

U.S. COMMISSION ON CIVIL RIGHTS/GAO AUDIT

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-NINTH CONGRESS
SECOND SESSION
ON
U.S. COMMISSION ON CIVIL RIGHTS/GAO AUDIT

MARCH 25 AND APRIL 22, 1986

Serial No. 62



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U.S. COMMISSION ON CIVIL RIGHTS/GAO AUDIT

TUESDAY, MARCH 25, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members present: Representatives Edwards, Kastenmeier, Schroeder, and Sensenbrenner.

Staff present: Stuart J. Ishimaru, assistant counsel and Alan M. Slobodin, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

The subcommittee has had, for a long time, oversight and authorization jurisdiction over the U.S. Commission on Civil Rights. In the last 2½ years since the Commission was reconstituted, this subcommittee has been concerned that the Commission's historic factfinding mission was no longer being carried out. The Commission has issued only one report, on comparable worth, during this time. Until this subcommittee held oversight hearings last fall, not a single State Advisory Committee report had been issued. No reports have been issued analyzing Federal civil rights enforcement, in a period when the Reagan administration's efforts have been under increasing attack.

During this period, the subcommittee received numerous and disturbing reports about the activities of the Commission. In order to objectively investigate these allegations, and to examine whether the Commission is meeting its mandate as a factfinding agency, last summer I joined with three other chairs, Mr. Hawkins of the Committee on Education and Labor, Mrs. Schroeder of the Subcommittee on Civil Service, who also sits on this subcommittee, and Mr. Martinez of the Subcommittee on Employment Opportunities, in requesting the General Accounting Office to do a comprehensive audit of the Commission. Today, the GAO will share with us their findings to date. Their findings have already been leaked right and left to the press, so this is a little bit late this morning, but that seems to be a way of life around here.

Since we requested this audit, Chairman Clarence Pendleton of the Commission has repeatedly complained about this audit. I believe I have received five or six letters from Mr. Pendleton. He has questioned the competence and fairness of the GAO, and our motives in requesting the audit.

Let me state for the record that the General Accounting Office is an independent arm of the Congress, and has a long and distinguished record of providing balanced and comprehensive analyses of operations of Federal agencies to the Congress. There is no question that the GAO has done a fully professional job on our request. It has never before been accused of partisan slanting. The accusations of Mr. Pendleton have no basis in fact.

And as far as Mr. Pendleton's insinuations about the motives of this subcommittee, they also have no basis in fact. Over the past 2½ years the Commission has spent nearly \$30 million and has produced one report, a report that was universally criticized for its lack of integrity. The Congress, in its oversight capacity, has a keen interest and is in a unique position to ask how taxpayers dollars have been spent for the last 2½ years.

The Commission has been provided with an oral briefing by the GAO, and will be provided with an opportunity to testify before this subcommittee at a later date.

I would like to yield to the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I am seriously concerned about the lack of objectivity toward this issue by the majority on this subcommittee, as well as what I believe is persistent meddling in the objectivity of the General Accounting Office's report. The usual and customary procedure when the GAO is requested by Members of Congress to audit the performance of an agency is to allow the audited agency a 30-day period to review a draft report and to submit written comments for inclusion in the final report.

The only time when the agency is not given this opportunity to review the conclusions and to include written comments is when Members of Congress request the GAO not to do so, and in this case the usual and customary procedure has not been followed, evidently because certain Members of Congress did not wish the Civil Rights Commission staff to review the report and to make their comments for inclusion into the report.

Second, I am concerned about the objectivity of the GAO audit because of the presence of one Mrs. Ros Kleeman as the project manager of the audit. Mrs. Kleeman participated in the panel discussions on comparable worth and affirmative action in May of 1985 while she was managing a review by the GAO of the Commission's publication on comparable worth. It seems to me that participating in those types of panel discussions does drag in the objectivity of the GAO since certain conclusions are put forth there.

I would like to ask unanimous consent to include in the record at this point a letter dated March 20, 1986, by Senator Hatch of Utah to the chairman of this subcommittee, which I think very adequately sets forth some of the objections.

Mr. EDWARDS. Without objection.

[The letter follows:]

U.S. SENATE,
 COMMITTEE ON THE JUDICIARY,
 Washington, DC, March 20, 1986.

HON. DON EDWARDS,
 Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR DON: It is my understanding that you will soon hold hearings to examine the findings of the audit of the U.S. Commission on Civil Rights which you requested the General Accounting Office to undertake. Although I have not, despite requests, seen the results of the audit, I am concerned that it may lack the objectivity and careful methodology required of an effective oversight tool.

For instance, it is revealing that this audit was requested two years after the Commission was reconstituted, and that the requested period of the audit covers only the reconstituted Commission. This provides no standard of comparison between the two Commissions. For this reason, I have requested that this audit be expanded to cover more than simply the 1983-85 time period. This expanded study may clarify many reasons for current Commission practices. This expanded audit will not be ready for a few months. You may wish to consider a delay in release of the limited audit in order to get the whole picture.

The limits placed on some aspects of the audit are also revealing. GAO was forbidden to offer the Commission the customary 30-day period to review the draft report and submit written comments for inclusion in the final report. The GAO report manual discusses this 30-day review and comment procedure as GAO's "usual" policy. Over 75% of GAO's reports are reviewed by the audited agency. In fact, review by the audited agency is omitted only at the request of Members of Congress. Omission of the normal review and comment procedure may prejudice any chance to develop a complete, objective record. The final report is likely to be less thorough than GAO's normal standard.

Finally, additional doubt about the objectivity of this audit is created by the presence of Mrs. Rosslyn Kleeman as a project manager of the audit. As Chairman Pendleton has noted in letters to Comptroller Charles Bowsher, Mrs. Kleeman participated in a panel discussion on comparable worth and affirmative action in May 1985 while she was managing a review by GAO of the Commission's publication on comparable worth. She used that public platform to criticize the Commission and make statements about the positions of individual Commissioners. GAO, in a July 3, 1985 letter to the Commission, acknowledged "GAO's general policy is not to disclose in such a public forum our tentative conclusions while our work is still underway. I can therefore appreciate your concern, especially since our report was not released . . . until . . . two weeks after the panel discussion." The creates the unseemly appearance that the audit is proceeding under the direction of an individual with a preexisting bias against the Commission, its, Chairman, and some of its Commissioners.

Although Congressional use of the General Accounting Office is a time-honored way for Congress to conduct oversight, I have serious concerns about the apparent flaws in this study. Again, I would note that some of these apprehensions may be cured upon release of the more complete audit covering the broader period of 1978-1983. I respectfully encourage you to await this standard for comparison before relying too heavily on the limited GAO report.

Sincerely,

ORRIN G. HATCH,
 U.S. Senator.

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON THE JUDICIARY,
 Washington, DC, March 31, 1986.

HON. ORRIN G. HATCH,
 Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of March 20 regarding the U.S. Commission on Civil Rights. Unfortunately, the letter was not delivered to my office until March 26, and I was not able to take it into consideration before the Subcommittee met on March 25.

I share your concerns about the Civil Rights Commission. I learned through the General Accounting Office that you and four other Members of Congress, including the minority members of this Subcommittee, have requested GAO to conduct an

audit of the Commission dating back to 1978. The Comptroller General has informed me, and I understand has informed you, that your audit will receive complete consideration by the GAO.

I believe your fears that the GAO will not conduct a fair, objective and complete audit of the Commission are unfounded. The extensive documentation provided by GAO indicates an extremely high level of professionalism on this audit, a level you and I have come to expect from the GAO. The problems that GAO found, such as missing personnel, financial and budget records and \$175,000 in unaccounted for funds, can easily be judged against objective management standards. A standard of comparison, going back to 1978 as you suggest, could possibly add some information, but nonetheless could not serve to justify the problems that GAO uncovered by the Commission established by Public Law 98-183.

I do not understand how the "limits" that the other requestors and I placed on the GAO may prejudice a complete and objective record. GAO has a number of options that Members of Congress may choose from when requesting an audit, including having GAO report directly to the requestors, as was done in this case. It is my understanding that GAO neither has a "usual" policy as you describe nor a policy of having allowing a 30-day review by the agency. As you know, GAO provided an extensive and detailed oral briefing to the Commission staff on March 18, fully detailing the proposed prepared testimony. GAO provided a tape recording of the briefing and extensive additional information to the Commission following this briefing, and made a number of changes to the testimony at the request of the Commission.

In order to fully insure that the Commission has every opportunity to respond to the GAO on the record, the Subcommittee has invited the Commission to testify in the near future. I believe that allowing the Commission to analyze the testimony and to review its own records will put it in the best possible position to respond to the GAO's findings. In the interim, name-calling and questioning the motives of the requestors certainly does not add to the debate.

Your concerns regarding Rosslyn Kleeman, Associate Director of the General Government Division, also have proved to be untrue. I know that Chairman Pendleton shares your views, and he has expressed his views to me about Mrs. Kleeman on numerous occasions. Neither you nor Mr. Pendleton have demonstrated to me that Mrs. Kleeman holds any bias against the Commission. Both I and GAO have found her work to be fully professional and no contrary showing has yet been made. I think that the testimony is excellent proof that Mrs. Kleeman and GAO have relied on facts, and not on biases, to conduct its audit.

I am enclosing a copy of the testimony from the GAO for your review. I think that after reading it you too will be impressed that it is thorough, complete and fair. If you do find any lack of objectivity or careful methodology in the study, I would appreciate learning it from you personally, before I hear of it from others, as unfortunately happened in this case.

Sincerely,

DON EDWARDS, *Chairman,*
Subcommittee on Civil and Constitutional Rights.

Mr. SENSENBRENNER. Finally, I believe that the lack of objectivity and bias on the part of the majority staff is emphasized by their scheduling of this hearing today when the House of Representatives is in recess. Many of the Members of the House of Representatives and members of this subcommittee are away from the city because the recess began last Thursday afternoon—unexpectedly I will grant you—but nonetheless the Democratic leadership did decide that the House would not do business this week.

I requested the chairman of this subcommittee to postpone this hearing until Congress was back in session so that all of the members of the subcommittee could fully participate in this discussion. There would be no inconvenience on the part of the witnesses because all of them were in Washington, DC, at the time.

The chairman refused my request so we are having a meeting today without all of the members of subcommittee being present in the city and able to participate and consequently, I believe that this is more of a witch hunt and a media event rather than an objective consideration of what the GAO has decided.

I could ask for a minority date of hearings but since the chairman I think is going to be dragging this issue on ad infinitum and ad nauseum, there will be a chance for minority to get in its licks when all of our members are in town. So I am not going to do that, but I do believe that it is important that these matters be placed in the record at this point in time and here is Senator Hatch's letter, which will be published.

Mr. EDWARDS. The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you very much, Mr. Chairman.

I want to commend you for having these hearings. As you know, they have been planned for a long time and most people planned to be here because it wasn't until Friday that we found out we would not be in session.

Second, I wanted to say that as I read the GAO statement, in the light of what Gramm-Rudman is doing in this Congress, I found what is going on at the Civil Rights Commission very embarrassing. It appears that at the time when we are having to talk about cutting criminal law enforcement; military personnel levels, hunger programs, and every other such things, the Civil Rights Commission has been throwing away the taxpayers money on illegal, self-promoting, and wasteful items.

It is fully documented in this report I think the issue is how in the world can we explain to our constituents that \$12 million a year appears to have been wasted? I think that that is the issue.

I think we also have to say that the Commission has not been performing any useful work on civil rights. The current Commission has made itself entirely irrelevant to the debate surrounding affirmative action, and I have to say it is about as much a part of the civil rights community as the LaRouche candidates in Illinois are part of the Democratic Party. Its erroneous and regressive views on civil rights are really ignored by those acquainted with the laws.

You may say that is partisan, but I would say that in this week's Princeton Alumni magazine a very, very distinguished Republican, William Hudnut III, who is the mayor of Indianapolis, absolutely tears the administration apart on its civil rights record. I would like to put this article in the record, because I think it makes the case that this is a serious waste and this is agreed with by very distinguished members of the other party. And he goes on to say that they have really abandoned any civil rights leadership and we are going back to the days of discrimination.

Mr. EDWARDS. Without objection, so ordered. It will be made part of the record.

[The article follows:]

[From the Princeton Alumni Weekly, Mar. 12, 1986]

THE ENTREPRENEURIAL AMERICAN CITY

(William H. Hudnut III)

This is the best of times and the worst of times, to borrow from Dickens. He was writing in the 1850s about the 1770s in London and Paris, but his words could just as well apply to the tale of American cities in the 1980s. The life of our cities today can be defined very aptly in terms of that kind of paradox and counterpoint.

For a variety of reasons, urban leaders have become very discouraged since the late 1970s and tend to take a negative view of what's happened in Washington since

1980. Even my friend George Voinovich, Cleveland's very able and otherwise clear-headed Republican mayor, told the National League of Cities' annual conference in Seattle last December: "You and I and everyone who cares about the future of cities stands on the edge of a precipice today. . . . If we don't force our representatives in Congress to change course, then we are on the road to the end of domestic America. . . . At issue is the future of our cities, and indeed our very society."

That's pretty strong stuff—too strong and too dire in my opinion—but nonetheless it reflects the frustration that many city officials around the country are feeling. It indicates why so many of them consider this "the worst of times" in urban America. The executive director of the National League of Cities recently told me that the whole intergovernmental apparatus is in the worst state of disrepair that it's been in for 50 years.

I think these officials overstate the situation somewhat. To be sure, we are facing many troubling problems in the cities and we are struggling to cope. But by the same token, we have a significant opportunity to reshape the way urban life is structured. In the midst of all the cuts and all the difficulties that we're facing, cities are being forced to become more self-reliant, more innovative, and more entrepreneurial.

First, however, I have to give my colleagues their due. There is no question about it: local elected officials are being battered by too many forces outside of their control, and they do have reason to feel as though Washington has cast them adrift on a chartless sea. The emergence of a global economy has done injury to many urban areas located in what can be referred to as an economic fault line that stretches all the way from Gary, Indiana, to the Ruhr Valley. Between 1979 and 1984, some 11.5 million U.S. workers were displaced by robots and shutdowns and foreign imports. Unemployment among young blacks in urban America stands way up around 42 percent today. The number of hungry and homeless people in our society is increasing because the economic recovery has not touched them.

At the same time, the federal government has been withdrawing its support from the cities. This feeling of abandonment by Washington is the most serious cause of disillusionment among city officials. For example, neither President Carter nor President Reagan acted on our proposal to establish a Presidential commission or council of urban advisers similar to the Council of Economic Advisers in order to help focus the nation's eye on urban problems, programs, and policies.

To take another example, many of us have tried in the cities—where we have to deal with a broad spectrum of people—to implement a commitment to Affirmative Action. But now we find President Reagan's Justice Department taking some 50 jurisdictions around the country, including Indianapolis, to court theoretically to modify the consent decrees that President Carter's Justice Department forced a lot of these cities to sign. Under the guise that we should be a color-blind society and that preferential hiring on the basis of race or sex quotas is unconstitutional, they are doing nothing but turning the clock back on some 25–30 years of progress in the civil rights field. In the process, they are causing all kinds of problems at the local level of government.

If Messrs. Meese and Reynolds succeed, the reality of discrimination will raise its ugly head again. In my opinion, they are making a serious legal, moral, and political mistake, and in Indianapolis, we are fighting them in the courts. It's paradoxical that the Reagan Administration, which came into office riding on a tide of decentralization, and of affirming the importance of the devolution of authority and power back to state and local government, now in this instance should be so heavily-handed with the cities. It makes us feel beat upon and abandoned.

But the biggest disappointments are caused by the continuing cutbacks in federal assistance, always with more to come. Community development block grant moneys were taken away from small cities and given to the states to administer. Two-thirds of the first round of cuts in the early 1980s came out of the urban social programs. Cities do not feel they are being treated fairly. They aren't going to Washington with a tin cup in their hands always asking for more. They've been willing to tighten their belts and take their share of the cuts. But they feel that they are being asked to absorb a disproportionate share of the cuts. Overall, there has been a 50 percent reduction in federal aid to cities since 1980. Ironically, these unparalleled cuts have not produced a dime of federal deficit reduction.

The cuts are going to force hard choices at the grass roots. Most people don't realize this. They just say, "Let's get rid of all that waste and fraud and abuse." They don't make the connection between the cuts in Washington and the hard choices that are going to have to be made at the local level of government between increasing revenues and decreasing services. Local officials think it's unfair for cities, and for states, to continue to feel the budget ax when 90 percent of all federal spending

lies elsewhere. And they resent the fact that last year, for the first time in the history of the Republic, the federal government recommended that we send more economic development aid to foreign nations than to American cities.

Moreover, they feel hamstrung because on the one hand Uncle Sugar is telling them that the money is running out, they can't have it any more, and on the other hand they are being forced to operate under state laws which all too frequently—certainly this is the case in Indiana—make it impossible for us to raise additional funds at the local level because of property tax freezes and all the rest. Some cities need transition time so they can be weaned away from dependence on federal fiscal paternalism because their own resources are very limited. These cities should be given an opportunity to negotiate "recovery compacts" with state and federal governments for the assistance that they need rather than just being peremptorily cut off. And then on top of all these financial problems, local elected officials are left scratching their heads at the way taxpayers say on the one hand, "Don't cut any of our services," and on the other, "Don't raise our taxes." You can't have it both ways: there's no such thing as a free cup of city service.

This does not mean that all is doom and gloom in the cities or that civilization is about to end. Within our despair lies the seeds of our hope. I think the federal government should address itself to some problems and be more sensitive and responsive than it has. But local officials had better start devising plans of their own, because the Reagan revolution is seismic in its proportions, and cities will not again in the near future be able to rely as they have in the near past on federal largesse to help us out.

Cities can do far more than wring their hands in anguish—must do more, and indeed, are doing more. Hard-pressed cities are becoming more self-reliant, more independent, more creative, more imaginative, more entrepreneurial. Indeed, the day of the entrepreneurial American city has dawned. We are redirecting resources from less productive into more productive investments and enterprises. We are taking risks and entering partnerships. We are using limited government resources to leverage more private dollars. We are turning liabilities into assets.

Robert McNulty, a friend of mine who is president of Partners for Livable Places, has come out with a small book, to which I am indebted, entitled *The Entrepreneurial American City*. I think it explains the situation very well:

"The decade of the '80s has brought a new realism and a new optimism to American cities regarding their futures. Faced with severe limitations in federal resources, constraints in traditional sources of state and local revenues, and competition from other communities and regions, many cities are nevertheless experiencing a surge of optimism, convinced that they can chart their destinies through local initiative, self-reliance, and resourcefulness. City officials are filing a variety of new roles in making their cities attractive places in which to live, work, and invest. City governments are no longer relying on federal aid as the dominant resource for addressing urban needs.

"This profound change in the way cities operate may best be termed 'urban entrepreneurship'. Cities are acting as risk-takers and are becoming active competitors in the urban economic game, and the key to each city's success is its ability to invest wisely and to market shrewdly. Urban entrepreneurship entails a new breed of municipal official, transcending the traditional local government roles of delivering services and enforcing regulations. The city entrepreneurial role includes characteristics traditionally viewed as distinctive to the private sector, such as risk taking, inventiveness, self-reliance, profit motivation, and promotion. The bottom line for the public balance sheet is the enhanced competitiveness of the city, which is critical to urban rebuilding and economic revitalization."

When I became mayor of Indianapolis more than a decade ago, after a very brief stint in Congress, it did not take me very long to discover that not too many people cared how I had voted in Washington on the interest-equalization tax or what my views were on the bombing of Red China or arms control in the Middle East, but they sure wanted to know what I was going to do about picking up their trash and filling their chuckholes. Those basic city services are the fundamental job of government.

But the mayor's job has expanded over the last decade. He is more than a caretaker; he is a facilitator, a leverager, a creator of expanding economic opportunity for his or her city. Indianapolis pursues economic growth very assiduously. If you don't believe me, ask our friends from Baltimore. Our efforts have not gone unrewarded.

The *National Geographic* came to town a year or two ago to talk to us because it was doing a story on the "Rustbelt." After the reporter left town, we inquired as to when the story might appear. We were told that Indianapolis would not be included

because "it doesn't fit." At first I was disappointed, but then I realized what he was saying. Indianapolis looked too good to be part of a Rustbelt story about urban decay. Our exclusion from that story implied our inclusion in another story about cities that are making it in spite of adversity, cities that are becoming more entrepreneurial and that are less afflicted with institutional hardening of the arteries.

It's a question, I think, of spirit—of mental attitude—with regard to running the city, and working and living in the city. We have here another counterpoint between the play-it-safe mentality and the entrepreneurial spirit. In government, as in the private sector, where I suspect all too often the problem is similar, the routine tendency is to resist change—the "RC factor," they call it—to build empires, to enlarge one's sphere of control, to protect projects and programs regardless of whether or not they are needed any longer, to declaim why something will not work rather than discover how it can, to say no rather than yes, to create red tape rather than to cut it. The end result is that many people in public service institutions become the modern equivalent of the old feudal barons of the middle ages—in Peter Drucker's words, "parasites, functionless, with nothing left but the power to obstruct and exploit."

In contrast, the entrepreneurial spirit seeks to contain costs and decrease red tape. It searches for more efficient and effective ways of managing. It is willing to abandon old programs and methods. It sunsets. It eschews traditional alternatives that offer only life-support systems. It employs solid business sense. It takes risks. It focuses on performance. It rewards merit. It sloughs off the old, the outworn, the no longer productive. It develops tax policies that encourage a return on investment and the formation of capital. It promotes social and economic flexibility. It battles inertia. It moves out to the cutting edge. It says, "Let's make it work." The entrepreneurial city is unafraid to dream the great dream. Says Drucker in his new book *Innovation and Entrepreneurship*: "To build entrepreneurial management into the existing public service institution may be the foremost political task of this generation."

In Indianapolis, we have been trying to do some things along these lines: taking risks, preserving some buildings and giving them a new lease on life, avoiding the wrecking ball, building a new domed stadium, including it in a convention center expansion project, and convincing the private sector to pay for half of it before we had a football team and before the first spade of earth was turned. We are trying to buck the national trend of suburban investment and urban disinvestment; we were trying to do that before it became fashionable, on the assumption that you can't be a suburb of nothing.

We saw the possibilities of our city in our planning, and every city—like every person—has to try to develop on the basis of its own assets. Indianapolis, for example, could work at it for 100 years, but we will never be a great ship-building town. Yet with our central geographical location, with the agricultural expertise of Purdue, with Indiana University's School of Medicine, with E.I. Lilly there, we began to develop the theme of fitness and health and wholeness. And so pretty soon we got going with the construction of over \$100 million worth of athletic facilities, which aren't just ends in themselves but means to the end of economic development activity. Now next year we are going to be the host for the Pan-American Games, the first time the Games will have been held in the United States in nearly 30 years.

We rejected the notion so prevalent in the Rustbelt that the loss of heavy manufacturing jobs was the harbinger of economic doom, even while we recognized the real human tragedy involved in all these unfortunate developments. AT&T in New York made the decision to close the Western Electric plant in Indianapolis, and 8,700 jobs were gone, and that's tough. But you can't just sit there; you have to diversify. So we spread into some high-tech, some mid-tech, some low-tech, and some no-tech where new jobs are coming from. And today John "Megatrends" Naisbitt identifies Indianapolis as one of the 10 best cities in the country in which to start a new business. The Bureau of Economic Analysis of the Department of Commerce concludes that we are one of the five best cities in the country for personal income growth in the next 15 years.

It is not just in Indianapolis that these things are happening. Many cities around the country are showing the same roll-up-your-sleeves-and-get-with-it spirit. All these entrepreneurial cities have certain characteristics in common. I would like to call attention to five of them.

1. *In the entrepreneurial city, partnerships are created.*—There is a strong commitment to the development of a working relationship between the public and private sector, between blue collar and white collar, between City Hall and neighborhood associations, and so on. The for-profit and not-for-profit segments of the private

sector get together with government to make things happen. Sometimes one sector takes the initiative, sometimes another, but they are all involved in creative leveraging of each other; they cooperate, establish a consensus, and move ahead.

This approach brings business and government together in partnership as a form of enlightened self-interest. It means going beyond traditional corporate philanthropy. It means that business views the improvement of social and economic conditions in the community as a goal tied so closely to its bottom-line interests that it requires direct action and effective involvement. It means that many public officials have come to appreciate the wisdom of Sir Winston Churchill's insight when he remarked: "Some people regard private enterprise as a predatory tiger to be shot. Others look on it as a cow they can milk. Not enough see it as a healthy horse, pulling a sturdy wagon."

Public officials are discovering that pulling the cart of economic development in tandem with the private sector—both its for-profit and not-for-profit components—makes a great deal of sense for the city's bottom line. Viewing the private sector as an ally and not as an adversary makes a big difference, because it creates jobs, expands economic development opportunities, enhances the quality of life, and pulls the community together.

2. *The entrepreneurial city takes risks.*—Its motto is not "Come weal or come woe, our status is quo." The really good local public officials are deal makers who are not afraid to share power, risks, and rewards with the private sector. Cities are investors too, who, in return for tangible support for a project, earn a share of the profit (hopefully not loss) by participating in gross revenues, net cash flows, or rents. No risk, no reward; no guts, no glory; nothing ventured, nothing gained.

3. *In-the entrepreneurial city, efforts are made to search for more efficient and effective methods of management.*—Johnny Smith, the mayor of Pritchard, Alabama, says: "A mayor and his staff must run a city like a business, or else the mayor has no business running the city." In city after city, we're contracting out portions of our trash pick-up, portions of the bus system, portions of snow removal services to private sector companies. In Jackson, Mississippi, a facility is being built to turn sewage sludge into compost that can be sold to golf courses, farms, parks, and nurseries.

In Indianapolis, we are joint venturing with Ogden-Martin to build what will be a \$100 million trash-burning facility. The city generates 2,000 tons of trash a day and 800 tons of sludge. We're going to put the trash in that plant, burn it, turn it into marketable steam, and then recycle the residual sterile inert ash that is left over. We call it the "trash to ash to cash" program. But the bottom line of all that we are doing to privatize or to make the running of local government more like a business is to reduce city costs, to improve city services, to increase investor confidence in the city, and to sharpen our competitive edge.

4. *The entrepreneurial city treats amenities as economic assets.*—We all know the magnificent way Baltimore has capitalized on its harbor front, transforming it from a dilapidated scene of deteriorating warehouses and wards into an exciting center of retail, residential, and waterfront activity. We're trying to do something similar in Indianapolis, not just with athletic facilities but also with cultural facilities. Many people don't understand the connection between a commitment to the amenities and job generation and economic development opportunity for a city. But it's paying off for us: we've got a lot of business coming into our city as a result of our commitment to the arts as well as the theme of fitness. All these quality-of-life projects make the central core of our city more attractive. They also enhance business growth, and help reverse the negative trend of a declining industrial base.

5. *The entrepreneurial city combats urban decline and attracts urban reinvestment, not by going to Washington and asking for more, but by creative use of non-traditional resources on the home front.*—Venture capital funds are being set up in city after city. Business incubator programs for new and existing companies are being established. Home-grown economy projects are springing up to provide technical assistance to small businesses to help them identify potential markets, develop workable business plans, and solve specific management problems. More than 1,300 enterprise zones have been created all across the country, even though the federal government still hasn't enacted the bill (26 states have). As a result, 75,000 jobs have been created or saved and \$2.5 billion of capital investment has been attracted to depressed neighborhoods.

Town and gown enterprises are springing up in cities where local government has an opportunity to work with universities and colleges, which are not only an important ingredient in the local economy, providing thousands of jobs and millions of dollars of payroll, but also anchors in terms of neighborhood stabilization and revitalization as well as sources of potential economic development for their communi-

ties. The Hudson Institute would never have moved to Indianapolis if it had not been for the strong support of Indiana University and Purdue.

In conclusion, if it is the worst of times for cities in some respects, it is also the best in many more—at least where the entrepreneurial spirit is being cultivated. Several years ago Kurt Waldheim, former secretary general of the United Nations, penned a memorable line: "Many great civilizations have collapsed at the very height of their achievement because they were unable to analyze there basic problems, to change direction, and to adjust to the new situations which faced them, by concerting their wisdom and strength."

The entrepreneurial spirit can keep that collapse from occurring. It has the ability to change direction, to adjust, to turn crisis into opportunity—first in individuals, then in local communities, finally at the national and international levels. We have become a nation of critics, but the entrepreneurial spirit encourages us to believe, to affirm, to hope, to dream, and to take risks in behalf of our dreams.

As a people, we have been seduced by an entitlement mentality—we deserve this, we deserve that—but the entrepreneurial spirit pushes us out toward the edge of freedom and opportunity where sacrifice and discipline and imagination and courage and sense of purpose can make a positive difference. In a technological society where all too much emphasis is put on production and consumption, the accumulation of wealth numbers, and power, the entrepreneurial spirit of cheerfulness and optimism can renew and enrich the human experience.

The cities are the training ground for civilization. If we do not succeed there, we will not succeed anywhere. If we can't make ther city work, we can't make the country work—or the world either, for that matter. But we can. The city can be the place where our true humanity and the creativity of the human spirit are realized. It can be the place where our destiny to live together in peace and love and freedom if fulfilled. It can be the place where the environment is protected, where people do enjoy a decent standard of living, where our wisdom and strength can come together with the resourcefulness of the entrepreneurial spirit to assure that our long, painful climb upward from a nasty, brutish experience, ruled by tooth and claw, will not have been in vain.

Mrs. SCHROEDER. Terrific. I would do that rather than bore everybody with reading it.

I think it is very ironic we have the Commission spending lots of money and doing nothing to fulfill its mandate. Rather than concerning itself with the maintaining records of the expenditures of public funds or getting its house in order, the Commission has turned around and decided to attack Ros Kleeman, who led the investigation. Mrs. Kleeman is head of the Federal civilian personnel area at GAO and does extensive work for the Subcommittee on Civil Service, which I chair. She has always done thorough and first rate work. If her work has any flaw, it is that maybe she leans over backwards to defend executive actions. When we had her look at whistleblowers, the GAO report went out of its way to try and protect the special counsel, in my viewpoint.

So I am going to say that I think attacking Mrs. Kleeman is a really silly way to get around dealing with the real issue here, which is the waste of the taxpayer's money.

I thank you for calling the hearing and getting down to the bottom of this, Mr. Chairman.

Mr. EDWARDS. Thank you, Mrs. Schroeder.

Our witnesses this morning are from the General Government Division of the GAO. Mr. William J. Anderson is the Director of the General Government Divison.

Mr. Anderson, would you introduce your colleagues?

STATEMENT OF WILLIAM J. ANDERSON, DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY RONALD CORMIER AND ROSSLYN KLEEMAN .

Mr. ANDERSON. Thank you very much.

To my left is Rosslyn Kleeman, associate director, as pointed out, in GAO's work in the personnel area.

To my right is Ron Cormier. Ron was in GAO's lingo, the evaluator in charge on this assignment. He was the person who actually led the small staff that we had in place at the Civil Rights Commission.

Mr. EDWARDS. Thank you, Mr. Anderson.

In accordance with subcommittee procedures, please stand so I can swear all three of you.

[The three witnesses were sworn.]

Mr. EDWARDS. Mr. Anderson, without objection, your full statement will be made part of the record and you may proceed as you see fit.

Mr. ANDERSON. Thank you very much, Mr. Chairman.

Before I proceed, I think it is important that I address this issue of GAO's objectivity and independence on this assignment. GAO's layered review processes have been the subject of much criticism for the time that we lose in our quest for perfection on everything we do. But one thing that it does assure is, No. 1, a lot of different political persuasions are involved in those reviews; and No. 2, a very thorough check is made on the factuality of the material that is being presented.

The Controller General wrote a letter to Chairman Pendleton, commenting on the fact that Mrs. Kleeman was a GAO senior executive and he had absolute confidence in her objectivity and independence, the characteristics that us folks in GAO pride ourselves in.

I can honestly state that I have been involved in numerous GAO audits over the years and I feel that we have brought our usual objectivity and fairness to this particular assignment.

Now, having said that, what I would like to do is excerpt material from the full statement that will cover the items of special interest to the committee and briefly touch on the remaining items. It will probably take me around 15 minutes. With your permission, I will proceed in that way, sir.

Mr. EDWARDS. You have my permission.

Mr. ANDERSON. There is a caveat with respect to everything I say. It is the problems that were created for us by missing, incomplete, and conflicting records at the Commission. It complicated our task, and prevented us from reaching closure on some of the items, that is, allegations that were brought to our attention.

An example of missing records was one of the consultants' files that we examined had the required description of their duties. An example of incomplete records was that the commission could only partially account for funds transferred into an earmarked activity that was one of the areas of interest to the committee.

An example of conflicting records was the different stories on how printing costs were treated in the 1985 budget. We were

unable to get to the bottom of that. One version would signify an Anti-Deficiency Act violation.

In any event, as requested, my oral statement will cover three areas: personnel, travel, and the 1985 appropriations earmarks.

In the personnel area, I will start with employment trends. There has been concern of increasing reliance on noncareer employees to do the Commission's work. In fact, this has been the case between October 1983 and September 1985, the number of noncareer employees increased from 28 to 61, from 11 percent to about 25 percent of the people on board.

Expressed another way, as a proportion of total compensation costs, salaries for consultants, temporary, and schedule C employees increased during the three fiscal years from 3.6 percent in 1983, to 9.7 percent in 1985.

The attachment to my statement, on page 7, shows the hirings of noncareer employees. It shows that in 1984 the number of hires of temporaries, consultants and schedule C's, increased from 33 in 1983, to 102 in 1984. So I would say that is evidence of a trend of bringing on these large numbers of noncareerists.

There were 60 career appointments also made during fiscal year 1983 through December 1985.

Let me now discuss our findings with respect to each of the three types of noncareerists at the Commission.

First, consultants. OPM defines a consultant as one who gives views or opinions on problems or questions presented by the agency, but who neither performs nor supervises the performance of operating functions. During the period covered by our review, the Commission made 41 consultant appointments. We examined the 31 appointments where files were still available at the Commission. None of the personnel files for the 31 appointments contained the statement of duties and responsibilities that OPM requires to be in the files. Thus, we could not determine whether the consultant services were needed or whether each consultant possessed the necessary background to render advisory services to the Commission. We recognize that, no doubt about it, a number of them were distinguished people.

As an example, we noted that one consultant had previously received a temporary 1 month special needs GS-11 appointment at the Commission. The temporary appointment was extended for another month, the maximum allowable by OPM. The consultant appointment was then made, immediately upon expiration of the extension, at the GS-11 pay rate, in the same office and in the same occupation. This raises the question as to what training or experience the person had to provide advice appropriate for consultant services since the full performance for the occupation is usually GS-12. After the consultant appointment ended, the person was reapointed to a temporary GS-11 position.

At least five of the consultants appeared to be performing operating duties, such as managing a Commission project or supervising career employees. This use of consultants is contrary to OPM instructions.

Finally, 5 of the 31 consultants also had contracts with the Commission during the 3 year period. While not necessarily illegal, two of these served in both capacities during concurrent time periods.

Based on records we reviewed, it is unlikely that they were paid in both capacities during the same time period.

Let me turn now to temporary employees. Unlike consultant appointments, which are excepted from the competitive service, temporary appointments are subject to the statutes, regulations, and principles governing competitive appointments in the Federal service, including observation of the merit principles of open competition, fair evaluation of qualifications, and selection solely on the basis of merit and fitness. Agencies are required to maintain records on all temporary appointments containing the qualification standards used, adequate evidence that the appointees had the necessary training and experience to meet the qualifications standards, and facts that establish the correctness of the appointments in other respects.

The Commission made 91 temporary competitive service appointments for 72 individuals between October 1, 1982 and December 31, 1985. We examined 23 appointments for the 15 individuals who were currently employed by the Commission or their personnel files were still available for review at the Commission. We identified problems with all of them. OPM requires that agencies make appointments outside its registers, establish an applicant supply file system, which provides for acceptance, rating, and referral of applications on a systematic basis and in accordance with OPM standards and requirements.

Although specifics on applicant supply file operations are, to a large extent, left up to the agencies, OPM requires that they have detailed procedures in an ASF policy. The Commission did not have any ASF procedures. In their absence, numerous violations of OPM regulations and guidelines have occurred, such as insufficient documentation in announcement files on how the applicants were evaluated, job announcements without opening dates, and acceptance of an application from an ultimately successful candidate after the announcement closed.

In all of the cases that we reviewed there was insufficient documentation to justify the need for the temporary appointment. In 12 of the appointments we found appointee qualifications to be questionable, using OPM criteria. However, we did not evaluate the quality of these individuals' performance in these positions.

