

Testimony of  
THE HONORABLE KENNETH L. MARCUS  
Staff Director  
UNITED STATES COMMISSION ON CIVIL RIGHTS

on  
COMMISSION OPERATIONS

Before the  
SUBCOMMITTEE ON THE CONSTITUTION  
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## TESTIMONY OF THE HONORABLE KENNETH L. MARCUS

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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.