budget and Finance was previously held by Mr. Harbison, who is now Director of Human Resources and Personnel, which creates a vacancy which we will fill at the GS–15 level.

That person will be responsible for oversight of all budget and financial matters, including additionally certain strategic planning responsibilities. That person will be responsible with dealing with oversight of all accounting practices. Currently we have a full service accounting provider named Booth. The new person would either interact with Booth or its successor, which might be a contractor or a combination of personnel.

I suspect that whatever we do with the new Budget and Finance Director, we would need a substantial amount of the work to be outsourced either to Booth or to another entity.

Mr. CHABOT. Okay. Let me shift gears. Have you conducted a human resources evaluation of the Committee staff to get an accurate understanding of the Commission's staffing strength and needs? And what do you intend to do relative to making sure that the staff is as efficient as possible and that civil rights are being pursued?

Mr. MARCUS. I have, of course, done an informal evaluation of the needs of the staff so as to determine what needs to be done on a right-away basis in light of the various emergencies that we have currently. As for a more formal or larger-scale plan, I know there is discussion among some of the Commissioners of various sorts of audit or analyses that might be done, and I think that that is possibly within the rubric of reforms that they are being considered. Whether it would be simply an analysis or a form of personnel audit is, I think, something that they are in the process of considering.

Mr. CHABOT. Okay. Thank you.

I have a number of other questions. We've got three votes on the floor, and I don't want to have the witnesses have to come back here. So let me just ask one final question, and then if any other Members have any questions they'd like to ask in the time we have left, we'd be willing to do that.

Mr. Redenbaugh, let me go back to you. You had mentioned in your opening statement a number of things, but one thing you said struck me. You said that we don't have a clear purpose, we have agendas. And could you explain, expound upon that a bit, what you meant by that?

Mr. REDENBAUGH. Yes. What I mean by that is we don't have—there's not an overarching theme or mission. To say that we're for civil rights doesn't—that merely announces we're not in the Department of Transportation. It doesn't—it isn't any organizing principle around which we can gather. So in the absence of that—and we have certain methods, like our fact-finding that Commissioner Yaki spoke about is one of our methods, but there isn't a mission that the Commissioners have even considered or adopted or em-

braced. Then in the absence of that, there are agendas put forward by Commissioners for particular projects, myself included.

Mr. CHABOT. All right. Thank you very much. My time hasn't expired, but I'm going to call it expired.

Mr. King, did you have any final thoughts or comments that you wanted to make?

Mr. KING. Thank you, Mr. Chairman. I do, and I'll try to keep them brief.

As I sit here and listen to this testimony, I know there's a mountain of evidence underneath this testimony, and, Mr. Yaki, I appreciate you throwing away your notes and giving us your testimony. But I'm happy enough to hear it off the page, too, and it comes from the heart when it's truthful, and I know that you're limited in your background being on the Commission, but you gave us your best presentation today, and I appreciate that as well.

I will just say that a lot of us here are out of patience or down to the very last few drops of it, and there have been some months to take some steps. And even though reaction to a GAO recommendation, there have been three or four other times that the GAO has made those recommendations when there hasn't been a response, and maybe we'll see some response this time. But I would say that it also is incumbent upon the Commission to be proactive, to step ahead of the GAO, and to lay out some solid terms of reform, both in agenda and purpose and also in financial management. And to have not had access to that general ledger for over a year in the position that you were in, Mr. Harbison, I can't express what that means to me. If I had a financial officer that said, well, I'm sorry, your finances are in a mess but I couldn't get my hands on the records, I just don't think that can be excused.

Furthermore, I'd ask the Commission to lay out an agenda of issues they may want to take up, and some of those that comes to mind are Adarand, for example. I've spent my life in the contracting business. I know what that case says. I followed it from the beginning, and yet it has been circumvented by a thing called goals rather than quotas. Would that be an appropriate subject matter for a Commission to take up.

There are a number of others, and rather than go down through that list, Mr. Chairman, I would just say that, you know, I've had a bit of a voice here and I would add one more thing, and that is that most of the staff has been hired by the predecessor, and that's where their loyalty would be, that's where their philosophy would be, and that's where the problem to some degree has been. And I would be—I would suspect that it would be very difficult to do an overhaul of your Commission without making changes in staff, to bring in fresh faces, fresh people, and fresh philosophy so that you could actually truly get a new start. And I think many of the Commissioners have voiced a commitment to make a new start, and those are my recommendations on how to do it.

I thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much, Mr. King. We appreciate your comments.

Mr. Harbison, would you—you had a prepared statement. Would you be able to submit that for the record? I know most of your comments were——

Mr. HARBISON. I have pretty much marked the one I have up, Mr. Chairman. I'd be happy to perhaps submit it later.

Mr. CHABOT. That would be very good. If you could submit that, we'd appreciate it.

I want to thank all the witnesses for being here this afternoon—or, excuse me, this morning, and we have some votes on the floor that we have to head over to right now. And, Mr. Redenbaugh, I'm particularly—again, we're sorry to see you go. We thank you very much for the 15 years that you spent. And I have to say just personally there have been a number of my fellow Members of Congress and others that have talked about doing away with the Civil Rights Commission. I do not personally share that view. What I would much rather do is reform the Civil Rights Commission and have it once again stand for those things that in some years it stood through, as you mentioned in your testimony, Mr. Yaki, very significant historical things that it played a role in. And it's had problems over the years, some of them mismanagement, some of it financial issues, and there's just so many things that need to be resolved, and we certainly want the Commission's cooperation in obtaining these things.

And as I mentioned, I see some of the folks, the new folks, as really being part of the solution, not part of the problem, trying to reform this agency so that it can once again be the great Civil Rights Commission that it was intended to be. So that's what my hope is. I don't know whether that's going to be able to be accomplished or not, but that's certainly my goal.

And thank you for being here this morning. If there's no further business to come before the Committee, we're adjourned. Thank you.

[Whereupon, at 11:13 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF GEORGE HARBISON, DIRECTOR OF HUMAN RESOURCES, AND ACTING CHIEF OF BUDGET AND FINANCE, U.S. COMMISSION ON CIVIL RIGHTS

WRITTEN STATEMENT OF GEORGE M. HARBISON

U.S. COMMISSION ON CIVIL RIGHTS

Before the
Subcommittee on the Constitution
House Committee on the Judiciary
U.S. House of Representatives

March 17, 2005

Thoughts on Fiscal and Management Practices of the United States Commission on Civil Rights

Mr. Chairman, Honorable members of the Sub Committee, good morning. I am George Harbison and I appear before you today in acceptance of your invitation to express my thoughts relative to the Fiscal and Management Practices of the U.S. Commission on Civil Rights. I have approximately 30 years of service in the federal sector in the areas of finance and management. From 1989 to Feb 2005 I served with the Commission on Civil Rights as Chief of the Budget and Finance Division. I am currently serving as the Director of Human Resources. Other government positions held include Auditor, Senior Auditor, Audit Manager and Acting Chief of an Area Audit Office.

Upon my arrival at the Commission on Civil Rights the Budget and Finance Division consisted of 4 professional staff responsible for managing, the day to day fiscal activities of the Commission. More specifically the Division:

Prepared, presented, justified, and executed the annual budgets; ensured preparation of required financial reports; prepared ad hoc reports necessary for internal financial management; implemented procedures as required by the Office of management and Budget, Department of the Treasury, General Services Administration, and others relative to financial management; received, certified for payment, and monitored vendor invoices; received, certified for payment, and monitored all Commission travel; ensured the establishment of a system of accounts compliant with federal guidelines to account for all Commission expenditures; served as security officer to safeguard individual and agency financial information; act as Commission liaison to federal and private sector on issues related to finance and budget. Staffing of the Division dwindled from 4 to 3 in 1989; from 3 to 2 in 2001; from 2 to 1 in 2005 and; currently consists of 1 person.

With regard to fiscal practices, the Commission on Civil Rights uses a centralized budgeting concept meaning that while budgeting, reporting and monitoring of expenditures are done at the individual cost center level, control of the budget rests with the Office of the Staff Director where all expenditures were approved, contractual arrangements were negotiated, acted as contracting officer, contractor invoices were received and contractor payments certified. When the Commission changed accounting service providers in FY2004 much of the accounting, reporting and monitoring functions previously done by the Budget and Finance Division were accomplished by the new contractor. The contractor reported directly to the Office of the Staff Director. The Budget and Finance Division essentially became an instrument for processing travel documents, vendor payments, and related documents and, to answer questions relating to these issues. Issues related to contractor performance and most liaison functions were

handled by the Office of the Staff Director. As a result the historical knowledge base relative to contractor performance issues rests with OSD as well. The downside to a centralized budget is that it limits the accountability of Office heads to be responsible for the operation of their programs.

I would now like to speak briefly about our budget. The Commission's budget is essentially labor driven often-consuming (conservatively) 74-75% of our appropriation. Office Space Rent will generally consume an additional 14%, Other Services which contains all our contracts consumes about 5% and the balance is available for distribution to travel, transportation, other rents, communications, printing, supplies and equipment. Our appropriation has remained constant while our non discretionary expenses continue to rise each year. For example in addition to the annual pay increase in FY 2004 the Commission experienced additional costs for Accounting services, Procurement contracting services, office space cost increases upon lease expiration, lump sum payments for retiring staff for accrued annual leave, and buyouts. These expenses were not luxury items but rather basic necessities to maintain operations. Typical example $1 used to buy a gallon of gasoline yesterday. That same dollar today might purchase ½ gallon. It's the same dollar but its purchasing power has diminished.

GAO and Other Audits.

As you may be aware there are several GAO and other audit efforts both complete and in progress that in one way or another address issues of fiscal operations and management practices. The Staff Director has discussed these in his presentation and I will add only that corrective measures are being implemented to address discrepancies as the Commission awaits formal release/publication of the reports.

FY 2004 Financial Statement Audit.