Let me now turn to the use of schedule C employment authority. Schedule C positions are excepted from the competitive service because of their confidential and policy-determining nature. The Commission processed 22 schedule C appointments for 17 individuals employed during the period of our review. We identified two basic deficiencies for all these appointments. First, no qualification standards were used, and second, appointments were not properly documented.

Because the Commission has not established qualification standards for its schedule C positions, it was not possible to determine the appropriateness of the Commission's actions or the appointees' qualifications. We observed that two GS-7 temporary employees were promoted directly to schedule C GS-11 and one GS-7 to GS-12; that a consultant was converted to schedule C GS-13 and, 17 months later through successive promotions as few as 5 months apart, became a Senior Executive Service noncareer level 3, repre-

senting a \$30,000 increase in salary; and that three schedule C promotions were made before the new positions were approved by OPM.

Now, let me turn to the use of the special needs hiring authority. It was alleged that the Commission may have circumvented merit selection procedures by the use of the special needs hiring authority. These temporary appointments, which are not competitive, are supposed to be used only when the legitimate needs of the agency cannot be served by some existing appointment authority. We reviewed the Commission's use of this authority during the period from October 1982, through December 1985 to determine how it was used and whether the Commission converted any individuals hired under the special needs authority to career appointments.

The Commission made 21 special needs appointments in the period that we reviewed. We reviewed eight of these appointments for which records were still available at the Commission and found no documentation to show the nature of the unusual or emergency circumstances requiring the use of the authority, as required by OPM. Seven of these were extended without documentation that the original conditions for the appointments still existed, as required by OPM.

The Commission used this authority to employ at least one individual while a schedule C authorization was pending because the employee had reported to work before the schedule C authorization was approved by OPM.

There was one conversion of a special needs appointment to a career appointment, but this person was appropriately converted based on reinstatement eligibility to a career position.

Let me now turn to the next area of interest to you, travel matters. We were asked to compare travel costs before and after the new Commission came into being, as well as to determine the extent of first class and overseas travel and the extent of travel by the Commission's Office of General Counsel. Travel costs have increased but the total number of trips have been about the same.

We found a problem with unidentified sources paying for portions of travel of some Commissioners and Commission staff constituting a possible unauthorized augmentation of appropriations. Each Commissioner has a blanket travel authorization allowing travel within the continental limits of the United States for a full fiscal year. Although Commissioners can approve their own trips, they must abide by General Services Administration travel guidelines.

One Commissioner travels first class routinely, and this has been justified by a letter from his physician. According to vouchers submitted by Commissioners and Special Assistants, their travel was to attend or participate in such activity as Commission meetings, hearings, or conferences and to make speeches. We noted that other sources paid for the Chairman's travel and/or lodging in 45 in the 117 trips he took over the 4 year period. In most instances, he did not identify these other sources on his vouchers.

To a lesser extent, other Commissioners and Commission employees have also had their travel expenses paid for by outside sources, also often unidentified. Donations from private sources for official travel constitute an unauthorized augmentation of appropriations,

unless the employing agency has statutory authority to accept gifts or if the donor qualifies as a nonprofit, tax exempt organization under section 501(c)(3) of the Internal Revenue Code. Such donations can also constitute a violation of 18 U.S.C. 209, which deals with supplementation of salary, but the Civil Rights Commissioners are exempt from the operation of that provision.

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the contributors qualified as 501(c)(3) organizations and other requirements were met, the Commission travelers had no authority to accept such payments. The Commission has no procedures to ensure compliance with this law, even though the Office of Government Ethics and OPM have suggested certain steps that agencies should take to preclude improper augmentation of their appropriations.

We also learned that GSA did not check for unauthorized augmentation of appropriations when reviewing travel vouchers of the Commission employees. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur.

We asked the Commission to identify the payment sources in all instances where they were not shown on the travel vouchers. Our review of this information shows that some of the outside sources should not have paid these expenses.

It should be noted that we have been advised by GSA officials who review and approve the travel vouchers that Commission personnel have generally been in compliance with travel regulations; only small amounts have been disallowed on individual vouchers over the years.

On the other hand, a recent GSA audit report that just came into my possession yesterday, indicates that the auditors in a recent audit found that Commission employees were unaware of GSA contract airlines arrangements and were not adhering to instructions governing their use and, on occasion, were paying too much as a result.

The last matter to be covered in my oral statement involves compliance with Commission appropriation earmarks. We were asked to look at the allocation of Commission overhead and to determine whether the Commission had inappropriately adjusted its overhead allocation to stay within the budget activity earmarks imposed by its fiscal year 1985 appropriation act. Because of the way that the earmarks were established, the discretion that the Commission's has in allocating costs and the poor condition of the Commission's budget records, we cannot say that the Commission did not comply with 1985 earmarks.

In general, the Commission overhead is allocated in direct relation to the salary costs in each budget activity. This is an appropriate technique. However, the lack of documentation of the Commission's budget setting process precluded a firm determination about which costs should remain in an earmarked budget activity and which should be allocated as overhead to all seven earmarked budget activities.

As a case in point, we were unable to conclude whether the Commission should have included printing costs in overhead, as it did in 1985, or whether printing costs should have been a direct to the charge to the publication preparation and dissemination budget ac-

tivity. There are some indications that the budget was prepared with printing as a direct charge. If the Commission had charged its printing costs to the publications budget activity, the appropriations earmark for that activity would have been exceeded.

The Commission requested and received permission from the Congress to shift \$421,000 from three budget activities to the hearings budget activity, so that a third hearing could be held during fiscal year 1985. This hearing was actually held in November 1985, the second month of the fiscal year 1986. After repeated requests for documentation on how this \$421,000 was used in 1985, the Commission responded that it had turned \$112,000 back to the Treasury and that \$83,000 had been incurred in direct salary charges and benefits for the November 1985 hearing during fiscal year 1985.

According to the Commission staff, the remaining \$226,000 was used to cover overhead costs of \$51,000, and other unidentifiable costs in the hearings budget activity. However, even the \$83,000 salary figure is questionable. We have documentation showing that before responding to our request for an explanation of how the money was spent, the Commission's general counsel changed his own time charges as well as the time charges of the staff that he said worked on planning the November hearing. They changed to much greater 1985 charges to the hearing than the staff had originally submitted. Most of the increases, however, were to the time charges of the general counsel and his deputy.

We questioned four other staff members who are still at the Commission. Only one agreed that the changes to the time charges were correct.

Let me stop here and close with these one sentence summations of the other matters covered in our audit to fill you in totally on what we did.

One, regarding referrals from State Employment Service offices. Again, there were missing records. The Commission asserts that it was referring job announcements as it should have, to the service offices. There is no documentation to substantiate that, so we can't verify that it was done.

Two, with respect to affirmative action, the Commission has a fine EEO profile compared to most Federal agencies but it hasn't been meeting the hiring goals for improvement in recent years, a claim that you wanted us to look at.

Three, regarding awards and promotions, careerists have had in the past generally been getting their share of both. But a new trend did develop in 1985 with respect to promotions. It needs to be watched. In fact it appears as though they were not getting a proportionate share of promotions.

Four, Commissioners and special assistants billings. We didn't find any significant problems in that area. It should be noted, as shown in detail in an attachment to our statement, that in most cases the vouchers submitted and the payments made could not be reconciled. Either there were more payments than salary vouchers or more payments due indicated by the salary voucher and fewer payments actually made.

Five, with respect to lobbying issues, the Chairman has a legitimate right to bring his views on the issues before the Congress, but he isn't supposed to exhort the public to influence lawmakers. He

may have done so improperly. That is not for GAO to conclude one way or the other.

Six, State Advisory Committees. There has been some change in the composition of the membership, however, not too significant with respect to the general membership. On the other hand, there has been a significant change in the compositions of the chairs. The characteristics of the chairpersons across the Nation has changed, marked most significantly by a large increase in the number of whites chairing those organizations—something like up to 72 percent from less than 30 percent, previously.

Use of Commission automobile. There were certain allegations concerning improper use of the Commission automobile, which were simply thwarted by missing records to get to the bottom of that one. The logs of the vehicle had been disposed of, not maintained in accordance with Agency procedures, and because of that we couldn't verify the statements that were made, both by the former driver and by the ex-staff director, that in fact the car was not used for improper purposes.

Eight, contracting. No irregularities were noted, although again, documentation needed to justify a noncompetitive award was missing.

That concludes my oral summary of our statement, Mr. Chairman. Mrs. Kleeman, Mr. Cormier, and I will try to answer any questions you or the other members may have.

[The statement of Mr. Anderson follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 9:30 AM
MARCH 25, 1986

STATEMENT OF
WILLIAM J. ANDERSON, DIRECTOR
GENERAL GOVERNMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ON
THE OPERATIONS OF
THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Mr. Chairman and Members of the Subcommittee:

At your request and those of three other Committee and Subcommittee Chairs, we have reviewed certain aspects of the operations of the U.S. Commission on Civil Rights. My statement today presents the results of our review. We have briefed the Commission on our findings, but, as you requested, we did not get their written comments.

Since the Commission was reconstituted in December 1983, it has been the subject of controversy. You received a number of allegations of mismanagement and other improprieties in the Commission's operations and asked us to look into them.

Before discussing our findings, I should point out that we had great difficulty in performing this audit. Some records were missing; some were incomplete; and still others were conflicting. This situation seriously hampered our ability to come to firm conclusions on some of the allegations, using the standards of evidence that we require. We were particularly concerned that documents critical to our ability to determine whether the Commission had followed merit principles in personnel actions were not in the files.

The details of our findings on each allegation are contained in the attachments to this statement.

Trends in Appointing and Paying Consultants,
Temporary, and Schedule C Employees

Concern was expressed that consultants, temporary, and Schedule C employees were hired in place of career staff,

leaving career positions vacant. We found that a large proportion of the employees hired since the Commission's reconstitution were in these three noncareer categories and we believe that they were, in fact, hired instead of career staff.

From the beginning of fiscal year 1983 through December 31, 1985, the period covered by our review, the Commission made 212 noncareer appointments vs. 60 career appointments. The total of 212 was composed of 151 temporaries, 41 consultants, and 20 Schedule Cs. The largest number of these (102) were made in fiscal year 1984. As of December 1985, 73 of the noncareer employees hired since the beginning of fiscal year 1983 were still at the Commission. Either they were rehired when their appointments expired, or their original appointments were still in effect. In its fiscal year 1987 budget submission, the Commission reported that 55 of its 236 permanent career positions were unfilled at the end of fiscal year 1985.

We were also asked to determine where the noncareer employees were assigned. Most of the consultants were hired for the Office of Programs and Policy. Most of the temporaries were hired for the Office of the Staff Director, the Office of General Counsel, and the Office of Management. Schedule C hires were primarily for the Commissioners and the Office of the Staff Director.

Practices Used in Hiring Consultants,
Temporary, and Schedule C Employees

Because various irregularities had been alleged, we were asked to review the hiring and use of consultants, temporary, and Schedule C employees.

Consultants

The Office of Personnel Management (OPM) defines a consultant as one who gives views or opinions on problems or questions presented by the agency, but who neither performs nor supervises the performance of operating functions. During the period covered by our review, the Commission made 41 consultant appointments.

We examined 31 consultant appointments. These consultants were either still employed by the Commission or their employment was recent enough that their personnel files were still available at the Commission. We attempted to determine whether: (1) the positions were actually consultative in nature; (2) the consultants were qualified for the positions; (3) the Commission had determined that no conflict of interest existed; (4) the 130-day limitation on intermittent services was met; (5) the employment records were accurate and adequate; and (6) the appropriate ethical standards were applied. We did not look at the quality of the services provided by the consultants.

The poor records maintained on consultant appointments precluded us from making firm determinations on their propriety. However, all 31 appointments contained indications of irregularities.

None of the personnel files for the 31 appointments contained the statement of duties and responsibilities that OPM requires be in the files. Thus, we could not determine whether the consultants' services were needed or whether each consultant possessed the necessary background to render advisory services to the Commission. As an example, we noted that one consultant had previously received a temporary one month special needs GS-11 appointment at the Commission. The temporary appointment was extended for another month, the maximum allowable by OPM. The consultant appointment was then made, immediately upon expiration of the extension, at the GS-11 pay rate, in the same office and the same occupation. The full performance level for the occupation is usually GS-12, which raises a question as to what training or experience the person had to provide advice appropriate for consultant services. After the consultant appointment ended, the person was reappointed to a temporary GS-11 position.

At least five of the consultants appeared to be performing operating duties, such as managing a Commission project or supervising career employees. This use of consultants is contrary to OPM instructions.

Finally, 5 of the 31 consultants also had contracts with the Commission during the 3-year period. While not necessarily illegal, two of these served in both capacities during concurrent time periods. Based on the records we reviewed, it is unlikely that they were paid in both capacities during the same time period.

Temporary Employees

Unlike consultant appointments, which are excepted from the competitive service, temporary appointments are subject to the statutes, regulations, and principles governing competitive appointments in the federal service, including observation of the merit principles of open competition, fair evaluation of qualifications, and selection solely on the basis of merit and fitness. Agencies are required to maintain records on all temporary appointments containing the qualification standards used, adequate evidence that the appointee had the necessary training and experience to meet the qualification standards, and facts that establish the correctness of the appointments in other respects.

The Commission made 91 temporary competitive service appointments for 72 individuals between October 1, 1982, and December 31, 1985. We examined 23 appointments for the 15 individuals who were currently employed by the Commission or whose personnel files were still available for review at the Commission. We found problems with all of them.

OPM requires that agencies making appointments outside OPM registers establish an Applicant Supply File (ASF) system which provides for acceptance, rating, and referral of applications on a systematic basis and in accordance with OPM standards and requirements. Although specifics on ASF operations are, to a large extent, left up to agencies, OPM requires that they have "detailed procedures" in an ASF policy.

The Commission does not have detailed ASF procedures. In their absence, numerous violations have occurred, such as insufficient documentation in announcement files on how the applicants were evaluated; job announcements without opening dates; and acceptance of an application from an ultimately successful candidate after the announcement closed. In all of the cases we reviewed, there was insufficient documentation to justify the need for the temporary appointment. In 12 of the appointments, we found appointee qualifications to be questionable, using OPM criteria. However, we did not evaluate the quality of these individuals' performance.

Schedule C Employees

Schedule C positions are excepted from the competitive service because of their confidential and policy-determining nature. The Commission processed 22 Schedule C appointments for 17 individuals employed during the period of our review. We identified two basic deficiencies for all of these appointments -- no qualification standards were used and appointments were not properly documented.

Because the Commission has not established qualification standards for its Schedule C positions, it was not possible to determine the appropriateness of the Commission's actions or the appointees' qualifications. We observed that two GS-7 temporary employees were promoted directly to Schedule C GS-11 and one GS-7 to GS-12; that a consultant was converted to a Schedule C GS-13 and, 17 months later, through successive promotions as

few as 5 months apart, became a Senior Executive Service noncareer level 3, representing a \$30,000 increase in salary; and that three Schedule C promotions were made before the new positions were approved by OPM.

Use of Special Needs Hiring Authority

It was alleged that the Commission may have circumvented merit selection procedures by the use of the special needs hiring authority. These temporary appointments, which are not competitive, are supposed to be used only when the legitimate needs of the agency cannot be served by some existing appointment authority. We reviewed the Commission's use of this authority during the period from October 1982 through December 1985 to determine how often it was used and whether the Commission converted any individuals hired under the special needs authority to career appointments.

The Commission made 21 special needs appointments in the period that we reviewed. We examined eight of these appointments for which records were available at the Commission and found no documentation to show the nature of the unusual or emergency circumstances requiring the use of the authority. Seven of these were extended without documentation that the original conditions for the appointment still existed. The Commission used this authority to employ at least one individual while a Schedule C authorization was pending because the employee had reported to work before the Schedule C authorization was approved by OPM.

There was one conversion of a special needs appointment to a career appointment, but this person was appropriately converted based on reinstatement eligibility to a career position.

Referrals From State Employment Service Offices

We were asked to find out whether the Commission had notified the District of Columbia's Department of Employment Services of job vacancies and, if so, how many referred persons were hired by the Commission. Federal agencies are required by statute to notify state employment service offices and OPM of any vacancies for temporary positions in the competitive service that are to be filled outside the OPM register. Agencies are also required to establish detailed procedures for operating their temporary employment programs to meet these requirements.

According to the Commission's Personnel Officer, temporary appointment announcements are sent to the employment service offices in Maryland, Virginia, and the District of Columbia. However, the Commission did not have records showing that this had been done. Moreover, the Commission's administrative instructions do not address notification of these offices or of OPM. The Commission maintains no separate records on how many people were referred by the state offices or, of those, how many were hired. However, the Personnel Officer said he was able to reconstruct from referrals attached to job applications 26 known referrals for 15 vacancies from October 1984 to December 1985. Three applicants were judged to be qualified, but none were selected.

Affirmative Action

Concern was expressed about the extent to which affirmative action was taken by the Commission to hire and promote women and minorities. We requested the Commission's affirmative action hiring goals and accomplishments for fiscal years 1983 through 1985. The accomplishment report for 1985 and the hiring goals for 1986 had not been approved by the Staff Director when we finished our work, so we were only able to review the accomplishments through fiscal year 1984. The Commission does not have affirmative action promotion goals, nor are such goals required.

The Commission sets hiring goals by comparing the profile of its women and minority employees with the profile of the Washington, D.C., metropolitan area civilian labor force. The Commission's goals since fiscal year 1982 have focused primarily on the underrepresented minorities of American Indians/Alaskan Native, Asian Americans/Pacific Islanders, and Hispanics. The goals include career and Schedule C employees, but not temporaries or consultants. The Commission partially met its goals in one job category out of four in each of 1983 and 1984.

Awards and Promotions

We were asked to look at the difference in promotions and awards given to new hires compared to long-time career employees. It was believed that the new hires (those hired after the Commission was reconstituted) were receiving more

favorable treatment. We found that new hires, in general, had not been receiving more favorable treatment, but this pattern could be changing.

Between October 1, 1982, and December 31, 1985, 11 employees received one or more awards less than one year after receiving a previous award, with one employee receiving three awards in less than a year. All of these individuals were career employees who had been hired by the Commission prior to its reconstitution.

The majority of award recipients were career employees who were employed by the Commission before December 1, 1983. However, in fiscal year 1985, new hires received 25 percent of the awards, which represented over 30 percent of the total dollar amount of the awards given. This was generally in proportion to their population. The average award amounts for 1985 and for the first quarter of fiscal year 1986 were greater for new hires than for those hired before the reconstitution of the Commission.

Our review of promotions showed that most of the promotions went to career employees and employees hired before December 1, 1983, until the first quarter of fiscal year 1986. In that quarter, 6 of the 9 promotions went to new hires, 5 of the 9 to noncareer employees.

We were also asked whether any employees received a promotion without serving a year in grade. Career federal employees above GS-5 must serve at least one year in grade

before becoming eligible for promotion'. This restriction applies to promotions to competitive positions, and, therefore, does not apply to promotions within the excepted service such as those of Schedule C employees, students, or attorneys. During the period that we examined, 10 Commission employees were promoted without serving one year in grade, but all were exempted. Five of the 10 were Schedule C employees; one was promoted three times in less than 17 months, and another was promoted twice in less than 10 months. The other five, with one promotion each, included an attorney, two students, and two clerical employees below GS-5.

Commissioners' and Special Assistants'

Billings and Financial Disclosure Reports

There were several concerns regarding the billings⁷ for time spent on Commission business. Of primary concern was the almost full time level of billings by the Chairman and his Special Assistant, for what were thought to be part-time positions. We found, however, that the Commission does not limit the number of days the Commissioners or their Special Assistants can work each year.

The Commission paid the Chairman for 233 days in fiscal year 1983, the same in fiscal year 1984, and 240 days in fiscal year 1985, amounting to about \$188,000 over the 3-year period. The other Commissioners billed less than half as much time to the Commission. The Chairman's Special Assistant was paid for

221 days, 179 days, and 239 days for the same fiscal years, amounting to about \$100,000. The other Special Assistants (with one exception in one year) billed less time to the Commission.

A related item of interest was whether the Commissioners and Special Assistants derived substantially all of their income from the Commission. We reviewed the latest financial disclosure statements filed by five Commissioners and two Special Assistants. Not all of the Commissioners and Special Assistants were required to file such statements because they had not billed more than 60 days in a calendar year.

We found that none of the Commissioners who filed statements relied on their Commission salary as their sole source of income. In fact, in no case was their Commission salary greater than 50 percent of their total reported income. Even when earned income alone was considered, the relationship of the Commission salary to total earned income ranged from minimal to 69 percent.

One Special Assistant's Commission salary represented over 75 percent of total reported income while the other Special Assistant's salary represented less than 60 percent of total reported income. When only earned income was considered, the relationship of the Commission salary to total earned income was 82 and 100 percent, respectively, for the two Special Assistants.

We did not attempt to determine the completeness or accuracy of the financial disclosure reports, but only used them

as indicators of non-Commission income. However, a Small Business Administration investigation of the Chairman's and his Special Assistant's business dealings raises questions about the accuracy of their reporting of outside income. The Small Business Administration was still reviewing this matter when we completed our work.

We were also asked to look at the role of Special Assistants in general and the tasks they billed for. We found that the nature of the billings was consistent with their job descriptions. However, there were conflicts in Commission records between the support for salary payments and the amounts paid.

Travel

We were asked to compare travel costs before and after the "new" Commission came into being, as well as to determine the extent of first class and overseas travel and the extent of travel by the Commission's Office of General Counsel. Travel costs have increased, but the total number of trips has been about the same. We found a problem with certain other sources paying for portions of travel of some Commissioners and Commission staff, constituting a possible unauthorized augmentation of appropriations.

Each Commissioner has a blanket travel authorization allowing travel within the continental limits of the United States for a full fiscal year. Although Commissioners can approve their own trips, they must abide by General Services

Administration travel guidelines. One Commissioner travels first class routinely, and this has been justified by a letter from his physician. According to vouchers they submitted, travel by Commissioners and Special Assistants was to attend or participate in such activities as Commission meetings, hearings, or conferences and to make speeches.

The total number of trips by Commissioners remained relatively constant over the last four fiscal years. In fiscal year 1982, they took 88 trips costing about \$40,000, whereas in fiscal year 1985, they took 93 trips costing about \$67,000. The Chairman made the most trips, ranging from 20 in fiscal year 1982 to 36 in fiscal year 1985. His Special Assistant made 4 trips in fiscal year 1982 and 21 in fiscal year 1985.

According to Commission records, the former Staff Director traveled to Israel at the invitation of its government to discuss affirmative action and civil rights issues with Israeli officials. This was the only overseas travel paid for by the Commission.

We have been advised by General Services Administration officials, who review and approve the travel vouchers, that Commission personnel have generally been in compliance with travel regulations; only small amounts have been disallowed on individual vouchers over the years.

Travel by the Commission's Office of General Counsel staff diminished substantially since fiscal year 1982, when 45 trips were made. Only six trips were made in fiscal year 1985--three

for mission-related projects and three to make speeches and to participate in conferences.

The Chairman's travel vouchers showed that other sources paid for his travel and/or lodging in 45 instances in the 117 trips he took over four years. In most instances, he did not identify these other sources on his vouchers. To a lesser extent, vouchers for other Commissioners and Commission employees showed travel expenses paid by outside sources, also often unidentified.

Donations from private sources for official travel constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or if the donor qualifies as a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Such donations can also constitute a violation of 18 U.S.C. §209, which deals with supplementation of salary, but the Civil Rights Commissioners are exempt from the operation of that provision.

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the contributors qualified as 501(c)(3) organizations, and other requirements were met, the Commission travelers had no authority to accept such payments. The Commission has no procedures to insure compliance with the law even though the Office of Government Ethics and the Office of Personnel Management have suggested certain steps that agencies should take to preclude improper augmentation of their

appropriations. We also learned that the General Services Administration did not check for unauthorized augmentation of appropriations when reviewing travel vouchers of Commission employees. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur.

We asked the Commission to identify the payment sources in all instances where they were not shown on the travel vouchers. Our review of this information shows that some of the outside sources should not have paid these expenses.

Appropriation Earmarks

We were asked to look at the allocation of Commission overhead and to determine whether the Commission had inappropriately adjusted its overhead allocations to stay within the budget activity earmarks imposed by its fiscal year 1985 appropriation act. Because of the way that the earmarks were established, the discretion that the Commission has in allocating costs, and the poor condition of the Commission's budget records, we cannot say that the Commission did not comply with the 1985 earmarks.

In general, Commission overhead is allocated in direct relation to the salary costs in each budget activity. This is an appropriate technique. However, the lack of documentation of the Commission's budget-setting process precluded a firm determination about which costs should remain in an earmarked budget activity and which should be allocated as overhead to all seven earmarked budget activities. As a case in point, we were

unable to conclude whether the Commission should have included printing costs in overhead, as it did in 1985, or whether printing costs should have been a direct charge to the Publications Preparation and Dissemination budget activity. There are some indications that the Commission prepared the budget with printing as a direct charge. If the Commission had charged its printing costs to the Publications budget activity, the appropriation earmark for that activity would have been exceeded.

The Commission requested and received permission from the Congress to shift \$421,000 from three budget activities to the Hearings budget activity so that a third hearing could be held during fiscal year 1985. This hearing was actually held in November 1985 -- the second month of fiscal year 1986. After our repeated requests for documentation on how this \$421,000 was used in fiscal year 1985, the Commission responded that it had turned \$112,000 back to Treasury and that \$83,000 had been incurred in direct salary charges and benefits for the November 1985 hearing during fiscal year 1985. According to the Commission staff, the remaining \$226,000 was used to cover overhead costs of \$51,000 and other unidentifiable costs in the hearings budget activity.

The \$83,000 salary figure is questionable. We have documentation showing that before responding to our requests for an explanation of how the money was spent, the Commission's General Counsel changed his own time charges, as well as the

time charges of the staff that he said worked on planning the November hearing. These changes show much greater fiscal year 1985 charges to the hearing than the staff originally submitted. Most of the increases, however, were to the time charges of the General Counsel and his Deputy. We questioned four other staff members who are still at the Commission; only one agreed that the changes to his time charges were correct.

Lobbying

We were asked to review letters that the Chairman of the Commission sent to four Members of Congress. In these letters, he expressed his opposition to a bill amendment that he stated would require the imposition of racial, sexual, and ethnic quotas in the hiring of Foreign Service officers. The letters stated that the amendment violated the policy of the Civil Rights Commission. We were asked whether the Chairman's actions violated any federal anti-lobbying restrictions and whether the Commission had, in fact, taken the position cited by the Chairman in the letters.

There are two types of restrictions on lobbying by government officials to support or oppose pending legislation -- restrictions in appropriations acts and criminal provisions. Based on our review of the restrictions, we found no conflict with the Chairman's writing of these letters. The letters reflected an official position of the Civil Rights Commission on the imposition of racial quotas. The Chairman's statements on quotas were consistent with a policy statement adopted by the Commission in January 1984 by a 6-2 vote.

There is a question, however, as to whether the bill amendment was referring to goals or quotas. The Chairman considers goals and quotas to be more alike than different. The Commission's January 1984 policy statement opposing quotas alludes to Commission opposition to all forms of racially preferential treatment, but does not specifically mention goals. To our knowledge, the Commission has not taken an official position on goals. We concluded, however, that the anti-lobbying statute's would not prohibit the Chairman of the Commission, as its spokesman, from expressing views on matters where the agency has not previously taken an official position.

On the other hand, when we obtained copies of speeches given by the Commissioners, we found that the Chairman made the following statement, in part, in a prepared speech that he had delivered at least ten times to audiences in various parts of the country from March to July 1985: "I feel compelled at this point to appeal to each of you to attempt to defeat the Civil Rights Restoration Act of 1985." Even though his statement reflected the official view of the Commission, there is some cause for concern. While the Chairman stopped short of explicitly asking members of the public to contact their elected representatives, the context of the speech makes it clear that the listener is being urged to do so. This statement appears to represent the type of remarks the restrictions on lobbying by government officials attempt to limit.

State Advisory Committees

There were several allegations with respect to the state advisory committees. These involved the number of members on the committees; the extensive participation by headquarters in nominating members and chairs, who now are mostly white males; screening and delaying the issuance of committee reports; and changes in the relationship between committee chairs and Commission regional office staff.

It is clear that the state advisory committees have undergone significant changes since being rechartered.

Prior to 1985, the size of the committees varied, ranging from 11 to 33 members in each state. However, Commission regulations only require 11 members for each state committee. When the committees were rechartered in 1985, each committee was limited to 11 members at the recommendation of the former Staff Director. She maintained that there was no apparent justification to tie the size of a committee to population and that larger committees were too costly. She also said smaller committees would have better attendance and greater involvement of members.

During the 1985 rechartering process, regional directors submitted 561 recommended committee members to headquarters. Some existing committee members were nominated, as well as new individuals. However, the former Staff Director and the former Assistant Staff Director for Programs and Policy recommended 280 other individuals as substitutes for 280 of the regional

nominees. These two officials also nominated different chairs for 47 of the 50 committees. The revised nominations were then resubmitted by the regional offices. The Commissioners approved the revised nominations as submitted.

The rechartered committees are now about 59 percent white vs. 49 percent previously and almost 65 percent male vs. about 54 percent in the previous charter. Committee chairs are now 72 percent white vs. 29 percent previously, and 92 percent of the chairs are male compared to 61 percent previously. The chairs set the agendas for committee meetings, attend conferences, and have a network among themselves and Commission officials in headquarters.

The relationship between the committees and the regional offices has changed. Committees are obtaining less input from the regions, and some regional officials told us that because of controls imposed by headquarters they cannot express their views to the committees as they did in the past. Before the 1985 rechartering, the regional staff exercised more influence over the committees in project identification.

Until fiscal year 1985, the committees' primary method of advising the Commission was reports. In that year, they began using briefing memoranda as an alternative to formal reports, and 24 such memoranda were issued to the Commissioners. The briefing memoranda concept was established by the former Staff Director as an alternative to formal committee reports. They are not published and are submitted to the Commissioners for informational purposes only.

The number of committee reports released by the Commission has declined substantially since fiscal year 1983, going from 36 in that year to 3 and 2, respectively, in fiscal years 1984 and 1985. Moreover, the two reports released in fiscal year 1985 were not released as Commission documents. Thus far in fiscal year 1986, the Commission has approved eight reports for release. All of these reports resulted from studies initiated by the committees before the 1985 rechartering. Projects-in-process have also declined from 40 in fiscal year 1983 to 14 in fiscal year 1985. Currently, there are six projects in process. Although the Commission considers the committees to be its "eyes and ears," the number of factfinding meetings went from 12 in 1983 to none in 1985. This meeting category was not listed in the Commission's fiscal year 1987 budget submission.

Use of Commission Automobile

It was alleged that the former Staff Director used a Commission chauffer and car to provide her with transportation between home and work.

During a 3-month period in 1985, an automobile was kept at Commission headquarters instead of at the Commission warehouse in Alexandria, Virginia, where it is normally kept. During approximately the same period of time, the Commission hired an employee whose duties included driving the car. He also had other clerical and administrative duties. The driver said he maintained a log, as required, on the use of the car while he drove it, but threw it away after he left the Commission, a week

after the Staff Director left. Commission instructions require that such logs be turned in to the Office of Management.

The former driver told us he did not transport any Commission employee between home and work. We were also given statements by the former driver and the former Staff Director that the automobile was used for official purposes while it was stationed at Commission headquarters.

Contracting to Support the Commission's Mission

We were asked to determine the extent of the work contracted by the Commission and whether such contracts were subject to competitive bidding.

During fiscal years 1984 and 1985, the Commission obligated over \$930,000 on 622 mission-related contracts. While the number of contracts was about equal in the two years, the 1984 obligations were much greater (\$722,000.) The largest obligations were for the Office of Programs and Policy with over \$506,000 in 1984 and almost \$83,000 in 1985.

Competitive bidding is generally required for all contracts over \$25,000, and there were only two contracts this large, both awarded in fiscal year 1984. The smaller contract (\$53,000) was awarded noncompetitively to the National Committee Against Discrimination in Housing to prepare a nationwide directory of private fair housing agencies. Federal regulations allow such noncompetitive awards when certain conditions are met, but the contract file did not document the existence of those conditions. The Commission's Solicitor, who is also the

contracting officer, told us these conditions were met. The other contract, initially competitively awarded at \$444,000, was with the System Development Corporation to prepare a report on the effectiveness of various school desegregation plans. This contract has been novated to the Unicon Research Corporation, and the Commission has been conducting an evaluation to determine whether it can be satisfactorily completed.

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This concludes my prepared remarks. I will now be pleased to answer any questions that you may have.

Attachments to Statement

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ATTACHMENT I

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EMPLOYMENT TRENDS IN
THE U. S. COMMISSION ON CIVIL RIGHTS

Concern was expressed that consultant, temporary, and Schedule C employees were being hired in place of career staff, leaving career positions vacant.

We were requested to (1) examine the staffing levels for headquarters and regional offices, (2) determine the career vacancies in such offices, (3) determine the numbers hired and salary costs associated with consultant, temporary, and Schedule C employees, and (4) determine whether consultant, temporary, and Schedule C employees were being used as substitutes for filling career vacancies.

The Commission hires employees under various types of appointment authorities, that is, career, temporary, Schedule C, and consultant. In general, these appointment authorities are as follows:

- Career -- a permanent appointment in the competitive service for which the appointee has met the service requirements for career tenure and has competitive status.
- Temporary -- a nonstatus appointment in the competitive service for a specified period not to exceed one year. Extensions of up to three years are possible.
- Schedule C -- an appointment in the excepted (noncompetitive) service of a policy-determining or confidential nature.
- Consultant -- a temporary or intermittent appointment in the excepted service of an advisory, rather than operational nature.

Table I.1 shows the staffing levels indicated by Commission records for employees in headquarters and the 10 regional offices as of October 1983, October 1984, and September 1985. (The Commission did not have available staffing level information for October 1985 when we completed our work.) The Commission could provide data on temporary employees for 1984 and 1985 only. We estimated the number of temporary employees for 1983 from information available in Commission personnel records.

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Table I.1
Number of Staff by Type and Location in
1983, 1984, and 1985

<u>Employee type</u>	<u>Number of staff as of:</u>		
	<u>October</u> <u>1983</u>	<u>October</u> <u>1984</u>	<u>September</u> <u>1985</u>
<u>Headquarters</u>			
Career	146	139	125
Temporary	13	17	22
Consultant	9	19	25
Schedule C	3	11	9
Other ^a	7	12	11
Subtotal	<u>178</u>	<u>198</u>	<u>192</u>
<u>Regions</u>			
Career	67	62	58
Temporary	3	4	5
Consultant	0	0	0
Schedule C	0	0	0
Other	0	0	0
Subtotal	<u>70</u>	<u>66</u>	<u>63</u>
Total	<u>248</u>	<u>264</u>	<u>255</u>

^aIncludes Commissioners, the Staff Director, employees retained under an Intergovernmental Personnel Act Agreement, and noncareer Senior Executive Service members. In December 1983, the number of Commissioners increased from six to eight with the passage of the U.S. Commission on Civil Rights Act of 1983.

As table I.1 shows, the number of consultants and Schedule C employees reached their highest levels in 1984. In fact, the number of consultants more than doubled while the number of Schedule C employees increased nearly four-fold from 1983 to 1984. During this time, the number of temporary employees increased by about one-third. The number of Schedule C employees dropped about 18 percent from 1984 to 1985. However, both the number of consultants and temporary employees each increased by about 30 percent in 1985. From 1983 to 1985, the total of all three types of noncareer staff more than doubled.

On the other hand, the number of career staff decreased over the same period. By 1985, the number of headquarters career staff had declined by 14 percent from the 1983 level, and career staff in the regions had declined by 13 percent.

Tables I.2, I.3, and I.4 show the various Commission units to which the employees were assigned during 1983, 1984, and 1985.

