

**WRITTEN TESTIMONY OF COMMISSIONER MICHAEL YAKI,
U.S. COMMISSION ON CIVIL RIGHTS,
BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION
MARCH 17, 2005**

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 securities 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 bipartisanThe 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.