This audit is an annual audit required by the Accountability of TAX Dollars Act of FY 2002 and is applicable to all federal agencies. This is the first audit of CCR financials and is limited to balance sheet verifications at this time. The ACT signed 11/07/02 requires all agencies not covered by the CFO act to prepare and submit to Congress and OMB audited financial statements for the preceeding year. OMB waived the requirement for the initial year and for the Commission on Civil Rights the 2nd year was also waived. I would add here only that I had made preparations to accomplish this audit in FY 2003 as required, through a joint effort with our then accounting service provider. The only remaining issue was to sign the agreement. The effort was tabled however when I was advised that the Commission had been exempted for the second year. The significance of this is that it would have provided the Commission with advanced insight into identifying potential discrepancies and addressing them.

In summary, I believe the Commission on Civil Rights can best move forward through a systematic process of planning, obtaining necessary human capital, inclusion of all stakeholders in its decision making processes, and, being provided with sufficient fiscal resources to get the job done. Thank you again Mr. Chairman for inviting me to address this committee. This concludes my comments.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY CHAIRMAN STEVE CHABOT TO MICHAEL YAKI, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS

RESPONSES TO QUESTIONS OF APRIL 26, 2005

I. Thank you for stating that my testimony added depth to the oversight of the Commission. As you know, I was only just appointed to the Commission before the hearing and have no personal knowledge of the Commission's activities and interaction with Congress prior to my appointment, other than what I read in the media. I believe that my fresh perspective and true belief in the continued viability of the Commission will serve it well in the future.

I believe that the analogy to the Department of Defense is correct in two respects. First, the Commission has produced and will continue to produce reports central to its mission that engage Congress and the Executive Branch. The fact that the reports sparked controversy is immaterial to the analysis since they were undertaken pursuant to our mandate to investigate and make findings of fact regarding civil rights issues in our country. The report on the Florida election debacle of 2000 is a case in point; while there were serious critiques of the report, the fact of the matter is that many states have since 2000 have moved to incorporate different and better vote tabulation procedures, software, and machinery and voting procedures to avoid a repeat of Florida 2000. It is important to remember that we operate with limited resources and with time constraints on some of our reporting deadlines. However, it has been my experience that attacks on the academic rigors of a report stem usually from disagreement over its premise or conclusions, disagreement which are usually dealt with in the form of rebuttals, debates, the media, etc. Debate in and of itself is healthy, for by its nature it sharpens the focus on an issue and helps policymakers sort out what is really at stake.

I also believe that a report of "academic rigor" must be separated from a report of poor quality. If a report is poorly written, poorly researched, and poorly received, it is of poor quality. However, nothing I have heard has led me to believe that we have produced any such report. Disagreements over methodology, yes. Disagreements over interpretation of data, of course. Disagreements over how to handle dissenting opinions, yes. Again, I turn to the Florida report, which sparked many tempers and more debate. But I must temper my statement by saying that since I was not on the Commission at the time of any of the reports that you might be alleging were not up to standard.

Secondly, the Commission took affirmative steps to ensure that we are not wasting Commission resources on the forthcoming enforcement report and other reports and briefings that will be part of our agenda for the next few years. The Commission made sure that it put its own stamp (and by Commission I mean the one as presently constituted) on all matters that will be forthcoming. In other words, we will not be held hostage to the past, unless there was something enacted or approved previously that the Commission believes still has utility and value to policymakers and the public.

Most recently, a report on disparities in access to health care for Native Americans has been sought by the Senate Indian Affairs Subcommittee in the wake of the tragic school shooting on an Indian reservation. The report may shed light on access to, or lack thereof, of mental health services to young people on reservations. In any event, I am

informed that the Senate found the existence and contents of the report useful in its field hearing in May.

Therefore, I do not believe that there was any failure or waste of resources that were not integral to our core mission. The expenditures that have been highlighted by GAO – travel reimbursements, rental payments, have not gone to the core mission of the USCCR.

Most, if not all, reports will create controversy. It will generate criticism, usually but not always from the subject or subjects of the report. The role of Congress and the Executive is to weigh the report against the reaction, positive and negative, and decide how policy should follow, if at all. It is not the mission of the Commission to determine policy. It is not the policy of the Commission, as the Washington Post erroneously assumed, to enforce civil rights laws. It is the mission of the Commission to fact-find, to recommend, to stir debate and the conscience of policymakers. That is why the Commission has been called the "civil rights watchdog" and the "civil rights conscience" of the nation. Sometimes what the Commission does will be met with approval by the Congress. Sometimes, in our role as watchdog, the Congress may not be pleased with our actions or recommendations. That does not, however, make it any less important or any less a function of our continuing and historic role in the advancement of civil rights in this country.

Finally, the Department of Defense analogy is correct in another respect. We are a small agency of only $9 million that has been struggled for years with no cost-of-living adjustment to our budget. We have gone from over 90 employees to barely over 50 in the last 10 years. The Defense Department literally forgot to recover over a $100 million in taxpayer dollars on unused airline tickets. I have no doubt that the line-item for travel in DoD is an essential part of the mission of many components of the Defense Department, and I have no doubt that it still exists, albeit (hopefully) with stronger accounting controls. While there may or may not be any financial mistakes or improprieties at the Commission – something of which I have no personal knowledge – with our still limited resources we are addressing the concerns of GAO, OMB, BPD, and the Congress. We are taking strong action to remedy our financial woes. Most recently we approved the formation of a Budget Subcommittee to a) ensure that the Commission is actively involved in ensuring that our budgetary priorities are consistent with our mission and b) free up time we have spent at Commission meetings debating our finances to allow us to concentrate on the job for which we were appointed -- being the watchdogs for civil rights.

While I have the greatest respect for the Congress and the Executive Branch, the sins of the past should not be held against us. We are taking our finances seriously. We understand its impact on our overall mission. We should be allowed to remedy this while still addressing our core mission of fact-finding and policy debate, discussion, and recommendation.

As a coda to this lengthy answer, the Commission's status as an independent agency also speaks for itself. While we have one mandated enforcement report due each fiscal year in

our statute, the fact is that the Commission, especially with its State Advisory Committees, is free to pursue topics of interest and concern whenever and wherever they occur. As an independent agency, it is not bound, with the exception above, to coordinate its activities with the Executive or with Congress. The flexibility and nimbleness of the Commission allows it to tackle issues before the Executive or Congress may be ready to deal with it; the Commission's reports on domestic violence and Americans with disabilities occurred well before Congress was willing to take up the challenge of creating legislation to deal with it. This is not a criticism of government, but more an example of the symbiotic, rather than dependent, relationship between the Commission and the Congress and Executive Branch that has worked well in the past and should continue to work well in the future. That is not to mean, however, that we should disregard inquiries or requests for assistance from the Executive and the Congress; to the contrary, where we can be of help, we should .

VIII. I have no personal knowledge of any of the statements contained in this paragraph.

IX. As stated before, the Post was erroneous in assuming that the commission has any enforcement, let alone law enforcement responsibilities. It was also partly wrong in assuming that our only function is to inform and elevate the debate. The historical and present mission of the Commission is to inform and elevate the debate, but in doing so it has the power of the subpoena to compel production of documents and witnesses, and in issuing reports it has the power to make recommendations and suggestions to the Congress and the Executive Branch. If the test of the Commission were, as the Post suggested, not to "inflame passions further," I would submit that the Commission's reports in the early 1960's, where it called for the abolition of Jim Crow laws, desegregation of public accommodations, radical (for the time) changes in voting laws, were hardly tame recommendations that did not "inflame passions" in the deep parts of the segregated South. Since these reports resulted in the Civil Rights Act of 1964 and the Voting Rights Act of 1965, I suppose the inflammation of passion was, in hindsight, worth it, although the Post standard would hardly accommodate it.

As the newest (at the time of writing) member of the Commission, it has been my observation that there is a current of bipartisanship on the Commission presently, which may distinguish it from the Commission or Commissions of the recent past. While unanimous agreement may not always be found, on controversial policy items such as our statutorily-mandated enforcement report for FY 05 we have found common ground. On other controversial items, such as working to put our own house in working order, there has been unanimity. My own experience as an elected official has taught me that working together is far more productive than working against each other. Given the opportunity, I believe that the Commission will operate in an atmosphere of decorum and civility, not unlike that which occurs on the floor of the House.

There is a difference between flaming partisan and personal passions and disagreements between Commission members, and inflaming passions on behalf of civil rights and civil rights remedies. I believe our jobs is to maximize the latter, and minimize the former.

X. I can only offer my own, personal, nonscientific definition of government waste. To me, not cashing in unused airline tickets is government waste. Paying more money for the same product that one could buy in the private sector (i.e., no special specs or technical requirements) is government waste. Paying for hotel rooms never used is government waste. Government offices (with the exception of the White House) decorated in a manner that would please Donald Trump or the Sultan of Brunei is waste. But I believe that much of what people ridicule as "government waste" usually has, in proper context, a proper role for government.

The Supreme Court of the United States has stated that "one man's vulgarity is another's lyric." So it is that projects often criticized by taxpayer groups as "pork barrel" waste are, in fact, vital projects to a local community or to local infrastructure. My experience in government compels me not to get too exercised about characterizations of waste save in the examples I have given above. Many citizen groups, with good motivations, unfairly disparage and mischaracterize studies and programs that have significant value to citizens, communities, and our country.

To answer, therefore, your final question, is it without any reservation that I say that the United States Commission on Civil Rights is not an example of government waste. To the contrary, the United States Commission on Civil Rights as an organization is a testament to the resiliency and hard work of the dedicated federal employees and its Commissioners, for it has had to struggle for years with shrinking resources and smaller staff while still hewing true to its mission. That fact that it has struggled for a few years both internally and externally is no reason to abandon it and its noble mission. Certainly, it shall receive my full measure of energy, support, and commitment for the duration of my term.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY CHAIRMAN STEVE CHABOT TO KENNETH L. MARCUS, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

May 18, 2005

The Honorable Steve Chabot
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
362 Ford House Office Building
Washington, DC 20515

Dear Chairman Chabot:

Thank you for the opportunity to testify before the Subcommittee on the financial and management operations of the Commission. I hope that the information I provided in March highlights the important work done by the Commission notwithstanding the challenges that it currently faces.

This letter responds to the supplemental questions contained in your letter of April 26, 2005. These answers are based on my information and belief as Staff Director and do not necessarily represent the views of all Commissioners. Chairman Gerald A. Reynolds will respond under separate cover to the additional questions contained in the letter that you and Congressman Jerrold L. Nadler sent to us on May 13, 2005.