Table I.2
Staffing by Commission Unit
October 1983

Headquarters' offices	<u>Career</u>	<u>Temporary</u>	<u>Consultant</u>	<u>Schedule</u>		<u>Total filled positions</u>	<u>Vacancies</u>	<u>Total authorized positions</u>
				<u>C</u>	<u>Other</u>			
Commissioners	0	0	0	0	6	6	0	6
Staff Director	1	2	2	3	1	9	4	13
General Counsel	19	3	0	0	0	22	7	29
Program Policy Review	34	1	4	0	0	39	2	41
Equal Employment Opportunity	2	0	0	0	0	2	0	2
Solicitor	3	0	0	0	0	3	0	3
Programs and Policy Evaluation	5	1	0	0	0	6	1	7
Management	42	5	1	0	0	48	5	53
Regional Programs	5	0	1	0	0	6	2	8
Congressional and Public Affairs	18	1	1	0	0	20	3	23
Federal Civil Rights Enforcement	17	0	0	0	0	17	3	20
Subtotal	<u>146</u>	<u>13</u>	<u>9</u>	<u>3</u>	<u>7</u>	<u>178</u>	<u>27</u>	<u>205</u>
Regions	<u>67</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>70</u>	<u>10</u>	<u>80</u>
Total	<u>213</u>	<u>16</u>	<u>9</u>	<u>3</u>	<u>7</u>	<u>248</u>	<u>37</u>	<u>285</u>

Table I.3
Staffing by Commission Unit
October 1984

Headquarters' offices	Career	Temporary	Consultant	Schedule		Total filled positions	Vacancies	Total authorized positions
				C	Other			
Commissioners	0	3	0	4	8	15	0	15
Staff Director	6	1	0	3	2	12	0	12
General Counsel	21	1	0	0	1	23	3	26
Programs and Policy ^a	3	3	19	2	1	28	0	28
Equal Employment Opportunity Solicitor	2	1	0	0	0	3	0	3
Research ^a	3	0	0	0	0	3	0	3
Research ^a	28	0	0	0	0	28	5	33
Planning and Coordination ^b	4	0	0	0	0	4	0	4
Management	38	6	0	0	0	44	6	50
Regional Programs	5	1	0	0	0	6	1	7
Congressional and Public Affairs	17	0	0	2	0	19	0	19
Federal Civil Rights Enforcement	12	1	0	0	0	13	7	20
Subtotal	<u>139</u>	<u>17</u>	<u>19</u>	<u>11</u>	<u>12</u>	<u>198</u>	<u>22</u>	<u>220</u>
Regions	<u>62</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>66</u>	<u>10</u>	<u>76</u>
Total	<u>201</u>	<u>21</u>	<u>19</u>	<u>11</u>	<u>12</u>	<u>264</u>	<u>32</u>	<u>296</u>

^aIn July 1984, the Commission divided the Office of Programs and Policy Review into the Office of Research and the Office of Programs and Policy.

^bThe Office of Programs and Policy Evaluation was abolished and a new Planning and Coordination Unit was established in July 1984.

Table I.A
Staffing by Commission Unit
September 1985

	Schedule					<u>Total^a</u>
	<u>Career</u>	<u>Temporary</u>	<u>Consultant</u>	<u>C</u>	<u>Other</u>	
Headquarters ¹ offices						
Commissioners	0	0	0	4	8	12
Staff Director	5	4	0	2	0	11
General Counsel	21	1	0	1	1	24
Office of Programs and Policy	5	7	25	2	2	41
Equal Employment Opportunity Solicitor	2	0	0	0	0	2
Solicitor	3	0	0	0	0	3
Planning and Coordination Management	3	0	0	0	0	3
Management	36	8	0	0	0	44
Research	16	0	0	0	0	16
Regional Programs	6	1	0	0	0	7
Congressional and Public Affairs	14	0	0	0	0	14
Federal Civil Rights Evaluation	14	1	0	0	0	15
Subtotal	<u>125</u>	<u>22</u>	<u>25</u>	<u>9</u>	<u>11</u>	<u>192</u>
Regions	<u>58</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>63</u>
Total	<u>183</u>	<u>27</u>	<u>25</u>	<u>9</u>	<u>11</u>	<u>255</u>

^aUnlike 1983 and 1984, the Commission said it did not maintain vacancy data in 1985. However, the Commission's fiscal year 1987 budget submission showed 55 of its 236 permanent career positions unfilled at the end of fiscal year 1985.

SALARIES OF CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEES

Table I.5 shows the total salaries from Commission records that were paid to consultants, temporary, and Schedule C employees during fiscal years 1983 to 1985. It also shows the amounts paid to all other Commission staff during the same time period.

Table I.5
Salaries by Type of Staff
Fiscal Years 1983-1985

<u>Type of appointment</u>	<u>Fiscal years</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
		(thousands)	
Temporary and part-time ^a	\$ 201.7	\$ 312.0	\$ 452.0
Consultant	29.3	78.4	30.0
Schedule C	49.6	164.7	303.2 ^b
Subtotal	<u>280.6</u>	<u>555.1</u>	<u>785.2</u>
Other employees ^c	7,432.6	7,066.9	7,322.8
Total compensation	<u>\$7,713.2</u>	<u>\$7,622.0</u>	<u>\$8,108.0</u>

^aThe Commission could not separate the salaries of temporary and part-time employees. However, a Commission official estimated that 90-95 percent of the part-time employees are also temporary employees.

^bWhile the numbers of Schedule Cs were similar for specific points in time in 1984 and 1985, as shown in tables I.3 and I.4, the salaries almost doubled in fiscal year 1985 due to a combination of their being employed for a greater portion of the year, promotions, and a greater number employed during the year.

^cAlso includes other compensation such as awards for all employees. Any awards given to consultants, temporary, and Schedule C employees are included in these amounts.

As a proportion of total compensation costs, salaries for consultants, temporary, and Schedule C employees increased during the 3 years--from 3.6 percent in 1983 to 9.7 percent in 1985.

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CONSULTANTS, TEMPORARY, AND SCHEDULE C
EMPLOYEES HIRED IN 1983, 1984, and 1985

The Commission did not have summary data on the number of consultants, temporary, and Schedule C employees hired for each year. However, we were able to identify the hiring information by using various personnel records. Table I.6 shows how many consultants, temporary, and Schedule C employees the Commission hired in fiscal years 1983, 1984, and 1985.

Table I.6
Consultants, Temporary, and Schedule C
Employees Hired in Fiscal Years 1983-1985

<u>Types of appointments</u>	<u>Fiscal years</u>			
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>Total</u>
Temporary	27	63	51	141
Consultant	5	29	7	41
Schedule C	1	10	4	15
Total	<u>33</u>	<u>102</u>	<u>62</u>	<u>197</u>

In addition, during the first 3 months of fiscal year 1986, the Commission hired 10 temporary and 5 Schedule C employees, bringing the total number of noncareer employees hired since fiscal year 1983 to 212. (During this same period, the Commission hired 60 career employees: 10 in 1983, 33 in 1984, 12 in 1985, and 5 in the first 3 months of 1986.)

Table I.7 shows that 117 of the 212 appointments were either renewed under the same or a different appointment authority after the original appointment expired, or the original appointments were still in effect as of December 31, 1985. These 117 appointments covered 93 employees, that is, some of the employees received more than one appointment. Of the 93 employees, 73 were still employed by the Commission on December 31, 1985.

Table I.7
Status of Consultants, Temporary,
and Schedule C Employees Hired Since
Fiscal Year 1983

<u>Type of appointment</u>	<u>Original appointment expired, employee not rehired</u>	<u>Original appointment expired, employee rehired</u>	<u>Original appointment still in effect</u>
Temporary	77	54	20
Consultant	13	7	21
Schedule C	5	4	11
Total	<u>95</u>	<u>65^a</u>	<u>52</u>

^aThese 65 appointments account for 41 employees of whom 21 were still employed at the Commission on December 31, 1985.

We examined the types of new appointments given in the 65 reappointments. As shown in table I.8, most of the rehired temporary employees were given new temporary appointments, and the Schedule Cs were rehired either as Schedule C or appointed to Senior Executive Service noncareer positions. The consultants were rehired in a variety of new appointments; none were given new consultant appointments.

Table I.8
New Appointments For Rehired
Consultants, Temporary, and Schedule C Employees

<u>New appointments</u>	<u>Original appointments</u>			
	<u>Temporary</u>	<u>Consultant</u>	<u>Schedule C</u>	<u>Total</u>
Temporary	40	2	0	42
Consultant	1	0	0	1
Schedule C	8	2	2	12
Career	5 ^a	1	0	6
SES noncareer	0	1	2	3
Other ^b	0	1	0	1
Total	<u>54</u>	<u>7</u>	<u>4</u>	<u>65</u>

^aThree were conversions based on reinstatement eligibility, one was converted after selection from an Office of Personnel Management (OPM) register, and another was converted under OPM authorization for direct hire.

^bRetained under an Intergovernmental Personnel Act agreement with a non-profit organization.

ABOLISHMENT OF REGIONAL ATTORNEY POSITIONS

During fiscal year 1985, the Commission decided to abolish its 10 regional attorney positions (one in each regional office) and assign their functions to the headquarters' Office of General Counsel. A Commission official explained that the legal workload was too low to justify an attorney in each region. Before this decision was made, three of the 10 attorneys-left the Commission. The Commission considered -- assigning one attorney to represent two regional offices, but decided against it. It began abolishing these positions, using reduction in force procedures for the remaining regional attorneys in the first month of fiscal year 1986. A Commission official estimated that it spent \$30,000 for the reduction, but will save \$130,000 during fiscal year 1986. Regional offices now must obtain legal assistance from headquarters.

We interviewed 12 officials in 4 of the 10 regional offices. Almost all of the 12 officials (regional directors and professional staff) had worked for the Commission over 5 years while over half had been with the Commission over 10 years. When asked what regional attorneys did, all identified duties such as legal research/advice, and legal reviews of documents/evidence. A few mentioned that attorneys also helped by tracking states' laws within the region and assisted with other staff work when the legal workload was low.

We asked the regional officials for their opinions on how the loss of the attorney positions would affect regional operations. Half of them viewed the impacts as negligible or balanced. Two were not sure what impacts would emerge, and four cited negative impacts--especially delays in getting legal assistance from the Office of General Counsel. Two of the four also expressed concern that headquarters' control of legal assistance may adversely influence the regions' work.

USE OF CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEES

Concerns were expressed that consultants were hired to perform work that should have been done by career employees and were performing duties for which they were not hired. Consultants were alleged to have held contracts with the Commission at the same time and compensation for both was overlapping. The Commission was also alleged to have circumvented merit selection procedures that require job advertising and competition among qualified applicants.

We were requested to examine the use of consultants, temporary, and Schedule C employees at the Commission to determine whether (1) appropriate hiring guidelines were followed for those employees, (2) consultants' duties overlapped with those of career staff, and (3) consultants held separate contracts with the Commission.

CONSULTANTS

The Office of Personnel Management (OPM) defines consultant and consultant position in its Federal Personnel Manual as follows:

"Consultant means a person who serves primarily as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant provides views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions (23 Comp. Gen. 497). Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which should make the advice distinctively valuable to the agency."

"A consultant position is one which primarily requires performance of advisory or consultant services, rather than performance of operating functions."

The statutory authority to hire consultants is found in 5 U.S.C. §3109, which permits the head of an agency to hire consultants when authorized by an appropriation or other statute. The Commission is granted this authority by its own statute, found in 42 U.S.C. §1975d. Agencies may require consultant services either by contracting with organizations or individuals or by hiring individuals as employees. Various federal laws and regulations apply, depending on the method used.

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When consultants are hired as employees, their positions are excepted from the competitive service. Consultant services obtained in this manner create an employer/employee relationship and are covered by OPM's rules applicable to salary, travel expenses, conflict of interest, financial disclosure, divestiture, ethics, and work product. An independent contractor does not have the status of a government employee and is generally subject only to any constraints on the conduct of his/her affairs imposed by the contract. The Commission in its Administrative Instructions, has adopted these and other "Federal Personnel Regulations" for its use.

According to 5 U.S.C. § 3109, agencies may employ consultants on a temporary or intermittent basis. Temporary employment is defined as continuous employment for 1 year or less. Intermittent employment is occasional or irregular employment on programs, projects, and problems requiring intermittent services as distinguished from continuous employment. The Federal Personnel Manual says consultants are properly used to obtain such benefits as:

- specialized opinions unavailable in the agency or in other agencies;
- outside points of view, to avoid too-limited judgment, on administrative or technical issues;
- advice on developments in industry, university, and foundation research;
- for especially important projects, the opinions of noted experts whose national or international prestige contributes to the undertaking's success;
- the advisory participation of citizens to develop or implement government programs that by their nature or by statute call for citizen participation;
- the skills of specialized persons who are not needed continuously, or who cannot serve regularly or full time.

The Federal Personnel Manual also cautions that: "The improper employment of experts and consultants is not only illegal, it is wasteful and destroys the morale of the career specialists." Examples of consultant employment considered improper are to: "give a particular person temporary or intermittent appointment solely in anticipation of a career-conditional appointment, do a job that can be done as well by regular employees, do a full-time continuous job, avoid competitive employment procedures, or avoid General Schedule pay limits."

The relevance of the distinction between intermittent and temporary consultant employment concerns the authority to renew the appointment. Accordingly, OPM has prescribed the following:

- Intermittent consultant appointments can be renewed from year to year; temporary consultant appointments cannot.
- A consultant who served under a temporary appointment in one service year may be reappointed the next year to the same position only on an intermittent basis or to a different position on a temporary or intermittent basis.

In the latter case, OPM warns that: "Even when different positions are involved, reappointments resulting in service for more than two years in a row on a regular basis can give the appearance of continuing employment..."

The Commission Improperly
Exercised its Employment
Authority for Consultants

From October 1982 through December 1985, the Commission employed 41 consultants.

We reviewed the Commission's consultant employment practices by examining the documentation contained in 31 individual consultant's Official Personnel Folders and other files. OPM requires, in addition to specific certification and employment processing procedures that: "Agencies will maintain information and records in such a manner that review at any time by representatives of OPM will disclose whether there has been compliance with the civil service rules and regulations, and OPM's instructions." Therefore, we relied upon the adequacy of the Commission's records to make determinations regarding compliance with the OPM review categories listed below. These 31 consultants were either still employed by the Commission or their employment was recent enough that their personnel files were still available at the Commission. All 31 consultants had intermittent 130-day limited appointments.

We reviewed the 31 appointments to determine whether (1) the positions were consultative in nature, (2) the employees' qualifications for the positions were documented, (3) the Commission had determined that no conflict of interest existed, (4) the 130-day limitation on services for intermittent consultants was met, (5) the employment records were adequate and (6) appropriate ethical standards and employee financial disclosure reporting requirements were applied.

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We found procedural violations of OPM requirements in all 31 appointments.

Because of the deficiencies in the records maintained on these appointments, we could not adequately assess compliance with employment requirements. None of the files contained a statement of the consultants' duties and responsibilities. Therefore, we could not determine from these files whether the duties performed were consultative or advisory in nature. This lack of records also prevented an analysis of (1) whether the consultants possessed the necessary background to render advisory services to the agency; or (2) whether the consultants' services were needed.

None of the files contained the required certification that the consultants' Statement of Employment and Financial Interests had been reviewed and determinations made that no conflicts of interest existed.

In this respect, because all 31 of these consultants were intermittent, 130-day limited appointments, they are regarded as "special government employees" and are subject to many of the laws and regulations on ethics and financial disclosure applicable to regular government employees. Therefore, the Federal Personnel Manual requires agencies to permanently retain in the official personnel folders for such consultants, certifications that financial disclosure statements have been reviewed, and determinations made that no conflict of interest exists; and certifications that, for appointments or extensions, "requirements concerning the position, appointee's qualifications, pay, documentation, and use of the appointing authority have been met."

OPM requires strict adherence to the 130-day limit. Twenty-one of the consultants' appointments were extended when their initial appointments expired. In none of the 21 cases was the required documentation on the personnel action forms showing the number of days worked under the original appointments. Our review of the Commission's time and attendance records, however, did not show that any consultants had worked more than 130 days.

In defining an intermittent appointment as "occasional or irregular employment", the Federal Personnel Manual cautions that:

"If at any time it is determined that the employee's work is no longer intermittent in nature, the employment must be terminated immediately."

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We noted that three consultants worked full-time and another worked substantially full-time for the duration of their intermittent appointments. In addition to the other appointment irregularities discussed below, the nature of the work schedules of consultants A, B, C, and D raise questions regarding the purpose of their appointments and the effectiveness of agency controls. Consultant A worked all 56 regular work days (non-holiday, Monday - Friday) from November 11, 1984, through February 2, 1985. Consultant B worked more than full-time; 67 days from March 18, 1984, through June 9, 1984, out of 59 regular work days. Consultant C also worked in excess of a normal full-time schedule; 59 out of 57 work days from February 23, 1984, through May 12, 1984. Consultant D worked 60 days from February 24, 1984, until expiration of the appointment on May 24, 1984, out of a total of 65 regular work days; substantially full-time. This consultant's appointment was extended on May 25, 1984, without documenting the number of days worked under the original appointment, permitting the consultant to work an additional 60 days out of the next 69 work days until September 2, 1984, when the consultant was given a special needs, temporary appointment. In our opinion, these are not intermittent tours of duty. Further, because consultant D had worked substantially full-time under the original appointment, the appointment should have been terminated, and the extension of this "intermittent" appointment was, therefore, improper.

Because none of the files for these appointments had sufficient documentation of the consultants' duties, it was not possible to adequately evaluate their qualifications for their assignments. In two cases, the Commission's official personnel folders did not contain the consultants' Personal Qualifications Statements or resumes--employment documents essential to determining and certifying qualifications for an appointment.

At least five of the consultants appeared to be performing operating duties. Performance of operating duties is considered by OPM to constitute illegal employment. Our conclusions for these consultants were based on evidence in personnel files or documents relating to their selection for other appointments. Because the Commission was negligent in its preparation of job descriptions and other record keeping responsibilities, it was not possible to make these determinations for the other 26 consultants.

Our findings on the five consultants were as follows.

Consultant A -- Beginning on September 10, 1984, this individual was given a 1-month, temporary "special needs" appointment as an economist, GS-110-11, which was extended for an additional 30 days before being appointed, without a break in

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service, to the consultant position on November 8, 1984. The consultant position was at the same pay rate, in the same occupation, and in the same office as her temporary appointment. In our opinion, this was a questionable use of the consultant and temporary appointment authorities to avoid competitive employment procedures. Moreover, the experience in these positions was used to qualify for a subsequent competitive, temporary appointment. This provided the employee a competitive advantage over other applicants.

Further, the employee subsequently described her duties in a job application, dated September 18, 1985, as "program specialist" at the Commission for the period from September 1984 to that date. Not only does this indicate that the duties under both the special needs and consultant appointments were the same and of a continuing nature, but the "program specialist" duties were described as including "overseeing" and "frequent supervision" which also appear to be operational, rather than advisory, inappropriate for a consultant to perform.

Depending on the context in which the actual "program specialist" work was performed, the definition provided for General Schedule positions in the Program Management Series, GS-340, or Civil Rights Analyst Series, GS-160, might apply to this employee's "program specialist" duties. Duties of positions classifiable in the GS-340 Series are to "manage, direct, or to assist in a line capacity in managing or directing one or more programs . . . when the paramount qualification requirement of the position is management and executive knowledge and ability. . ." Therefore, in cases where the Program Management definition would apply; managing, directing, and assisting in a line capacity are operating duties; not appropriate for consultant work.

Similarly, in positions where specialized subject matter knowledge (i.e., voting rights, equal employment, etc.) is required, the GS-160 Series would be applicable. But, again, such duties would represent operating duties necessary to carrying out the Commission's mission. In either case, the duties of a "program specialist" would appear operational in nature, rather than advisory.

The GS-11 grade level equivalent of this consultant's salary is also an indication of questionable qualifications to provide consultant services. OPM's Economist Series GS-110 classification standard, the series assigned to both the special needs and consultant appointments, describes the GS-13 consultant economist work as "the lowest level at which a professional economist in the Federal service is expected to provide technical advice which is relied on in decisions

concerning official government action..." Further, the OPM classification guide which supplements this standard for consultant type work, indicates that "positions at the full performance level presently are rarely found below GS-12. Moreover, positions below GS-11 ... are usually trainees..." Thus, the GS-11 level would be considered, perhaps an advanced trainee position, not yet performing duties at the full performance level. It is doubtful that anything below the full performance level could provide adequate advice at a level appropriate for consultant services.

Consultant B -- This consultant was appointed on March 19, 1984. On a Personal Qualifications Statement, dated May 16, 1984, the consultant described the duties of this appointment as: "Doing the research and writing for a major civil rights study and, in addition, writing occasional discussions on civil rights issues as requested by my supervisor." If the consultant was being used to write the Commission's report on this project, rather than providing advice on the issues for consideration by Commission staff, such work would be of an operational nature. This appears to be the case and was evident in an April 27, 1984, memorandum where a Commission official described the consultant's work as "preparing a background report on the history of Federal civil rights enforcement policy."

After 3 months, this consultant was converted on June 10, 1984, to a career appointment, GS-160-13 Civil Rights Analyst. In our opinion, the consultant's qualifications for this permanent appointment were questionable. It was not clear if the experience gained under the consultant appointment was used as a basis to qualify for this position. There was no documentation in the consultant's official personnel folder that the Commission had evaluated the employee's background and consultant experience against the requirements of OPM's qualification standards. However, our analysis of these requirements indicated that the consultant's Ph.D. in Political Science would be qualifying only for a GS-11. The consultant's application did not show evidence that the consultant had the necessary quantity or quality of specialized experience in one or more identified civil rights areas (e.g., voting rights, discrimination) for the GS-13 level.

Consultant C -- This consultant was appointed on February 23, 1984, and performed "research on the Student Financial Aid and the Higher Education Act of 1965"; duties that appear related to the continuing operations of the Commission and, therefore, improperly performed by a consultant. Yet, the Staff Director signed an Expert/Consultant Certificate for this appointment that stated "I am satisfied that... the work... requires a high level of expertness not available in the regular work force, is of a purely advisory nature, and does not include the performance or supervision of operating functions."

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On May 18, 1984, the employee was made Special Assistant to the Staff Director under a Schedule C appointment; the qualification standards for which were not established by the Commission as required by the Federal Personnel Manual.

Consultant D -- This consultant was appointed on February 24, 1984, to a position described by the Commission in terms which indicate that the employee's duties were of an operational nature. In an April 27, 1984, memorandum, the Special Assistant to the Staff Director reported that the consultant "is laying the groundwork for a study of Affirmative Action as implemented by institutions of higher education." The consultant was given a 4-month extension on May 25, 1984.

In this case the operational nature of the consultant's work was recognized by the Assistant Staff Director for Administration who informed the Deputy Staff Director in an August 24, 1984, memorandum that the consultant was performing "work which should be performed by a Commission employee." The Assistant Staff Director for Administration went on to suggest that the consultant should be "reassigned to bonafide expert work or his appointment should be terminated." Recognizing the seriousness of the matter, the Assistant Staff Director emphasized that "If we do not take corrective action, OPM could terminate our delegation of authority to appoint consultants/experts." The consultant's appointment was terminated on September 2, 1984, when the employee was converted to a "special needs" temporary position as a "special assistant".

The 30-day special needs temporary appointment and its subsequent 30-day extension were questionable in several respects. A special needs appointment requires the existence of unusual or emergency circumstances for its use and continuance of those circumstances for its extension. There was no documentation that such circumstances existed. The appointment was made after the employee had worked substantially full-time for 120 days of the 130-day limit as a consultant, performing duties which the Commission, before the conversion recognized as improper. According to a Commission memorandum, the pay rate set under the temporary appointment was justified under the Commission's Delegation of Authority Agreement from OPM to pay "an advanced in-hiring rate of GM-15 step 5 (\$57,227)" based on the employee's "superior qualifications." The memorandum, discussing this pay rate and explaining the employee's "superior qualifications" was written after the original appointment had expired and had been extended without this required justification.

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While the memorandum did document a high level of qualifications, it did not properly address the criteria in the Federal Personnel Manual regarding the "existing pay which the candidate would have to forfeit by accepting federal employment". The memorandum referenced an annual salary (\$54,000) earned under employment terminated in February 1983 but did not mention the much lower salary received for the 9 months just before the consultant appointment. Both salaries were more than \$2,500 below the advanced rate given, which was a direct violation of the conditions set forth in the OPM delegation agreement. According to the agreement, "no advanced rate will be approved which would be in excess of \$2,500 above the candidate's current actual earnings."

It is also improper to consider, as did the Commission, for "superior qualifications" purposes, the annual salary rate paid this employee as a consultant (approximately \$56,700) in setting the pay for the subsequent temporary appointment. To do so would be to base the pay of a competitive service appointment, subject to General Schedule pay restrictions, on the salary set by administrative authority of the same employer for the excepted service consultant position. General Schedule pay provisions require that appointments be made at the minimum rate of the grade and specifically prohibit setting higher rates of pay on the basis of a rate received for an appointment as a consultant.

Consultant E -- This consultant's file contained a memorandum which described the projected nature of the assignment as advisor to the Assistant Staff Director for Congressional and Public Affairs while acting as Editor of the Commission's publication, Perspectives. If editorial work was performed, it may be considered operational work of the office, not advisory. The consultant was the Commission's former Director of Press and Communications Division and editor of Perspectives.

Interviews With Commission Staff on Consultants' Duties

In an effort to learn more about the consultants' duties, we interviewed eight staff who worked on four Commission projects that used consultants. These interviews focused on the duties that each Commission employee performed compared to the consultants.

Those interviewed had similar duties. All generally had responsibility for researching one or more areas of an issue, including data collection and analysis. They also were responsible for writing a sections(s) on their area(s) for the final project reports.

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Those interviewed pointed to two types of consultants serving on these projects. One type served on what they called an advisory panel or group. This group, of two to seven consultants, was formed to offer advice to the project team. They said the group generally met twice with each project team; one meeting occurred near the project's origin to discuss its design (e.g., methodology, objectives, scope) and the other occurred when the project team began writing the report. They said the group generally listened to presentations from the team and provided verbal comments. Most of those interviewed said that these advisory consultants did little else. For example, they said that they did not know of these advisory consultants providing written products or interacting to any extent with individual team members outside of these meetings.

Those interviewed described the other type of consultant as playing a much more active role, such as acting as the project director. All interviewees who worked with this type of consultant referred to a least one consultant on their project who played an active role. For example,

- All those interviewed for one project referred to a consultant who served as the project director by proposing, designing, and managing the project; supervising team members; and researching and writing report sections. The Commission later converted the consultant to a Schedule C position because this person had been performing the duties of a project director.
- According to two staff interviewed, the consultant's project direction differed significantly from other projects. For example, they said the consultant, rather than career staff, proposed and designed the project. They also said that the consultant, as project director, did not follow Commission procedures and practices by (1) ignoring internal comments, which the two staff characterized as highly critical, on the project's design, and (2) rewriting project team members' draft chapters without discussing revisions with the writers and without support from the research.
- The same people said that a consultant who worked part time for the Commission on this project, performed staff duties. They said that the consultant researched and wrote a chapter of the report.
- All those interviewed who worked on another project said the consultant directed the project.

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Consultants Serving as Contractors

We reviewed Commission contract files for fiscal years 1983 through 1985 to determine whether any individuals who were employed by the Commission as consultants were also being paid as contractors. We identified five individuals who served as both a consultant and a contractor during the 3-year period. Two of these served in both capacities during concurrent time periods. However, based on the records we reviewed, it is unlikely that they were paid in both capacities during the same time period.

TEMPORARY EMPLOYEES

Unlike consultant appointments, which are excepted from the competitive service, the temporary appointments we reviewed are subject to the statutes, regulations and principles governing competitive appointments in the federal service. Agencies must observe the merit principles of open competition, fair evaluation of qualifications, and selection solely on the basis of merit and fitness in making temporary appointments.

Agencies have considerable discretion in choosing the method to be used for filling competitive positions. With few exceptions, competitive appointments, whether permanent or temporary, are made from registers of qualified applicants which have been evaluated by OPM and ranked on the basis of their ratings for referral to agencies upon request. Appointments outside these registers are strictly limited by OPM to such conditions as when insufficient eligibles are available for referral from OPM registers or the appointments are made under specific authority delegated to the agency by OPM. These exceptions permit temporary employment outside of OPM registers to be made in the manner prescribed by OPM through the use of agency established registers known as applicant supply files.

Procedures governing selections of temporary appointees from agency registers have been delegated to agencies for appointments for 1 year or less to positions at grades GS-12 and below; and for extensions to those appointments for up to one year each, for a total of up to 4 years¹ provided that:

¹Before January 1985, delegated temporary employment authority was limited to positions at GS-7 and below for periods of up to one year and for extensions to those appointments for one additional year.

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- (1) appropriate state job service and OPM offices are notified of the job openings;
- (2) the appointee meets the qualification standard for the position; and
- (3) the appointee comes within reach for selection through the agency's applicant supply file.

The competitive, agency register selection requirements do not apply to non-competitive temporary appointments of persons with eligibility for reinstatement (competitive status); and persons with non-competitive appointment eligibility (former Peace Corps, Vista and ACTION Community volunteers).

Agencies are also delegated authority to make non-competitive, 30-day temporary limited appointments to meet "special needs." Special needs appointments are appropriate only when the legitimate needs of the agency "cannot be served through appointment under some existing authority" and include emergency conditions. The Commission's use of special needs appointments is discussed separately, beginning on page 28.

The Commission has Improperly
Exercised its Temporary
Employment Authority

We examined personnel folders and other Commission records to determine whether the Commission complied with the qualification standards and other appointment and record keeping requirements for temporary employees. OPM requires agencies to maintain records in each appointee's official personnel folder so that a review at any time will show:

- the qualification standards used;
- adequate evidence that the employee had the necessary training and experience to meet the qualification standards at the time the appointment was made; and
- facts which establish the correctness of the appointment in all other respects.

The Commission made 91 temporary competitive service appointments for 72 individuals who were employed between October 1, 1982, and December 31, 1985, under its delegated authority to make appointments outside OPM registers. Because of the nature of temporary employment, most of the individuals were no longer employed by the Commission and, consequently, their records were not at the Commission. We were able to

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review 23 appointments for 15 individuals who were currently employed by the Commission and/or whose personnel files were still available.

The Commission did not have an applicant supply file policy specifying its temporary appointment procedures. OPM requires that agencies making appointments outside OPM registers establish agency registers known as the applicant supply file system which provides for acceptance, rating and referral of applications on a systematic basis and in accordance with OPM standards and requirements. Although specifics on the system's operations are, to a large extent, left up to agencies, OPM requires that they have "detailed procedures" in agency policy.

We found that violations of OPM's procedures and possibly Title 5 regulations may have occurred in all 23 temporary appointments we reviewed. These included instances of (1) no evidence that appropriate state employment services and OPM offices were notified of the openings; (2) applications not being date-stamped to show when they were received; (3) insufficient information in vacancy announcements on the qualifications required and application procedures to be followed; (4) insufficient documentation in announcement files of how applicant ratings were derived; (5) announcements without opening dates; (6) an application being accepted after the closing date of the announcement; and (7) failure to publish vacancy announcements.

Because these temporary limited appointments are considered employment in the competitive service, appointees must meet the qualification standards for the positions. For this reason, OPM requires that announcements specify the standard to be used in making the determination of eligibility. In 12 of the 14 appointments requiring competitive qualification analysis, such documentation was lacking and/or, we found appointee qualifications to be questionable. The other 9 temporary appointments did not require qualification analysis; 8 were special needs appointments, exempt from examination processes, and one was based on prior appointment from a competitive register. However, in the latter case (see employee 5) this was not documented.

Also, the appropriateness of the appointments in other respects was not adequately documented. OPM requires that temporary appointments made outside OPM registers must not be made to avoid merit principles, to extend other temporary appointments or to make non-competitive appointments pending completion of examining, referral, or other competitive processes. The Commission did not document the unusual circumstances for any of the 8 special needs appointments; and the other 15 appointments were so procedurally flawed that the appropriateness of all 23 appointments is questionable.

Examples of Questionable
Temporary Appointments

The following nine examples illustrate the deficiencies we found in our review of temporary appointments.

Employee 1 -- This employee was given a "special needs" appointment as a GS-101-7 Social Science Analyst on October 29, 1984, without documentation of the need for this emergency appointment and was then extended for an additional month. Not only was there no documentation that the initial appointment met the special needs criteria, i.e., agency needs "cannot be served through appointment under some existing authority", but the extension of this 1-month appointment, according to the Federal Personnel Manual, was proper only when "continued employment is essential to agency operations, as in the case of natural disasters or acts of God."

The employee was then selected for a 1-year, outside the register appointment on January 3, 1985, for the same position. The file for this temporary job opportunity announcement did not indicate that appropriate state employment service and OPM offices were contacted, and did not show an opening date for the receipt of applications. Selecting this person immediately following a special needs appointment suggests that the prohibition against the use of special needs appointments "to effect employment of an applicant pending completion of examining, referral, or other competitive processes" may have been violated.

Employee 2 -- This employee's appointment as a GS-301-4 clerk on January 28, 1985, was not processed according to OPM prescribed procedures. The Commission's announcement for a 1-year temporary, outside the register appointment opened on November 28 and closed on December 10, 1984. The announcement file did not contain the employee's job application. Moreover, the application in his official personnel folder was not date-stamped to show when it was received by the Commission nor was there any indication of the position for which it was submitted. The application also did not have an original signature and was dated November 15, 1984--two weeks before the opening date of the announcement. The Federal Personnel Manual requires that all applications be dated to show when they were received and the position sought identified. Agencies are directed to return any applications filed for positions for which the agency is not accepting applications (i.e., before the opening date of an announcement) to the applicant.

This employee's pay was also inappropriately set at GS-4 step 5 under highest previous rate procedures. The employee's official personnel records show a previous appointment at the

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GS-5 level as the basis for the advanced step. However, the GS-5 position was also a temporary position limited to 10 days, an inappropriate basis upon which to justify pay above the minimum (step 1) for the grade. As required by OPM regulations and the Commission's own instructions, the highest previous rate may not be based on a temporary appointment of 90 days or less.

Employee 3 -- Effective September 10, 1984, this employee was appointed as a GS-110-11 Economist under "special needs" authority without documentation of the circumstances requiring this restricted type of employment action. Similarly, the circumstances requiring her 1-month extension on October 10, 1984, were not documented.

Following her special needs appointment and a subsequent consultant position, she was selected for a temporary, outside the register appointment, as a GS-301-11 Program Specialist on February 4, 1985. There was no evidence in the Commission's records to indicate that the announcement for this position was sent to all required sources. Neither did the announcement identify the qualification standard used for the position or summarize its requirements.

A selective placement factor was used by the Commission for this position. Selective placement factors are job-related, qualification requirements not specified in the applicable OPM qualification standard but which candidates must meet for basic eligibility purposes. The announcement stated that "knowledge of policy review and analysis as demonstrated by experience or education is required as a selective factor." The need for a selective placement factor was not apparent since the description of the Program Specialist position did not contain duties indicating policy review and analysis responsibilities.

We are concerned that the use of the selective factor may have been to give the employee a competitive advantage over other prospective candidates because her Personal Qualifications Statement shows a master's degree in public policy analysis. In describing a prohibited personnel practice, 5 U.S.C. §2302(b)(6) states: "Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority...grant any preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment."

We also found the employee's qualifications for a GS-301-11 Program Specialist position to be questionable. She was given credit for 6 months experience doing computer systems analysis

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toward meeting the 1-year, directly related, specialized experience as a program specialist required for appointment at the GS-11 level. According to the qualification standard used by the Commission, specialized experience is "experience in a type of work...directly related to the position to be filled... and at the grade for which considered." The employee's computer systems analyst experience does not appear to be directly related to civil rights and equal employment opportunity research duties outlined in the position description. Without the credit of this service, she would have been 4 months short of meeting the minimum specialized experience qualification requirements. Moreover, on October 6, 1985, she received a temporary appointment to Program Specialist GS-301-12, her qualifications for which were based on her GS-11 temporary appointment.

Employee 4 -- This employee did not appear to meet the minimum requirements for her temporary outside the register appointment as a GS-160-11 Civil Rights Analyst. The OPM qualification standard for positions at the GS-11 level requires 1 year of experience at the GS-9 level or equivalent in the civil rights, equal opportunity, or other fields that involve work directly related to the position being filled, in addition to a master's degree in a directly related field.

Although rating forms for 9 other applicants for the position were in the Commission's announcement file, the rating form for the employee selected was missing. Our review of her qualifications as stated in her application and resume, indicated that she had a master's degree but her work experience as a counselor, teaching assistant, and word processor operator did not involve civil rights or equal opportunity work or work in another directly related field. Therefore, we found no basis for the Commission's decision that she was qualified for the position.