1. For FY 2004, did the Commission obligate its rent for the entire year by midnight on September 30, 2004?

In FY 2004, the prior management of the Commission entered into a deferral agreement with the General Services Administration (GSA) to defer $75,000 of its FY 2004 rent payment obligation until FY 2005. Under the agreement, the Commission discharged its previously incurred rent obligation using FY 2005 funds.

> *A. If not, under what authority can FY 2005 appropriations be used to pay FY 2004 obligations? How much of the FY 2004 appropriation did the Commission recognize in unobligated money as of midnight on September 30, 2004?*
>
> An internal review of this rent deferral agreement has revealed that the agreement violated the Anti-Deficiency Act. First, the Commission obligated FY 2005 funds in advance of appropriations in violation of the Act. Second, because the Commission apparently does not have sufficient funds in its FY 2004 account to

properly discharge this FY 2004 rent obligation, there appears to be a deficiency in its FY 2004 account. The Commission is reporting these actions to the proper authorities as required by 31 U.S.C. § 1351.

Although the final balance is yet to be confirmed by the Department of Treasury, according to current figures, the Commission should have approximately $18,180.04 of unobligated funds in the FY 2004 account, excluding the $75,000 liability described above. Additionally, the Commission should have obligated, but not yet expended, approximately $19,730.77.

As FY 2005 funds should not be used to discharge a FY 2004 obligation, we are in the process of working with the GSA to obtain a reimbursement of the FY 2005 funds so used so that payment is charged from the correct fiscal year's account. Due to the disarray in which current management found the Commission's financial records for FY 2004, we were unaware of the extent to which the deferral violated the Anti-Deficiency Act prior to satisfying that obligation.

B. Please provide a copy of the USCCR's rent agreement for its Ninth Street, NW, Washington, D.C. office space.

Please find a copy of the Commission's rental agreement with the GSA for its Ninth Street, NW, Washington, D.C. office space attached as Exhibit A.

II. What was the state of the finance and budget system at the USCCR when you arrived?

Overall, the finance and budget system at the Commission was in serious disarray upon my arrival in December 2004. I found little that was inconsistent with serious concerns cited by Government Accountability Office (GAO) reports since 1997, namely limited awareness of how agency resources were used, inadequate project management and transparency in contracting procedures, and insufficient compliance with the Government Performance and Results Act (GPRA), among others. For example, a 1997 GAO report cited the agency for its inability to provide key cost information for its regional offices, complaints referral process, clearinghouse, public service announcements, and at least one project. It also reported that the Commission had not established accountability for resources and did not maintain appropriate documentation of agency operations. However, in a 2003 report, GAO noted substantial improvement in project management since 1997.

In general, the GAO's reports painted a portrait of an agency that was run with little financial control, weak management, and little accountability. In fact, the Treasury Department's Bureau of Public Debt, which had previously provided accounting services to the Commission, terminated its relationship with the Commission effective fiscal year 2004, citing concerns regarding the agency's financial responsibility.
In short, the Commission's financial controls had deteriorated to the point last fiscal year that another agency of the federal government refused to continue to service its account.

My predecessor was forced to seek a new accounting services provider in the midst of these challenges in the middle of the fiscal year. The agency entered into an agreement with a small company with limited experience in providing full service accounting to a federal agency.

Additionally, the Commission had not had an independent audit of its books for many years, although an independent limited scope audit is currently underway by Parker, Whitfield, & Co.

Complicating these already significant internal challenges were the structural problems underlying the Commission's budget. The Commission's budget for fiscal year 2005 is $9,023,232—essentially unchanged from fiscal year 1995. While the Commission's budget has remained flat for a decade, salaries and benefits have continued to rise. Without serious fiscal corrective measures, the Commission was recently on course to overspend its FY 2005 appropriation by approximately $265,000, according to our best estimates.

A. What immediate and long-term procedural steps must the Commission take to have a finance and budget system in place that in accordance with federal government standards?

The Commission seeks to establish a culture of accountability and transparency with respect to its budget and finance system. As such, the Commission voted to adopt all GAO and OPM recommendations issued in reports issued from 1997 through April 6, 2005, and that all recommendations be implemented within a nine-month time frame to the extent that they are non-repetitive, that funds are available, and that implementation can be consistent with restrictions imposed by the Anti-Deficiency Act.

In the immediate term, the Commission has begun decentralizing budget functions and is seeking an accounting services provider with the requisite skills, ability, and broad experience. In the procurement area, the Commission is proposing to create stronger document control measures, creating language, adjusted as necessary, to be embodied in a conflict of interest provision in our contracts. The Commission is preparing to submit our risk and vulnerability assessment under the Federal Financial Managers Integrity Act, which would further identify weaknesses in our internal controls and create a remediation plan based on those identified weaknesses and risks.

Further, the Commission is reviewing its contract with Booth Management. The Commission must obtain budget and financial services that are accurate and reliable. It is currently not clear that Booth, with its limited experience in providing full accounting services to agencies of the federal government, can provide this degree of accuracy and reliability that the Commission seeks.

B. Has the Commission begun to implement these steps?

The Commission has already taken steps to introduce a culture of transparency and accountability that will promote sound financial operations. The Staff Director has issued three administrative instructions (AIs), directives outlining the internal guidance and policies of the Commission, which address numerous GAO recommendations regarding financial transparency.

Three additional AIs—AIs 3-15, 3-16, and 4-22—were issued in March 2005 to improve accountability. AI 3-15 established guidelines to ensure that the Commission recognizes payroll expenses in the proper period for accounting purposes. Specifically, AI 3-15:

- Asked Commissioners to submit timesheets to the Commission tracking their billable hours, either on a once-per-pay-period or monthly basis;
- Provided for submission of the timesheets to the Office of the Staff Director for signature in a timely fashion and eventual submission of the signed timesheet to the Human Resources Division; and
- Required the Executive Secretary for the Staff Director to follow up on Commissioners' timesheets that have not yet been received by the second Thursday of a pay period.

AI 3-16 embraced a wide variety of reforms to ensure that non-salary expenditures have proper authorization, approval, and supporting documentation. Among other things, these reforms directed the Acting Chief of the Budget and Finance Division to:

- Periodically review accounts to identify unusual balances;
- Keep appropriate documentation in transaction files to support accounting entries made to adjust or write off assets and liabilities;
- Retain sufficient evidence in transaction files to show that all transactions have been properly approved for payment;
- Prepare purchase authorizations in advance of the expenditure to be approved;
- Have evidence of receipt of goods and services prior to approving transactions of payment;
- Provide travel vouchers and ensure that travelers provide documentation to indicate the trip was taken; and
- Require that all financial transactions be properly approved and supported before being processed.

These two administrative instructions implement approximately 20 of the GAO's recommendations. Some success has already been posted, as the Commission has input data in the Federal Procurement Data Center, clearing up a year's backlog and completing 75 percent of another year's backlog.

AI 4-21 directed the Chief of the Administrative Services and Clearinghouse Division to:

- Prepare and maintain contract files to document the basis for Commission decisions in acquiring good and services;
- Ensure that all statements of work contain a provision on organizational conflict of interest;
- Provide training to appropriate employees on federal procurement rules, regulations, procedures, and issues;
- Require that all aspects of the Commission's procurement be documented in accordance with Federal Acquisition Regulations; and
- Report fiscal year procurement data for fiscal years 2003 through 2005 into the Federal Procurement Data Center and, going forward, to report such data annually into the Center.

The Commission has recently authorized cost-cutting measures to close its structural deficit for fiscal years 2005 and 2006 and provide funds to implement financial and management reform measures recommended by GAO and provide a sufficient cushion against unexpected costs so that we can be assured that we are not in danger of violating the Anti-Deficiency Act. These measures, when combined with other cost-cutting measures now being implemented, are intended to satisfy five major goals: 1) closing a projected FY 2005 deficit estimated at $265,000 as of April 8, 2005, 2) closing an expected FY 2006 deficit that, depending on increases in Federal salaries and benefits, could yield a deficit that exceeds the agency's current shortfall by more than $200,000, 3) providing some additional cushion to protect the agency against potential Anti-Deficiency violations in FY 2006 that might also provide some additional funds to support financial integrity and legal compliance reform efforts in FY 2006, 4) protecting the ability of the agency to accomplish its mission, and 5) protecting the welfare of the agency's employees.

In order to address this projected deficiency, the Commission has already implemented significant cost-cutting measures, including a hiring freeze, authorization for voluntary early retirement, a request for employees to consider voluntary leave without pay, a request for one month's rent exemption from the General Services Administration, and increased efforts to curtail all discretionary expenditures. According to the latest estimates, these efforts may already have significantly reduced the projected deficit.

On April 8, 2005, the Commission voted unanimously to authorize a Reduction in Force (RIF) of four employees in FY 2005 and the closure of two of our six Regional Offices in FY 2006. It also approved the use of mandatory furloughs of all agency employees in order to close whatever additional deficit there may be in FY 2005, after other cost-cutting measures have been implemented. On May 13, 2005, in light of recent staff attrition, the Commission voted to postpone these measures.

The Commission strives to maximize the agency's ability to conduct core mission-critical activities, such as civil rights investigation, fact-finding, evaluation, analysis and reporting, and to ensure compliance with applicable legal requirements, including rules governing accounting and finance. The corrective measures described above will enable the agency to successfully meet the goals described above.

C. Is the Commission in compliance with all applicable federal law (for example, the Government Performance and Results Act, the Accountability of Tax Dollars Act, and the Federal Managers' Financial Integrity Act)? If not, please explain the status of the last point for which the Commission was in compliance with each law and the current status of the Commission's plans for becoming compliant?

The Commission's filing status under its reporting requirements is as follows:

- Inspector General's Act: The Commission has no prior history of filing this report. It plans to submit its required FY 2005 report to the Office of Management and Budget (OMB) and Congress by October 31, 2005.

- Performance and Accountability Report: The Commission has no prior history of filing this report. It plans to submit its required FY 2005 report to OMB by November 15, 2005. This report integrates the Government Performance and Results Act Performance Report and the annual financial statement and includes information from the vulnerability/risk assessment report required under the Federal Manager's Financial Integrity Act and the information security management report required under the Federal Information Security Act.

- Federal Manager's Financial Integrity Act Report: The Commission last filed this report for FY 2003. The Commission plans to submit an abbreviated FY 2004 report to OMB some time in June 2005 and an FY 2005 report by December 31, 2005.

- Government Performance Results Act (GPRA) Performance Report: The Commission last filed this report for FY 2003. It plans to submit the FY 2004 report to OMB and Congress some time in June 2005 and will integrate the FY 2005 report into the FY 2005 Performance and Accountability Report. Once integrated into the Performance and Accountability Report, this will no longer be a stand-alone report.

- Federal Information Security Act: The Commission has no prior history of filing this report. It plans to submit a quarterly report some time in June 2005.

- Accountability of Tax Dollars Act: The Commission was not required to have a full audit under the Accountability of Tax Dollars Act in the first year of the Act and was specifically exempted from an audit the second year (FY 2003). It was required to have a full audit for FY 2004, but none was conducted. Provided there are sufficient records, it plans to submit un-audited financial statements to OMB some time in June 2005.

- Strategic Plan: The Commission issued its last strategic plan in 1997 to apply through 2002. It plans to revise and issue a new strategic plan to OMB and Congress some time in January 2006.

III. Can you explain the duties the Commission out-sources to Booth Management?

Under a contract entered into by prior management, Booth Management is currently responsible for system operation and maintenance, which include: providing core accounting software that complies with Joint Financial Management Information Programs (JFMIP) federal financial management standards. The core accounting software system must provide the following functions: budget, general ledger, purchasing, accounts payable, accounts receivable, and automated disbursements.

Booth Management is also responsible for budgetary transaction processing, financial reporting, contractor support desk and training, travel services, and some procurement services.

A. Can you explain the duties performed by the prior Director of Budget and Finance (George Harbison) and the Director of Administration (TinaLouise Martin)?

Please find the position descriptions for the respective positions attached as Exhibit B.

B. What is the relationship between the duties performed by internal employees and outside providers?

TinaLouise Martin serves as the Contracting Officer's Technical Representative (COTR) for Booth Management. The COTR is responsible for approving and disapproving invoices, clarifying work priorities, receiving reports, and assigning specific tasks to the accounting firm. The Budget and Finance Officer serves as a liaison between the accounting firm and the agency in reference to bill paying and travel services. The Chief of Administrative Services provides all obligating documents to the accounting firm for payment.

C. Can you explain whether the new Director of Budget and Finance, when hired, who will be a GS-15 level federal employee, will be responsible for the duties currently being performed by Booth Management?

The new Director of Budget and Finance will not be responsible for the duties currently performed by Booth Management, but will coordinate and reconcile work of Booth Management and serve as the COTR.

1. If not, who will be responsible for the duties currently being performed by Booth Management or will you retain Booth? If you retain this firm, what will you do to ensure the duties will not be duplicated?

A decision is still pending on whether Booth Management will be retained. Staff is currently reviewing proposals from accounting services providers to determine the best options for the agency. An appropriate statement of work for the new accounting firm and a new position description for the Budget Officer will ensure that duties will not be duplicated.

2. For what duties will the new Director of Budget and Finance be responsible?

Please find the position description for the new Director of Budget and Finance attached as Exhibit C.

3. Why has the position of Director of Budget and Finance been elevated to a GS-15 level?

Based on the financial difficulties of the agency and several GAO reports, we have determined that the Budget and Finance Division is in need of a high-level, high-performing, experienced staff member. The Director of Budget and Finance position has been elevated to a GS- 15 level to recruit someone who is capable of stewardship of the agency's financial resources, and to also bring the agency into compliance with governing financial regulations, such as; 1) the Anti-Deficiency Act, 2) Budget and Accounting Act, 3) the Federal Managers' Financial Integrity Act, 4) the Government Performance and Results Act, and 5) the Accountability of Tax Dollars Act.

The new Budget and Finance position will also encompass strategic planning, financial planning, budget formulation and presentation, budget execution and analysis, financial reporting, financial data integrity, and internal controls.

D. How much has the Commission paid Booth Management for its services and how much does the Commission expect to pay Booth Management in FY 2005?

The Commission paid Booth Management $135, 812 in FY 2004 and will have paid Booth Management $220,600 in FY 2005.

1. Does Booth Management's services include keeping the Commission's General Ledger?

Booth Management's services include keeping the Commission's General Ledger.

IV. Under the time-line specified by the OMB, and in accordance with the Commission's procedures, the Commission's proposed budget should be submitted to the Commissioners for approval in June and final approval in July. Will you submit the Commission's budget to the Commissioners in June or July 2005?

The agency's internal timeline for submitting the Commission's proposed budget to Commissioners in June is based on internal guidelines and driven by the required submission of the Commission's Budget Estimate to OMB in September. These guidelines assume that an annual planning meeting takes place in January or February, in which project proposals are discussed and voted on. The Commission's program offices then take the approved project proposals and develop full-scale project requirements and cost projections over several months for inclusion in the proposed budget submitted to Commissioners.

This year, however, the Commission's annual planning meeting did not take place until May 13, 2005 due to a transition in leadership, implementation of operational and financial reform, the urgency of resolving a fiscal crisis, and the arrival of several new Commissioners. However, since the Commissioners approved the project proposals during the May 2005 meeting, we anticipate that the proposed budget will be presented to them in the July 2005 meeting. If the Commissioners approve the budget during the July 2005 meeting, we expect that the Budget Estimate will be sent to OMB in September 2005.

V. As you stated in your written testimony, the firm Parker, Whitfield is currently working on a balance sheet audit for the Commission. What is the time-frame for completing the Commission's balance sheet audit that was due November 15, 2004 under Accountability of Tax Dollar Act? To the best of your knowledge, why has the report not yet been completed?

Parker, Whitfield was scheduled to complete its balance sheet audit on November 15, 2004. They did not complete the audit by that date, and it has not been completed and delivered to us even on this date. At this point, we do not have an expected time-frame

for its completion. Parker, Whitfield attributes this delay to problems with Booth Management Company. For example, Parker, Whitfield claims that the work completed by Booth for incorporation into its balance sheet audit has been replete with errors, that the documents submitted by Booth are often in disarray, and that Booth is not sufficiently cooperative. Booth denies these claims and has alleged that the requests from Parker, Whitfield are often duplicative. In order to resolve these claims between Parker, Whitfield and Booth, TinaLouise Martin has created a new accountability system under which the Director of Management acts as the liaison between Parker, Whitfield and Booth. As such, the Director of Management reviews and forwards requests from Parker, Whitfield to Booth, reviews and submits the responsive documents that Booth prepares to Parker, Whitfield, and facilitates meetings between Parker, Whitfield and Booth.

VI: Have you conducted a human resources evaluation of the Commission's staff to get an accurate understanding of the Commission's staffing strengths and needs?

Human resources are a vital and fundamental part of carrying out our mission. Given our current needs and challenges, the Commission requested assistance from the Office of Personnel Management (OPM) with labor and personnel issues. Beginning May 2, 2005, OPM has provided a detailee for 120 days to assist the Commission in addressing labor and personnel issues. This detailee will be working closely with the Office of Management.

The Commission understands that its workforce planning strategy must be inextricably linked to its strategic and program planning efforts, and form the basis for identifying our current and future human capital needs and strategic competency requirements. The Commission is currently in the process of gathering human capital information from our internal data systems and the Central Personnel Data File maintained by OPM. The Commission plans to assess the formal skills of our workforce to identify the degree to which the organization's current and anticipated competency needs are being met. These analyses will form the basis for a strategic human capital plan to be developed later that will identify actions and strategies for addressing key human capital challenges, including those related to staffing levels and gaps in strategic competencies. This workforce planning will further serve to inform the development of the Commission's annual performance budgets, which will integrate the Commission's GPRA annual performance plans with its budget submissions.

> *A. If not, how are you planning on staffing substantive projects without an accurate understanding of the capabilities and limitations of staff?*
>
> Please see above.

B. Of all of the authorized, but unfilled, Commission staff positions, how have you determined which positions to open for application?

As part of the fiscal corrective measures authorized by Commissioners in April 2005, the Staff Director imposed a freeze on hiring of new career and non-career employees. Several Commissioners, including the Chairman, have refrained from hiring full-time special assistants as permitted by statute. This freeze also extends to filling vacancies in critical positions such as Deputy Staff Director, Congressional Affairs Chief, Public Affairs Director, Regional Programs Officer, and General Counsel.

C. How qualified is your staff to write academic reports published with the Federal Government seal? Please explain.

The Office of Civil Rights Evaluation (OCRE) staff is comprised of three GS-13 Social Scientists, three GS-13 Civil Rights Analysts, one GS-11 Civil Rights Analyst, and one SES member. Analysts have worked at the Commission for an average of approximately seven years, with tenure ranging from five months to 17 years. Collectively, OCRE analysts have dedicated more than 94 years to Federal government work.

OCRE staff represents a wide variety of backgrounds and experiences—the private sector, non-profit organizations in fields such as journalism and research, state governments, international organizations, and academia. The eight-member analytical staff totals seven bachelor's degrees, five Masters' degrees, and three Ph.Ds in disciplines such as government, economics, sociology, anthropology, statistics, journalism, and education from institutions including University of California at Los Angeles, Carnegie-Mellon University, Florida International University, University of Florida, Johns Hopkins University, University of Maryland, University of Michigan, University of Missouri, University of Oklahoma, Princeton University, University of Singapore, and University of Virginia. All have pursued additional post-secondary training in subjects such as demography, business, leadership, project management, econometrics, statistics, and writing, at institutions including Georgetown University, USDA Graduate School, University of the District of Columbia, University of Michigan, Essex County College, the Office of Personnel Management, and University of Massachusetts.