Employee 5 -- This employee was first employed under a temporary, outside the register appointment as a GS-301-12 Staff Assistant on April 5, 1982. We found none of the required documentation for this appointment. On March 2, 1982, the Commission had requested the Southwestern Regional Office of OPM to rate and certify the individual as eligible for appointment to the position. However, the employee was not certified and, according to the Commission's Personnel Officer, no certificate was received. The Commission then used the outside the register appointment to hire the employee. After three extensions of the temporary appointment, which permitted the employee to be retained for more than 18 months, the appointment was terminated, briefly, but he was reappointed to the same position on November 15, 1983. The November 1983 appointment

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used a non-competitive employment authority which is to be used only when the appointee has had a minimum 30 day break in service and has previously served under a temporary appointment after selection from a competitive register. Such an authority was inappropriate in this employee's case. His earlier outside the register appointment did not confer eligibility for movement or reappointment to other jobs, and his break in service was only 16 days.

The Commission did not document the employee's qualifications for either appointment. Further, there was no documentation of required approval from OPM to make this temporary appointment above the GS-7 level delegated. The Commission's Personnel Officer also told us that the employee should have been appointed under Schedule C authority.

Employee 6 -- This employee received an outside the register appointment as a GS-110-7 Economist on March 3, 1985. The position vacancy announcement did not indicate an opening date for receipt of applications. Also, the files contained no indication that the announcement had been forwarded to the state job service and OPM offices.

Of primary concern in this case is the employee's apparent lack of qualifications for the position. The OPM qualification standard for GS-110-7 economist specifies that completion of a 4-year course of study is required for appointment. According to his job application, the employee had not completed a full 4-year course of study.

Employee 7 -- This employee was given a 1-month "special needs" appointment on April 16, 1984, as a GS-160-7 Civil Rights Analyst, and the appointment was extended for another month on May 17, 1984. The files contained no documentation of the need for this restrictive type of appointment. Neither was there any evidence in the files that the conditions continued, necessitating the extension of the appointment.

The employee's appointment was then converted to a summer appointment in the same position, on May 27, 1984, in apparent violation of procedures required for making this special type of temporary appointment. The Federal Personnel Manual specifies that temporary appointments during the summer period (May 12 - September 30) are to be made in accordance with OPM Summer Jobs Announcement and filled using a special agency established summer register. When asked about this appointment, the Commission's Personnel Officer could not provide any evidence to support the appropriateness of this action.

At the end of the summer appointment the employee was converted to a temporary outside the register appointment, not to exceed 1 year as a GS-101-7 Social Science Analyst. No agency register documentation was available to support the legitimacy of this appointment.

Considered together, these appointments appear to violate the prohibition against use of the temporary appointment authority to extend other temporary appointments. Moreover, on May 8, 1985, the employee was converted to a Schedule C appointment as a GS-301-12 Special Assistant, without documenting the qualification requirements for the position or how the employee met those requirements.

Employee 8 -- This employee received an outside the register temporary appointment on April 21, 1985, as a GS-160-13 Civil Rights Analyst. The vacancy announcement for the position did not specify the position qualification requirements. There was no documentation of the rating given the employee in relation to qualifications for the position. There was also no documentation of prior OPM approval for the GS-13 level which was above the maximum GS-12 level delegated for temporary appointments.

The employee's job application was dated March 15, 1985, one week after the announcement closed on March 8, 1985. A handwritten note on the last page of the application indicated it had been received in the personnel office on March 11, 1985. Nevertheless, both dates were after the announcement closing date. Thus, it appears that the application should not have been accepted, and the appointment was improper.

Employee 9 -- This employee was appointed as a GS-1035-9 Writer Editor on June 17, 1985. However, the job application was dated May 9, 1985, 6 days before the position vacancy was announced. The Federal Personnel Manual requires that applications received for positions for which the agency is not accepting applications be returned to the applicant.

Further, the position vacancy announcement required applicants to submit writing samples at the time they applied. We found no writing sample with the employee's job application or in the recruiting file. There also was no documentation of what weight was given a writing sample in the evaluation.

Six individuals were rated eligible for this vacancy, including two veterans. The veterans were entitled to preferential consideration over non-veteran applicants like the employee selected. The Commission's Acting Staff Director interviewed only the two veterans. One was determined to be

"not eligible" because he did not submit a writing sample, and the other veteran withdrew from competition, indicating "he did not think he was interested."

USE OF SPECIAL NEEDS
HIRING AUTHORITY

We reviewed the use of the "special needs" temporary employment authority for those employees at the Commission during the period of October 1, 1982, through December 31, 1985, to determine (1) how extensively this authority was used and (2) whether the Commission converted any of these individuals to other appointments.

Under the specific circumstances permitted by OPM, agencies are delegated authority to make non-competitive temporary limited appointments without examination to meet special needs. Special needs appointments are appropriate only when the legitimate needs of the agency "cannot be served through appointment under some existing authority." The needs of the agency are to be considered, as opposed to accommodating the needs of the individual employee, in making these types of appointments. According to the Federal Personnel Manual, special needs appointments;

- (1) may not exceed 1 month; may be extended for 1 month if essential to agency operations; and no more than one appointment is permitted for any individual during any 12 consecutive months;
- (2) may not be made to effect employment of an applicant pending completion of examining, referral, or other competitive processes; and
- (3) like other temporary, outside-the-register appointments, may not be used to exceed the service limitation imposed by some other appointment authority.

The Commission made 21 special needs appointments to 18 individuals employed at the Commission during the period of our review. Eight of these appointments for 7 employees were included in our broader review of the Commission's use of temporary employment authorities (see pages 20 to 28). None of them had documentation establishing the nature of the unusual or emergency circumstances requiring the use of the authority. Seven of the eight special needs appointments that we reviewed were also extended without documentation that the original conditions for the appointment continued to be "essential to agency operations" as required by the Federal Personnel Manual.

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Without the documentation to justify the legitimate use of the special needs appointment authority, it appears that the Commission may have used the authority to employ individuals while other employment processes were pending or for other inappropriate purposes. For example, in one case the Staff Director notified the Assistant Staff Director for Administration in an internal memorandum dated March 8, 1984, that an individual had reported to work on March 5, 1984. The Assistant then notified the Staff Director that the employee's Schedule C position required prior OPM approval and suggested the special needs appointment to "cover [the employee] from the period of March 5 until OPM approves the appointment...". The employee was subsequently appointed using the special needs authority until the Schedule C position was authorized by OPM on March 14, 1984. According to the Commission's Personnel Officer, this authority was also used for another Schedule C employee while OPM approval was pending. Circumstances which primarily accommodate the needs of the employee or are not emergencies, such as this, are clearly not appropriate "special needs." On two occasions, the Commission used special needs appointments to cover clerical services while employees were on leave. Such circumstances are not unusual, can be planned for in advance, and can be met using other employment authorities.

USE OF SCHEDULE C EMPLOYMENT AUTHORITY

As discussed previously, Schedule C positions are "excepted" from competitive examining requirements because of their confidential and policy-determining nature. These positions, at GS-15 and below, can be established and filled only with specific authorization from OPM. OPM must not only determine that exception of the position from the competitive service is appropriate, but also must ensure that Schedule C positions already approved continue to be appropriate. Each Schedule C authority applies only to the specific position for which it was approved. Therefore, when a Schedule C position becomes vacant, the agency must request OPM approval to reestablish the position before it can be filled.

When an agency changes the duties or grade of a Schedule C position, its organizational location, or its reporting relationships, the appointing official may not assume that the newly described position is covered by the earlier Schedule C authority. Schedule C employees must also meet the security, suitability, and conduct requirements prescribed by law for all government employees.

Among other requirements, OPM specifies that agency requests for Schedule C position authorizations must include OPM Form 1019. This form is to be used by OPM and the agency to

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document official approval of the exception. Because it is the form authorizing the appointment, the Federal Personnel Manual requires that agencies retain the Form 1019 as a permanent record in the employee's official personnel folder. The appointment action should also specify the OPM assigned position number provided on the Form 1019.

Schedule C Appointments at the Commission

A total of 17 individuals serving under Schedule C appointments were employed at the Commission between October 1, 1982, and December 31, 1985. These appointments and others held by these employees are shown in table II.1. We identified two basic deficiencies for the 22 appointments processed for these employees; qualification standards were not used and the appointments were not properly documented.

The Commission has not established qualification standards for its Schedule C appointments. This is a violation of the Federal Personnel Manual requirement that agencies establish qualification standards before appointing employees to excepted service positions. According to an OPM representative we talked to, Schedule C positions are not excluded from this requirement. Qualification standards are necessary to establish selection criteria for these appointments in a manner which is in keeping with the government's policy of equal employment opportunity and the specific limitations on the Schedule C appointment authority imposed by OPM. Because the Commission did not establish such standards, we were unable to assess the appropriateness of the Commission's actions or the appointees' qualifications for the positions.

Promotions for Schedule C employees are not subject to the time-in-grade restrictions applicable to positions in the General Schedule. However, OPM reminds agencies that the purpose of the restrictions is to prevent excessively rapid promotions and that agencies should assure that their promotion programs do not permit excessively rapid promotions for positions not subject to the General Schedule.

As indicated in table II.1, the variety of appointments and other personnel actions used by the Commission to promote and move employees between Schedule C and other positions, indicates a general lack of employment controls and possible misuse of employment authority. Employees 10C and 14C stand out in this regard.

Employee 10C, appointed as a consultant (see discussion of consultant C on page 16) on February 23, 1984, at a salary approximately equivalent to GS-13, was converted 3 months later

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to a Schedule C appointment on May 18, 1984, as a GS-301-13 (\$36,152) Special Assistant to the Staff Director. Then, at 5 month intervals, this employee was promoted to GM-14 and GM-15 Schedule C positions, and finally, 7 months later promoted to a noncareer Senior Executive Service ES-3 position (\$66,232). This rapid rise represented a \$30,080 (83 percent) increase in salary in only 17 months.

Employee 14C was converted to a Schedule C appointment as a GS-301-12 (\$31,619) on May 8, 1985, after a series of questionable GS-160-7 (\$17,221) temporary appointments (see discussion of temporary employee 7 on page 26). This employee's Schedule C conversion resulted in an 84 percent pay increase over the GS-7 salary held under the temporary appointments for just over a year.

The Commission also did not properly document its employment actions on Schedule C appointments. None of the personnel action documents cited the OPM assigned position numbers, and personnel action documents for three promotions and two appointments did not cite the authority for the actions, the approved OPM Form 1019 and OPM approval date or the exception to OPM approval. The three promotions--employee 6C to GS-14, employee 10C to GM-15, and employee 12C to GS-13--were effective March 3, 1985, but OPM did not approve upgrades for these positions until March 20, 1985. An OPM representative confirmed to us that, of the two appointment actions in question, the December 20, 1985, appointment of employee 16C was properly authorized by OPM but could not confirm that OPM had approved the October 1, 1985, appointment for employee 2C. The OPM representative also stated that agencies should use the OPM assigned position numbers. This number provides essential position/incumbent controls. Because the Commission did not cite the OPM assigned position numbers on the personnel action documents, it was not possible to determine which specific OPM Form 1019 authorized any of these actions. It also prevented verification that the employees were performing the duties approved by OPM.

Table 11.1
Schedule C Employee
Appointment Chronology

<u>Employee</u>	<u>Date</u>	<u>Type of Action</u>	<u>Job Title</u>	<u>Grade</u>
1C	06-01-82	30-Day Special Needs Appointment	Special Assistant to Chairman	13
	07-02-82	30-Day Extension-Special Needs	Special Assistant to Chairman	13
	07-25-82	Schedule C Appointment	Special Assistant to Chairman	13
	10-30-83	Promotion-Schedule C	Special Assistant to Chairman	14
	02-04-84	Termination		
	03-05-84	30-Day Special Needs Appointment	Special Assistant to Chairman	14
	03-14-84	Schedule C Appointment	Special Assistant to Chairman	14
	10-09-85	Promotion-Schedule C	Special Assistant to Chairman	15
	2C	07-27-80	Schedule C Appointment	Confidential Assistant to Member
10-28-83		Termination		
11-15-83		30-Day Special Needs Appointment	Confidential Assistant to Member	12
11-18-83		Schedule C Appointment	Confidential Assistant to Member	12
02-04-84		Termination		
03-05-84		30-Day Special Needs Appointment	Confidential Assistant to Member	12
04-05-84		30-Day Extension-Special Needs	Confidential Assistant to Member	12
04-18-84		Schedule C Appointment	Confidential Assistant to Member	12
10-01-85		Schedule C Appointment	Confidential Assistant to Member	12
3C	08-25-83	2-Month Consultant Appointment	Consultant	\$205/day
	09-18-83	Schedule C Appointment	Special Asst. to Staff Director	15
	09-25-84	SES Noncareer Appointment	Asst. Staff Director, Programs & Policy	ES-3
	10-01-85	Termination		
4C	5-02-84	Schedule C Appointment	Confidential Secretary to Commissioner	7
5C	03-25-84	Schedule C Appointment	Deputy General Counsel	15
	12-09-85	Schedule C Appointment	Special Asst. to the Staff Director	15
6C	03-12-84	3-Month Detail to Office of the Staff Director	Special Legislative Liaison to Staff Director	12
	09-25-84	Schedule C Appointment	Special Assistant for Congressional Affairs	13
	03-03-85	Promotion-Schedule C	Special Assistant for Congressional Affairs	14
7C	10-29-84	30-Day Special Needs Appointment	Social Science Analyst	7
	11-28-84	30-Day Extension-Special Needs	Social Science Analyst	7
	12-27-84	Termination		
	01-05-85	1-Year Temporary Appointment	Social Scientist	7
	07-29-85	Schedule C Appointment	Special Assistant	11
8C	04-27-84	Schedule C Appointment	Confidential Secretary to Commissioner	9
	10-09-85	Schedule C Appointment	Special Assistant to Commissioner	11
9C	09-04-84	30-Day Special Needs Appointment	Public Affairs Specialist	12
	10-03-84	Schedule C Appointment	Public Affairs Specialist	12

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Table 11.1
Schedule C Employee
Appointment Chronology
(continued)

<u>Employee</u>	<u>Date</u>	<u>Type or Action</u>	<u>Job Title</u>	<u>Grade</u>
10C	02-23-84	3-Month Consultant Appointment	Consultant	\$136/day
	05-18-84	Schedule C Appointment	Special Assistant to Staff Director	13
	10-12-84	Promotion-Schedule C	Special Assistant to Staff Director	14
	03-03-85	Promotion-Schedule C	Special Assistant to Staff Director	15
	10-25-85	SES Noncareer Appointment	Assistant Staff Director, Programs & Policy	ES-3
11C	03-19-84	Schedule C Appointment	Public Affairs Officer	14
	07-09-84	Promotion-Schedule C	Public Affairs Officer	15
	04-26-85	Resignation		
12C	05-21-84	Schedule C Appointment	Confidential Secretary to Staff Director	11
	10-12-84	Promotion-Schedule C	Confidential Assistant to Staff Director	12
	03-03-85	Promotion-Schedule C	Confidential Assistant to Staff Director	13
	04-19-85	Termination		
13C	02-24-84	3-Month Consultant Appointment	Consultant	\$218/day
	05-25-84	4-Month Extension-Consultant	Consultant	\$218/day
	09-02-84	30-Day Special Needs Appointment	Special Assistant	15
	10-02-84	30-Day Extension-Special Needs	Special Assistant	15
	10-03-84	Schedule C Appointment	Special Assistant	15
14C	04-16-84	30-Day Special Needs Appointment	Civil Rights Analyst	7
	05-17-84	30-Day Extension-Special Needs	Civil Rights Analyst	7
	05-27-84	4-Month Summer Appointment	Civil Rights Analyst	7
	10-01-84	1-Year Temporary Appointment	Social Science Analyst	7
	05-08-85	Schedule C Appointment	Confidential Special Assistant	12
	08-16-85	Resignation		
15C	09-17-84	Schedule A--Attorney Appointment	Attorney-Advisor	13
	12-09-85	Schedule C Appointment	Deputy General Counsel	15
16C	10-24-85	30-Day Special Needs Appointment	Special Assistant to General Counsel	7
	11-24-85	30-Day Extension-Special Needs	Special Assistant to General Counsel	7
	12-20-85	Schedule C Appointment	Special Assistant to General Counsel	11
17C	12-02-85	Schedule C Appointment	Special Assistant to Commissioner	15

REFERRALS FROM STATE EMPLOYMENT SERVICE OFFICES

The concern was that the Commission did not hire qualified applicants for vacant positions referred by the Washington, D.C., employment service office.

We were requested to determine whether the Commission notified the Washington, D.C., employment service office of job vacancies, the number of persons referred by the employment office, the number of referrals hired by the Commission, and reasons for not hiring referrals.

Federal agencies are required by 5 U.S.C. § 3327 to notify state employment service and OPM offices of any temporary vacancies that are to be filled in the competitive service without use of OPM's employment registers. OPM provides addresses of the offices to which the announcements should be sent. Agencies are also required to establish detailed procedures for operating their temporary employment programs to meet these requirements.

According to the Commission's Personnel Officer, temporary appointment announcements are sent to the employment service offices in Maryland, Virginia, and the District of Columbia. We found in our review of the Commission's recruitment files from October 1, 1982, to December 31, 1985, however, that the Commission did not have records showing that this had been done. None of the 13 temporary appointments requiring such notices that we reviewed showed sufficient evidence that the Commission had sent the vacancy announcements to the appropriate state employment and OPM offices. We believe sufficient evidence should include copies of the transmittal letters and announcements. For example, one recruitment file contained a notation that the notice was "called in." Such a procedure is not only inadequate to meet the notification requirements, but it also provides insufficient documentation on what information was provided. Moreover, the Commission's written administrative instructions do not address temporary employment actions using agency-established registers, including notification of the state employment and OPM offices.

Applicants who learn of federal job vacancies through a state employment office are given a referral slip by the office to attach to their applications. The employment offices do not notify the agencies of such referrals, but they do maintain records of all referral slips given. However, a Washington D.C., employment office official told us that his office does not maintain the records broken down by referrals to a specific

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agency. Agencies are asked to return the referral slips to the employment offices stating whether or not the applicants were selected.

The Commission's Personnel Officer stated that he did not know the specific number of applicants for Commission job vacancies referred by the state offices, since not all applicants attach their referral slips to their applications. He said the Commission maintains no separate records on how many people are referred by the state employment offices. However, he said he was able to reconstruct from referral slips attached to job applications 26 known referrals for 15 vacancies for the period October 1984 to December 1985. According to the Personnel Officer, 3 of the 26 referrals were qualified applicants but none were selected.

AFFIRMATIVE ACTION

It was alleged that the Commission made no attempt to ensure that minorities and women were included in the applicant pool for jobs and that most of the employees hired since the reconstitution of the Commission (December 1, 1983) were white males.

We were requested (1) to determine the extent to which affirmative action was taken to hire and promote minority and women employees and (2) to determine the length of service with the Commission for those that have left since December 1, 1983.

Affirmative action hiring programs and accomplishment reports are required by 5 CFR 720. The Equal Employment Opportunity Commission has prescribed instructions, procedures, guidance, and formats for agencies to follow in implementing the law. We requested the Commission's affirmative action hiring goals and accomplishments for fiscal years 1983 through 1985. According to the Commission's Equal Employment Opportunity Director, the accomplishment report for 1985 and goals for 1986 were drafted and sent to the Staff Director for approval on December 23, 1985. As of February 25, 1986, they had not been approved, and the Staff Director would not release the 1985 accomplishment report for our review. Consequently, we were only able to review the accomplishments through fiscal year 1984.

We also requested the Commission's affirmative action promotion goals and accomplishments. However, agencies are not required to set specific goals for promotion of women and minorities, and, according to the Equal Employment Opportunity Director, the Commission has not established any such goals. Without the availability of promotion goals as criteria, we were unable to measure the Commission's success rate in promoting women and minorities.

Table IV.1 shows the Commission's hiring goals and reported accomplishments for fiscal years 1983 and 1984 and the hiring goals for 1985. They do not include temporaries and consultants. Goals are set for specific types of persons in specific job categories. The job categories are groupings of job series listed in Equal Employment Opportunity Commission instructions. Goals are determined by comparing the profile (numbers of women and members of minority groups) in the agency with the profile of the Washington, D.C., metropolitan area civilian labor force. The Commission's goals since fiscal year 1983 have focused primarily on the underrepresented

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minorities of American Indians/Alaska Natives, Asian Americans/Pacific Islanders, and Hispanics. Although the Commission has hired many women and minorities, it has not achieved the specific goals set in its affirmative action plans. The Commission partially met its goals in one job category in each of the two years (clerical category in 1983 and technical category in 1984).

Table IV.2 shows the workforce composition of the agency (other than consultants and temporaries) at the end of fiscal years 1983 and 1984. Table IV.3 is a breakdown, by groups, of the career and Schedule C employees hired by the Commission in fiscal years 1983 and 1984.

Table IV, 1
The Commission's Affirmative Action
Hiring Goals and Achievements
Fiscal Years 1983-1985

Job category	1983			1984			1985		
	Goals	Achievements	Other hires ¹	Goals	Achievements	Other hires	Goals	Achievements ²	Other hires ²
Professional	1 American Indian/ Alaskan Native Male or Female	0	1 White Male 1 White Female 1 Black Male 1 Black Female 1 Hispanic Female 1 Asian American/ Pacific Islander Female	1 Black Male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	9 White Males 3 White Females 1 Black Female	1 White Female 1 Asian American/ Pacific Islander 1 American Indian/ Indian/Alaska Native		
Administrative	1 Hispanic Male 1 Asian American/ Pacific Islander	0	1 Hispanic Female	1 Hispanic Male 1 Asian American/ Pacific Islander or American Indian/Alaskan Native	0	4 White Males 4 White Females 4 Black Males 1 Black Female	1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native		
Technical	No goals		None	1 White Female 1 Asian American/ Pacific Islander or American Indian/Alaskan Native	1 White Female	1 Black Female	1 White Female 1 American Indian/ Alaskan Native		
Clerical	1 White Female 1 Asian American/ Pacific Islander Female	1 White Female	1 Black Female	1 Hispanic Male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	1 White Male 3 White Females 2 Black Males 9 Black Females 3 Hispanic Females	1 Hispanic Male 1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native		
Other	No goals		None	No goals		None	No goals		

¹Based on our review of the Commission's personnel actions (standard form 50s) and monthly personnel reports upon which the affirmative action statistics are based, we found three additional employees hired in fiscal year 1983 that are not included in the table: one white female, one hispanic female, and one black male. All three were in the professional job category.

²Information on 1985 hiring results was not available as of February 25, 1986.

Table IV.2
Commission Workforce Composition
Fiscal Years 1983 and 1984

	<u>1983</u>	<u>1984</u>
Male	82	83
Female	135	132
White Male	32	39
White Female	36	33
Black Male	32	30
Black Female	80	78
Hispanic Male	14	11
Hispanic Female	16	16
Asian American/ Pacific Islander Male	4	3
Asian American/ Pacific Islander Female	3	3
American Indian/ Alaskan Native Male	0	0
American Indian/ Alaskan Native Female	0	0

The Commission's Equal Employment Opportunity Director, who joined the Commission in May 1984, had no explanation as to why hiring goals had not been met for fiscal years 1983 and 1984. She did not believe that the Commission was experiencing any difficulty reaching any of the target groups. She said that she had expanded the Commission's outreach programs since joining the Commission. For example, she said that she and her staff attend training programs and conferences attended by women and minorities in the attempt to attract women and minorities to the Commission.

Table IV.4 shows the sex and race of most employees that the Commission promoted in fiscal years 1983, 1984, 1985, and 1986 through December 31, 1985. We were able to develop this information by using Commission personnel records and assistance from the Commission's Equal Employment Opportunity Director. She said, however, that she was not able to provide race data on seven promotions because they were given to temporary employees for which data on race was not recorded, and she had no personal knowledge of their race.

We also calculated the average length of service at the Commission for those employees (excluding temporaries and consultants) who left the agency between December 1, 1983, and December 31, 1985. We found that, on average, these individuals had about 5 years 9 months of service at the Commission. Table IV.5 shows the composition of the staff that left the agency during this period.

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Table IV.3
Career and Schedule C
Employees Hired by the Commission
Fiscal Years 1983 and 1984

	<u>1983</u>	<u>1984</u>
Vacancies filled	12	46
Vacancies filled by:		
Male	3	20
Female	9	26
White Male	1	14
White Female	3	11
Black Male	2	6
Black Female	2	12
Hispanic Female	3	3
Asian American/ Pacific Islander Female	1	0

Table IV.4
Promotion of Commission Employees
Fiscal Years 1983-1986

	<u>Fiscal years</u>			
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986^b</u>
Male	5	10	13	3
Female	8	18	15	6
White Male	2	2	7	1
White Female	2	2	8	2
Black Male	3	6	2	0
Black Female	6	12	5	3
Hispanic Male	0	1	2	0
Hispanic Female	0	4	0	0
Asian American/ Pacific Islander Male	0	0	1	0
Male, Race unknown ^a	0	1	1	2
Female, Race unknown ^a	0	0	2	1

^aThe Commission did not have data on racial composition for seven temporary promotions.

^bThrough December 31, 1985.

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Table IV.5
Attrition of Commission Employees
12/1/83 to 12/31/85

	Fiscal years		
	1984 ^a	1985	1986 ^b
Male	7	10	6
Female	6	22	3
White Male	4	4	3
White Female	2	8	0
Black Male	3	5	2
Black Female	3	13	1
Hispanic Male	0	0	1
Hispanic Female	1	1	2
Asian American/ Pacific Islander Male	0	1	0
Asian American/ Pacific Islander Female	0	0	0
American Indian/Alaskan Native Male	0	0	0
American Indian/Alaska Native Female	0	0	0

^aSince December 1, 1983.

^bThrough December 31, 1985.

AWARDS AND PROMOTIONS

The concern was expressed that employees hired after the Commission was reconstituted were receiving more favorable treatment than those employees hired before the reconstitution. Those hired after the Commission's reconstitution were alleged to be receiving more frequent and prompt awards and promotions.

We were requested to (1) examine the pattern of awards and promotions given to employees hired before and after December 1, 1983, (2) identify how many awards and promotions went to career employees and political appointees, and (3) determine whether any employees received more than one promotion or award within a one-year period.

AWARDS

We reviewed monetary awards given to Commission employees from October 1, 1982, through December 31, 1985. Three basic types of awards were included in our analyses: (1) special achievement awards; (2) quality step increases; and (3) merit pay or, beginning in fiscal year 1985, Performance Management and Recognition System cash awards. Special achievement awards are granted for either a one-time special act, service or achievement, or sustained superior performance. Quality step increases serve to recognize individuals for sustained high quality performance. Merit pay or Performance Management and Recognition System awards parallel the special achievement awards provisions for other employees. Only employees in grades GM-13 to GM-15 are eligible for this type of award.

Table V.1 shows the total amounts awarded in each category. As shown in the table, merit pay and its replacement, Performance Management and Recognition System awards, constituted over one-half of the dollar amount of all awards in fiscal years 1984 and 1985.

Between October 1, 1982, and December 31, 1985, eleven employees received one or more awards less than one year after receiving a previous award (one employee received three awards, each less than a year following the previous one). All of these individuals were career employees who had been hired by the Commission before December 1, 1983, when the Commission was reconstituted.

Table V.2 shows awards given, by year, to employees hired before and after the reconstitution of the Commission as well as those given to career and noncareer employees. As of October,

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1984, 22 percent of the Commission's career, temporary, and Schedule C employees and as of September 1985, 29 percent were hired after December 1, 1983. The majority of award recipients were career employees who were employed by the Commission before December 1, 1983. In fiscal year 1985, employees hired after December 1, 1983, received 25 percent of the awards, which represented 30.5 percent of the total dollar amount of awards given. Also, beginning in fiscal year 1985, the average award amounts were greater for those employees receiving awards that were hired after December 1, 1983, than for those employees hired earlier. This trend continued during the first 3 months of fiscal year 1986.

TABLE V.1
TYPES OF COMMISSION AWARDS
Fiscal Years 1983-1986

	Fiscal years			
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986^a</u>
<u>Total awards</u>				
Amounts	\$15,317 ^b	\$77,541	\$59,120	\$6,950
Numbers	27	51	28	8
Average amounts	\$613 ^b	\$1,520	\$2,111	\$869
<u>Special achievement awards</u>				
Amounts	\$7,070 ^b	\$33,976	\$21,220	\$6,950
Numbers	17	36	16	8
Average amounts	\$471 ^b	\$944	\$1,326	\$869
<u>Quality step increases</u>				
Amounts	\$4,946	\$0	\$0	\$0
Numbers	7	0	0	0
Average amounts	\$707	\$0	\$0	\$0
<u>Merit pay/performance management and recognition system</u>				
Amounts	\$3,301	\$43,565	\$37,900	\$0
Numbers	3	15	12	0
Average amounts	\$1,100	\$2,904	\$3,158	\$0

^aThrough December 31, 1985.

^bDoes not include two awards of unknown amounts.

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TABLE V.2
NUMBER AND AMOUNTS OF COMMISSION AWARDS
Fiscal Years 1983-1986

	<u>Fiscal years</u>			
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986^a</u>
<u>Total awards</u>				
Number of awards	27	51	28	8
Number of recipients	27	45	28	8
Total amounts	\$15,317 ^b	\$77,541	\$59,120	\$6,950
Average amounts	\$613 ^b	\$1,520	\$2,111	\$869
<u>Employees hired before</u> <u>December 1, 1983</u>				
Amounts	\$15,317 ^b	\$75,391	\$41,070	\$5,950
Numbers	27	49	21	7
Average amounts	\$613 ^b	\$1,539	\$1,956	\$850
<u>Employees hired after</u> <u>December 1, 1983</u>				
Amounts	N/A	\$2,150	\$18,050	\$1,000
Numbers	N/A	2	7	1
Average amounts	N/A	\$1,075	\$2,579	\$1,000
<u>Career employees</u>				
Amounts	\$15,317 ^b	\$71,541	\$54,370	\$5,950
Numbers	27	48	25	7
Average amounts	\$613 ^b	\$1,490	\$2,175	\$850
<u>Temporaries</u>				
Amounts	0	\$500	\$4,750	0
Numbers	0	2	3	0
Average amounts	0	\$250	\$1,583	0
<u>Schedule Cs</u>				
Amounts	0	\$5,500	0	\$1,000
Numbers	0	1	0	1
Average amounts	0	\$5,500	0	\$1,000

^aThrough December 31, 1985.

^bDoes not include two awards of unknown amounts.

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PROMOTIONS

We reviewed promotions for fiscal year 1983 through the first quarter of fiscal year 1986 to determine how many went to Commission employees hired before and after December 1, 1983. Table V.3 shows that until the first 3 months of fiscal year 1986, most of the promotions went to career employees and employees hired prior to December 1, 1983.

Promotions to positions of greater responsibility can occur in various ways. A person can be promoted through: (1) a permanent promotion; (2) a temporary promotion (not to exceed a specified date); (3) a promotion resulting from a conversion from one appointment to another (can be the same or a different type of appointment); or (4) other actions resulting in a promotion such as reassignments. Most of the Commission's promotions, as shown in table V.3, occurred in the first two ways. The Commission on one occasion, in October 1982, used an extension of appointment action to promote an employee. According to the Federal Personnel Manual, extensions are not to be used for this purpose. The Commission's Personnel Officer informed us that, if he had processed the action, he would have used the conversion to new temporary appointment action.

Career federal employees above GS-5 must serve at least 1 year in grade before becoming eligible for promotion. This restriction does not apply to promotions within the excepted service, such as those of Schedule C employees, students (whose employment is dependent upon their being in school), or attorneys. During the period we examined, 10 Commission employees were promoted without serving 1 year in the prior grade. All 10 employees were in groups exempted from the 1-year service requirement. Five of them were Schedule C employees. One Schedule C employee was promoted three times in less than 17 months, and another was promoted twice in less than 10 months.

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TABLE V.3
PROMOTIONS
Fiscal Years 1983-1986

	<u>Fiscal years</u>			
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986^a</u>
Totals	13	28	28	9
Number of				
--permanent promotions	8	15	21	3
--temporary promotions	3	7	2	2
--conversions from one type of appointment to another, resulting in promotion	1	6	4	4
--other actions resulting in promotion	1	0	1	0
Number to				
--career	10	22	18	4
--noncareer	3	6	10	5
Number to				
--employees hired before December 1, 1983	13	24	14	3
--employees hired after after December 1, 1983	N/A	4	14	6

^aThrough December 31, 1985.

COMMISSIONERS' AND SPECIAL
ASSISTANTS' BILLINGS

Concern was expressed that the Chairman of the Commission and his Special Assistant billed the agency for work on an almost full-time basis, while such positions are supposedly part-time positions.

We were requested to examine the billings for the Commissioners and their Special Assistants to determine how the billings comport for part-time positions. We were also requested to examine the roles of the Commissioners' Special Assistants and to determine whether the tasks they billed the Commission reflected the nature of work expected from Special Assistants.

The U.S. Commission on Civil Rights Act of 1983 (Public Law 98-183) Sec. 4 (a) states that:

"Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission . . ."

The act does not limit the number of days the Commissioners can work each year. Similarly, there is no limitation in the act on the number of days their Special Assistants can work.

Commissioners' and Special
Assistants' Salaries
and Billing Days

The reported salaries and the number of days billed by the Commissioners and their Special Assistants for fiscal years 1983, 1984, and 1985 are shown in table VI.1. The salaries and days billed were provided by the Commission's Office of Management. The number of days billed represents the equivalent number of 8-hour days worked. For example, if a Commissioner worked 4 hours one day and 4 hours on another day, the total days billed would be one. The Commissioners for whom the Special Assistants worked are noted next to the Special Assistant's name in table VI.1.

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TABLE VI.1
Salaries and Days Billed For
Commissioners and Special Assistants
Fiscal Years 1983-1985

<u>Commissioners/ Special Assistants</u>	<u>1983</u>		<u>1984</u>		<u>1985</u>	
	<u>Salary</u>	<u>Days^a</u>	<u>Salary</u>	<u>Days^a</u>	<u>Salary</u>	<u>Days^a</u>
<u>Commissioners</u>						
Pendleton	\$58,385	233	\$62,162	233	\$67,344	240
Berry	24,303	97	15,741	59	13,895	50
Smith ^a	10,455	42	1,734	7	--	--
Ramirez	12,455	50	10,021	38	7,263	26
Ruckelshaus ^a	12,363	51	1,601	6	--	--
Saltzman ^c	11,622	46	534	2	--	--
Abram ^d	--	--	10,295	39	11,631	41
Buckley ^d	--	--	11,455	43	19,381	69
Bunzel ^d	--	--	13,822	52	28,781	103
Destro ^d	--	--	17,032	64	21,231	76
Guess ^d	--	--	6,854	26	16,391	58
<u>Special Assistants</u>						
Novell (Pendleton)	\$28,942	221	\$29,231	179	\$41,328	239
Edwards (Berry)	38,334	261	9,603	63	15,478	99
Brown (Smith) ^e	951	15	143	2	--	--
Garza (Ramirez) ^f	14,462	128	4,442	39	--	--
Arredondo (Ramirez) ^g	--	--	3,496	24	14,081	208
Ferrone (Abram) ^h	--	--	523	9	1,586	19
Van de Weighe (Destro) ⁱ	--	--	3,894	59	370	5
Bryant (Guess) ^j	--	--	--	--	7,489	137
Wolf (Abram) ^k	--	--	--	--	1,129	11
Stuart (Destro) ^l	--	--	--	--	4,891	90
Lawrence (Destro) ^m	--	--	--	--	662	12
Bratton (Buckley) ⁿ	--	--	--	--	2,732	50

^aRounded to nearest full day.^bAppointment ended Nov. 1983.^cAppointment ended Oct. 1983.^dAppointed Dec. 1983.^eEmployed from Nov. 1982 to Nov. 1983.^fEmployment ended Feb. 1984.^gEmployed May 1984.^hEmployed April 1984.ⁱEmployed from May 1984 to May 1985.^jEmployed from May 1984 to Sept. 1985.^kEmployed from Nov. 1984 to Sept. 1985.^lEmployed from Aug. 1984 to May 1985.^mEmployed May 1985.ⁿEmployed Oct. 1984.

Missing Salary Vouchers and
Variances Between Salary
Vouchers and Office of
Management Records

We found instances where there were no vouchers in the files to support salaries paid to the Commissioners' Special Assistants.¹ We also found instances where substantial variances existed between total days worked by Special Assistants, as reported on their salary vouchers, and the Office of Management's records of salary paid. Variances between these documents also existed for some of the Commissioners.

There were no fiscal year 1983 salary vouchers in the files for Special Assistants Edwards, Brown, and Garza. Similarly, there were no fiscal year 1984 salary vouchers in the files for Special Assistants Brown, Garza, and Van de Weighe. We brought this matter to the attention of the Assistant Staff Director for Administration, and he could not account for the missing salary vouchers.