In addition to their academic credentials and federal government experience, OCRE analysts have written extensively for general and specialized audiences. Prior to working for the Commission, OCRE staff wrote numerous articles for scholarly and academic journals, nationally distributed monthly magazines, and general circulation newspapers, as well as reports for nonprofit research institutions, private sector clients, and other government agencies. Research conducted by the members of the analytical staff has been presented at major professional conferences held by the American Political Science Association, the

American Society for Ethnohistory, the American Sociological Association, the Association of American Medical Colleges, and the Society for Applied Anthropology Annual Meeting. Journal articles and reviews authored by OCRE analytical staff have been published in the *Journal of Policy Analysis and Management, Journal of Women and Minorities in Science and Engineering, Contemporary Sociology, Journal of the International Society of Optical Engineering, Women's Studies Quarterly, Journal of Asian Studies, Pacific Affairs, and Sociology of Education*. Their articles and research have also appeared in major media outlets like *The Ladies' Home Journal, USA TODAY,* and *The Washington Post*.

Additionally, the Office of General Counsel staff of four attorney-advisors consists of three GS-13 Attorney-Advisors and one GS- torney. All OGC professional staff hold advanced degrees, includin Doctorate (JD) degrees, and one Master of Laws (LLM) degree. Combined, the four OGC attorneys bring more than 45 years of legal and other experience to the Commission.

In addition to their extensive writing experience during their tenure at the Commission, the attorneys have a mix of both private sector, non-profit, and public sector work experience, including private sector litigation experience in civil rights and discrimination cases; extensive experience overseeing the discovery phase of complex civil rights litigation, including the drafting and use of interrogatories and other discovery; civil rights policy writing experience, including published articles, legal analyses, and policy papers; exceptional experience drafting civil rights related appellate briefs before the federal courts of appeals, including the U.S Supreme Court; human rights experience resulting from contributing to books on the international law of damages and the international criminal court; the completion of advanced LLM work on the protection of religious and political speech under international human rights law; broad experience drafting decisions on disability and Medicare cases for Administrative Law Judges; and experience defending military personnel in all aspects of military criminal law through the Trial Defense Service of the Judge Advocate General Corps.

> *1. How do these qualifications compare to those authors of other academic literature?*
>
> We do not have sufficient information to make such a comparison (but see above).

2. Are there any controls in place to ensure the accuracy of the reports, one of the only products produced by the Civil Rights Commission? Please explain.

The Commission has many controls in place to ensure the accuracy of reports. Specifically, AI 1-6, *National Office Program Development and Implementation*, provides extensive instructions on the control measures for producing accurate reports.

First, in OGC and OCRE qualified attorney-advisors, civil rights analysts, and social scientists, all with extensive research and writing skills, develop, outline, and draft the Commission's reports. They use a variety of documented source material, witness interviews, interrogatories, and testimony from briefings and hearings. Once compiled into chapter drafts, all reports go through a lengthy review process. At the level of the Staff Director, the content of OGC reports are reviewed and comments are submitted to the General Counsel or Deputy General Counsel concerning the sufficiency of the legal and factual analysis within the reports. In addition, in consultation with OGC management, the Office of the Staff Director monitors the progress of the report and ensures that the report is consistent with the purpose, scope, and methodology approved by the Commissioners during project planning and their subsequent discussions.

Moreover, pursuant to AI 1-6, OGC and OCRE reports go through a three-member Editorial Review Board, whose primary purpose is to determine the adequacy and accuracy of the substantive information in the draft document, including conceptual soundness, adherence to Commission policy, quality of research, argumentation, and documentation of major points.

Simultaneous with sending the draft report for editorial policy review, OGC also conducts a legal sufficiency review (LSR) and, if appropriate, a defame/degrade review. The purpose of the LSR is to ensure the accurate interpretation and citation of legal materials and compliance with statutory requirements. To ensure consistency and accuracy in the LSR process, OGC created internal LSR guidelines that provide the criteria for conducting the review. After this review, the OGC staff member responsible for conducting the LSR works with the project team responsible for producing the report to make the draft legally sufficient.

After completing any revisions required by the legal sufficiency and editorial reviews, each report written by OGC and OCRE staff undergo affected agency review. During this process, government agencies affected by or critiqued in the report are provided relevant portions of the draft report for review and comment on the accuracy of the material contained in those sections. Upon receipt of the comments from the

affected agency, the project team responsible for drafting the report prepares appropriate revisions. If substantial changes affecting the legal direction of the report are made, the changes must undergo an expedited legal sufficiency review.

The assigned office sends the final revised draft, incorporating all editorial, legal, and affected agency revisions to the Staff Director again for his approval and submission to the Commission for review. In addition, once the final OSD review is completed and the draft report is presented to the Commissioners, they have the opportunity to review and discuss the work prior to voting on the report. This may result in staff being asked to make additional revisions to the draft report. Moreover, under rules recently recommended by the Working Group on Reform and passed by the Commission on May 13, 2005, Commissioners will now have additional and greater input into projects at critical milestones in the project's progress in the future.

D. Please submit a list of current staff and their respective job responsibilities, including those employed in regional or other offices.

Please find the list of current staff and their respective position descriptions attached as Exhibit D.

E. Please submit a list of unfilled, but authorized positions, and indicate when each position was last filled.

Please find the list of unfilled, but authorized positions, and the status of when each was last filled, on the attachment designated Exhibit D.

VII. It is my understanding that the Working Group on Reform has not completed its review. Moreover, it is my understanding that the Working Group is not going to examine certain process issues, such as whether the Commission will continue to issue blanket subpoenas or, in contrast to current practice, whether report topics will be focused sufficiently so subpoenas are issued to elicit information relevant to be useful in the report drafting process. How is project planning proceeding before these basic and integral procedural processes are formally amended by the Commission? For example, how are staffing assignment and products designed before strategic planning is discussed, approved, and updated?

The Commission will not issue "blanket subpoenas." The Commission's statute authorizes the specific use of subpoenas. When OGC proposes a hearing during project planning, the anticipated use of subpoenas for witnesses is usually included in the Commission information presented prior to approving a project. Once the Commission approves a project as a hearing, staff conducts extensive research to determine the appropriate and relevant parties who should present information on the particular civil

rights issues encompassed by the project to the Commission. Before the issuance of any subpoena, a list of witnesses is presented to the Staff Director for approval. The past practice, consistent with the Commission's statute, has been that once the Staff Director approves the list of witnesses to be subpoenaed for a Commission-approved hearing, the staff prepares the subpoenas, the Chairman of the Commission signs them, and they are issued.

As mentioned earlier, the recommendations of the Working Group on Reform were presented and adopted by the Commission on May 13, 2005. Among the issues discussed were process issues, including the project planning process, discovery requests, and the use of subpoenas. At the May 13 meeting, the Commission approved a new project planning process affording additional Commissioner input at critical milestones in a project's life, including the discovery phase at which subpoenas would be issued.

Under the new rules, the staff will draft a discovery plan for approval by the Commission. The discovery plan will describe with as much detail as practicable the subpoenas, interrogatories, document requests and other forms of discovery that the staff proposes to undertake and the timeline for doing so. The discovery plan shall be presented to the Commission for review and discussion at a regular monthly meeting. No discovery shall take place until the Commission reviews and approves by majority vote the discovery plan presented by the staff. This does not preclude staff from continuing routine research and analysis. This rule was adopted concurrent with the Commissioners' consideration of the 2005, 2006, and 2007 project proposals. All projects going forward will proceed under the new rules.

Moreover, while the Commission is revising the strategic plan, it has six clearly identified areas of authority based on its statute. Project planning is the primary process through which the Commission's statutory mandate is executed.

VIII. How is it determined whether the Commission, or its representatives, has authority to issue interrogatories at the time interrogatories are issued?

Interrogatories are issued under the Commission's statutory authority to investigate and study issues of civil rights and equal protection. 42 U.S.C. § 1975a. Federal agencies have an affirmative duty to cooperate with USCCR inquiries. 42 U.S.C. § 1975b(e). The use of written interrogatories is a way to facilitate the Commission's "fact-finding" function, as well as to document the information provided to it by federal agencies and others. Interrogatories are drafted by staff pursuant to a validly authorized project proposal. Again, under new rules adopted recently, the Commissions will review and approve staff's discovery plan prior to issuance to the relevant parties.

A. How it is determined what the scope of those interrogatories will be?

Interrogatories are almost exclusively issued after a Commission hearing in order to fill in evidentiary gaps and to substantiate, refute, or seek further elaboration on

testimony provided by witnesses. It is a tool used to supplement other research. The scope is determined by the goals of the approved project and the necessity of obtaining targeted information.

B. Is the scope of an interrogatory something that should be part of the project planning process before an interrogatory is issued?

As discussed earlier, under new rules passed by the Commission, the Commissioners will review a discovery plan that will describe with as much detail as practicable the subpoenas, interrogatories, document requests and other forms of discovery that the staff proposes to undertake and the timeline for doing so. The discovery plan shall be presented to the Commission for review and discussion. No discovery shall take place until the Commission reviews and approves by majority vote the discovery plan presented by the staff.

Although staff members working on a project are well situated to determine the scope of an interrogatory after performing preliminary research, Commissioners' input into the discovery plan, which describes the scope of an interrogatory in as much detail as practicable, will be useful as in shaping the project into a final product likely to gain formal approval from a majority of Commissioners. The new project planning rules strike a balance between engaging useful Commissioner input and preventing Commissioner micromanagement of projects, recognizing that staff members bring to bear a thorough review of appropriate literature, data, and interviews with agency officials on determining an interrogatory's scope and that Commissioners may not have the detailed knowledge necessary to determine said scope.

C. Is consideration of the amount of time, effort, and cost it will take recipients of USCCR interrogatories to respond to the interrogatories weighed against the value of the responses to the Commission's work?

At times, interrogatory and document requests may be lengthy and challenging. These characteristics are not unnecessary, however. Projects should and do include complex aspects of civil rights protections, and as such warrant thorough requests. The interrogatory demonstrates the Commission's commitment to thorough and accurate representation of facts.

For its part, the Commission strives to smooth the data collection process. For example, it encourages agencies to respond as carefully and completely to the interrogatory questions as possible. By doing so, the agencies and the Commission save time and resources, since the need for follow-up interviews are minimized. The Commission also makes efforts to ensure that agency staff has adequate time to prepare the interrogatories. The Commission takes into consideration the fact that agencies sometimes need to coordinate with components in order to generate a reply. However, the Commission makes it clear that any extension of the deadlines may affect the conduct of the studies, and must

be weighed against our responsibility to appropriately review and analyze responses often from several agencies, to meet sometimes statutorily imposed deadlines. Delays and lack of first-hand agency answers could seriously affect a thorough representation of an agency's efforts. Commission staff stands ready to answer agency questions on any aspect of a project, including the reasons for inclusion of certain interrogatory questions.

Further, the Commission selects the most appropriate method to collect data for a project. Interrogatories have certain advantages over personal interviews. For example, interrogatories do not entail transcription cost. This is a significant consideration since a substantial amount of information is collected from agencies. Moreover, interrogatories allow respondents an opportunity to present considered, detailed, and written responses to which the Commission may cite in its report. Further, the information that the Commission seeks usually resides in different units of an agency. An interrogatory allows the most knowledgeable staff in the appropriate units to respond to the questions. Finally, interrogatories make it possible for an agency's senior staff and attorneys to vet responses before releasing them to the Commission.

The Commission recognizes that agencies expend much cost, time, and effort to compile responses to its interrogatories. Their necessary contributions are invaluable as the Commission continues its work on improving federal civil rights enforcement.

D. What do you do with information that is obtained, but unused?

Staff preparation completed prior to the issuance of interrogatories seeks to limit the amount of unused information gathered. Staff reviews all requested information. All information, used or unused, becomes part of the project record. At the conclusion of a project, all the materials associated with it are filed in the requesting office, either the OGC or OCRE file rooms. They are maintained for a time period consistent with the Records Disposition Schedule.

E. How is it determined what the scope of subpoenas issued by USCCR will be?

As discussed in our response to Question VII, when OGC proposes a hearing during project planning, the use of subpoenas and their general scope is included in the project concepts for Commissioner review. Once approved as a hearing, extensive research is conducted by staff in order to determine the knowledgeable parties appropriate to present information on the particular civil rights issue to the Commission. Before the issuance of any subpoena, a list of witnesses, their contact information, and a summary of what information they are expected to provide if subpoenaed is presented to the Staff Director for approval. The past practice, consistent with the Commission's statute, has been that once the Staff Director approves the list of witnesses to be subpoenaed for a Commission-approved hearing, the staff prepares the subpoenas, the Chairman of the

Commission signs them, and they are served on the witnesses by the U.S. Marshal or other approved method. In rules recently passed, the Commissioners will revisit a project with the staff at the discovery stage. They will review and approve a discovery plan will describe with as much detail as practicable the subpoenas, interrogatories, document requests and other forms of discovery that the staff proposes to undertake and the timeline for doing so.

F. Is consideration of the amount of time and effort it will take recipients of USCCR subpoenas to comply with the subpoenas weighed against the use of the information solicited to the Commission's work?

The time it takes for recipients to comply with subpoenas is considered. However, a subpoena for documents or for attendance at a hearing is a critical tool provided to this agency in order to complete its statutory obligations. Subpoenas for documents, while not issued frequently, and when issued have been have approved as a part of a project by a Commission vote, may seem voluminous to the recipient. As noted with interrogatories, however, this characteristic is not unnecessary. Commission projects and the resulting reports should and do include complex aspects of civil rights protections, and as such warrant thorough document requests. The subpoena for documents demonstrates the Commission's commitment to thorough and accurate representation of facts. Before and after issuing a subpoena for the production of documents, OGC works with those required to produce documents to help narrow or further focus the request, if possible. In addition, OGC engages agencies and other in negotiations concerning the need for extensions of time required for production and to create staggered production schedules, when appropriate.

A subpoena for attendance of witnesses is issued by the Commission only after research and background interviews have been done to determine the appropriate witnesses to testify before the Commission. Such testimony is necessary to fulfill the mission and mandate of a Commission approved project and hearing. Moreover, OGC encourages witnesses to contact the project team or OGC leadership to discuss the purpose and nature of a hearing so that they can be adequately prepared to testify. OGC also strives to give witnesses ample preparation time in advance of the hearing.

IX. Is implementing GAO's recommendations in reverse chronological order, rather than by beginning with those recommendations regarding strategic planning, when strategic planning should guide all substantive, financial, and managerial decisions, the most effective means of bringing the Commission in compliance with applicable law and regulation and in returning the Commission to the work that will effectuate the Commission's statutory mission?

Strategic planning and good financial management are intertwined; both are indispensable to the effective execution of the Commission's mission and compliance

with applicable laws and regulations, especially the Anti-Deficiency Act. As the strategic planning process gets underway, the Commission continues to place financial reforms up front to guide the planning process and as a reflection of the reality that strategic planning can only move forward productively when the Commission is fully aware of available financial and human capital resources.

X. Despite the purported use of project reports by prior Commission leadership, which were recommended by GAO to inform Commissioners of detailed project costs, staffing needs, and deadlines, Commissioners are still not provided transparent working information. Do you believe that the Commission has adequately complied with this GAO recommendation? Please explain.

The overall increase in transparency in the operation of the Commission was recently recognized by Commissioners Jennifer Braceras and Peter Kirsanow at the March 18, 2005 Commission meeting. Commissioner Kirsanow went as far as to comment that "in one meeting alone, [the Staff Director] provided more information than I have gotten in three years by a magnitude of three or four-fold." In a subsequent letter to the Chairman of this Subcommittee, dated March 28, 2005, Vice Chair Abigail Thernstrom and Commissioner Braceras cited this transparency for bringing the Commission's financial condition to light.

More specifically, however, the Commission has undertaken numerous initiatives to comply with GAO recommendations regarding transparency in project planning. The Commission created the Working Group on Reform in February 2005 to address transparency in project planning. On May 13, 2005, the Commission adopted the Working Group's proposed timeline that would involve Commissioners in the early stages of project planning such as scoping. Also, as part of the strategic planning slated to be underway in late May and early June, the Commission will explore ways to more clearly and closely link our financial and human capital resources with programs and projects.

A significant part of being able to provide Commissioners with project cost information is being able to access accurate financial information from the Budget and Finance Division (BFD). Currently, BFD is striving to ensure that the object classification codes used in tracking costs associated with projects and other expenditures are correct. This is critical to accurately determining where money is being spent, including what is being expended on specific projects.

Additionally, the Commission recently adopted reforms to strengthen financial accountability. For example, in his short time at the Commission, the Staff Director has issued three administrative instructions that begin the long process of curing the substantial inadequacies in financial management that undermine the ability to properly fund and otherwise conduct Commission projects.

The Staff Director's new AIs 3-15, 3-16, and 4-21 create improved tracking of agency financial resources by better matching human resources expenses with the appropriate pay period; ensuring that non-salary expenditures have proper authorization, approval, and supporting documentation; and preparing and maintaining complete contract files to ensure compliance with Federal Acquisition (FAR) Rules.

These actions, alone, have implemented approximately 20 of GAO's recommendations on financial management and controls. These actions, in combination with other planned reforms, will support increased financial accountability and transparency in Commission projects.

XI. Are you aware of 5 U.S.C. 306 (d), which states that when developing a strategic plan, a federal agency shall consult with the Congress, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan? Have you put in place a mechanism to comply with this statute?

The Commission is aware of its obligation under 5 U.S.C. § 306(d) to consult Congress and solicit and consider the views of suggestions of entities potentially affected by or interested in our strategic plan. The strategic planning process currently under development includes consultation with Congress, as well as outreach to other stakeholders. The Commission's strategic planning timeline will specifically include a period of time for stakeholder outreach and consultation.

XII. How do you see your work fitting with the six statutory guidelines set forth by Congress? How do your expenses align with your goals?

As mentioned in response to Question II, the Commission has undertaken fiscal corrective measures that are consistent with its goals of protecting the ability of the agency to accomplish its mission and protecting the welfare of the agency's employees. The spending plan outlined in the Commission's recently submitted FY 2006 Request for Appropriations takes these goals into account as well as our performance goals.

Our current spending plan is based on six performance goals, which, in turn, are based on our statutory responsibilities: (1) Evaluate and identify ways of improving the effectiveness and efficiency of federal enforcement of civil rights laws and policies; (2) Study allegations of denials of civil rights and equal protection of the laws, and illuminate the causes, the consequences, and the possible remedies related to discrimination based on race, color, religion, gender, age, disability; (3) Promote greater public awareness of civil rights protection and responsibilities; (4) Assist members of the public who seek information and advice about protecting their civil rights national origin, or in the administration of justice; (5) Enhance the unique network of 51 State Advisory Committees (SACs), which serve as the Commission's "eyes and ears," in addressing regional, state, and local civil rights issues; and (6) Improve the management, accountability, and productivity of the Commission.

The Commission's Request for Appropriations included internal cost estimates for meeting these goals to the extent that this information was available. There are few costs incurred in meeting these goals above and beyond the operational baseline. Internal estimates indicate that approximately 85 percent of Commission expenditures fall under salaries, rents, and benefits, while the remainder consists of costs for other services, printing, mailing, communications, and travel (mostly for the monthly Commission meetings), among other things. At the May Commission meeting, Commissioners approved project proposals in light of the Commission's structural fiscal constraints and internally generated cost estimates. As the Commission increases financial transparency in project management, the Commission will keep Commissioners informed of any changes in costs estimated and actual expenses incurred.

XIII. It is our understanding that the former Staff Director, Les Jin, has taken some USCCR working documents to San Francisco and has refused to respond to written and telephone requests by current USCCR leadership for information and materials. Can you please tell us what you know about this? Specifically, what documents were in existence when you arrived, what documents are missing, what documents do you believe were taken? What attempts have been made to contact Mr. Jin? Has anyone within the Commission spoken with him? To your knowledge, did anyone help Mr. Jin abscond with the records?

Upon my arrival, the documents in existence in the Staff Director's immediate office were a collection of the Administrative Instructions; an information book with the Commission's authorizing statute, regulations, records disposition authority, and various civil rights statutes; briefing books for Commissioners that included general information on the Commission, a schedule of meetings; copies of previous years' appropriations requests; copies of previous years' budget estimates; and, for FY 2001, a budget "call," in which the Commission's program offices submitted their cost estimates to the Office of the Staff Director for incorporation into the budget estimate. Other materials found in the Staff Director's Office upon my arrival were a written request for passback for FY 1999; Commission meeting materials dating back to 2000; a reference guide on the Accountability of Tax Dollars Act; a brochure overview of the Federal Advisory Committee Act published by the GSA; copies of Commission publications; and various phone directories.