For fiscal year 1985, salary vouchers were in the files for the Special Assistants, but there were substantial variances between the total days worked shown on the vouchers and the Office of Management salary payment records. We also noted variances for four of the eight Commissioners. The variances are shown in table VI.2.

The Commission has no administrative instruction covering the procedures to be used by the Commissioners and their Special Assistants in preparing their salary vouchers. According to the Assistant Staff Director for Administration, the same instruction that applies to experts and consultants also applies to the Commissioners and their Special Assistants. This instruction requires that the following information be included on the salary vouchers:

- the project code, when possible, for activities performed,
- the date(s) of services performed,
- a brief description of the services performed, and
- the number of hours worked for each project.

¹Unlike the other Special Assistants, who have intermittent appointments, Special Assistant Arredondo is a part-time Schedule C employee. As such, she is not required to submit salary vouchers.

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Table VI.2
Variances in Reported Days Worked and
Salary Payments for Commissioners and Special Assistants
Fiscal Year 1985

	<u>Days Worked</u>		
	<u>Office of Management</u> <u>payment records</u>	<u>Salary</u> <u>vouchers</u>	<u>Variances</u>
<u>Commissioners</u>			
Pendleton	240	240	0
Abram	41	45	4
Berry	50	50	0
Buckley	69	73	4
Bunzel	103	79	24
Destro	76	74	2
Guess	59	59	0
Ramirez	26	26	0
<u>Special Assistants</u>			
Bratton	50	57	7
Bryant	137	93	44
Edwards	99	105	6
Ferrone	19	21	2
Novell	239	240	1
Stuart	90	74	16
Wolf	11	11	0
Van de Weighe	5	8	3
Lawrence	12	84	72

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...The instruction also requires the signature of the individual submitting the salary voucher and the signature of the authorized approving official before any time card documents are sent to the payroll office for payment.

During our review of the salary vouchers, we noted several instances of noncompliance with this instruction. Some individuals either used a form which did not provide space for stating the nature of the services performed or used the proper form but did not state the nature of their duties. We also found a few instances where the vouchers were not signed by the claimant or the approving official. Moreover, in discussing the variances noted above, the Assistant Staff Director for Administration told us that changes were often made to payroll documentation based on telephone conversations rather than requiring the claimants to submit new or revised salary vouchers.

The Assistant Staff Director for Administration agreed that stricter enforcement of the instruction is needed to improve accountability. Accordingly, he said he had discussed this matter with the Commission's Staff Director and plans to prepare a memorandum describing the problem and suggesting corrective action.

Nature of Work Performed by
Commissioners and Special
Assistants

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The nature of the work performed by the Commissioners and their Special Assistants as reported on their salary vouchers fell into five broad categories. These categories included:

- reading and commenting,
- speech preparation/correspondence,
- time in transit,
- meetings and speeches, and
- other.

Table VI.3 shows the proportion of time, as indicated by available salary vouchers, that each Commissioner and Special Assistant spent on each of these categories during fiscal year 1985. There are, however, several qualifications to our computations of their work as reported on salary vouchers. In some instances, the total time for a day was charged to several categories. In those cases, we divided the time evenly among the categories. However, when the individual was in transit and charged time to both transit and other categories, we allocated all such time to transit. Four Special Assistants (Edwards, Van de Weighe, Stuart, and Bratton) submitted salary vouchers but did not note the nature of their work. Also, according to the Assistant Staff Director for Administration, one Special Assistant (Arredondo) worked a consistent 64 hours each

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bi-weekly pay period, and her timesheets did not indicate the nature of the work performed. Therefore, we could not include these five Special Assistants in our analysis. Finally, as previously stated, there were missing salary vouchers for both Commissioners and Special Assistants. The Commission staff could not account for such vouchers.

TABLE VI.3
Nature of Work Reported by
Commissioners and Special Assistants
Fiscal Year 1985

	<u>Reading</u> <u>and</u> <u>comment-</u> <u>ing</u>	<u>Speech</u> <u>prep./</u> <u>corres-</u> <u>pondence</u>	<u>Time in</u> <u>transit</u> ^a	<u>Meetings</u> <u>and</u> <u>speeches</u>	<u>Other</u> ^b
	(percentages)				
<u>Commissioners</u>					
Pendelton	12	19	31	26	12
Abram	17	6	43	19	15
Berry	94	0	3	3	0
Buckley	41	1	28	20	10
Bunzel	48	2	23	18	9
Destro	15	16	10	53	6
Guess	76	2	9	4	9
Ramirez	19	0	18	8	55
<u>Special Assistants</u>					
Novell	9	59	15	15	2
Bryant	72	2	0	0	26
Ferrone	1	46	6	2	45
Lawrence	0	45	0	5	50
Wolf	18	0	12	29	41

^aIncludes travel to and from Commission meetings as well as other Commission-related travel. All Commissioners other than Berry and Destro live outside the Washington, D.C. area.

^bOther includes such functions as media interviews, press conferences, research, and scheduling.

Reported Work is Consistent
with Special Assistants'
Position Descriptions

We reviewed the position descriptions for the Special Assistants to the Commissioners and the Special Assistant to the Chairman to compare the duties described with the work reported on the Special Assistants' billings that were available for

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fiscal year 1985. We found that the nature of the work reported by five Special Assistants, including the Special Assistant to the Chairman, (the only Special Assistants for whom salary vouchers showing the nature of their work were available) to be generally in line with the duties set forth in their position descriptions.

According to their position descriptions, Special Assistants to Commissioners are to consult with Commission staff, locate and acquire documentation, and make recommendations to the Commissioners. They are also required to draft letters and speeches and make arrangements for their Commissioners' attendance at meetings, hearings, consultations, and appearances before congressional committees. The Special Assistants are responsible for ensuring that all administrative documents such as time cards, travel vouchers, and requests for reimbursement are submitted and processed expeditiously. Also, they are required to prepare replies, for the Commissioners' signature, to inquiries concerning matters related to Commission programs and projects.

Work performed by the Special Assistants to the Commissioners, to the extent that four of them described it on their salary vouchers, included such tasks as:

- contacting and meeting with Commission staff;
- reading, commenting, and conducting research;
- attending Commission meetings, hearings, etc.;
- preparing correspondence, statements and other materials;
- filing, organizing, making travel arrangements, and preparing time records; and
- reviewing state advisory committee reports, case summaries, etc.

According to her position description, the Special Assistant to the Chairman is to conduct research into current civil rights, equal protection, and administration of justice issues and advise the Chairman on those matters that may be appropriate for discussion by the Commissioners. She is also to develop data for the Chairman in support of, or opposition to, proposed Commission policy, programs, or projects. In addition, the incumbent is to consult, as necessary, with Commission staff, representatives of other federal agencies and with representatives of civil rights groups to obtain various types of information. She is to draft correspondence and speeches, based on her knowledge of the Chairman's position on various issues, and to coordinate plans for his speaking engagements. She is to review written material and documents related to Commission hearings, consultations, studies, etc. and

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advise the Chairman as to recommended positions, modifications, etc. Finally, she may recommend additions, deletions or other changes to the agenda for meetings of the Commissioners.

Work performed by the Special Assistant to the Chairman, to the extent that it was described on her salary vouchers, included such tasks as:

- conducting meetings with Commission staff and staff from other agencies;
- traveling in support of the Chairman;
- preparing speeches, correspondence and other material;
- attending Commission meetings, state advisory committee meetings, hearings, meetings with civil rights groups and meetings with media representatives;
- performing miscellaneous press work;
- scheduling the Chairman's time; and
- reading, commenting, and conducting research.

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COMMISSIONERS' AND SPECIAL
ASSISTANTS' FINANCIAL
DISCLOSURE REPORTS

The question was raised as to how the Chairman of the Commission and his Special Assistant could receive almost full-time compensation from the Commission and also be employed elsewhere.

We were requested to examine the Commissioners' and Special Assistants' financial disclosure reports to determine what portion of their total income was derived from the Commission.

Requirements for filing public financial disclosure reports (SF 278) are set forth in 5 CFR 734. The purpose of these reports is to provide a means for high level¹ federal employees to disclose their personal financial interests and demonstrate that they are able to carry out their duties without compromising the public trust. The review of the information provided in these reports serves to deter conflicts of interest in the case of current employees and to identify potential conflicts of interest in the case of newcomers to government service. Statements of income, assets, and liabilities must be reported by the President and Vice President, presidential appointees, members of the Senior Executive Service, employees in confidential or policy making positions (Schedule C) and career employees in grade GS 16 and above including comparable officers in the uniformed and foreign services.

The regulations require each individual who performs the duties of his or her position or office for a period in excess of 60 days during any calendar year to file a financial disclosure report on or before May 15 of the succeeding year. Although these reports are to be reviewed within 60 days of the filing date, the individual filing the report is responsible for its accuracy, and the reports are not routinely audited to determine whether the disclosures are correct.²

¹Employees at lower levels (GS-13 to GS-15) also file reports, but they are not available to the public.

²Since 1983, the appointment of Commissioners has not been subject to Senate confirmation. As a result, copies of their financial disclosure reports are no longer required to be transmitted to the Director, Office of Government Ethics, OPM.

We did not attempt, as part of our review, to determine the completeness or accuracy of the financial disclosure reports filed by Commission officials. However, we noted that questions have been raised by the Small Business Administration about the amount of outside income of the Commission's Chairman and his Special Assistant from their participation in packaging Small Business Administration loans. The Small Business Administration was reviewing this matter at the time we completed our work.

We requested financial disclosure reports covering calendar years 1982, 1983, and 1984 for the 11 Commissioners and 12 Special Assistants who served at the Commission during fiscal years 1983 through 1985. Not all were required to file reports because of the 60-day criteria noted above. Table VII.1 shows the 5 Commissioners and 2 Special Assistants who filed at least one financial disclosure report during the 3-year period. Table VII.1 also shows the latest year for which a report was filed.

TABLE VII.1
COMMISSIONERS AND SPECIAL ASSISTANTS
FILING FINANCIAL DISCLOSURE REPORTS
1982-1984

<u>Commissioners</u>	<u>Calendar year^a</u>
Pendleton	1984
Abram	1982
Berry	1983
Bunzel	1984
Destro	1984
 <u>Special Assistants</u>	
Novell	1984
Edwards	1984

^aMost recent calendar year for which the individual was required to submit a financial disclosure report.

We examined the latest financial disclosure reports submitted by these seven individuals and compared their reported income from other sources to their Commission income to determine the proportion of their total income earned from the Commission.

There are limitations on using financial disclosure reports in this fashion. The reports do not provide a sound basis for determining the amount of income received outside the Commission. While salary and all other earned income must be

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reported exactly, dividends, rental income, interest income, capital gains, and income from trusts are stated in ranges which are often too large to be meaningful for estimating income. For example, the report calls for stating such incomes in ranges between \$15,000 and \$50,000; \$50,000 and \$100,000; and over \$100,000. Spousal income is also shown on the financial disclosure reports, but we did not include it in our computations. The financial disclosure reports are submitted on a calendar year basis while the Commissioners' and Special Assistants' Commission salaries are accumulated for budgetary purposes on a fiscal year basis. Thus, income from both sources covers a 12-month period but with a 3-month difference in the period covered. Additionally, honoraria are required to be reported only if they total more than \$100 individually.

With an awareness of the limitations cited above, we attempted to determine the proportion of these seven Commissioners' and Special Assistants' total income represented by their Commission salaries. The basis for such an analysis was non-Commission income reported in the calendar year covered by their most recently filed financial disclosure statement and their Commission salary for the comparable fiscal year. For example, if the latest financial disclosure report covered calendar year 1984, we compared it to fiscal year 1984 Commission salary. The only exception was for Commissioner Abram. We had to compare his 1982 financial disclosure report (his only report) to his fiscal year 1984 Commission salary (his first year as a Commissioner).

We found that none of the seven Commissioners or Special Assistants relied on their Commission salary as their sole source of income. Also, for none of the Commissioners was their Commission salary greater than 50 percent of their total reported income, even when the lower end of the range of reported outside income was used. Except for one Commissioner, whose Commission salary was minimal in relation to total income, individual Commissioners' salaries from the Commission ranged from 14 to 50 percent of their total incomes. One of the Special Assistant's Commission salary represented over 75 percent of total reported income while the other Special Assistant's salary represented less than 60 percent of total reported income.

We also analyzed the seven Commissioners' and Special Assistants' Commission salaries in comparison to their reported outside earned income, including salaries, honoraria, and partnership income. As was the case in the comparison above, one Commissioner's salary was minimal in relation to total earned income. The remaining Commissioners' salaries from the Commission ranged from 20 to 69 percent of their total earned income. For the two Special Assistants, their Commission salaries represented 82 and 100 percent, respectively, of their total earned income.

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COMMISSIONERS, SPECIAL ASSISTANTS,
STAFF DIRECTOR, AND OFFICE
OF GENERAL COUNSEL
TRAVEL

Commission travel was allegedly increasing in recent years, especially for the Commissioners and Special Assistants.

We were requested to (1) examine the travel vouchers for the Commissioners, Special Assistants, Staff Director, and Office of General Counsel staff to determine whether there were any overseas trips and whether any individuals traveled first class and (2) ascertain the policy for Commissioners' travel. We were also asked to compare the extent of travel for the Commissioners, Special Assistants, and Staff Director before and after the Commission was reconstituted in December 1983.

Total travel costs for the Commission for fiscal years 1982 through 1985 were about \$456,000, \$345,000, \$395,000, and \$503,000, respectively. We reviewed travel by the Commissioners, the Special Assistants, and the Staff Directors for these fiscal years. We also reviewed travel by the staff of the Commission's Office of General Counsel for this period.

Commissioners'
Travel Policy

Each Commissioner has a blanket travel authorization which covers all travel within the continental limits of the United States for a full fiscal year.

Commissioners and employees are required to abide by General Service Administration travel guidelines. For example, they are required to use contract fares whenever possible. When no such fares exist, they are required to use coach or the lowest fare available unless emergency or extenuating circumstances exist.

Fiscal Years 1982 Through 1985
Travel by Commissioners,
Special Assistants,
and Staff Directors

Travel by the Commissioners, Special Assistants, and Staff Directors was to attend or participate in such activities as Commission meetings, hearings, and conferences or to make speeches.

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The number and cost of trips taken by these individuals during fiscal years 1982 through 1985 are set forth in table VIII.1.¹ These statistics show that, while the number of trips taken by all of the Commissioners remained relatively constant, the cost of such trips increased during the period. Also, the number of Commissioners increased from 6 to 8 in fiscal year 1984 as a result of the U.S. Commission on Civil Rights Act of 1983. The statistics also show that the total number and cost of trips taken by the Staff Director were higher in fiscal years 1984 and 1985 than in fiscal years 1982 and 1983. The number and cost of trips taken by the current Chairman's Special Assistant increased steadily over the four years.

¹The number and cost of trips taken, as shown in table VIII.1, were obtained from the Commission's Office of Management files.

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TABLE VIII.1
COMMISSIONERS, SPECIAL ASSISTANTS, AND
STAFF DIRECTORS TRAVEL, FISCAL YEARS 1982 - 1985

	Fiscal years							
	1982		1983		1984		1985	
Commissioners	#	Amount	#	Amount	#	Amount	#	Amount
Flemming ^a	9	\$ 2,712	--	--	--	--	--	--
Pendleton	20	12,097	31	\$20,194	30	\$23,200	36	\$29,300
Smith ^b	9	4,826	12	5,565	1	510	--	--
Horn ^a	6	3,535	--	--	--	--	--	--
Ramirez	9	6,248	10	5,520	7	3,146	3	1,600
Berry	17	4,714	10	2,772	8	1,492	2	500
Saltzman ^c	12	2,596	13	1,834	1	103	--	--
Ruckelshaus ^d	6	3,797	5	3,408	--	--	--	--
Abram ^e	--	--	--	--	9	1,993	14	3,500
Bunzel ^e	--	--	--	--	8	9,958	11	17,200
Guess ^e	--	--	--	--	7	3,623	14	8,000
Buckley ^e	--	--	--	--	7	4,670	9	6,000
Destro ^e	--	--	--	--	7	2,643	4	1,500
Subtotal	<u>88</u>	<u>\$40,525</u>	<u>81</u>	<u>\$39,293</u>	<u>85</u>	<u>\$51,338</u>	<u>93</u>	<u>\$67,600</u>
Staff Directors								
Hope								
(acting) ^f	12	\$ 3,200	4	\$ 1,628	--	--	--	--
Chavez ^g	--	--	2	954	21	7,119	15	6,205
Green								
(acting) ^h	--	--	--	--	--	--	--	--
Subtotal	<u>12</u>	<u>\$ 3,200</u>	<u>6</u>	<u>\$ 2,582</u>	<u>21</u>	<u>\$ 7,119</u>	<u>15</u>	<u>\$ 6,205</u>
Special Assistants								
Novell	4	\$ 2,239	7	\$ 5,802	12	\$ 8,546	21	\$14,800
Wolf ⁱ	--	--	--	--	--	--	1	800
Ferrone ^j	--	--	--	--	--	--	1	300
Arredondo ^k	--	--	--	--	--	--	1	400
Bryant ^l	--	--	--	--	--	--	1	1,000
Bratton ^m	--	--	--	--	--	--	1	300
Subtotal	<u>4</u>	<u>\$ 2,239</u>	<u>7</u>	<u>\$ 5,802</u>	<u>12</u>	<u>\$ 8,546</u>	<u>26</u>	<u>\$17,600</u>
Total	<u>104</u>	<u>\$45,964</u>	<u>94</u>	<u>\$47,677</u>	<u>118</u>	<u>\$67,003</u>	<u>134</u>	<u>\$91,405</u>

^aAppointment ended April 1982.^bAppointment ended Nov. 1983.^cAppointment ended Oct. 1983.^dAppointment ended Nov. 1983.^eAppointed Dec. 1983.^fTenure ended Aug. 1983.^gEmployed Aug. 1983 and served to April 1985.^hServed as Acting Staff Director from April 1985 to Oct. 1985.ⁱEmployed from Nov. 1984

to Sept. 1985.

^jEmployed April 1984.^kEmployed May 1984.^lEmployed from May 1984 to Sept. 1985.^mEmployed Oct. 1984.

First Class and Overseas Travel

One Commissioner travels first class routinely. Such travel was approved by the Commission's Staff Director on December 27, 1983. The approval was based on a letter, dated December 12, 1983, to the Staff Director from a physician recommending that the Commissioner be permitted to travel first class for medical reasons.

With respect to overseas travel, the Staff Director visited Israel in January 1985 at the Commission's expense. The trip was made at the request of the Government of Israel and is the only instance of overseas travel paid by the Commission during fiscal years 1982 through 1985. The purpose of the trip, as stated on the travel authorization, was to discuss affirmative action and civil rights issues with Israeli officials.

We discussed Commission travel with General Services Administration (GSA) representatives who are responsible for reviewing vouchers submitted by Commission personnel for compliance with travel regulations.² These individuals were familiar with the routine first class travel by one of the Commissioners and the few other instances of first class travel and found such travel to be in compliance with regulations. The other instances of first class travel (3 over the 4-year period) were attributed to illness and unavailability of contract or coach fares. Moreover, we were advised by the GSA staff that Commission personnel, including the Commissioners, Special Assistants, and Staff Directors, have generally been in compliance with GSA travel regulations, and only small amounts have been disallowed on individual vouchers over the years.

Travel by Office of General Counsel Staff has Diminished

Travel by the Commission's Office of General Counsel staff has diminished substantially since fiscal year 1982. Office of Management records show that personnel assigned to General Counsel made 45 trips in fiscal year 1982, 4 trips in fiscal year 1983, 10 trips in fiscal year 1984, and 6 trips in fiscal year 1985. Also, they appeared to be much more heavily involved in preparing for hearings in the field and otherwise participating in projects in the field in fiscal year 1982 than in more recent fiscal years. Table VIII.2 shows the breakdown by fiscal year of trips devoted to mission-related projects as opposed to those trips taken to attend training and planning conferences or to make speeches or participate in panel discussions.

²The Commission has contracted with GSA for certain administrative services such as travel, payroll, and bill paying.

The mission-related trips taken by the Office of General Counsel for fiscal years 1982 to 1985 were to work on hearings projects. In fiscal year 1982, the Office of General Counsel's mission-oriented trips were almost all related to work on three hearings: the growth industries hearing project on opportunities and the participation of minorities and women in high technology industry, the Baltimore hearing project dealing with urban minority economic development, and the Miami hearing project concerning the isolation of minorities in urban centers. The only mission-oriented trip made by the General Counsel's staff in fiscal year 1983 was for work on the Baltimore hearing project. All 11 mission related trips made during fiscal year 1984 and 1985 were for work on the handicapped newborn infants hearing project, concerning the withholding of medical treatment from infants on the basis of actual or potential handicaps.

TABLE VIII.2
OFFICE OF GENERAL COUNSEL TRAVEL
FISCAL YEARS 1982 - 1985

<u>Fiscal year</u>	<u>Total trips</u>		<u>Purpose of trip</u>			
			<u>Training, speeches, planning, etc.</u>		<u>Work on mission related projects</u>	
			<u>Number</u>	<u>Amount</u>	<u>Number</u>	<u>Amount</u>
1982	45	\$39,847	9	\$4,187	36	\$35,660
1983	4	1,253	3	1,234	1	19
1984	10	8,977	2	359	8	8,618
1985	6	3,097	3	1,889	3	1,208

Commission Travel Sometimes Paid for by Other Sources

During our review, we noted 45 instances where travel vouchers showed the Chairman's travel and/or lodging expenses were paid by "other sources" which were identified in 17 instances and not identified in 28 others. To a lesser extent, two other Commissioners (two instances) and three Commission employees (10 instances) had their travel expenses paid by outside sources. One of the Commissioners identified the source while the other Commissioner did not. In 8 of the 10 instances involving Commission employees, they did not identify the source.

Donations from private sources for official travel to conduct government business constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or the gift qualifies under

5 U.S.C. § 4111. Under 5 U.S.C. § 4111, enacted as part of the Government Employees Training Act, an employee may accept (1) contributions and awards incident to training in non-government facilities, or (2) payment of travel, subsistence, and other expenses incident to attendance at meetings, only if the donor qualifies as a non-profit, tax exempt organization under 26 U.S.C. § 501(c)(3). Regulations promulgated by the Office of Personnel Management at 5 CFR 410.701 et seq. require prior written authorization for acceptance of such travel expenses, including certification that any contribution, award, or payment is not a reward for services to the organization prior to the training or meeting and acceptance of any payment does not create an actual or apparent conflict.

The Office of Government Ethics has suggested certain procedures which it considers essential to protect both the agency and the individual traveler from accepting gifts which improperly augment the agency's appropriations. These procedures are listed below:

- "All offers of payment of official travel expenses must be approved in writing prior to acceptance."
- "If possible, all offers should be approved by the same office within an agency so as to provide consistency of interpretation of applicable statutes and regulations."
- "All agency personnel should be made aware that such offers must be approved by the appropriate office."
- "Travel orders should note specifically what expenses are being accepted by the traveling employee and under what authority."
- "The traveling official should never be placed in a position of approving the acceptance of his or her own travel expenses."
- "If possible, a record of all travel expenses accepted should be kept by the agency in a central file."

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the organizations which contributed to the Commissioners' and employees' travel qualified as non-profit tax exempt organizations under 26 U.S.C. § 501(c)(3), and all other requirements of CFR 410.701 et seq. were met, the Commission travelers had no authority to accept such payments. Such donations can also contribute a violation of 18 U.S.C. § 209, which deals with salary payments, but the Civil Rights Commissioners are exempt from the operation of that provision.

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We asked the Commission's Solicitor, who is also the Commission's designated ethics official, what procedures were in effect to insure that the acceptance of travel expenses was not an improper augmentation of the agency's appropriation. He said that the Commission has no procedures (or files) on this matter, and he relies on the traveler's knowledge of the law to insure that donor organizations are non-profit, tax exempt institutions as described by 26 U.S.C. § 501 (c)(3).

We also asked GSA officials whether they had included this issue in their review of Commission travel vouchers. They advised us that they had not. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur.

We requested from the Commission on February 6, 1986, the exact name and state of incorporation for the 57 instances where sources other than the Commission paid travel expenses for Commission employees or where such sources were not identified. The exact name and state of incorporation of the sources are needed to determine if the organizations qualify as non-profit, tax exempt institutions as described by 26 U.S.C. § 501(c)(3). By February 27, 1986, the Assistant Staff Director for Administration had provided us with information identifying the sources other than the Commission and the states of incorporation for most of them. Our review of this information shows that some of the outside sources should not have paid these expenses. These include such sources as an oil company, television networks, and political organizations.

FISCAL YEAR 1985
APPROPRIATION EARMARKS

Concern was expressed that the Commission may have violated the congressionally-imposed earmarks to its fiscal year 1985 appropriation.

We were requested to examine the allocation of overhead among the various budget activities which were earmarked and to determine the method of allocation, including whether a standard formula existed for each budget activity.

The original fiscal year 1985 appropriation for the Commission totaled \$12,747,000. The Congress "earmarked" the appropriation among seven budget activities. These "earmarks" had the effect of establishing separate appropriations for each of the activities. Any obligations exceeding the amount appropriated for any of the seven budget activities would violate the Anti-Deficiency Act.

The Anti-Deficiency Act provides that no officer or employee of the United States shall make or authorize any obligation or expenditure in excess of the amount available in the applicable appropriation (31 U.S.C. §1314(a)(1)(A)). Section 1351 of the Act requires that all violations of section 1341(a)(1)(A) to be reported by the agency immediately to the President, through the Director of the Office of Management and Budget, and to the Congress. The reports are required to contain the facts of the violation and a statement of the disciplinary action taken. If a deficiency appropriation is necessary to liquidate an over obligation, a request for such an appropriation would be part of the report.

Shifting Within the Earmarks

The Commission was successful in securing congressional approval of a change to its appropriation earmarks in fiscal year 1985. In August 1985, part of the funding for three budget activities (Publications Preparation and Dissemination, Federal Evaluation, and the Clearinghouse Library) totaling \$421,000 was shifted to the budget activity for Hearings, Legal Analysis, and Legal Services. In addition, an August 1985 supplemental appropriation to cover employee pay raises increased the Commission's total appropriation by \$122,000 to \$12,869,000. Table IX.1 traces the effects of these changes on each budget activity.

The Commission's seven budget activities involve nine program offices. The Office of Research and the program functions of the Office of Programs and Policy are funded by the Reports, Studies, and Program Monitoring budget activity. The Office of General Counsel and the Solicitor's Unit are funded by the Hearings, Legal Analysis, and Legal Services budget activity. The Office of Regional Programs, including the 10 regional offices, makes up the Field Operations budget activity. The Publications Management Division of the Office of Management is funded by the Publications Preparation and Dissemination budget activity. The Office of Federal Civil Rights Evaluation is funded by the Federal Evaluation budget activity. The Office of Congressional and Public Affairs is funded by the Liaison and Information Dissemination budget activity. The National Clearinghouse Library is funded by the Clearinghouse Library budget activity.

Other units of the Commission are included in overhead costs which are allocated to the seven budget activities on the basis of salary costs¹ incurred by the offices covered by each activity. These units include the Commissioners, the policy functions of the Office of Programs and Policy, the Office of Management, the Offices of the Staff Director and Deputy Staff Director, the Equal Employment Opportunity Unit, and the Planning and Coordination Unit.

The Commission's determination of program costs and overhead allocated to the seven budget activities for fiscal year 1985 are shown in table IX.2.

¹Includes the salaries of full time permanent employees and other staff such as temporary and part-time employees, and consultants. It does not include overtime and awards.

Table IX.1
The Commission's Fiscal Year 1985
Earmarked Appropriation

<u>Budget activity</u>	<u>Original earmark</u>	<u>Revised per Commission request</u>	<u>Revised for pay increases</u>
Reports, Studies, and Program Monitoring	\$ 2,299,000	\$ 2,299,000	\$ 2,320,000
Hearings, Legal Analysis, and Legal Services	1,642,000	2,063,000	2,083,000
Field Operations	4,999,000	4,999,000	5,047,000
Publications Preparation and Dissemination	831,000	747,000	753,000
Federal Evaluation	1,217,000	1,011,000	1,022,000
Liaison and Information Dissemination	1,231,000	1,231,000	1,244,000
Clearinghouse Library	528,000	397,000	400,000
Total	<u>\$12,747,000</u>	<u>\$12,747,000</u>	<u>\$12,869,000</u>

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Table IX.2
Program Costs and Overhead Allocated to Budget Activities
Fiscal Year 1985

	<u>Program costs</u>	<u>Overhead</u>	<u>Total obligations</u>
Reports, Studies, and Program Monitoring	\$1,354,000	\$ 878,000	\$ 2,232,000
Hearings, Legal Analysis, and Legal Services	1,146,000	825,000	1,971,000
Field Operations	3,013,000	2,034,000	5,047,000
Publications Preparation and Dissemination	467,000	282,000	749,000
Federal Evaluation	563,000	430,000	993,000
Liaison and Information Dissemination	717,000	497,000	1,214,000
Clearinghouse Library	<u>259,000</u>	<u>141,000</u>	<u>400,000</u>
Total	<u>\$7,519,000</u>	<u>\$5,087,000</u>	<u>\$12,606,000</u>

Third Hearing in Fiscal Year 1985

The Commission, in its narrative justification for shifting funds to the Hearings, Legal Analysis, and Legal Services budget activity made the following statement in March 1985 during hearings before a House Appropriations Subcommittee:

"The Commission proposes to hold a hearing, a combination hearing/consultation and to begin field work for a third hearing this fiscal year. This compares to earlier plans to hold two hearings."

In responding to a question raised during this hearing by the Subcommittee Chairman, the Commission's Staff Director said that the Commission planned to actually conduct three hearings in fiscal year 1985 in contrast to the above statement indicating that only field work would be started during the year on the third hearing.

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In recommending approval of the change in the budget earmarks, the House Appropriations Committee's report on the 1985 supplemental appropriations bill (99-142) stated that "The proposed language changes will enable the Commission to adopt its program to include a third hearing for fiscal year 1985 beyond the two hearings provided for by the fiscal year 1985 Appropriations Act."

Only two hearings were held during fiscal year 1985. They included a consultation/hearing on affirmative action in March 1985 and a hearing on handicapped newborn infants in June 1985. The third, a consultation/hearing on housing discrimination, was not held until November 1985. Therefore, we requested in late November 1985 a breakdown from the Commission showing how the \$421,000 transferred into the Hearings, Legal Analysis, and Legal Services budget activity had been spent.

After repeated requests for the information, on February 11, 1986, the Commission's Assistant Staff Director for Administration and the Budget Officer provided us with an explanation of how the \$421,000 was spent. They said that \$83,000 was charged to salaries and benefits of General Counsel staff who worked on preparing for the housing discrimination consultation/hearing and an additional \$226,000 was spent elsewhere within the hearings budget activity. According to the Commission officials, \$51,000 of the \$226,000 was for overhead attributable to the budget activity, and \$175,000 was spent on various other, unidentifiable, program activities. The Commission officials told us the remaining \$112,000 was returned to the Treasury, the difference between the hearings budget activity's earmarked appropriation and the final obligation amount.

The \$83,000 charged to the housing consultation/hearing project in fiscal year 1985 was derived as follows. The original charges to the housing project based on the monthly time charge reports prepared by the General Counsel staff involved were 313.5 staff days with a total cost of \$47,500. In January 1986, the Assistant Staff Director for Administration requested the General Counsel to review the time charges for the project to determine if they were understated. The General Counsel reported, after his review, that he found some inaccuracies in the amount of time allocated to the project. On February 11, 1986, he increased the time charges for himself, his deputy, and 7 other employees by 153.5 days so that the total time charged equalled 467 days costing \$83,000. Four of these employees, including the General Counsel, had not initially charged any time to the project.

According to the General Counsel, his revisions were based on discussions with the five staff members who worked on the project and were still employed by the Commission and his knowledge of what the three staff members who had left the Commission were working on at the time. We interviewed the five General Counsel staff whose time charges were revised by the General Counsel and who were still employed by the Commission. One of these was the Deputy General Counsel. He said the changes to his time charges were appropriate. Only one of the four others agreed that the changes made were appropriate. Another said he had been told by the General Counsel that time charges were being changed, but he did not agree with the changes that were made to his time charges. The two others said that the General Counsel had not discussed the changes to their time charges with them and that the changes were not correct.

The project account code for the housing project which was the basis for time charges was assigned on July 22, 1985. On the original time charges for the project, there were no charges before July. According to the General Counsel, work was performed on the project before the approval of the project account code, but time was not charged to the project because no code existed. His revisions showed a total of 75.5 days for 7 employees charged to the project from February to June 1985. According to the project director, he delayed requesting a project code until final decisions were made by the Staff Director on topics for the hearing and the project's staffing. He requested a project account code on July 19, 1985. The project director told us that 75.5 staff days for 7 staff from February to June 1985 appeared high and he was unaware of that many people working on the project at that time. He acknowledged that some staff work was performed before July, but said only one staff member did substantial work.

Revised time charges for the General Counsel and the Deputy General Counsel accounted for about two-thirds of the 153.5 additional days charged to the housing project. These two individuals originally had no time charges to the project. According to the General Counsel, who was appointed to his position in May 1985, he was not aware that monthly time account reports were required until he was requested to review the time charges by the Assistant Staff Director for Administration in January 1986. He said that both he and his deputy had not been asked what projects they spent their time on by the General Counsel employee who initially prepared the reports.

Year-end Reconciliation

We attempted to determine whether the Commission's allocation of costs during the year-end closing was consistent with the treatment of such costs at the time the budget was submitted to the Congress. However, we found that data on how the fiscal year 1985 budget was constructed was practically non-existent. After repeated requests for documentation, the Commission provided us on February 19, 1986, with a summary of agency expenditures by budget activity for the first month of fiscal year 1985 which also showed the allocation by budget activity of the fiscal year 1985 total budget authority.

We are concerned about the manner in which printing costs were treated in the Commission accounts. At the year-end closing the Commission treated printing costs (\$240,000) as an overhead item to be allocated to the seven budget activities. However, the summary of agency expenditures document noted above showed estimated printing cost as a direct charge to the Publications Management Division, the only program office included in the Publications Preparation and Dissemination budget activity. Also, the Commission's justification for transferring \$84,000 from the Publications Preparation and Dissemination budget activity to Hearings, Legal Analysis, and Legal Services when the earmarks were revised suggests that the Commission had originally anticipated that printing costs would be covered by the Publications Preparation and Dissemination budget activity. The justification, which was forwarded to the Director of the Office of Management and Budget on November 7, 1984, was as follows:

"Because of the restructuring of the Commission in November 1983, most of the projects presently underway were started in the latter part of fiscal year 1984. This will result in fewer reports reaching the editing and printing stage in fiscal year 1985. The savings from not filling one position and from lower printing costs would be transferred to Activity II [Hearings, Legal Analysis, and Legal Services]." (Underlining added for emphasis)

A similar statement was placed in the record during hearings before the Appropriations Subcommittee on March 7, 1985.

If printing costs had been treated as a direct charge to Publications Preparation and Dissemination during the calculation of final obligations, the total charges to this activity would have been about \$976,000 or about \$223,000 over the \$753,000 earmarked.

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As noted above, there are indications that the justification for the transfer of \$84,000, as well as the Commission's fiscal year 1985 budget submission, treated printing costs as a direct charge to the Publications Preparation and Dissemination budget activity. However, the Budget Appendix for fiscal year 1985, which contained the agency's description of the work it intended to perform, suggests that printing costs may not have been considered as a direct charge. The Appendix contains the following explanation of the work to be performed in the Publications Preparation and Dissemination activity: "Commission publications are edited, illustrated, processed, and prepared for printing. Publications are distributed to those who implement the laws and policies, as well as to the general public." (Emphasis added). The use of the phrase "prepared for printing" rather than "printing costs" casts some doubt on whether the Commission intended to treat all printing costs as a direct charge to the Publications activity. We noted that the Commission's Budget Appendices for fiscal years 1984 and 1986 each contained the same description of the Publications Preparation and Dissemination budget activity as quoted above.

We discussed the printing cost issue with the Commission's current Budget Officer and her staff. She was not employed at the Commission at the time the fiscal year 1985 budget was constructed. A staff member, who worked on the budget submission, said printing costs were included as a direct charge to the Publications budget activity. However, the Budget Officer informed us that the issue had been discussed among Commission officials in June 1985 and that they had decided that the cost of printing should be included in overhead because (1) the printing function served the entire organization, (2) the cost of printing had been included in overhead previously, and (3) treatment of printing as overhead would permit the Commission to stay within its earmarks.