I have no knowledge of what documents, if any, were either missing or taken from the Commission. There have been some instances in which I have obtained copies of correspondence between the previous Staff Director and outside entities from the outside entities in question. For example, the Bureau of Public Debt sent me a copy of its letter terminating its accounting services relationship with the Commission. I have not been able to locate the corresponding internal copy of this letter.

The Commission's Director of Management, TinaLouise Martin, left Mr. Jin a voicemail message in December 2004 to inquire as to whether he had any matters to discuss with the incoming Staff Director. Mr. Jin then left Ms. Martin a voicemail message indicating

that he had no desire to speak with the incoming Staff Director and advised that the incoming Staff Director should direct inquires about Commission matters to Terri Dickerson, Assistant Director for OCRE, whom Mr. Jin said that he had briefed on such matters before his departure. I then located Mr. Jin's contact information on the Internet, as I had no independent verification of his whereabouts. I then called Mr. Jin and left a voicemail message on his machine. He did not respond. I then sent Mr. Jin a letter addressed to the Washington, D.C. address indicated on the Internet, by mail on December 21, 2004, to express my interest in meeting with him so as to obtain information on the operation of the Commission known only to Mr. Jin. So far, I have not received a response to these communications.

The Office of the Staff Director has made inquiries to staff members in connection with your question to determine the extent of their contacts with Mr. Jin. To the best of my knowledge, four staff members have had contact with Mr. Jin since his departure. According to these staff members, none of these contacts involved discussion of any matters related to Commission documents or business. Furthermore, to the best of my knowledge, no staff member has any knowledge about whether Mr. Jin absconded with any records.

XIV. As you are aware, the Committee has asked for any and all records relating to any "contracts" the Commission has entered into with any person and/or entity. To your knowledge, were any contracts moved to the location of, or categorized as, personnel records?

> *A. If so, who authorized this change?*
> *B. Were any documents subject to that change missing from the submissions that were responsive to requests by GAO or this Committee? Please delineate the applicable documents.*
> *C. If so, did you ever learn why the change was made? Please explain.*

We have no information indicating that any contracts were moved to the location or, or categorized as, personnel records. Nor do we have knowledge of any change in policy as to whether the Commission's acquisition of goods and services are handled as contracts or as personnel matters. The Commission would appreciate any further information from the Committee that the Committee believes would be helpful in addressing this matter.

Under the recently issued AI 4-21, the Commission's Administrative Services and Clearinghouse Division will retain records of all contracts and contract-related documents. The Commission has striven to comply with all Committee and GAO requests for contract and contract-related documents.

XV. Do any of you have any knowledge about any Commission documents being removed from the building to prevent the Committee from gaining access to certain records?

The Office of the Staff Director has made inquiries to staff members in connection with your question about alleged removal of Commission documents possibly intended to prevent access to certain records. Based on these inquiries, it appears that no one at the Commission indicates having any knowledge about the alleged removal of Commission documents from the building intended to prevent access to certain records.

XVI. How many equal opportunity complaints are currently pending against the Commission? What is the status of filling the awards?

Two equal opportunity complaints are currently pending against the Commission, both of which arise from the same complainant and are factually related. Awards have been paid to the complainant and counsel. For one complaint, the Judgment Fund paid an award granted by the Equal Employment Opportunity Commission. We later determined that the payment was in error and that reimbursement was required. We are working with the Department of the Treasury to resolve the matter.

XVII. Do you forward allegations of civil rights violations received by the Commission to the Justice Department? What mechanism do you have to ensure that civil rights complaints received by the Commission are forwarded to DOJ - the federal agency with investigatory and enforcement authority.

The Commission provides assistance to members of the public who seek information and advice about protecting their civil rights. Such individuals may expect a response in a timely manner and to have their complaint forwarded to the appropriate Federal, state, or local enforcement agency for action, or private organizations that are authorized to help. Agencies authorized to help include, but are not limited to, the U.S. Department of Justice (DOJ). Commission staff members make referrals based on knowledge of federal agency enforcement responsibilities and the type of discrimination (education, housing, employment, public accommodations, health, administration of justice, etc.) alleged.

For the last five fiscal cycles, the Commission has referred almost 18,000 civil rights complaints, 3,538 annually, on the average (3,100; 3,286; 4,602; 3,714; and 2,988 for FYs 2000-2004, respectively.) Despite fluctuating numbers of complaints, OCRE has responded effectively and maintained no monthly or annual backlog of pending cases. For example, the Commission experienced a 29 percent increase the year coincident with the September 11, 2001 attacks. It processed 33 percent more complaints in FY 2002 than in 2000. OCRE referred 5,052 complaints to DOJ from 2000 to 2004 (1,123; 807; 1,097; 1,124; and 901 for FYs 2000-2004 respectively).

The Commission has many mechanisms to ensure that civil rights complaints received by the Commission are forwarded to DOJ. First, position descriptions of several

Commission staff members include duties associated with the timely referral of complaints as well as the production of monthly, yearly and other reports necessary to apprise the Commission regarding the number, issues (housing, employment, education, etc.) and bases (race, age, national origin, religion, etc.) of complaints that the office receives from members of the public.

A civil rights analyst in OCRE is primarily responsible for counseling complainants regarding their allegations of discrimination, and based on the counseling, providing a referral to the appropriate enforcement agency. In addition to counseling and referring, the analyst is responsible for producing statistical analyses of complaints, as necessary, and for completing periodic reports, usually on a monthly basis, for the office director, the Staff Director, and the Commission.

To obtain a referral, individuals may call or write to the Commission's headquarters office, or any of the Commission's six regional offices. Commission staff members specifically expert in referrals handle complaints received by telephone, mail, facsimile, e-mail, and in person. Additionally, the Commission publishes and distributes *Getting Uncle Sam to Enforce Your Civil Rights*, a guide describing the initial steps of filing a discrimination complaint. The Commission also offers information contained in the guide on its Web site. At any point, complainants may contact the investigative/enforcement agency directly.

Complaints are tracked by last name (if known) of the complainant. Upon inquiring, the Commission may inform a complainant of the status of his/her complaint referral. The Commission forwards the complaint to the appropriate enforcement agency (including DOJ), asking it to assist the complainant and to inform the Commission when the matter has been resolved.

Telephonic complainants are given a verbal referral to the appropriate enforcement agency, thus enabling direct communication with the agency. If, in the case of telephone referrals, additional information and documentation are required, or if the complaint cannot sufficiently be described by phone, the Commission may ask the complainant to forward details in writing. In order to provide assistance, the Commission requires complete information, and, as such, may ask the complainant for additional information. Walk-in complainants must be prepared to fill out a complaint intake form and append all pertinent documents.

Complainants are not required to provide a name or personal data unless they would like the complaint to be forwarded by the Commission to an enforcement agency. The Commission cannot forward complaints for which it does not have a full name and address. Complainants do not have to provide a full name or personal information to receive referral information to agencies that they will contact on their own.

The Commission does not provide direct remedial assistance or offer an opinion as to the soundness of individual allegations. The Commission does not act as an advocate for complainants or respondents in claims of discrimination.

It is up to the complainant to contact the referring agency within the time frame specified by the law for the type of discrimination alleged. Commission staff members, or the referral agency, may counsel the complainant about what occurred and his/her rights. The referral agency may offer informal and formal means of resolving the problem. As different time limits govern various types of discrimination complaints, the Commission advises complainants to ask the agency if there is a time limit and to make note if one applies. Federal agencies may not try to convince the complainant to file a formal complainant and must not reveal the complainant's name without his/her permission. At any time, the complainant is free to seek help from a private attorney.

If the complainant is not satisfied with attempts to resolve the complaint, the agency must provide the proper forms for initiating a formal complaint. An agency may not accept a complaint if: the complainant has already received a decision on the same issue, is awaiting a decision on the same matter, refuses to provide relevant information, or if the complaint is untimely. A complainant may appeal the agency's decision to dismiss all or part of his/her complaint. If the complaint is accepted, it will undergo a complaints handling procedure, which is different for each agency.

XVIII. Do Special Assistants perform non-USCCR work for their Commissioner-boss? Is this work undertaken outside the full-time hours Special Assistants are paid for Commission work? Please explain.

The Office of the Staff Director has made inquiries to Commissioners and Special Assistants in connection with the Special Assistant's alleged performance of any non-Commission work. Based on these inquiries, it appears that Special Assistants do not perform non-Commissioner work for their Commissioner-supervisor.

Very truly yours,

KENNETH L. MARCUS
Staff Director

cc: The Honorable Jerrold L. Nadler
Mindy Barry, Chief Counsel
David Lachmann, Minority Counsel

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY CHAIRMAN STEVE CHABOT TO GEORGE HARBISON, DIRECTOR OF HUMAN RESOURCES, AND ACTING CHIEF OF BUDGET AND FINANCE, U.S. COMMISSION ON CIVIL RIGHTS

RESPONSES TO THE SUBCOMMITTEE'S SUPPLEMENTAL QUESTIONS

I. Are you aware that part of the FY2004 rent was not paid from FY2004 appropriations?

Response: Yes.

1. If so, when did you become aware of this unpaid obligation?

Response: On or about December 2004.

1. What are the specific steps by which the rent was not paid? For example, did the Commission fail to make the payment, was the electronic transfer that was scheduled cancelled, did the Commission request that they payment be returned? Please explain.

Response: I am aware that in FY 2004, the Office of the Staff Director of the Commission negotiated and executed a deferral agreement with General Services Administration (GSA), National Capital Region Office to defer $75,000 of its FY2004 rental obligation until FY 2005. Under the agreement, the Commission discharged its previously incurred rent obligation using FY2005 funds. It is my understanding that the Commission agreed to pay an additional $10,000 per month from October 2004 through April 2005 and was to pay the remaining $5,000 in May 2005. I am aware of the above facts by way of review of Commission documents which were brought to my attention well after the above agreement had been executed. I had no decision-making power with respect to this matter nor was I requested to provide any comment with respect to this budgetary issue. As a result, I am not aware of the specific steps by which the deferral was recorded in the Commission's records.

2. Was the failure to pay this rent payment consistent with generally accepted accounting principles and all applicable law and practice (please cite applicable principles, law, and practice)? Was it accounted for on the Ledger and how was it recorded, if at all?