The Anti-Deficiency Act does not require that an agency follow its original budget estimates unless these estimates are specified in or incorporated by references in the appropriation act itself. The appropriation act did not specify where printing costs were to be charged. Thus, the Commission was under no legal obligation to follow its original budget submission. Furthermore, it is not clear whether Congress intended to include printing costs in the Publications Preparation and Dissemination budget activity. The earmarks do

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not describe the activities included under the heading "Publications Preparation and Dissemination." Where more than one of the budget activities earmarked may reasonably be construed as available for an expenditure not specifically mentioned under any of the activities, the determination of the agency as to which of the activities to use is presumed to be reasonable so long as the agency is consistent in charging that activity. In this instance, a reasonable basis exists for treating printing costs, which serve the needs of the entire organization, as part of overhead, and of allocating the overhead costs among the seven budget activities. Therefore, we cannot conclude that any violation of the Anti-Deficiency Act occurred.

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LOBBYING ISSUES

On July 29, 1985, the Commission's Chairman sent letters to four Members of Congress in which he expressed his views on an amendment to H.R. 2068, the Foreign Relations Authorization Act for fiscal years 1986 and 1987. According to the Chairman, the amendment would require the imposition of racial, sexual, and ethnic quotas in the State Department's hiring of foreign service officers. He stated that the amendment violated the policy of the Civil Rights Commission, as expressed in a policy statement adopted in January 1984.

As requested, we inquired into whether (1) the Chairman's actions violated any federal anti-lobbying restrictions; (2) the Commission had, in fact, taken the position cited by the Chairman either by virtue of staff findings or as a result of a formal Commission vote; and (3) the Chairman issued statements prior to the Commission taking a position on an issue.

Restrictions on lobbying by Government officials to support or oppose pending legislation are of two types -- restrictions in appropriation acts and criminal provisions. Many annual appropriations acts contain restrictions on the use of federal funds for lobbying activities. The Civil Rights Commission's fiscal year 1985 appropriation act did not contain such a restriction, but even if the restriction had been included, we do not believe it would have prohibited the Chairman from writing letters to Members of Congress in an attempt to directly influence the amendment in question. In interpreting such restrictions, we have recognized that every federal agency has a legitimate interest in communication with the public and with Congress regarding its policies and activities. We also reviewed the writing of these letters in light of the criminal provisions, 18 U.S.C. §1913, Lobbying With Appropriated Moneys, and found no conflict with those provisions.

The second question the requesters asked was if the Chairman's statements in his July 29, 1985, letters reflected an official position of the Civil Rights Commission on the subject of the bill amendment. The Chairman interpreted the amendment as calling for quotas. The Commission adopted a policy statement against quotas in January 1984 by a 6-2 vote. The policy statement, whose specific purpose was to deplore the city of Detroit's use of a racial quota in its promotions of police sergeants to lieutenants, also states a more general criticism of what it considers racially preferential employment techniques, citing quotas as an example, in both promotions and hiring, but does not mention goals. There is some question;

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however, as to whether the bill amendment was referring to goals or quotas. To our knowledge, the Commission has not taken an official position on whether goals should be regarded as quotas. The Chairman, however, considers goals and quotas to be more alike than different and uses them in the same context. We concluded, therefore, that the anti-lobbying statutes would not prohibit the Chairman of the Commission, as its spokesman, from expressing views on matters where the agency has not previously taken an official position.

Speeches

We requested and obtained copies of written speeches given by the Commissioners from fiscal year 1983 to 1985. All speeches given were not in writing. Upon reviewing all of the written speeches, we found that the Chairman made the following statement in a prepared speech he delivered at least ten times to audiences in various parts of the country from March to July 1985.

"I FEEL COMPELLED AT THIS POINT TO APPEAL TO EACH OF YOU TO ATTEMPT TO DEFEAT THE CIVIL RIGHTS RESTORATION ACT OF 1985. IT IS PROBABLY THE BROADEST INTERPRETATION OF THE CIVIL RIGHTS ACT OF 1964 EVER IMAGINED. THE BILLS BOTH H.R. 700 AND S. 272 WOULD RESULT IN A MASSIVE FEDERAL INTRUSION INTO BOTH STATE AND LOCAL GOVERNMENT AND THE PRIVATE SECTOR BY EXPANDING THE DEFINITION OF PROGRAM OR ACTIVITY COVERED BY FEDERAL AID AND BY EXPANDING THE AUTHORITY OF A FEDERAL AGENCY TO TERMINATE FEDERAL FUNDS. THE OPEN ENDED NATURE OF THE LEGISLATION AMOUNTS TO AN OPEN INVITATION TO THE FEDERAL GOVERNMENT TO EXTEND ITS REACH VIRTUALLY WITHOUT LIMIT THROUGHOUT AMERICAN SOCIETY AND FOR FEDERAL REGULATORS, PRIVATE LITIGANTS, AND FEDERAL JUDGES TO WORK THEIR WILL IN PLACES THEY HAVE NEVER BEEN BEFORE."

The statement above reflects the official views of the Civil Rights Commission as stated in a Commission policy statement dated March 5, 1985, and in testimony of the Chairman and the former Staff Director of the Commission before the Committees on Judiciary and Education and Labor on April 2, 1985. Although it reflects official Commission policy, the statement raises a matter of concern under the penal statute 18 U.S.C. §1913, Lobbying With Appropriated Moneys. While the Chairman stopped short of explicitly requesting members of the public to contact their elected representatives, the context of the speech makes it clear that the listener is being urged to do so. The statement appears to represent the type of remarks the restrictions on lobbying by government officials attempt to limit.

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The statute reads as follows: -

"No part of the money appropriated by any enactment of the Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than \$500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

The above statute contains fine and imprisonment provisions, and its enforcement is the responsibility of the Department of Justice. To our knowledge, there has never been a prosecution under this statute. Moreover, a review of the case law indicates that only a few federal court decisions have cited the statute.

STATE ADVISORY COMMITTEES

A number of issues were raised concerning the state advisory committees. These included allegations that (1) the Commission headquarters staff was excessively involved in the 1985 committee rechartering process, particularly the nomination of committee members and chairs (2) the committees did not meet the membership criteria cited in Commission regulations; (3) few committee reports were issued and many reports were held up in the Staff Director's office; and (4) the committees were not seeking input from regional offices as they had done in the past.

We were requested to (1) examine the rechartering of the state advisory committees in 1985 and whether they met the standards of diverse membership set forth in Commission regulations, (2) determine the extent to which committee reports have been printed and released to the public and whether reports are still awaiting review by the Staff Director, and (3) determine whether the role of the committees has changed, including whether regional offices are allowed to provide assistance to the committees.

The state advisory committees, as well as the regional staff, are the "eyes and ears" of the Commission in the states and the District of Columbia. According to Commission regulations (45 CFR 703), the committees advise the Commission on matters relating to alleged deprivation of the right to vote or the denial of equal protection of the laws under the constitution, advise the Commission on matters of mutual concern, receive input from those within the state regarding inquiries conducted by the committee, initiate and forward advice and recommendations to the Commission on those matters they have studied, and assist the Commission with its clearinghouse function of compiling and distributing information to interested persons on such areas as minorities' and women's civil rights, aging, and the handicapped. Generally, each committee is limited to matters within its state. The Commission's 10 regional offices provide support services to the committees in addition to performing other regional functions of the Commission.

According to the Commission, costs related to committee activities for fiscal years 1983, 1984, and 1985 were \$2.2, \$1.6, and \$2.0 million, respectively. These costs include the committee members' travel and per diem and regional staff travel, per diem, and salaries associated with committee activities, and other costs such as meeting space and court reporters. Committee members do not receive compensation for their services.

Committees' Makeup and Selection Process

Commission regulations (45 CFR 703.5) and the Federal Advisory Committee Act (P.L. 92-463) provide general guidance on the makeup of the state advisory committees. There are committees in each of the 50 states plus the District of Columbia. The act stipulates that committee membership for all federal advisory committees should be fairly balanced in terms of the points of views represented and the functions to be performed. The Commission regulations also require committee membership to be reflective of the ethnic, racial, and religious composition of each state as well as representative with respect to sex, political affiliation, age, and handicap status.

Before the 1985 rechartering¹ of the Commission's state advisory committees, the Commissioners had selected committee members based mainly on recommendations from the Commission's regional offices. According to the Assistant Staff Director for Regional Programs, recommendations were made by regional directors, committee chairpersons, and individual Commissioners, but the majority came from the regional directors. Regional directors and their staff in four regional offices that we interviewed agreed that the recommendation of committee members was largely determined by the regional offices; and those recommendations were nearly always accepted by the Commissioners. One regional director said prospective new members were interviewed by regional staff before being recommended and a principal criterion used in selecting nominees was a fair representation of minority groups. Another regional director told us that committee chairpersons and regional directors agreed on nominees before they were recommended to headquarters. For the 1985 rechartering, the regions continued to make their recommendations, however, headquarters' officials controlled the nominating process.

Commission regulations state that each state advisory committee shall consist of at least 11 members; however, exceptions may be made by the Commissioners in special circumstances. Before 1985, the size of the committees varied, ranging from 11 to 33 members per state. The recommended committee size in the past, per Commission guidelines, was 11 members plus 1 additional member for each million of population

¹In accordance with the Federal Advisory Committee Act, advisory committees are generally chartered for a 2-year period and must be rechartered to carry on their duties. The Commission's 1985 rechartering occurred between January and May 1985 and its previous chartering occurred between December 1981 and December 1983.

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in a state. Thus, states such as Rhode Island and Delaware had the minimum number of members, and New York and California had the largest numbers.

In March 1984, the Commissioners approved the Staff Director's recommendation that committee membership in each state be set at 11. According to the Staff Director, there appeared to be no strong justification to tie the size of the committees to population and larger sizes were too costly. She also noted that existing guidelines relating to diversity of membership could be met with the 11-member limitation. Smaller committees, according to the Staff Director, had better attendance at their meetings and had greater member involvement in program activities. She acknowledged at the March 1984 Commission meeting that the committees could ask for an exemption to exceed the 11-member limitation.

The state advisory committees were rechartered and their members were approved in Commission meetings during the period of January through May 1985. All committees and their members were approved with the exception of the District of Columbia. That committee has yet to be rechartered.

According to the Assistant Staff Director for Regional Programs, the 1985 advisory committee rechartering process began in October 1984. The regional directors submitted the recharter packages, including the recommended committee members, to headquarters through the Commission's Office of Regional Programs. The 561 committee members recommended by the regional directors (11 members, including a recommended chairperson, for each the 51 committees) included nominations of some of those already serving on the committees plus some new individuals. However, the Staff Director and the Assistant Staff Director for Programs and Policy recommended 280 new committee members as substitutes for 280 of the regional nominees. These two headquarters officials also nominated a number of committee members that had been nominated by the regional directors.

Furthermore, the two headquarters officials nominated different chairpersons for 47 of the 50 committees. According to the Assistant Staff Director for Regional Programs, the committee chairpersons have more influence than the other committee members. The chairpersons generally set the agenda for committee meetings, attend conferences such as the Annual State Advisory Committee Chairmen's Conference, and have a network among themselves and Commission officials in headquarters.

The Staff Director and Assistant Staff Director for Programs and Policy recommended as many as eight names to each advisory committee. The Staff Director, through the Assistant Staff Director for Regional Programs, then told the regional directors to recommend the remaining nominees from the standpoint of improving committee balance. The Assistant Staff Director for Regional Programs advised the Assistant Staff Director for Programs and Policy that it would be difficult if not impossible to do for some of the committees. The regional directors resubmitted the rechartering packages incorporating the Staff Director's and the Assistant Staff Director for Programs and Policy's recommendations.

Table XI.1 shows the source of the recommendations by state of the committee members approved by the Commissioners. Those nominations by the Staff Director and the Assistant Director for Programs and Policy that were also nominated by the regional directors are counted in the regional column. The Washington, D.C. committee nominees are not included because they had not been forwarded to the Commissioners as of January 24, 1986.

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Table XI.1
Source of State Advisory Committee Members
Recommendations for the 1985 Rechartering
by State

<u>State</u>	<u>Source of Recommendations</u>	
	<u>Staff Director and</u> <u>Assistant Staff Director</u> <u>Programs and Policy</u>	<u>Regional</u> <u>directors</u>
Alabama	5	6
Alaska	4	7
Arizona	6	5
Arkansas	6	5
California	7	4
Colorado	7	4
Connecticut	8	3
Delaware	6	5
Florida	7	4
Georgia	4	7
Hawaii	1	10
Idaho	4	7
Illinois	5	6
Indiana	6	5
Iowa	6	5
Kansas	6	5
Kentucky	5	6
Louisiana	8	3
Maine	4	7
Maryland	6	5
Massachusetts	8	3
Michigan	9	2
Minnesota	5	6
Mississippi	4	7
Missouri	5	6
Montana	4	7
Nebraska	4	7
Nevada	5	6
New Hampshire	5	6
New Jersey	8	3
New Mexico	4	7
New York	8	3
North Carolina	5	6
North Dakota	0	11
Ohio	6	5
Oklahoma	7	4
Oregon	6	5
Pennsylvania	7	4
Rhode Island	3	8
South Carolina	2	9
South Dakota	7	4
Tennessee	6	5
Texas	6	5
Utah	8	3
Vermont	6	5
Virginia	8	3
Washington	7	4
West Virginia	7	4
Wisconsin	6	5
Wyoming	3	8
Total	<u>280</u>	<u>276</u>

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We discussed the new committees' composition with four regional office directors and their staffs. They were equally divided as to whether the new committee members met the criteria of representing the various population groups, but the majority thought the new committee has not met the balanced point of view criteria. There was agreement that the membership and balanced point of view criteria were met by the previous committees.

Commission guidelines for meeting the balanced point of view criteria call for the committees to be diverse and include minority groups, women's rights representatives, civil rights leaders and persons with substantive or procedural skills that can facilitate the committee's work. Prior to 1985, the General Services Administration's Committee Management Secretariat, which is responsible for overseeing and reporting on federal advisory committee activities, required the Commission to describe how each committee's membership met the balanced point of view criteria. In 1983 and 1984, the Commission reported that the criteria had been met. The Secretariat deleted this reporting requirement in 1985.

Tables XI.2 and XI.3 show the comparable aggregate characteristics for representation of the various population groups of the 1985 and previous committees and chairpersons as provided to us by the Commission.

Table XI.2
Characteristics of State Advisory Committees

	<u>1985 recharter^a</u>	<u>Previous charter</u> (percentages)
<u>Race</u>		
American Indian	4.4	6.9
Asian American	2.7	3.4
Black	25.1	28.3
Hispanic	8.5	11.7
White	58.9	49.0
Other	.4	.7
Total	<u>100.0</u>	<u>100.0</u>
<u>Religion</u>		
Catholic	22.5	23.2
Jewish	20.9	11.0
Protestant	45.7	52.2
Other	10.9	13.6
Total	<u>100.0</u>	<u>100.0</u>
<u>Sex</u>		
Female	35.3	45.6
Male	64.7	54.4
Total	<u>100.0</u>	<u>100.0</u>
<u>Political Affiliation</u>		
Democrat	45.7	43.5
Republican	35.2	36.5
Independent	19.1	20.0
Total	<u>100.0</u>	<u>100.0</u>
<u>Age</u>		
Under 40	21.3	25.9
Over 40	78.7	74.1
Total	<u>100.0</u>	<u>100.0</u>

^aDoes not include Washington, D.C. committee.

Table XI.3
Characteristics of State Advisory Committee Chairpersons

	<u>1985 recharter^a</u>	<u>Previous charter</u> (percentages)
<u>Race</u>		
American Indian	4.0	3.9
Asian American	0.0	11.8
Black	18.0	41.2
Hispanic	6.0	13.7
White	72.0	29.4
Other	0.0	0.0
Total	<u>100.0</u>	<u>100.0</u>
<u>Religion</u>		
Catholic	14.0	13.7
Jewish	48.0	11.8
Protestant	30.0	62.7
Other	8.0	11.8
Total	<u>100.0</u>	<u>100.0</u>
<u>Sex</u>		
Female	8.0	39.2
Male	92.0	60.8
Total	<u>100.0</u>	<u>100.0</u>
<u>Political Affiliation</u>		
Democrat	40.0	52.9
Republican	44.0	25.9
Independent	16.0	21.6
Total	<u>100.0</u>	<u>100.0</u>
<u>Age</u>		
Under 40	24.0	25.5
Over 40	76.0	74.5
Total	<u>100.0</u>	<u>100.0</u>

^aDoes not include Washington, D.C. chairperson.

Regional Office Assistance

Administrative assistance to the committees by the regional offices has not changed with the 1985 rechartering, according to those 12 regional officials we interviewed. However, the regional officials said that the nature of their involvement with the committees has changed. Several officials indicated that the current committees are obtaining less input from regional office staff in identifying issues. They said that they cannot express views to the committees as they have in the past; one said that he must get headquarters' approval before presenting ideas to the committees. Another said that he was directed by headquarters not to suggest projects or issues. Before the 1985 rechartering, according to several of the regional officials, regional staff exercised more control over the committees in project identification.

Committee Meetings

There are four types of advisory committee meetings: planning, special, factfinding, and conference. Planning meetings are to plan programs, discuss projects, establish priorities, gather factual data, and review reports before sending them to the Commission. Special meetings, which are not formal meetings, involve investigative interviews, procedural planning, and followup activities at which no decisions are reached. Factfinding meetings are held for the purpose of obtaining information from government officials and private citizens on a topic being studied by the committee. These meetings differ from a Commission hearing primarily because the committees do not have subpoena power and cannot take testimony from witnesses under oath. Finally, conferences are meetings whereby the committees exchange information with experts on specific topics.

The total number of committee meetings increased during the fiscal year 1983 to 1985 time period as indicated by table XI.4. The 3-year figures show the number of planning meetings is increasing. The number of special, factfinding, and conference meetings declined in fiscal year 1984; however, special meetings increased in 1985 over 1984. The number of factfinding meetings went from 12 in fiscal year 1983 to none in 1985. Similarly, the number of conferences continued to decrease in 1985.

Table XI.4
State Advisory Committee Meetings
Fiscal Years 1983-1985

<u>Type of meetings</u>	<u>Fiscal year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
Planning	170	170	235
Special	69	40	54
Factfinding	12	3	0
Conference	10	9	5
Total	<u>261</u>	<u>222</u>	<u>294</u>

Committee Products

The state advisory committees' primary method of providing advice to the Commission until fiscal year 1985 was reports. In fiscal year 1985, the committees began using briefing memoranda as a way to advise the Commissioners. According to a Commission official, the briefing memoranda concept grew out of a perceived need by the Staff Director and regional directors for an alternative to the formal committee reports. Briefing memoranda are submitted to the Commissioners, through the Staff Director's office, for informational purposes only. There have been a few instances, according to the Assistant Staff Director for Regional Programs, where the briefing memoranda were also provided to regional directors. They are not published.

The number of advisory committee reports released by the Commission has declined since fiscal year 1983, going from 36 in that year to 3 and 2, respectively, in fiscal years 1984 and 1985. Moreover, the two committee reports released in fiscal year 1985 by the Commission were not published as Commission documents. The two advisory committees were given permission by the Commissioners to release the reports within their states. Eight committee reports were approved for release by the Commissioners during the first half of fiscal year 1986. As of March 1986, five committee reports were in process at Commission headquarters, but had not been submitted to the Commissioners. All of these reports were started by the committees before the 1985 rechartering.

Projects-in-process by the advisory committees, which generally result in reports, have also been declining since fiscal year 1983. At the end of fiscal year 1983, there were 40 ongoing projects and 29 and 14 at the end of fiscal years 1984 and 1985, respectively. As of March 1986, there were 6 ongoing projects. Projects-in-process include projects which have been

approved by the Staff Director and in which fieldwork, research, or report drafting has begun. Table XI.5 shows the number of committee reports, briefing memoranda, and projects-in-process during the fiscal year 1983 to 1985 time period.

As of March 1986, there were 11 concepts for projects approved by the Staff Director. A concept is a document that briefly outlines the essential purpose, methodology, and justification for a proposed project. Fieldwork can not begin on the concept until the project proposal has been approved by the Staff Director. The proposal is the justification and plan for a project which describes the purpose, scope, and methodology and includes milestone tasks, target dates, and budget.

Table XI.5
State Advisory Committee
Products and Projects-in-Process
Fiscal Years 1983-1985

<u>Products and projects</u>	<u>Fiscal year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
Reports	36	3	2
Briefing memoranda	--	--	24
Projects-in-process	40	29 ^a	14 ^b

^aIncludes eight projects subsequently converted to briefing memoranda and one project subsequently dropped.

^bIncludes one project subsequently converted to a briefing memorandum and one project subsequently dropped.

USE OF COMMISSION AUTOMOBILE

Charges were made that the Commission's automobile was used for other than official purposes such as transporting the Staff Director between her home and work.

We were requested to examine the use of the Commission automobile to determine if its use was consistent with regulations governing official vehicle use.¹

The U.S. Commission on Civil Rights leased an automobile, a 1983 Ford Escort station wagon, for use by its warehouse in Alexandria, Virginia, to transport publications and other materials to the Commission and other locations in the Washington, D.C., metropolitan area. There were two designated drivers who worked primarily at the warehouse.

The Commission's automobile was housed for a 3-month period in early 1985 at its headquarters in downtown Washington, D.C., from late January through late April 1985. The two Commission drivers from the warehouse did not drive the automobile during this period. A new driver was hired by the Commission on January 28, 1985. His driving duties included transporting Commissioners, the Staff Director, and other Commission employees to meetings and other official functions, providing messenger/courier services, and making daily runs to the warehouse for pickup/delivery of publications and materials. The driver also had other clerical and administrative duties.

The relocation of the automobile was made at the request of the Staff Director (who left the Commission on April 29, 1985), who also assigned the newly created driver position to the Office of the Deputy Staff Director. According to the former Deputy Staff Director, the new driver reported to the Staff Director's office.

The new driver left the Commission on April 24, 1985. The driver's position was not refilled, and the automobile was returned to the warehouse. Upon return to the warehouse, the

¹Although the basic authority for the use of government motor vehicles (31 U.S.C. §1344) does not define official purpose, it does state an official purpose does not include transporting officers or employees of the government, with certain exceptions, between their domiciles and places of employment. The exceptions do not apply to the Commission.

automobile continued to be driven by the former two drivers for transporting publications and other materials to the Commission and other locations in the metropolitan area.

A Commission administrative instruction requires that trip logs must be prepared by each Commission employee who drives the automobile, accounting for each trip, showing mileage and points of departure and arrival. The completed logs were to be sent to the Commission's Administrative Services Division of the Office of Management at the end of each calendar year.

In October 1985, we requested the trip logs for the automobile covering the period December 1, 1983, to October 1985. The trip logs were provided covering the period January 3, 1983, to June 30, 1983, and April 24, 1985, to October 7, 1985. The trip logs were not provided for the period July 1, 1983, to April 23, 1985, a 22-month period. According to the Assistant Staff Director for Administration, he learned that the trip logs were missing when we requested the documents. According to Commission officials, the trip logs covering the period July 1, 1983, to January 28, 1985, when the new driver was hired, were left in the automobile contrary to the administrative instruction previously mentioned. However, the new driver told us that he had not seen the logs for that period and did not know their whereabouts. He acknowledged that he took the logs he prepared during the 3-month period he drove the automobile with him when he left the Commission in April 1985. He said he disposed of them approximately 6 months later. The administrative instruction requiring the trip logs has since been amended to require completed trip logs be sent to the Administrative Services Division at the end of each month instead of annually.

The former driver also told us on November 25, 1985, that he drove Commissioners to meetings and used the automobile for official functions. He also told us that he did not transport any Commission employee between home and work.

In December 1985, the Assistant Staff Director for Administration asked both the former driver and the former Staff Director for statements explaining how the automobile was used for the 3-month period ending in April 1985. They stated in writing that in addition to his messenger and clerical duties, the former driver drove the Staff Director and Commissioners to meetings and other official functions.

Also, we interviewed a Commission employee who was one of the designated drivers of the automobile during the period of July 1, 1983, through January 1985. He stated that the automobile was used only for official purposes during that time.

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Without the missing trip logs, we could not verify that the Commission automobile was used only for official purposes while it was stationed at Commission headquarters or its warehouse. Our review of available trip logs for the period January 3 to June 30, 1983, and April 24 to October 7, 1985, indicated the automobile was used for official purposes for the periods covered by such records.

CONTRACTING TO SUPPORT THE COMMISSION'S MISSION

It was alleged that contractors were being used to perform work that should have been done by the Commission's career staff.

We were requested to examine the extent of work contracted by the Commission, including costs, justification, and whether such contracts were subject to competitive bidding.

We reviewed the Commission's contract files for fiscal years 1984 and 1985 to determine the number, types, and costs of mission related work for which a contractor was used. For purposes of analysis, we divided the mission related contract work into three categories:

- direct mission work, such as purchase orders for the preparation of papers for hearings;
- mission support work, such as room rentals and court reporters for Commission meetings; and
- miscellaneous, such as subscriptions to civil rights related journals.

Contracts not directly related to the mission of the agency, such as typewriter repair and supplies, were excluded from our analysis.

During fiscal years 1984 and 1985, the Commission obligated a total of \$930,291 on 622 mission-related contracts. The number of contracts in effect for each of the 2 years was about the same (315 and 307), but the 1984 obligations were for much greater amounts (\$722,337 in 1984 as compared to \$207,954 in 1985). According to the Assistant Staff Director for Administration, the contracts were used to supplement Commission capability or obtain capability that did not exist in the Commission.

Direct mission work accounted for the largest amounts of the contract obligations (\$607,313 in 1984 and \$124,592 in 1985). The largest obligations for direct mission work were in the Office of Programs and Policy Review¹ (\$506,644) in fiscal

¹The functions of the Office of Programs and Policy Review were reorganized into the Office of Research and Office of Programs and Policy in July 1984.

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year 1984 and in the Office of Programs and Policy (\$82,742) in fiscal year 1985. For the most part, the direct mission contracts were for academic papers commissioned from university professors for presentation/use at Commission hearings and consultations. Individually, obligations under these contracts ranged from \$300 to \$1,000.

Tables XIII.1 and XIII.2 show the contracting activity for the 2 years by category and program office.

Federal acquisition regulations generally require competitive bidding for contracts exceeding \$25,000. Two Commission contracts, both in fiscal year 1984, were this large. However, only one of these was competitively bid. This contract was awarded to the System Development Corporation to prepare a report on the effectiveness of various public school desegregation plans. The initial contract award was \$444,364.

The other contract over \$25,000 was awarded to the National Committee Against Discrimination in Housing to prepare a nationwide directory of private fair housing agencies. The initial contract award was \$53,280. The contract was not competitively bid because it was an unsolicited proposal. According to Federal Acquisition Regulation (48 C.F.R. 15.507(b)), such a negotiated noncompetitive contract can be awarded when the unsolicited proposal is innovative or unique, independently originated and developed by the offeror, prepared without government supervision, could benefit the agency's research or other mission responsibilities, receives a favorable comprehensive evaluation, and facts and circumstances exist to preclude competition. Although documentation in the Commission's contract file did not specifically say the criteria were met, the Commission's Solicitor, who is also the agency's contracting officer, told us the proposal met all criteria. The next largest contract awarded in fiscal years 1984 and 1985 was for \$19,664.

Difficulties arose in the latter part of fiscal year 1985 on the school desegregation study contract. After reporting critical personnel losses, the contractor, System Development Corporation, entered into a novation agreement with Unicon Research Corporation in June 1985 (the Commission concurred with the arrangement) whereby Unicon would complete the study. Since the change in contractors, there has been controversy surrounding the study. Specifically, one of the advisory panel members to the study, in his letter of resignation to the Commission on October 25, 1985, stated that "the study has been so seriously mismanaged and is so flawed in its current organization that it cannot be carried out in a way that will

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either be seen as professionally respectable or fair." A representative of the Unicon Research Corporation, the chairman of the advisory panel, and the advisory panel member who resigned appeared before the Commissioners' November 12 and December 10, 1985, meetings to present their views and concerns about the study. At the December 1985 meeting, the Commissioners agreed to evaluate, with Commission staff assistance, whether Unicon will be able to complete the study as envisioned in the original contract. This evaluation was underway when we completed our work.

Table XIII.1
Mission-Related Contract Obligations
Fiscal Year 1984

	<u>Direct mission</u>		<u>Mission support</u>		<u>Miscellaneous</u>		<u>Total</u>	
	<u>Amount¹</u>	<u>Number</u>	<u>Amount¹</u>	<u>Number</u>	<u>Amount¹</u>	<u>Number</u>	<u>Amount¹</u>	<u>Number</u>
<u>Headquarters</u>								
<u>offices</u>								
Congressional and Public Affairs	\$27,261	6	\$ 0	0	\$ 0	0	\$27,261	6
General Counsel	16,000	16	5,501	1	0	0	21,501	17
Management	750	1	17,140	14	36,778	57	55,208	72
Programs and Policy Review	506,644	3	1,070	4	2,334	10	510,048	17
Staff Director	9,350	14	2,936	2	0	0	12,286	16
Equal Employment Opportunity	0	0	85	1	750	1	835	2
Planning and Coordination	0	0	850	1	0	0	850	1
Unidentified	47,308	5	10,028	5	8,737	44	66,072	54
Subtotals	<u>\$607,313</u>	<u>45</u>	<u>\$37,609</u>	<u>28</u>	<u>\$48,538</u>	<u>112</u>	<u>\$694,061</u>	<u>185</u>
<u>Regions</u>								
Central States	\$ 0	0	\$1,919	12	\$2,814	12	\$4,733	24
Eastern	0	0	475	3	536	7	1,011	10
Midwestern	0	0	1,065	13	1,794	7	2,859	20
Northwestern	0	0	0	0	1,197	1	1,197	1
Rocky Mountain	0	0	0	0	1,197	1	1,197	1
Southern	0	0	3,384	14	130	2	3,514	16
Southwestern	0	0	3,265	14	6,715	17	9,980	31
Western	0	0	1,408	9	2,278	17	3,686	26
Unidentified	0	0	100	1	0	0	100	1
Subtotals	<u>\$ 0</u>	<u>0</u>	<u>\$11,616</u>	<u>66</u>	<u>\$16,660</u>	<u>64</u>	<u>\$ 28,276</u>	<u>130</u>
Totals	<u>\$607,313</u>	<u>45</u>	<u>\$49,225</u>	<u>94</u>	<u>\$65,258</u>	<u>176</u>	<u>\$722,337</u>	<u>315</u>

¹Amounts may not add because of rounding.

Table XIII.2
Mission-Related Contract Obligations
Fiscal Year 1985

	<u>Direct mission</u>		<u>Mission support</u>		<u>Miscellaneous</u>		<u>Total</u>	
	<u>Amount¹</u>	<u>Number</u>	<u>Amount¹</u>	<u>Number</u>	<u>Amount¹</u>	<u>Number</u>	<u>Amount¹</u>	<u>Number</u>
<u>Headquarters</u>								
<u>offices</u>								
General Counsel	\$ 14,000	14	\$ 2,799	2	\$ 111	3	\$ 16,910	19
Management	800	1	14,557	11	15,350	30	30,707	42
Programs and Policy	82,742	12	125	1	650	2	83,517	15
Research	300	1	85	1	2,833	12	3,218	14
Staff Director	15,000	5	449	1	0	0	15,449	6
Unidentified	11,750	15	10,056	20	11,993	17	33,799	52
Subtotals	<u>\$124,592</u>	<u>48</u>	<u>\$28,071</u>	<u>36</u>	<u>\$30,937</u>	<u>64</u>	<u>\$183,600</u>	<u>148</u>
<u>Regions</u>								
Central States	\$ 0	0	\$ 982	14	\$ 1,308	7	\$ 2,291	21
Eastern	0	0	1,340	10	1,606	11	2,946	21
Mid-Atlantic	0	0	4,815	14	3,195	20	8,010	34
Midwestern	0	0	0	0	522	5	522	6
New England	0	0	190	2	1,072	10	1,262	12
Northwestern	0	0	50	1	1,340	5	1,390	6
Rocky Mountain	0	0	1,381	12	1,850	24	3,230	36
Southern	0	0	147	3	206	1	353	4
Southwestern	0	0	3,423	15	770	1	4,193	16
Western	0	0	72	2	86	1	157	3
Subtotals	<u>\$ 0</u>	<u>0</u>	<u>\$12,400</u>	<u>73</u>	<u>\$11,954</u>	<u>86</u>	<u>\$ 24,354</u>	<u>159</u>
Totals	<u>\$124,592</u>	<u>48</u>	<u>\$40,471</u>	<u>109</u>	<u>\$42,891</u>	<u>150</u>	<u>\$207,954</u>	<u>307</u>

¹Amounts may not add because of rounding.

Mr. EDWARDS. Thank you, Mr. Anderson.

We will be operating under the 5 minute rule and I yield first to the gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Well, thank you very much, Mr. Chairman.

I would like to have you detail, if you can, the campaign the Commission has used to discredit the GAO work. I have been amazed by that. If you could just tell me what has happened to you with the Commission?

Mr. ANDERSON. Probably the most significant single events have been—this started some months ago—attempts to discredit Mrs. Kleeman's participation in the audit, questioning her objectivity as a part of the audit team. And there has been an exchange of letters between the Comptroller General and the chairman. The issue still has not died, and letters have also been written to the Senate side as well, about that same point.

In our meetings with Commission officials, we have tried to argue, as I have stated here today, that GAO only operates one way, that is with objectivity and independence, when it addresses this issue, and we certainly were not trying to reach any answers that this committee desired. I think you pointed out Mrs. Kleeman has given you the wrong answers once in a while. Chairman Edwards may not remember it, but I can remember a few years ago getting a dressing down in his office as a result of some work we were doing for him over at the FBI and the answers weren't what he expected. In any event we pride ourselves on that.

Mrs. SCHROEDER. So basically, the attack has not been on the work produced but on the person doing the work?

Mr. ANDERSON. Basically, yes, it has been on Mrs. Kleeman and obviously as you are aware, Mrs. Schroeder, they have also been impugning the motives of the members in requesting that the work be done in the first place.

Mrs. SCHROEDER. Has there been any evidence that the types of things that you have found in the Commission are routine in other agencies of the Government? In other words, in your other kinds of investigations that go on, is it fair to say that we are picking on the Commission because everybody in Government does this?

Mr. ANDERSON. The state of the records at the Commission is unusually bad, and I think the GSA auditors noted as much when they were in there recently—at the request of the Commission I should note. Looking at administrative matters generally, they are unusually bad.

Mrs. SCHROEDER. When you are saying their records are a mess, that is not the status of most agency records when you go in and look at them?

Mr. ANDERSON. I would say that we would be surprised, for example, at most Federal agencies to go in and not find personnel files complete and in accordance with OPM guidance.

Mrs. SCHROEDER. I would hope so. Otherwise, we are in real trouble.

On page 16 you say "we cannot say that the Commission did not comply with the 1985 earmarks." Could you say that they did comply with the 1985 earmarks?

Mr. ANDERSON. No, I can't make that statement either. There is evidence that we found that indicated that they did not comply,

evidence specifically speaking to the point on where printing costs were included in the original budget. There is evidence in a document that would indicate that printing costs in fact were included in the publications budget activity earmark. We also have a statement from a Commission employee, who said that the item was included in the publications budget activity earmark.

On the other hand, there is also evidence that in prior years the Commission had treated printing as an overhead item to be distributed. So we have it both ways and we can't come down with an informed opinion on either.

Mrs. SCHROEDER. Could you also explain to me why the cost of schedule C or the political appointees went from under \$50,000 in fiscal year 1983, to what appears to be over \$300,000 in fiscal year 1985? That seems like a very large increase in amounts for political appointees. I wonder if that struck you the same way, and if there was any reason for that or you just documented that it happened.

Mr. ANDERSON. I would say basically that they had more schedule C's on the payroll for a longer time, that is the part of that trend of augmenting the noncareerists.

Mrs. SCHROEDER. Really, a quarter of a million dollars is a lot of money in 1 year.

Mr. ANDERSON. Yes.

Mrs. SCHROEDER. How did the Commission violate the law in hiring temporary employees?

Mr. ANDERSON. Well, violating the law isn't the phrase that we used. They violated OPM guidance with respect to documenting the requirements for temporary positions and for documenting the skills and capabilities of the people that were hired to fill those positions.

The temporary appointments these in competitive service, and there was no applicant supply file, and they didn't follow the OPM regulations in hiring the temporary employees. OPM is encouraging the hiring of temporary employees but in these cases the appointments did not follow the OPM guidance.

Mrs. SCHROEDER. I wanted to know about the hiring of the drivers for Linda Chavez. Could you tell me a bit about the sequence of the destruction of the logs for the car by its driver?

Mr. ANDERSON. Well, as we understand it, the driver ceased his activity as a driver, the person who drove the car in addition to performing other duties around April 1985. When we spoke to that person subsequently, he indicated that the records had been disposed of around October about the same time we made our request for the logs, by the way.

Mrs. SCHROEDER. Did he say who disposed of them?

Mr. ANDERSON. He said he did, he threw them away.

Mrs. SCHROEDER. Why did he do it?

Mr. ANDERSON. No explanation was offered and I guess it was asserted to be not knowing about Federal regulations.

Mrs. SCHROEDER. Why did he think was keeping the logs?

Mr. ANDERSON. That is a very good question, Mrs. Schroeder. We did not—

Mrs. SCHROEDER. So he was told to keep the logs. He kept the logs. When you start your investigation he destroys the logs because he—

Mr. ANDERSON. I am sorry, Mr. Cormier tells me that he wasn't told to keep the log. Could you elaborate on that?

Mr. CORMIER. Yes. It happened after we asked for the trip logs that the Commission employees found out that they did not have them at the Commission.

Mr. ANDERSON. I think Mr. Cormier didn't understand your question.

Mrs. SCHROEDER. What I am asking is why did he destroy the logs?

Mr. CORMIER. We don't know.

Mrs. SCHROEDER. Did you ask?

Mr. CORMIER. He said he was clearing his files.

Mr. ANDERSON. I guess he pleaded ignorance of the requirements that they be maintained, at the time he threw them away, trying to get rid of junk laying around.

Mrs. SCHROEDER. I find that absolutely amazing.

Mr. ANDERSON. I should mention there were other drivers at the Commission who did the very same thing. He wasn't unique in that respect. Earlier logs were also missing.

Mrs. SCHROEDER. But you didn't find any evidence that they were called in and told to destroy them?

Mr. ANDERSON. No.

Mrs. SCHROEDER. They all happened to——

Mr. ANDERSON. That is correct.

Mrs. SCHROEDER. Did any drivers keep their logs?

Mr. ANDERSON. Did we find any logs at all?

Mr. CORMIER. Yes, prior to an——

Mr. ANDERSON. We did find logs from some other drivers.

Mrs. SCHROEDER. Did anyone happen to notice if there was a driver in between the ones who kept the logs and the ones who destroyed them?

Mr. ANDERSON. I am sorry, I don't think we analyzed the data from that aspect.

Mr. EDWARDS. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I would like to begin my questioning with a statement and expression of concern. I don't think anybody is impugning the motives of Mrs. Kleeman or impugning her integrity. The concern I have, since the General Accounting Office is the auditing arm of Congress, is the appearance of impropriety or pre-existing bias that may exist when a General Accounting Office employee is participating in public forums while a matter is pending.

Definitely the strictures that apply to the judicial branch of the Government in discussing pending cases don't apply to the legislative branch, but I think that even the appearance of lack of objectivity will bring the GAO's objectivity itself into question when there are these kinds of comments that are made on pending audits before preliminary reports are released.

Now, just to put the facts on the table, the forum in question was held in May 1985. On July 3, 1985, the General Accounting Office sent a letter to the Commission and acknowledged from the letter, quote:

GAO's general policy is not to disclose in such a public forum our tentative conclusion while our work is still underway. I can therefore appreciate your concern,

especially since our report was not released until 2 weeks ago after the panel discussion.

I would hope that not only in your division but in other divisions GAO, that there be instructions made that GAO employees not participate in public forums until after a report is released so that the appearance of objectivity is not shattered. I am afraid that the appearance of objectivity was shattered as a result of this particular chronology.

Mr. ANDERSON. I am sorry, may I break in for just a second? There is more to that story than you have been told, if what you recited is basically what you understand of the situation.

I will let Mrs. Kleeman speak or argue her own case in terms of what transpired.

Mr. SENSENBRENNER. I have a limited amount of time, and generally the clock ticks quicker for Republicans than it does for Democrats around here.

Mr. EDWARDS. I resent that, because it doesn't happen. The gentleman sees me take very careful notes.

Mr. SENSENBRENNER. Well, Mr. Chairman, I timed the gentleman from Colorado's comments. By my watch, they began at 10:06 and ended at 10:15, which was 9 minutes for a 5 minute questioning period.

Now, as you know, Mr. Anderson, two Republican Senators and all three of the Republican members of this subcommittee requested the General Accounting Office to make an audit of the pre-1983 Commission activities and to consolidate that audit with the post-1983 Commission activities, so that there would be a basis of comparison between the existing Civil Rights Commission, which has been attacked quite vigorously by the civil rights community and the Democrats in both Houses of Congress, and the preceding Civil Rights Commission, which they attempted to keep in office even after the 1980 elections.

What happened to our request, and how come that has not proceeded contemporaneously with the request that was made by our Democratic colleagues?

Mr. ANDERSON. This audit was underway when we received that request. We in GAO not infrequently have a situation where one congressional committee or another has asked us to do something, and our policy is that the first group has a proprietary right to what is being done. Now, you can quarrel with it, but I think we would be in trouble if we didn't say that by virtue of asking us to be the first one into this area, unless the committees can work out an agreement among themselves, that the GAO will work on and report jointly, we would proceed to do for number one first.

Mr. SENSENBRENNER. Fine, I can understand that, but when is our audit request going to be attended to?

Mr. ANDERSON. By the way, we are going to do that audit in the same objective way we did this one. The same people that have gained a lot of expertise about the Commission, the records, and its modus operandi I have told the requesters will be doing the audit. They have another job they want us to complete as well, and both will commence in April and will be done concurrently. Mr. Cormier is going to be repeating the very same audit steps that we did on

this job and looking at personnel records and the same kind of things that we did develop.

Mr. SENSENBRENNER. The second question that I have to ask is one of procedure and that is, why was not the Civil Rights Commission given a chance to review the preliminary figures of this audit before they were leaked to the public and everybody knew about them, when the ordinary and customary procedure is to allow the audited agency to review and include comments for submission into the formal report.

Mr. ANDERSON. Let me handle that in two parts if I can. In the first instance, it is not unusual for GAO to be requested by committees and individual members not to obtain formal agency comments, to give agencies those 30 days to give—

Mr. SENSENBRENNER. Was there such a request?

Mr. ANDERSON. Yes sir, there was.

Mr. SENSENBRENNER. Who made that request?

Mr. ANDERSON. The requesters. I guess it was in the request letter that came to us.

Mr. SENSENBRENNER. Then, in other words, the people who made the request specifically said that you should not give the audited agency their right to review, comment and submit written comments in the record?

Mr. ANDERSON. That is correct. I think what we gathered was that there was a real desire to get in there and get out, and we were being criticized by the committee for not being timely, quick enough to meet their needs.

Mr. SENSENBRENNER. I would just point out that fairness apparently applies only in certain selected instances, if requesters specifically said that the GAO should not do their usual and customary thing. I think I have made my point that this is a witch hunt and I yield back the balance of my time.

Mr. ANDERSON. I am sorry, can I speak to that?

Mrs. SCHROEDER. I think you should be allowed to speak to that.

Mr. EDWARDS. Yes. You are recognized.

Mr. ANDERSON. First, two things to recognize. No. 1, the point made earlier, that is, some of the people that GAO does the most work for in the Congress are Mr. Brooks and Mr. Dingell, who both have heavy oversight agendas, and both of those gentlemen have a standing procedure that we do not obtain agency comments. Their philosophy is that they are the ones that want to inquire as to the agency's formal position on the matters, and GAO, as I said, has no choice but to accede to those wishes.

On the other hand—

Mr. SENSENBRENNER. Reclaiming my time, I think that that is legitimate if the requester says don't let the agency look at it, that GAO should follow that. But I think that it should be pointed out that the reason that the Civil Rights Commission wasn't able to review and comment and to put its side of the story in as part of the report was because Mr. Edwards and the other people who asked for this report specifically forbade you to do that.

I recognize your right to follow their instructions, I think that it should be abundantly clear that the reason that there was not the other side given the chance is because the people who have been conducting this hearing and who requested the audit specifically

requested that that be the procedure. Fairness is fairness. It is absent in this subcommittee.

Mr. ANDERSON. Let me elaborate, if I can. First, we had their permission to provide oral discussion of the findings in great detail to the Commission, virtually the same or in greater depth than I presented this morning on each of the items.

It should be recognized that in the course of our investigation we were discussing the matters that we are talking about here today trying to get information from the Commission employees.

I guess it certainly wasn't the 30 days that we give, that GAO itself initiated. On the other hand, they are going to get their day in court, and as I said, they will have an opportunity to react to this.

We went to great pains to try and inform them before anything went public on what our findings were. We even provided them with a tape of the exit conference which if I can believe an article in the New York Times, they released initially. So the public disclosure of these matters—if I can believe that article in the New York Times—came from there.

We made an effort to give them an opportunity, we have reflected, and we have made changes in this document as a result of that discussion that we had with all of the top staff of the Civil Rights Commission.

Mrs. KLEEMAN. I wanted to comment on your question on when we would be doing the audit. We met with your staff shortly after we got the request and discussed the timing of the further work, and I have since been in touch with them to discuss the timing of that work. So we have been in touch with them regularly.

Mrs. SCHROEDER. We wanted an audit of the books. You did go to see the Commission, you did have a long, comprehensive review of what happened. Our feeling was that that was very adequate, because we wanted to get on with it and see if we couldn't do some corrective things under the incredible budget crunch we are under. I really think to have members of this committee being impugned is not being fair, it is very wrong.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. I think it is a very useful inquiry this morning, receiving this report.

I am not going to ask any questions, but along the line of questioning that preceded, if Mrs. Kleeman would like or Mr. Anderson would like to respond further to the allegation that Mrs. Kleeman participated in a public forum, I would yield to you for that purpose.

Mr. ANDERSON. Yes sir. I should mention that I personally was at a meeting on the Senate side with Mr. Pendleton and with some staffers on that side to discuss that situation. I thought we had resolved it and explained why what happened in fact did happen.

Let Mrs. Kleeman tell her own story on what preceded that forum.

Mrs. KLEEMAN. The report had been thoroughly reviewed, the only thing that had not happened with that report was that it had not been printed. The timing of the conference was such that I did get in touch with members of the Commission to try to tell them what I was going to say in that speech. Two meetings that I had

scheduled with them were canceled. I then called the person who had written the report that we were auditing and gave her the points that told her exactly what I was going to be saying.

I saw Mr. Pendleton at the conference before the speech was to be given, and I asked if he would like to meet with me to discuss it and he said he had another appointment.

So they knew exactly what I was going to say before I said it. Also, the report had been thoroughly reviewed at GAO. The final printing had not taken place, but it was issued shortly after, and nothing I said was any different from what was in the final report when it was issued.

Mr. KASTENMEIER. So it is your position that that did not represent a conflicting nor was it inappropriate that you speak before an organization?

Mrs. KLEEMAN. It certainly represented no bias. The results of the audit were exactly as I presented them that day.

Mr. KASTENMEIER. Thank you.

I yield back the balance of my time, Mr. Chairman.

Mr. EDWARDS. Well, I think that it would be useful to get at the subject of the audit rather than peripheral matters. How did you find morale in your interviews?

Mr. ANDERSON. Mr. Cormier has spoken to more people over there than either of us. Let me turn it over to him.

Mr. CORMIER. Speaking to the morale of the career staff that we spoke to, I would say it was down—I don't know how far down it is, but I would say it was down.

Mr. ANDERSON. I think one indication is there were 17 different staffers over there that approached us for—pardon the expression—to air some gripes or allegations that they had concerning the Commission, so that is a pretty substantial number.

Mr. EDWARDS. So you are not describing a happy ship?

Mr. ANDERSON. Well, I don't want to overstate that. Apparently there was some discontent over there. We certainly know that.

Mr. CORMIER. Yes sir.

Mr. EDWARDS. I found it interesting in your report that the chairman, Mr. Pendleton, boilerplated into his speeches on at least seven instances his opposition to H.R. 700—the Civil Rights Restoration Act—which almost nobody is against. Even Mr. Sensenbrenner is a supporter with the Sensenbrenner amendment of H.R. 700.

Isn't that odd for the Chairman of the Civil Rights Commission to make speeches all over the country in opposition to the major civil rights bill of the 99th Congress?

Mr. ANDERSON. We don't make a value judgment on that, but we would point out that the speech was made and the backup to our statement contains a quotation from that speech that appears to be improper from the standpoint of trying to influence the public to contact the Congress and attempt to defeat the legislation.

Mr. EDWARDS. So the taxpayers put up the \$11 million or \$12 million to pay for the Civil Rights Commission and the Civil Rights Commission goes around and tells the taxpayers how they would like their Congressmen to vote, right?

Mr. ANDERSON. That could be read into the speech sir, yes.

Mr. EDWARDS. Can you sum up the accomplishments of the Commission during the period that you audited? What did the public

get out of it, what kind of work did they do that they issued to the public?

Mr. ANDERSON. The point was brought out earlier there has been a significant decrease in the number of factfinding reports by State Advisory Committees that have been issued by the Commission. For example, 36 in 1983, 2 in 1985. Major reports issued during the period, we know about the comparable worth report, however, that was a Commission report.

There was a significant decrease in the number of ongoing projects. That was something I wanted to note for myself. There were 40 ongoing projects in the State Advisory Committees in 1983, 14 in 1985, and 6 in March 1986. It went from 40 down to 6 ongoing projects out in the States. So that would indicate a decreased level of activity.

Mr. CORMIER. Just one other point. In looking at the reports that have come out, we noticed that there had been a decline from 1983 to 1985, but in fiscal year 1986 thus far, there have been eight reports that have been approved for release by the Commission. So there has been an upswing in the first 6 months of fiscal year 1986 compared to 1984 and 1985.

Mr. ANDERSON. Those are State Advisory Committee reports.

Mr. EDWARDS. The Appropriations Committee specifically allocated \$421,000 for a third hearing on fair housing in fiscal year 1985. This hearing was not held until fiscal year 1986. Of the \$421,000, \$112,000 was returned to the Treasury; \$83,000 was spent on salaries, \$51,000 was spent on overhead; and \$175,000 was unaccounted for. Did you find out how that was spent?

Mr. ANDERSON. No sir. The Commission was unable to provide us with any information on how that money was spent. The records we looked at didn't give any indication. We drew a blank, we can't explain it.

Mr. EDWARDS. To get back to the automobile just for a moment, where was the driver previously employed?

Mr. ANDERSON. Before he joined the Civil Rights Commission you mean?

Mr. EDWARDS. Yes.

Mr. ANDERSON. Ron, do you know that?

Mr. CORMIER. Yes I do. He was employed by the President's Commission on Industrial Competitiveness.

Mr. EDWARDS. At the White House?

Mr. CORMIER. It was a White House Commission. It was located on Jackson Place, right down from the White House. It was a Commission-type agency.

Mr. EDWARDS. Then where did the driver go after leaving the Commission?

Mr. CORMIER. He went to the White House Conference on Small Business.

Mr. EDWARDS. And when did the driver say he destroyed the logs?

Mr. CORMIER. In a letter to the Commission—he did not tell us that specifically—he informed a Commission employee in charge of this operation that he destroyed them approximately 6 months after he left the Commission.

Mr. EDWARDS. My 5 minutes are up.

The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I wanted to ask if there is anything in the law currently that prohibits the Commission from giving out awards to temporary employees and to schedule C's, which apparently they were doing quite a bit of. Are you allowed to give awards to political appointees and temporaries?

Mrs. KLEEMAN. I don't believe there is anything against it. I would have to furnish that for the record for you.

Mrs. SCHROEDER. It might be helpful, because I remember the whole concept of the awards was not to go in that direction and I was startled.

Mrs. KLEEMAN. The Senior Executive Service bonuses are not to go to noncareer appointees. But merit pay employees are under the new performance management recognition system. I believe they are allowed to receive awards. I will follow up on that for you.

[The information follows:]

Chapter 45 of title 5, U.S. Code is the legal basis for the Office of Personnel Management's [OPM] Government Employees' Incentive Awards Program. Under this authority, all employees, including temporaries and schedule Cs (as defined in 5 U.S.C. §2105) are eligible for a variety of honorary, cash, quality step increase, or other awards. According to OPM's Federal Personnel Manual:

"While both career and non-career SES executives are eligible for awards under this authority, OPM recommends that Presidential appointees whose appointments require Senate confirmation receive honorary, rather than monetary awards."

Mrs. SCHROEDER. I find it interesting that awards went out to them, that we saw this incredible increase in political employees from \$50,000 to \$300,000 in the 2-year period in which reports went down from 36 to 2, and projects went down from 40 to 14. It looks like we are paying more and getting less. I really find that shocking when you really look at the numbers there.

The other thing that disturbs me from my civil service standpoint, it looks like there is a whole list of personnel problems—the documentation you provide of them is very good—and I find that absolutely outrageous. I guess my question is, What can be done about it, why isn't OPM enforcing the personnel laws better in this agency?

Mr. ANDERSON. We have already held some discussions with the OPM officials that are responsible for overseeing the execution of these delegations of authority. I will let Mrs. Kleeman elaborate.

Mrs. KLEEMAN. We will be talking to OPM officials further. We have had preliminary discussions with them about the authorities that they have delegated to the Commission and they will be reviewing some of these activities and following up on some of the things that we did find.

Mrs. SCHROEDER. So you have notified them there appears to be an awful lot of violations?

Mrs. KLEEMAN. Yes, we have discussed it with them.

Mrs. SCHROEDER. OK. Well, thank you very much, I appreciate it.

Mr. Chairman, I certainly won't use 1 minute more.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I have got two questions. One is the subject of temporary employees. Is not the OPM encouraging the overall use of more temporary

employees? I know one of the ways my office is getting under the budget as a result of Gramm-Rudman is that we are using more temporary interns to do the job in my office, which ends up being cheaper than having permanent employees on the staff.

Mr. ANDERSON. Yes sir, when there is a fluctuating workload the use of temporaries is a good way to overcome that. I guess our principal observations on use of temporaries at the Commission here, was the way it was done, not the use. In other words we are not questioning the use of temporaries, we are just saying that there was ineffective documentation and inadequate justification of the need for the temporaries. In terms of whether in fact the Commission is the type of organization with a fluctuating workload, I would imagine some of these reports and investigative efforts are mounted that you could make a case it would have fluctuating requirements.

Mr. SENSENBRENNER. Did you look into whether there were fluctuating requirements before you reached the conclusions that you did on temporary employees?

Mr. ANDERSON. We did not reach any conclusions with respect to whether in fact temporaries generally were needed. What we did was look at each individual temporaries, the paperwork justifying individual temporaries, and tries to see whether in fact the documentation justified the need, justified the qualifications of the person, and justified the fact that the job was appropriately advertised and made available as part of the competitive service. That was the focus of what we did, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Second, it is my understanding that 12 years ago the solicitor of the Civil Rights Commission—which was just shortly after it was created—or reconstituted by an act of Congress, that there was a opinion issued that the Commissioners and staff were not bound by the general rules, that travel and lodging could be paid by non-501(c)(3) organization.

Was the GAO aware of this solicitors' opinion when you looked at who was paying for the travel and lodging of the Commissioners when they were out on the road?

Mr. ANDERSON. Yes sir. In fact, some of the attorneys that helped us do that are here in the room today and the essential fact that came out of our discussions with the Commission was that 18 U.S.C. 209 as it applies to the criminal sanctions for illegally augmenting salary reimbursement from others, did not apply to the Commissioners but to the other staff. I look around and hopefully the lawyers will be shaking their heads. OK.

Mr. SENSENBRENNER. Did your investigation conclude that the present Commissions made no deviation from the procedure that was outlined by this 1974 solicitors opinion? In other words, they just did what the previous Commissioners had done or was there a difference?

Mr. ANDERSON. Here is my understanding of that, sir. We haven't examined whether they did anything different from previous Commissioners. That will be a part of our next job. The only point we are making is we would still hold what was done was improper. However, it was not illegal, hence not subject to any penalties. That is the point with respect to the Commissioners themselves but not to the other staffers.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. EDWARDS. I have one last question, Mr. Anderson. The testimony indicates that the general counsel altered time forms for himself and other staff members. Can you give us more detail, this is serious misconduct—it is obviously misconduct. Apparently some of the other staff members didn't know that the general counsel had altered these time cards.

Mr. ANDERSON. Yes sir. We interviewed five of the attorneys whose time cards were altered and three told us that the changes to their time charges were not correct. I guess the facts speak for themselves. I can't elaborate on it beyond that. That was certainly an improper act.

Now, one thing I don't really understand is the motivation for it. In other words, I guess it was done to try and build up the costs that were chargeable to the third hearing and against that \$421,000, but I am not sure that that really explains it sufficiently.

Ron, do you want to comment on that?

Mr. EDWARDS. What is the purpose of the time cards, and are they subject to any Federal laws?

Mr. CORMIER. They did not change their time sheets as far as their salary payment. There is a monthly report that the general counsel, as well as other people at the Commission, report what projects they worked on during the month, and the time charges were shifted from one project to another. They worked that time. It is just they were reallocating their time among projects.

Mr. ANDERSON. Let me ask the question. I will have to ask our attorneys if they are willing to venture an opinion on revising a timecard, that was already submitted. I guess it could result, for example, in affecting the charges to a particular appropriations, that is, you could fix the charges to an appropriations, avoid an Antideficiency Act violation by manipulating timecards.

In a situation like this, probably, I am sure that the attorneys would be unwilling to render an opinion in this forum right now. I won't even ask them about it. It sounds in those circumstances it might be subject to some type of sanctions. Without real research, I can't speak to it. We will do that and supply it for the record.

Mr. EDWARDS. Yes, I think that is of some importance. If you would supply that for the record.

[The information follows:]

Mr. Anderson used the phrase "time-cards" as a short-hand reference to monthly time charge reports. These reports are a part of an internal system of records used by the Commission to record the amount of time spend on projects and are not used for making salary payments. As pointed out on p. 69 of the attachments to our statement, the General Counsel, after reviewing the original charges to the housing project, concluded they were understated and revised them accordingly. Not all the employees whose activity records were adjusted agreed with the changes made. Because all of the activities of the General Counsel's Office were contained in the same budget activity, any alterations of time spent within that activity do not raise concerns about compliance with the Anti-Deficiency Act.

Mr. Ishimaru.

Mr. ISHIMARU. Thank you, Mr. Chairman.

Who was in charge at the Commission during the period when the audit went on. Who was the staff director, the head staff person at the Commission?

Mr. ANDERSON. At the time we started the job, we met with Max Green, who was acting staff director.

Mr. ISHIMARU. Did he replaced someone?

Mr. ANDERSON. Let me give you dates and account for the entire period covered by our review. Linda Chavez was staff director from August 14, 1983, to April 19, 1985.

Mr. ISHIMARU. Where did she go after she left her position as staff director?

Mr. ANDERSON. To a White House assignment.

Max Green was acting staff director from April 20 to October 1, 1985.

Mr. ISHIMARU. Where did Mr. Green go after he left?

Mr. ANDERSON. He was Linda Chavez's deputy in her assignment over at the White House.

Mr. ISHIMARU. Who followed Mr. Green?

Mr. ANDERSON. Susan Morris was acting staff director from October 2 to December 2, 1985. She is still there.

Mr. ISHIMARU. And following her?

Mr. ANDERSON. Al Latham was appointed on December 3, 1985 as staff director and continues to serve in that position.

Mr. ISHIMARU. In your testimony, you indicated that Mr. Pendleton worked roughly 230, 240 days a year for the past 3 years and billed for all of those days. Is that basically full-time work?

Mr. ANDERSON. Yes sir, by Government standards, that would represent about a full-time job.

Mr. ISHIMARU. How much of earned income did the Commission salary represent of Mr. Pendleton's total earned income?

Mr. ANDERSON. Sixty-nine percent of his total earned income.

Mr. ISHIMARU. So he still had time to work on his other job, on his weekends, I guess?

Mr. ANDERSON. Sometime or other.

Mr. ISHIMARU. What about for his special assistant, Sydney Novell?

Mr. ANDERSON. Sydney Novell, 82 percent of her earned income was derived from Commission salary.

Mr. ISHIMARU. Mr. Pendleton took the most number of trips of any Commissioner?

Mr. ANDERSON. Yes. We cite 117 trips over the 4-year period.

Mr. ISHIMARU. Did his special assistant ever accompany him?

Mr. ANDERSON. She made a number of trips over the period. I am not sure whether we can confirm that any were made with him. Was she in California?

Mrs. KLEEMAN. Yes.

Mr. ANDERSON. And the forum that we spoke about earlier?

Mrs. KLEEMAN. She wasn't there then. She lives in California.

Mr. ANDERSON. We did not examine that. We cannot speak to it.

Mr. ISHIMARU. Did any other special assistants to a Commissioner travel more than one time in 1 year?

Mr. ANDERSON. No, according to the information I am looking at right now—it was on page 6 of our testimony—the other special assistants each took one trip in 1985, none in the years before that.

Mr. ISHIMARU. How many did Sydney Novell take?

Mr. ANDERSON. In 1985? Twenty-one.

Mr. ISHIMARU. Twenty-one trips?

Mr. ANDERSON. Yes sir.

Mr. ISHIMARU. I understand that the Commission paid for a visit by Staff Director Chavez to Israel in 1985.

Mr. ANDERSON. That is correct.

Mr. ISHIMARU. Who invited her?

Mr. ANDERSON. The Government of Israel invited her. In fact, I am looking at a copy of a letter from the Embassy of Israel signed by the Ambassador.

Mr. ISHIMARU. Is it?

Mr. ANDERSON. It is very short. I can read it to you.

Mr. ISHIMARU. Fine.

Mr. ANDERSON [reading].

On behalf of the Government of Israel, it gives me great pleasure to extend to you an invitation to visit Israel in early 1985. We in Israel have followed with great interest and admiration your untiring efforts in the cause of civil rights. We hope that such a visit would be an opportunity for you to get to know Israel and at the same time for our people to get to know about your work. We look forward to hearing from you.

Mr. ISHIMARU. And did the government pay for that, the Government of Israel?

Mr. ANDERSON. No, the Commission.

Mr. ISHIMARU. The Commission paid for it?

Mr. ANDERSON. Yes sir.

Mr. ISHIMARU. Did you look into whether any Commission staff people rented a car to go to Mexico in 1985?

Mr. ANDERSON. Well, we are aware that on the trip in question one of the specific allegations we examined, a car was rented. What we can't do is verify that in fact it was taken into Mexico. We can't prove or disprove the allegation.

Mr. ISHIMARU. I would like to turn to the \$175,000 that is totally unaccounted for. You have asked the Commission what they spent the money on and they can't tell you?

Mr. ANDERSON. That is correct.

Mr. CORMIER. They have told us that money was spent in the account. They just can't tell us specifically what items or areas the money was spent on, but it was spent in the hearing activity account.

Mr. ISHIMARU. How do they know that?

Mr. CORMIER. Because——

Mr. ISHIMARU. The money is no longer there?

Mr. CORMIER. Well, the money was shifted into that activity and the money was spent in that activity, and they can account for all the moneys, including the \$112,000 that they reported as sent back to the Treasury.

Mr. ANDERSON. We haven't seen a set of records that would really show precisely how all those moneys were spent. They aren't available and we only have their word for it right now, their affirmation, but we can't confirm it.

Mrs. KLEEMAN. It took some time to get those records. When we first asked for some of the budget documents they weren't available and we only got these fairly recently.

Mr. ISHIMARU. What kind of shape were the budget records in when you finally did get them?

Mr. ANDERSON. They were almost nonexistent, to be honest with you. Although we sought to find information that would show us how the 1985 budget was developed, and we couldn't find out. We had to actually take a budget report for the first month into the 1985 fiscal year. It was the only place, the only records we were able to find, that showed some detail on the composition of the 1985 budget. However, all of the preliminary records that would have led to the establishment of the earmarks could not be produced.

Mr. ISHIMARU. I would like to turn back for just a second to the car.

This is a little car, a Ford Escort station wagon, so it is not a fancy limosine. Now, you asked for the log from the Commission in October 1985?

Mr. CORMIER. Yes, that is correct.

Mr. ISHIMARU. And it just so happened that in that same month the driver threw out the logs?

Mr. CORMIER. Yes, that is correct.

Mr. ANDERSON. He said that he threw them away about 6 months after he left the job. He left the job in April, so that takes us to the October timeframe you are talking about.

Mr. ISHIMARU. You actually talked to the driver. Did you ever ask him whether he brought any staff member or Commissioner from home to work or home to another business function and whether he used the car for official use? Did he sign a statement to that effect?

Mr. CORMIER. I personally talked to him and he told me what types of uses he made of the car. I specifically asked him whether he used the car to transport any Commission employee from home to work and he said no.

Mr. ISHIMARU. Did he say for official use only?

Mr. CORMIER. He did not say that he used the car for official use only.

Mr. ISHIMARU. Did he say that he never used the car to bring a Commission employee from home to another work function or was it phrased as from home to work?

Mr. CORMIER. It was phrased in the general sense of home to work.

Mr. ISHIMARU. So you didn't—

Mr. CORMIER. I did not ask him specifically.

Mr. ISHIMARU. Thank you very much.

Thank you, Mr. Chairman.

Mr. SLOBODIN. I have a question about the nature of this audit request. In a letter that was—I guess it has been mentioned—Chairman Pendleton has been upset about the conduct of the audit, there were a flurry of letters. The requesters of the audit on March 11, 1986, sent a letter to Chairman Pendleton and they said in the letter we have requested that GAO follow ordinary and acceptable practices in performing this order.

Instead of the report manual he checked the dictionary and the dictionary says that ordinary means usual, and the GAO says in its own report that the normal, usual policy is to provide the audited

agency a draft copy of the GAO report and grant a 30-day period in which to submit written comments, which when they differed with the GAO findings are included in final publication of the report.

Now, I guess I have a couple of questions. What requests were you referring to when you said that the requesters asked you not to follow ordinary practices of the GAO, and has there been a change in the nature to have a request, and if so, why didn't the GAO follow this change in the request?

Mr. ANDERSON. Sir, could I take that letter and look at it, please, as I am having a little difficulty recalling it.

Mr. SLOBODIN. Sure.

Mr. EDWARDS. That letter is from whom?

Mr. SLOBODIN. That is from the requesters of the audit. It includes you, sir, Chairman Hawkins, Chairman Schroeder, and Chairman Martinez.

Mr. ANDERSON. I guess the response that I would make is that GAO's practice of adhering to congressional desires on obtaining agency comments is an ordinary and usual practice with respect to the way we do our work.

Mr. SLOBODIN. Well, is this an accurate statement? As far as the request, as you understand it, you were requested to follow ordinary and acceptable practices at GAO?

Mr. ANDERSON. They are not extraordinary. I am having a little difficulty. In other words, I don't read into it the meaning that you do, sir. I don't read that meaning into it that we deviated from ordinary practices by virtue of not getting the formal agency comments. It is such an ordinary thing.

Mr. SLOBODIN. Well, the majority of the time, though, would you agree that the majority of the time you would grant the written comments and the 30-day period in which to include those reports? That is what you do the majority of the time, right?

Mr. ANDERSON. Right now, about 70 percent of our work is in response to congressional requests. Of those, I am talking about 30-40 percent or so where we are asked not to. Where GAO is in control, we will, as a matter of course, obtain agency comments. Again, as I explained earlier, it is not unusual at all for Members of Congress to view that they are the ones that are entitled to obtain the formal agency comments—give us the facts as you found them and leave it up to us to solicit.

Mr. SLOBODIN. Would you agree though, if you had followed the usual, longstanding, as it is called in the GAO report manual, if you had followed the longstanding policy of granting these rights that Chairman Pendleton wanted the report would have been more thorough, complete?

Mr. ANDERSON. Had we not taken the trouble or adhered to our policy and had a very extensive oral close-out, I would agree with you. The difference between what we were able to learn at the oral close-out—

Mr. SLOBODIN. I have a question about the oral briefing as well.

On this huge attachment included with your testimony, which I didn't get until the middle of the afternoon yesterday, it indicates on page 21 of attachment 2, you assert here, or GAO asserted, the Commission has improperly exercised its temporary employment authority. I have a couple of questions about that statement.

From the transcript of the close-out, Mr. Latham asked Paul O'Neill, it says:

Well, as far as GAO is concerned, you are not contending that our hiring consultants, temporary employees and schedule Cs is improper?

Mr. O'NEILL. No, absolutely not.

How would you reconcile that?

And No. 2. Remember earlier on when you were discussing Chairman Pendleton, alleging lobbying, that you said, well, he may have engaged in lobbying, you quickly add, it is not GAO's role to say one way or another.

So aren't you having your cake and eating it too? You are saying, you are making the inference, making the comment and then at the same time, you are saying, oh, no, we are not making that.

Mr. ANDERSON. Let me take the lobbying item first, and say that what we said was we described, the set of facts that indicated that a standard speech that appeared to contain an exhortation to the audience to go out and do what they could to combat a piece of legislation, that was a fact. And we said, with legal advice, that it is not an unreasonable interpretation of the lobbying statutes that actions like that may be improper. Now, I don't know what we can add beyond that.

Mr. SLOBODIN. It is a little bit different, don't you think between having the GAO saying this might be a violation versus legal advice that the GAO obtained of the opinion that there might be a violation? Isn't that a little bit different?

One is giving the imprimatur of the so-called objective political independent agency versus the reporting of facts which is what I understand the GAO's role is. Wouldn't it have been easier to just report what your counsel had said rather than making it a statement as if it were a fact?

Mr. ANDERSON. I am not sure—I think a close reading doesn't indicate that we inappropriately caveated and described what we did and what we said.

Mr. SLOBODIN. Well, getting back to the oral close-out, how did you reconcile what Mr. O'Neill said?

Mrs. KLEEMAN. We said the hiring was not improper. It is perfectly proper to hire consultants, temporaries, and schedule C's. It is the way it was done that is improper and if you read—

Mr. SLOBODIN. That was the question Mr. Latham asked. Are you contending that our hiring of temporaries is improper?

Mrs. KLEEMAN. The hiring is not improper, it is the way the hiring was done. They didn't follow the right procedures. An agency has the authority to hire—

Mr. ANDERSON. I am sorry, I would like to review the transcript and listen to that tape. Paul O'Neill, the person that you referred to, says that he thought that the question was something like was this hiring done to the detriment of—

Mr. SLOBODIN. That was another question.

Mr. ANDERSON. Well, let me put it to you this way. I will have to review the tape and that isn't our recollection of the transcript, at least it isn't Mr. O'Neill's, the one on the receiving end of the question.

Mr. EDWARDS. Will you respond to that in writing?

Mr. ANDERSON. Yes sir.

Mr. EDWARDS. It is unclear as to what went on.

[The information follows:]

It is GAO's view that the conversation cited above was taken out of context. The dialogue at the exit conference was as follows, preceded by a discussion of the 55 vacancies at the end of fiscal year 1985:

Mr. LATHAM. Are you aware that OPM has changed its regulations to encourage the employment of temporaries instead of full-time permanent career employees. You are aware of that?

Mrs. KLEEMAN. Yes, we are making a study of that right now.

Ms. WHITE. Will you be . . . in that report? (Garbled) So you will be putting that in the report, mentioning that OMB is changing its direction?

Mr. LATHAM. Excuse me, OPM.

Mrs. KLEEMAN. We will look at that, I'm not sure that it is relevant.

Mr. LATHAM. Well, let me show you how it's relevant. The whole implication in the first section of what you read to us is that we're doing something bad by hiring temporaries and consultants. Yet Mr. O'Neill acknowledged that there is no allegation that our practice in this regard worked to the prejudice of any of our career employees, and, in fact, OPM does encourage the use of temporaries. It makes a lot of sense, in our current government-wide fiscal restraint situation. So, in what way have our practices been bad?

Mr. ANDERSON. We don't draw that judgment. What we were asked was has the composition, essentially the question that we were asked to develop information on, has the composition of the workforce here changed, vis-a-vis career permanents, as opposed to temporary, consultants, Schedule Cs, that's the issue we were asked to address. Now, obviously there are some inferences behind that that we don't make, but what we have done is develop information that portrays the composition of the workforce and how it changed, that's all.

Ms. WHITE. The requesters weren't interested in why the workforce composition might have changed?

Mr. ANDERSON. Well, let me put it to you this way, the requesters, you know, may draw some conclusions about explanations for the change. I don't think you'll find those conclusions expressed in anything we say.

Mr. LATHAM. But, as far as GAO is concerned, you're not contending that our hiring consultants, temporary employees and Schedule Cs is improper.

Mr. O'NEILL. No, absolutely not.