Response: To the best of my knowledge, no. I do not know if the deferral was recorded in the General Ledger because I did not know at that time. During the relevant time, the General Ledger was maintained by Booth Management Corporation, a contractor selected by the Office of the Staff Director to provide full service accounting for the Commission in the middle of FY 2004.

2. If not, do you believe that an employee of a federal government agency with the title "Director of Finance and Budget" should know whether expenses are paid and recorded in a timely manner?

Response: Not applicable.

2. You stated at the January, 2005 monthly meeting of the U.S. Commission on Civil Rights that, despite being responsible for the finances of the Commission, you were unaware of most financial transactions because former Staff Director Jin made all financial decisions and controlled all supporting documents. Please explain. For example, did Mr. Jin receive all incoming invoices and were appropriations directed to his attention?

Response: During June or July, 2003, the Office of the Staff Director assumed the main tasks of the Director, Budget and Finance. I was informed by Staff Director Jin that any, and all budget and finance issues would be addressed by his Special Assistant, Alexander Sun. In addition to this directive, all general accounting services were being performed by the Bureau of Public Debt from FY 2003 until FY 2004; subsequently Booth Management Corporation performed these services. In addition to these facts, the Commission reduced the staff of my office, through attrition, from a total of four to one from the period of 1989 through 2005. As I indicated in my testimony, in 1989 there were a total of four persons, including myself. This was reduced to three persons shortly after my arrival in 1989. Then the staff was reduced from three to two in 2001 and from two to one in 2005.

From approximately FY 2003 through FY 2004, the Office of the Staff Director approved most expenditures, negotiated most contractual arrangements, handled

most contracting officer responsibilities, received most contractor invoices, certified most payments to contractors, and oversaw and received most financial information from the contractor.

1. If Mr. Jin made all of the decisions relating to the finances, and he maintained all of the records, and you were unaware of financial transactions, and the Commission contracts with a financial services provider for book-keeping services, in your position as the Commission's chief budget and financial officer, what functions did you perform on a daily basis? Please provide specific information.

Response: Subsequent to the removal of many of my office's duties, I continued to process all travel documentation and agenda payments; I functioned as representative to other federal organizations to include the National Finance Center, Citicorp, GSA and its subagencies and other organizations; I prepared the annual budget call for submission to OMB; I assisted in the preparation of responses to the annual Congressional request; and I assisted in the many tasks which were required upon the transfer of the general accounting services from the Bureau of Public Debt to Booth Management Corporation. I also continued to prepare responses for GAO reports and Congressional inquiries, as well as reports to Commissioners. I performed general research and other day-to-day functions.

3. At that same meeting, you testified that information about financial decisions made by former Staff Director Jin was not funneled back to you even after decisions were made. As the Director of Finance and Budget for a federal agency, did you have a fiduciary duty either to be responsible for financial decisions and actions (whether or not they actually were performed by you) or to report to appropriate authorities that your responsibilities were usurped?

Response: As I indicated in my testimony, I did believe and still do believe that I have a fiduciary duty to the Commission. It was my understanding at the time that the Office of the Staff Director had the power and authority to remove certain duties from my office and/or maintain direct, centralized control over these tasks. I did not feel that my responsibilities were usurped; rather, I believed that my duties were being reduced as a

result of the down-sizing of my staff over the preceding years and as a result of the Office of the Staff Director further centralizing the traditional budget and finance duties.

4. At that same meeting, you stated that as head of the Budget and Finance Division, you were responsible for "the gathering of data for the congressional request, in addition to providing as much as we could to support the GAO auditors." Since you were responsible for the gathering of the data for our request, can you please explain why the documents that we have received are incomplete and why documents are missing and the Commission has no index of the delivered documents? Moreover, can you explain why there were limited, if no, documents when Staff Director Marcus began his tenure?

Response: I provided all responsive documents, which were in my office's possession to Alexander Sun, Special Assistant to the Staff Director. I inquired of Mr. Sun whether he wished my office to bates stamp the requested documents. Mr. Sun informed me that I did not have to perform that task. The Commission's response was issued directly from the Office of the Staff Director. I cannot explain why the current Staff Director had limited documents upon commencement of his tenure.

1. As you also were gathering information for the investigations conducted by GAO, please explain why the Commission only provided one of the thirteen contracts requested by GAO.

Response: The contracts and related documents were not kept within my office but rather were maintained by the Administrative Services Division. My office maintained general day-to-day documents such as purchase orders and invoices. Again, I provided the Office of the Staff Director with all responsive documents within my possession that related to the Congressional inquiry. I provided all documents within my possession, which had been requested by GAO, for the auditors who were often on site. GAO documents were provided after having been cleared through the Office of the Staff Director.

2. To your knowledge, were any contracts moved to the location of, or categorized as, personnel records?

Response: I am not aware of any such relocation or categorizing of "contracts" as "personnel records."

1. If so, who authorized this change?

Response: I have no knowledge of this matter.

2. Were any documents subject to that change missing from the submissions that were responsive to requests by GAO or this Committee? Please delineate the applicable documents.

Response: I have no knowledge of this matter.

3. If so, did you ever learn why the change was made? Please explain.

Response: I have no knowledge of this matter.

5. As the chief financial officer for a federal agency, can you tell us where the Commission's General Ledger and other financial working documents are? Can you explain whether a Ledger was kept?

Response: Yes. From the period of approximately FY 2003 through March 2004 the General Ledger was maintained by the Bureau of Public Debt (BPD). From March 2004 to present date the General Ledger was and is maintained by Booth Management Corporation.

6. Have you submitted a copy of the testimony you presented at the March 17, 2005 hearing held by this Committee?

Response: No.

1. If not, please include a copy with your responses to this letter, along with a written explanation of why you failed to submit the testimony, which was requested, within the seven legislative days for which the record was held open.

Response: The written statement is attached. You will recall I had marked up the copy I brought with me and had intended to follow up with a clean copy. Unfortunately

Letter of Resignation from Russell G. Redenbaugh, Commissioner, U.S. Commission on Civil Rights, to Majority Leader Bill Frist

March 15, 2005

The Honorable Bill Frist
Senate Majority Leader
S-230, U.S. Capitol
Washington, DC 20510

Dear Majority Leader Frist:

After 15 years of service on the U.S. Commission on Civil Rights, I herby tender my resignation effective April 1, 2005. This is a decision that has been very difficult to make. I joined the commission with great optimism, hoping to elevate the nation's civil rights debate from one mired in victimhood and ideology to one focused on opportunity and ownership. Unfortunately, chronic mismanagement and a fatally flawed organizational structure eliminates the commission's institutional capacity to even participate in this conversation. The commission, once the nation's conscience, is now a national embarrassment beyond repair.

I served under bad leadership and public scandal. I endured excessive partisanship, railed against slanted reports, and exposed the commission's unaccountability to the tax-payer. I remained on the commission often in dissent, but always committed to reform.

I believed that once the commission's leadership changed hands, partisan tensions would lift and the commission would act immediately to embrace goals and priorities that would (1) normalize its financial and operational controls, (2) improve the relevance and utility of its work product to stakeholders in Congress and the Executive and (3) increase oversight and transparency over its financial and internal affairs. But the commission is reluctant to embrace these priorities, focusing instead on a substantive agenda. I now understand that the principal obstruction to reform throughout my tenure was not political; it was structural.

The great thing about American businesses is that reform is guaranteed. When your customers demand reform, you must respond or be put out of business. The commission, however, operates under the mindset that its "independence" means that it has no customers, no one to whom the commission must account. This mindset privileges the interests of the commissioners to the exclusion of stakeholders in Congress and the Executive. There is no consequence for not reforming and no incentive to reform. In my view, reform is not possible under this structure, and therefore, it is my recommendation that this commission be shut down.

I am encouraged that the House of Representatives is holding an oversight hearing on the commission this week. This type of meticulous oversight at the commission is long overdue. Perhaps, the commission's stakeholders can compel accountability and reform through legislative will. The cause of civil rights deserves nothing less.

Sincerely,

Russell G. Redenbaugh

LETTER TO CHAIRMAN STEVE CHABOT FROM ABIGAIL THERNSTROM, VICE CHAIRMAN, AND JENNIFER C. BRACERAS, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS

UNITED STATES COMMISSION ON CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

March 28, 2005

The Honorable Steve Chabot
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
House of Representatives
United States Congress
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chabot:

We respectfully request that this letter be submitted as part of the record of the Oversight hearing conducted on March 17, 2005 to review the U.S. Commission on Civil Rights.

Since joining the Commission in January and December 2001, respectively, we have been aggressive advocates for reform. Unfortunately, however, during the time that Mary Frances Berry served as the Commission's chairman and Les Jin as its staff director, our attempts to increase transparency and institute procedural reforms were blocked by the majority. We were not only powerless, but deprived of even the most basic information about the Commission's finances and the status of Commission projects.

As you are aware, in December 2004 Berry's term expired, and President Bush appointed Gerald A. Reynolds as chairman and Kenneth L. Marcus as staff director. Upon taking office, they both took immediate steps to increase transparency. Despite these efforts, however, the full financial picture was not instantly apparent because many of the financial records were either never kept or have been removed and perhaps destroyed. Nevertheless, we now have enough information to confirm what we only suspected previously: The Commission's finances are in appalling condition.

Since taking office *only three months ago*, Staff Director Marcus has worked tirelessly to rein in spending and put the Commission's finances in order. Both the staff director (in his discretionary capacity) and the Commission as a whole currently are considering a wide array of financial reforms. At the same time, the Commissioners themselves (across party lines) have dedicated themselves to important procedural changes. All options are on the table and always have been.

No commissioner has tried in any way to obstruct reform. All of the current commissioners are united in our commitment to substantial financial, structural, and

procedural change—by means of a careful, deliberative process, however. Clearly, it would be a serious mistake if, in our efforts to change the corrupt practices of the past, we rammed through reform proposals without understanding their cost and policy implications. Only through thoughtful, careful, and collegial efforts will we truly be able to reform the agency that the GAO once labeled "in disarray."

Respectfully,

Abigail Thernstrom
Vice Chairman

Jennifer C. Braceras
Commissioner