Mr. SLOBODIN. I wanted to get back on to some of the statements made in the report. One of them I am a little troubled by. You said the SBA investigation, Small Business Administration investigation, which there was a Post story on this, of a financial disclosure report of Chairman Pendleton and his special assistant quote "raises questions" unquote, about their propriety. Has there been any finding by SBA about propriety or impropriety? If not, aren't Chairman Pendleton and the special assistant in question entitled to a presumption of innocence?

Mr. ANDERSON. The statement as written, merely informs our congressional requesters that for their information the Small Business Administration's inspector general is conducting an investigation of certain allegations which if substantiated would indicate, as we say, that in fact all was not well in the financial information reporting. I don't see how that was improper to communicate.

Mr. SLOBODIN. What type of impression do you think that creates? Isn't that the type of witch-hunting atmosphere we had during the McCarthy era where they started alleging associations? We haven't found this and casting suspicion in various areas, it creates the illusion that something is wrong rather than a pre-

sumption of innocence, that there hasn't been sufficient evidence to make a statement the other way.

Mr. ANDERSON. I certainly have to hold out that that judgment might be held by other people. We did not hold it.

Mr. SLOBODIN. You agree you shouldn't approach it until guilty—

Mr. ANDERSON. We tried to be very careful in our wording, as to not say that.

Mr. SLOBODIN. Thank you.

Mr. EDWARDS. Thank you.

Well, that winds up our hearing and we are very grateful to the GAO for the hard work that you put in and your usual expertise and skill. I regret that there was a lot of emotion, anger and a certain amount of harassment involved here today. Actually, your report confirms many of the complaints that we had, actually most of them. I might point out that there isn't a civil rights organization, both traditional civil rights organizations or any new ones, in the country that doesn't think that this organization, the Civil Rights Commission, should be done away with. We are constantly importuned not to authorize any money for them, that they are working against the enforcement of the civil rights laws of the United States, and not overseeing the implementation and enforcement of the civil rights laws made by the Federal Government.

So this message is getting to the right people and indeed, the subcommittee in marking up the authorization bill for the Commission, will read our report and its contents with great care, because that is a lot of money. That is more than \$1 million a month, that this organization spends, and if the results of these large expenditures are what you describe, the taxpayers are being cheated. I will be interested to hear what Mr. Pendleton says when he comes to testify, if he will. He is more wont to write letters of complaint about me and about you, than to testify. But we will be interested, and thank you again.

Thank you again.

The subcommittee is very grateful for your splendid testimony, Mr. Anderson, and your colleagues.

Mr. ANDERSON. Thank you very much, Mr. Chairman.

[Whereupon, at 11 a.m., the subcommittee was adjourned.]

U.S. COMMISSION ON CIVIL RIGHTS/GAO AUDIT

TUESDAY, APRIL 22, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 1:30 p.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Conyers, Schroeder, Schumer, Sensenbrenner, DeWine, and Dannemeyer.

Staff present: Catherine A. Leroy, counsel; Stuart J. Ishimaru, assistant counsel; Alan M. Slobodin, associate counsel; Deborah Ward and Barbara Ward-Dobyns, clerks.

Mr. EDWARDS. The subcommittee will come to order. Today we continue a series of oversight hearings on the U.S. Commission on Civil Rights. This hearing this afternoon will allow members of the Commission to testify, and to respond to the audit on the Commission by the General Accounting Office.

Four weeks ago, the subcommittee began this series of hearings. We received testimony from the General Accounting Office, about the audit requested by Chairman Augustus F. Hawkins of the Education and Labor Committee, Chairwoman Patricia Schroeder of the Civil Service Subcommittee, Chairman Mathew G. Martinez of the Employment Opportunities Subcommittee, and I, on the operations of the Commission.

The GAO testimony detailed disturbing problems at the Commission, including financial problems, personnel problems, missing records, and inept management.

The Chairman and the staff of the Commission have denounced the work of the General Accounting Office. One senior staff member said that "most of the GAO report is untrue."

We are pleased that four commissioners, including the Chairman, are able to join us this morning to respond to the GAO report on the record.

Our witnesses are going to appear as a panel.

I yield to the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Once again I must state that I am very disturbed about the witch hunt of the Civil Rights Commission that is being conducted by this subcommittee. It rather reminds me of the Red Queen in Alice in Wonderland, who said, "Verdict first, trial afterwards."

There is no doubt that the GAO audit has been recklessly wielded against the Commission by its political adversaries who oppose

its policies. One need only look at this sample list of procedural irregularities in the way this audit was requested and conducted.

First, the GAO was not permitted to expand the audit to include the 1978 through 1983 period, thereby, denying Congress and the public a comprehensive analysis of Commission practices and a comparison between the practices in this area of the present Commission, the Commission before it was reconstituted.

Second, the GAO was directed by its requesters to violate its own long-standing policy for insuring accuracy and fairness by refusing to permit the Commission to review in advance its written findings and respond to them in writing for publication.

Third, the requesters forbade the Commission any review of GAO's findings in writing before they were made public.

Fourth, a GAO official who has publicly fought with the Chairman of the Commission over the content of an official Commission report, was directly involved in the audit.

Fifth, the Commission was not invited to testify at the initial hearing used to issue the GAO's findings.

Sixth, the GAO audit listed pages of allegations but never said exactly what laws or regulations were broken.

But the subcommittee is not merely content with exploiting a GAO audit for partisan purposes, it now wants to deprive the Commission a full and fair opportunity to testify at this hearing.

Mr. Chairman, on April 18, 1986, you were respectfully notified that the Commission had requested its staff director, J. Al Latham, Jr., to be present at the hearing to present testimony on its behalf. As far as I am aware you have refused to invite Mr. Latham to present testimony at this hearing; such a refusal flaunts history, Federal law, common sense, and fair play.

The staff director is the individual responsible and most knowledgeable about the management of the agency, which is the subject of this hearing. He is also the individual charged with representing the agency to Congress.

Section 701.2 of the Rules of the Commission, provide that the staff director, and I quote: "Manages the administrative affairs of the agency, and conducts agency liaison with the Executive Office of the President, the Congress and other Federal agencies."

Moreover, Mr. Latham represented the Commission at their briefing provided by the GAO prior to our hearing on March 25. Finally, the staff director has traditionally testified before the subcommittee and other congressional subcommittees, on hearings concerning the commission.

Indeed, I have two documents listing at least 32 instances where the staff director has presented testimony to congressional committees since 1967. Normally in politics, as William of Ockham suggested centuries ago, the simplest explanation of behavior is the most likely to be correct.

In this spirit it is self-evident to any fair-minded observer, that the refusal to grant Mr. Latham the opportunity to present testimony can simply be explained as partisan politics.

So at this point, Mr. Chairman, I move to permit Mr. J. Al Latham to testify today.

Mr. EDWARDS. The question occurs on the motion of the gentleman from Wisconsin.

Those in favor signify by saying aye.

[Chorus of ayes.]

Contrary-minded, no.

[Chorus of noes.]

Mr. SENSENBRENNER. Mr. Chairman, I would like to ask for a rollcall on that.

Mr. EDWARDS. Rollcall is requested.

The clerk will call the roll.

The CLERK. Mr. Kastenmeier?

Mr. KASTENMEIER. No.

The CLERK. Mr. Conyers?

[No response.]

The CLERK. Mrs. Schroeder?

Mrs. SCHROEDER. No.

The CLERK. Mr. Schumer?

[No response.]

The CLERK. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. DeWine?

Mr. DEWINE. Aye.

The CLERK. Mr. Dannemeyer?

Mr. DANNEMEYER. Aye.

The CLERK. Mr. Edwards?

Mr. EDWARDS. No.

The clerk will count.

The CLERK. Three to three, Mr. Chairman.

Mr. EDWARDS. A tie vote, the motion does not carry.

Mr. SENSENBRENNER. Mr. Chairman, at this time I would like to make another motion to adjourn this session of the committee until a time certain when Mr. Latham can appear with the remaining members of the Commission.

Mr. EDWARDS. Is there discussion on the motion?

I think it should be pointed out that the Commissioners are appointed by the President of the United States. The Commissioners are responsible for the operation of the Commission on Civil Rights.

If we started the process here where we invite witnesses, responsible people, who are responsible for running important agencies, spending as much as \$11 million or \$12 million per year, and the agencies, and the chairman of the agencies insist on sending employees—staff directors, assistant staff directors—to present their testimony, we really wouldn't have very much responsible oversight.

In this particular case we wanted to hear from the commissioners. This is the first opportunity that the commissioners have had to respond to the General Accounting Office audit.

I might point out that the General Accounting Office has never before been attacked as a partisan organization, as it has by certain members of the Commission on Civil Rights, and my good friend, the gentleman from Wisconsin, Mr. Sensenbrenner. Never before in the history of Congress has the GAO been attacked in this way as a partisan organization.

Let me tell you, I have seen many, many reports. The General Accounting Office at our request audited the FBI for the first time

in the FBI's history, and it came out with a withering report on work that the FBI was doing in domestic intelligence, a withering report. The FBI, the Director, Clarence Kelly, did not come up here and say this was a partisan GAO report.

I really am very surprised that the General Accounting Office would be a whipping boy. At the request of Mr. Sensenbrenner, now they are engaged in a study of the activities of the Civil Rights Commission for previous years, previous to the reconstitution of the Commission that took place just a few short years ago. When GAO is finished we will hold a hearing, or more, to hear the evidence of the General Accounting Office on the Commission on Civil Rights as was operated under previous administrations.

I certainly hope that the then-chairman, who I am sure will be called upon to testify, will not try to send, instead of themselves, former employees, former staff directors, or assistant staff directors. It just wouldn't be appropriate. This is not an appropriate way to handle it.

Is there further discussion on the motion of the gentleman?

Mr. SENSENBRENNER. Mr. Chairman, yes.

Mr. PENDLETON. Mr. Chairman, may I speak—

Mr. EDWARDS. Mr. Pendleton, you are not recognized, this is a motion before—

Mr. SENSENBRENNER. Mr. Chairman, I would like to be recognized.

First of all, this subcommittee has historically invited the staff director to appear to give testimony both by himself or herself, or in conjunction with members of the Civil Rights Commission. I have a compilation of instances where testimony was given before subcommittees of Congress by the staff director of the Civil Rights Commission.

The most recent instance was on September 18, 1985, where Max Green, the acting staff director of the Civil Rights Commission, appeared before this subcommittee in response to a question by one of the members of the majority party, to give technical answers to technical questions in an oversight hearing relative to the role of State advisory commissions. He was not invited to appear.

He was not scheduled to appear; but technical questions did come up during the hearing and he was allowed to appear to answer those technical questions. Now again, we are having different strokes for different folks. At this point in time, I think that is patently unfair.

Now second, relative to Mr. Edwards' comments relative to partisanship creeping into the General Accounting Office, he has got nobody to blame but himself for that. Because the GAO is directed by those who requested this audit, including Mr. Edwards, to depart from the longstanding policy of ensuring accuracy by not giving the Commission its findings in advance to review.

Furthermore, the requesters forbade the Commission any review of the GAO's findings in writing before they were made public. We had an instance where a GAO official who was conducting this audit had publicly fought with the Chairman of the Commission over something entirely unrelated.

Now if that were the case in a court of law, the judge would have disqualified himself and another judge would have been appointed

to hear the case. But this wasn't the case in the instance of this General Accounting Office audit.

Finally, I would remind my eminent subcommittee chairman, that the Commission is no longer comprised of Presidential appointees since this subcommittee reconstituted it. Half of the members of the Commission are appointed by the President of the United States, but the other half of the members of the Commission are appointed by the congressional leadership.

So instead of having an exclusive Commission of Presidential appointees, as was the case for the first 26 years of this Commission's operations, we now have a hybrid Commission. And there are two very able and articulate members of the Commission who were appointed by the Speaker and by Minority Leader Byrd of West Virginia.

In all of these instances I think that the chairman is wrong, I do think that we ought to have the staff director available to answer technical questions, just as he was available on September 18, 1985, when we had a technical hearing.

Unless Mr. Latham is allowed to appear in this kind of context, I think this is nothing but a partisan witch hunt, and you ought to admit that fact.

Thank you.

Mr. EDWARDS. I would like to point out to the gentleman that Mr. Latham will be asked to remain and answer questions. I will also point out to the gentleman from Wisconsin that he has the privilege always honored, on having a day of hearings when Mr. Latham can testify. It happens that this particular hearing we invited the members of the Commission to testify and we are pleased to have them.

Mr. SENSENBRENNER. Will the gentleman yield?

Mr. EDWARDS. Yes.

Mr. SENSENBRENNER. I would make the formal request once again to have Mr. Latham appear at this hearing. There is no need why we should go to the expense of having another hearing, hiring another court reporter, and publishing another hearing record when this all could be wrapped up in one hearing.

Mr. EDWARDS. On the motion to adjourn, does the gentleman insist on a vote?

Mr. SENSENBRENNER. Yes; I insist on a vote, if my request to have Mr. Latham appear here today is denied again.

Mr. EDWARDS. The question is on adjournment.

Those in favor signify by saying aye.

[Chorus of ayes.]

Contrary-minded, no.

[Chorus of ayes.]

Mr. SENSENBRENNER. May we have a rollcall?

Mr. EDWARDS. The clerk will call the roll.

The CLERK. Mr. Kastenmeier?

Mr. KASTENMEIER. No.

The CLERK. Mr. Conyers?

[No response.]

The CLERK. Mrs. Schroeder?

Mrs. SCHROEDER. No.

The CLERK. Mr. Schumer?

[No response.]

The CLERK. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. DeWine?

Mr. DEWINE. Aye.

The CLERK. Mr. Dannemeyer?

Mr. DANNEMEYER. Aye.

The CLERK. Mr. Edwards?

Mr. EDWARDS. No.

The clerk will report.

The CLERK. The vote is three to three, Mr. Chairman.

Mr. EDWARDS. The motion does not carry.

Are there any other statements?

Our witnesses this morning appear as a panel. We are pleased that four of the eight members of the Commission on Civil Rights accepted our invitation to testify.

The witnesses are: Clarence M. Pendleton, Jr., a San Diego businessman, and Chairman of the Commission; Morris B. Abram, a New York City lawyer, and Vice Chairman; Robert A. Destro, a law professor at Catholic University; and Mary Frances Berry, a professor of history and law at Howard University.

In accordance with committee procedures, I will now swear you in.

Please stand and raise your right hand.

[Witnesses sworn.]

Mr. ISHIMARU. Would you swear in Mr. Latham, please.

Mr. EDWARDS. If Mr. Latham is going to answer questions.

[Witness sworn.]

Mr. Pendleton, we welcome you. You may proceed.

TESTIMONY OF CLARENCE M. PENDLETON, JR., CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS; MORRIS B. ABRAM, VICE CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS; ROBERT A. DESTRO, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS; AND MARY FRANCES BERRY, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS

Mr. PENDLETON. Mr. Chairman, I am going to defer initially to my colleague, Mr. Abram, so we can share this opening statement.

But I need to say for the record, Mr. Chairman, that Mr. Latham, like the Presidential appointees that you discussed or mentioned, is also a Presidential appointee, which makes him a little different from everyday employees at an agency.

I think that is important to say that for the record, as I turn to Mr. Abram for his statement.

Mr. EDWARDS. Mr. Abram, welcome.

Mr. ABRAM. Mr. Chairman, members of the subcommittee, I thank you for the opportunity to appear here today in reference to the recent General Accounting Office report on the Commission. It is clear, however, that the appearance by the Commissioners and the staff director who is beside me, may be an empty formality, for at least two members of this distinguished subcommittee since Representative Edwards has already written the Washington Post al-

leging mismanagement of the Commission, and Representative Schroeder called for defunding of the Commission last month.

Notwithstanding, I would like to make a statement for the record so that more open-minded observers can draw informed conclusions of this GAO report.

To begin with, it should be made clear that the Commission was in no way afforded, as Mr. Sensenbrenner pointed out, even the basic due process with respect to the investigation. The normal procedure would have been for the draft report to be turned over to the Commission and the Commission given up to 30 days to comment in writing.

We did not see the written draft ever before it was published by the GAO. We were not given up to 30 days for comment in writing. There was no opportunity afforded whatsoever to comment in writing.

Indeed, the staff director has here as his testimony, the comment that would have been made had we received the normal, the normal due process which a committee on constitutional rights, I should have thought, would have been very observant of. Moreover, the investigation's purpose and target were kept concealed throughout until we had an oral briefing 1½ days before the report was issued.

One week before the report was issued we did not even know the charges that were being looked into. Now, therefore this is the first opportunity for a detailed response.

The charges were given to the staff director in an oral presentation. They were not given to the Commissioners. They were given to the gentleman whom you do not wish to hear from. He is prepared to answer for the first time, to you, and you don't want to hear from him.

Moreover, as Mr. Sensenbrenner points out, the GAO assigned as one of its principal investigators, a woman whose devotion to what I call social engineering, leads her to criticize publicly a Commission statement on comparable worth, even as she is in the process of authoring a so-called nonpartisan report on that very Commission statement. How someone capable of such behavior should be allowed to participate in another report on the Commission defies imagination.

Even after the GAO, as I said, produced the written report, the management of the Commission was not afforded the usual and customary rights, that is, that they were not allowed to see it, Mr. Chairman.

Mr. Chairman, they were not allowed to see it. Not allowed adequate time to respond, the conventional time to respond.

I understand this procedure was adopted, Mr. Chairman, at the request of yourself, and several of your colleagues. The GAO would not have done this had you not so requested, Mr. Chairman.

I have asked the staff director to detail further in his testimony the numerous transgressions of the GAO's established procedures during this investigation.

Needless to say, the principal impression that a disinterested observer would have of this investigation is that it is one compelled not by concern for careful concern of the taxpayers' dollars, but by prejudice. It is the kind of partisanship that was exhibited by

the distinguished chairman of this subcommittee, last October, in a letter to the New York Times, when he asserted that this Commission is no longer an independent watchdog over civil rights.

As I guarantee you, sir, having devoted 40 years to this struggle, I am; and I will always be.

What, then, is this GAO report? Well, I can state in absolute confidence two things this report is not about. The first is the management of the Commission on Civil Rights; and the second is the work of the Commission on Civil Rights.

To start with it is evident that this report is not really about the management practices of the Commission. The GAO ignored a request by several Congressmen and Senators to conduct a comprehensive and comparative study by extending the period under investigation back to 1978, from December 1983.

This refusal, of course, means that the GAO had no standard by which to judge the management of the Agency. It is utterly nonsensical to claim that the changes in the agencies management that took place in December 1983 were responsible for the institution of poor management practices, if one has no idea of what went before. And what went before I can tell you from experience with what we have found, in a moment, is interesting.

The magnitude of this senselessness becomes even more apparent when one considers that the vast bulk of the Commission's administrative procedure, types of work, and even personnel have remained unchanged from the old Commission.

Now, I do not know the details of the management of the agency. And I am skeptical of any commissioner who says that he or she does—only the staff director, who is the agency's executive officer, appointed by the President of the United States, and the assistant staff director for management, are familiar enough with such matters to give trustworthy answers.

This subcommittee, by the way, of course, has not seen fit to invite either of these officials by asking them to be present and submit testimony.

However, with respect to the matters in the GAO report, all I can say is I can well remember, Mr. Chairman, the day when the former staff director, Linda Chavez told me that she had just learned of the existence, after weeks in office, of an official commission car which had been kept concealed from her by the staff of the agency.

The management responsible for that type of irregularity has been removed, and extensive subsequent efforts have been made by the new Assistant Staff Director for Administration, Albert Maltz, to impose tighter procedures at the Commission.

Now, Mr. Chairman, and ladies and gentlemen, who is Mr. Maltz, appointed by Linda Chavez? He is a man with over 30 years of distinguished Federal career service to his credit.

He has served six different agencies advancing from an entry level GS-5, to the SES ranks. His two civilian assignments prior to his current position, were as an OPM Bureau Director of Administration and an agency director of personnel. He has over 34 years of military service, including over 7 years of active service.

He has served both in the Army and the Air Force; entered the Army as a private, and retired from the Air Force as an O6 colo-

nel. He was awarded, sir, the Legion of Merit, the second highest decoration that the Army can bestow for efficiency in work, as well as numerous other peacetime and wartime decorations.

Mr. Maltz—he is here today, if you want to hear from him—left his position of director of personnel involuntarily rather than to disobey a civil service regulation when he was ordered to do so by his superiors who were Republican political appointees. Given such a record, I have reason to have ample confidence in the integrity of the administration of the Commission, whose administrative work is handled by a man of this character and experience.

Finally, it is important to note one fact that I believe is nowhere found in the GAO report, namely, that even after all the people and all the time the GAO lavished on this inquisition, it was unable to make a single allegation of peculation.

The GAO could not find a single person who improperly profited from the Commission on Civil Rights since it was reconstituted in 1983. Even more amazingly, it is my understanding that the GAO report, despite its unending innuendos, contains only a single claim that any law was broken, and that concerns a statute where the Commission staff is confident that the GAO's interpretation is wrong.

It seems to me that if the management of the Commission is as bad as the chairman of this subcommittee has claimed, then some actual law should have been violated in an unequivocal fashion. Absent that, one wonders why this report has received such attention, than except for partisan political purposes.

The second major point that needs to be made is that the GAO report has nothing to do with the substantive work of this Commission. Because I understand the next phase of the GAO's continuing harassment is to be an investigation of the current Commission's work, I would like to make a few predictions for you at this time. It is critical I make these comments now because I expect that once again the Commission will be denied due process to comment before the report is made public, as is usual, Mr. Chairman.

I predict that the next report will ignore the quality work that is now being done at the Commission. Projects are now underway dealing with the major issues related to civil rights: school desegregation, redistricting and voting rights, income differences among racial and ethnic groups and between men and women, and the effects of affirmative action.

These projects are staffed by an excellent group of economists and other social scientists. And the staff regularly consults with outstanding experts from the academic and policy communities.

Listen, Mr. Chairman, our project consultants include: Prof. Nathan Glazer; Prof. Glen Loury; and Prof. Stephan Thernstrom, all professors at Harvard; the economists Jacob Mincer at Columbia; Claudia Goldin at the University of Pennsylvania; Barry Chiswick, University of Illinois; Glen Cain of Wisconsin; and Christopher Jencks, who was David Reisman's colleague and coauthor of many standard works, now from Northwestern, who recently joined the advisory group to our school desegregation project in replacement of Gary Orfield who resigned after leaking a letter to the press before it was delivered to the chairman. Christopher Jencks took his place; a great man.

Our magazine, *New Perspectives*, has breathed fresh vitality and balance into the public debate on civil rights issues, with articles such as those by Sidney Hook, Glen Loury, Joseph Adelson, Richard Freeman, Diane Ravitch, Barry Goldstein, Charles Hamilton (upcoming); and interviews with Bayard Rustin, Brad Reynolds, and Heidi Hartmann.

In fact, the editor of *Daedalus*, the journal of the American Academy of Arts and Sciences wrote recently. Let me quote what this distinguished scholar said about this magazine which we publish:

Indeed, it is your fall issue of 1985, that makes me realize that I have missed reading a publication that has existed for some time, that is clearly excellent in any number of ways.

You haven't heard that, sir, you haven't heard that from the conventional press. This is what the distinguished academic press says about the work of the Commission, I have no doubt that the GAO will do its level best to minimize or ignore altogether these points, these scholarly projects.

Will the next GAO report look to the initial period after the funding of the Commission in 1957 to see how long it took them to begin producing work, such a comparison being extremely relevant to the experience of the reconstituted commission? I doubt it.

I remember, sir, as a young lawyer fighting segregation in Georgia in 1957, when that commission first came to Atlanta, in 1957, to take testimony on segregation in that community. It was a long time before they put out work. Will the next GAO report contrast the current principled research to the previous Commission effort?

Will it discuss the disgraceful 1981 Commission statement on the equal rights amendment which was written by whom, under a lucrative contract that the Commission made with a professor?

Oh, no; the National Organization of Women's Legal Defense and Education Fund, that is whom they ladled their money out to.

When it looks at our report on Euroethnics, which is coming out shortly, will it compare it to the old Commission's failure to produce a report on Euroethnics, despite a congressional order embraced in an amendment to the Commission on Civil Rights Act to do so, and the expenditure of the old Commission of large sums of money to an outside group from 1978 to 1983, which produced nothing?

Will it contrast our report on black/white incomes to the old Commission's crude 1980 report on affirmative action which issued a blanket condemnation of the American system—listen to what they said, as one that now routinely bestows privileges, favors and advantages on white males and imposes disadvantages and penalties on minorities and women?

I think the answer to all of these questions can only be "no."

How do I know so much about what the next report will look like, Mr. Chairman?

It is certainly not that I am clairvoyant; and it is certainly not that I have been provided with an advance copy, because that would be even-handed. Rather, the reason that I know these things is that I understand what is really at stake here, Mr. Chairman.

I know this process has nothing to do with appointments, civil service regulations, or recordkeeping. The real object of this dis-

pute is over equality of opportunity in this country versus equality of results. Over individual rights as compared to group rights. Over color blindness as opposed to preferences based upon blood or race.

The real issues are individual rights versus group rights. The struggle is between the fair shakers, and I think I was one of them, sir, who started early in the civil rights movement, and the social engineers who now claim to speak for it.

Frankly, Mr. Chairman, and distinguished members of the subcommittee, I do not believe that nondiscrimination for all means discrimination for some. I remain devoted to the original principles of the civil rights movement as outlined by Dr. Martin Luther King, with whom I stood; Roy Wilkins, whom I loved; and Hubert Humphrey, who was my stalwart ally.

I know that many do not share my beliefs or their beliefs, and instead feel that equality of results is the proper goal of the civil rights laws. Nevertheless, I and many of my colleagues on the Commission on Civil Rights remain true to these noble ideals.

It is the fact that these beliefs are once more in the ascendancy in the Civil Rights Commission that has triggered these GAO reports, and the fact that the social engineers have lost ideological monopoly of the Commission.

Let me remind you, sirs, that President Carter offered me a place on this Commission in 1979, and when I told him that I would not support quotas, he withdrew the offer.

As the distinguished economist Thomas Sowell remarked only two weeks ago, "The Civil Rights Commission is at a turning point in its history. After many years of being merely an echo of whatever thinking was in vogue in the civil rights establishment, it has at last become the independent agency it was intended to be." The Commission's true independence is what its critics find so offensive.

In other words, this GAO report that we are discussing here today is merely a part of a larger effort to discredit the Commission because our ideas are unacceptable and to make a preemptive strike before the outpouring of scholarly reports that are shortly due.

This process is not about mismanagement, and I might add, that it is not about the style of rhetoric issuing from new members of the Commission.

Now, I know, Mr. Chairman, you, among others, have accused Mr. Pendleton, of engaging in inflammatory rhetoric. We cannot examine his rhetoric, however, without examining the rhetoric of others, including, sir, respectfully, yourself.

For example, you publicly labeled this Commission last week a "disinformation tool," a term usually reserved for America's enemies.

I am not an enemy of my country, sir. I am nobody's tool.

For that matter, Mr. Chairman, I must say that I find it interesting that those who denounce some people's rhetoric never seem to cast a very wide net in their search for unacceptable remarks.

Why do these same people never take exception when Commissioner Berry characterizes Chairman Pendleton, Attorney General Meese, and Assistant Attorney Reynolds, as having and I quote here, "bigotry dripping from their lips"?

Where are these critics when Commissioner Berry accuses Chairman Pendleton and Linda Chavez of having "used the Agency as if it were a private cookie jar"?

Where are these sanctimonious guardians of the public discourse when Congressman Parren Mitchell or others call the chairman "a low-level houseboy" or "Uncle Tom," then walk out of the meeting? He walked out, having said those damnable words, which if anyone else had used them would have been regarded as racist to the core.

I will tell you why they look the other way, because these speakers, no matter how inflammatory their rhetoric, have the correct social engineering ideas. And so it is with the GAO report. It is simply another example of heavy-handed attempts at legislative interference with an independent commission because of its ideas.

Now, Mr. Chairman, this is nothing new. Senator McClellan of Arkansas conducted an investigation of the Commission in 1960, charging incompetent management and failure to conform to civil service requirements in hiring staff personnel. Then, as now, the real contest was over ideas, not management, and the Commission was attacked by those, including Senator McClellan, who found it difficult to yield up the color preference then known as white supremacy.

Mr. Chairman, distinguished members of the this subcommittee, I must conclude by saying that my lifelong participation in the struggle for civil rights has shaped my deepest moral and political beliefs. I can only ask that we hope and pray that we all stop hiding behind these so-called audits, that are nothing more than harassment tactics, and resume a serious discussion of the vitally important issues of civil rights in this country which still remain on the plate of the national discourse and the national agenda, and are still to be resolved. Let us work together; and let us work for the cause of that constitutional provision which says that we shall have equal protection of the law in this country, and equal means equal, without regard to race, creed, or gender.

Thank you, Mr. Chairman.

[The testimony of Mr. Abram follows.]

UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C. 20425

FOR RELEASE ON DELIVERY
EXPECTED AT 1:30 P.M.
APRIL 22, 1986

STATEMENT OF
THE HONORABLE MORRIS ABRAM, VICE CHAIRMAN
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ON
A GENERAL ACCOUNTING OFFICE REPORT OF
MARCH 25, 1986

Mr. Chairman and Members of the Subcommittee:

I thank you for the opportunity to appear here today in reference to the recent General Accounting Office report on the Commission on Civil Rights. It is clear, however, that the appearance by the Commissioners and the Staff Director at this hearing is regarded as an empty formality by at least two members of this distinguished subcommittee, since Representative Edwards has already written the Washington Post alleging mismanagement at the Commission and Representative Schroeder called for defunding the Commission last month.

Notwithstanding the rush to judgment of these Congressmen, I would like to make a statement for the record so that more open-minded observers can draw informed conclusions about the merits of this GAO report. To begin with, it should be made clear that the Commission was in no way afforded even basic due process with respect to this investigation. The investigation's purpose and targets were kept concealed throughout. Moreover, the GAO assigned as one of its principal investigators a woman whose devotion to social engineering lead her to criticize publicly a Commission statement on comparable worth even as she was in the process of authoring a so-called "nonpartisan" report on that very Commission statement. How someone capable of such behavior would be allowed to participate in another report on the Commission defies the

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imagination. Even after the GAO produced a written report, the management of the Commission was not afforded the usual and customary rights, that is, they were not allowed to see it, not allowed adequate time to respond, and not even allowed to respond on the record. And I understand that this procedure was adopted, Mr. Chairman, at the request of yourself and several of your colleagues. I have asked the Staff Director to detail further in his testimony the numerous transgressions of the GAO s established procedures during this investigation.

Needless to say, the principal impression that a disinterested observer would have of this investigation is that it is one compelled not by concern for careful expenditure of the taxpayers' dollars, but by prejudgment. It is this kind of partisanship that was exhibited by the distinguished Chairman of this Subcommittee last October in a letter to the New York Times when he asserted that the Commission is no longer an independent watchdog over civil rights.

What, then, is this GAO report? Well, I can state in absolute confidence two things this report is not about -- the first is the management of the Commission on Civil Rights, and the second is the work of the Commission on Civil Rights.

To start, it is evident that this report is not really about the management practices of the Commission. The GAO ignored a request by several Congressmen and Senators to

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conduct a comprehensive and comparative study by extending the period under investigation back to 1978 from December, 1983. This refusal means, of course, that the GAO has no standard by which to judge the management of the agency. It is utterly nonsensical to claim that the changes in the agency's management that took place in December, 1983 were responsible for the institution of poor management practices if one has no idea of what went before. The magnitude of this senselessness becomes even more apparent when one considers that the vast bulk of the Commission's administrative procedures, types of work, and even personnel have remained unchanged from the old Commission.

Now, I do not know the details of the management of this agency, and I am skeptical of any Commissioner who says that he or she does -- only the Staff Director, who is the agency's executive officer, and the Assistant Staff Director for Management are familiar enough with such matters to give trustworthy answers. This Subcommittee, by the way, did not see fit to invite either of those officials to be here today, an oversight which the Chairman and I have rectified by asking the Staff Director to present testimony for us.

However, with respect to the matters in the GAO report, all I can say is that I well remember the day when former Staff Director Chavez told me that she had just learned of the existence, after weeks in office, of an official Commission car which had been kept concealed from her by the staff of the

agency. The management responsible for that type of irregularity has been removed, and extensive subsequent efforts have been made by the new Assistant Staff Director for Administration, Albert Maltz, to impose tighter procedures at the Commission.

Who is Mr. Maltz, appointed by Linda Chavez? He is a man with over 30 years of distinguished Federal career service to his credit. He has served in six different agencies advancing from an entry GS-5 to the SES ranks. His two civilian assignments prior to his current position were as an OPM Bureau Director of Administration and an Agency Director of Personnel. His over 34 years of military service includes 7 years of active military duty. He served in both the Army and Air Force, entered the Army as a private and retired from the Air Force as an O6 Colonel. He was awarded the U.S. Legion of Merit as well as numerous other peacetime and wartime decorations. Mr. Maltz left his position as Director of Personnel involuntarily rather than disobey a Civil Service regulation when he had been ordered to do so by his superiors who were Republican political appointees. Given such a record, I have ample reason to have confidence in the integrity of the administration of the Commission.

Finally, it is important to note one fact that I believe is nowhere to be found in the GAO report -- namely, that even after all the people and all the time that the GAO lavished on this inquisition, it was unable to make a single allegation of

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peculation. The GAO could not find a single person who improperly profited from the Commission on Civil Rights since it was reconstituted in December, 1983. Even more amazingly, it is my understanding that the GAO report, despite its unending innuendos, contains only a single claim that any law was broken, and that concerns a statute where the Commission staff is confident that the GAO's interpretation is wrong. It seems to me that if the management of the Commission is as bad as the Chairman of this Subcommittee has claimed, then some actual law should have been violated in an unequivocal fashion. Absent that, one wonders why this report has received such attention except for partisan political purposes.

The second major point that needs to be made is that the GAO report has nothing to do with the substantive work of the Commission. Because I understand that the next phase of the GAO's continuing harassment is to be an investigation of the current Commission's work, I would like to make a few predictions at this time. It is critical that I make these comments now, because I expect that once again the Commission will be denied its due process right to comment before the report is made public.

I predict that the next report will ignore the quality work that is now being done at the Commission. Projects now are under way dealing with major issues related to civil rights:

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School desegregation, redistricting and voting rights, income differences among racial and ethnic groups and between men and women, and the effects of affirmative action. These projects are staffed by a excellent group of economists and other social scientists. And the staff regularly consults with outstanding experts from the academic and policy communities. Our project consultants include Nathan Glazer, Glen Loury and Stephen Thernstrom - all professors at Harvard; the economists Jacob Mincer (Columbia), Claudia Goldin (University of Pennsylvania), Barry Chiswick (University of Illinois), Alen Cain (Wisconsin); and Christopher Jencks from Northwestern who has recently joined the advisory group to our school desegregation project as a replacement of Gary Orfield who resigned after leaking a letter to the press before it was delivered to the Chairman. Our magazine, New Perspectives, has breathed fresh vitality and balance into public debate on civil rights issues, with articles by such authors as Sidney Hook, Glen Loury, Joseph Adelson, Richard Freeman, Diane Ravitch, Barry Goldstein and Charles Hamilton (upcoming); and interviews with Bayard Rustin, Brad Reynolds, and Heidi Hartmann. In fact, the editor of Daedalus, the journal of the American Academy of Arts and Sciences wrote "Indeed, it is your Fall 1985 issue that makes me realize that I have missed reading a publication that has existed for some time, that is clearly excellent in any number of ways." I have no doubt but that the GAO will do its level

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best to minimize or ignore altogether these important, scholarly projects.

Will the next GAO report look to the initial period after the funding of the Commission in 1957 to see how long it took them to begin producing work, such a comparison being extremely relevant to the experience of the reconstituted Commission? I doubt it.

Will the next GAO report contrast the current principled research to the previous Commission's efforts? Will it discuss the disgraceful 1981 Commission statement on the Equal Rights Amendment which was written under a lucrative contract by the National Organization of Women's Legal Defense and Education Fund? When it looks at our report on Euroethnics which is coming out shortly, will it compare it to the old Commission's failure to produce a report on Euroethnics despite a Congressional order to do so and the expenditure of large sums of money to an outside group from 1978 to 1983? Will it contrast our report on black/white incomes to the old Commission's crude 1980 report on affirmative action which issued a blanket condemnation of the American system as one that "now routinely bestows privileges, favors and advantages on white males and imposes disadvantages and penalties on minorities and women?" I think that the answer to all of these questions can only be "no."

How do I know so much about what the next report will look like, Mr. Chairman? It is certainly not that I am clairvoyant,

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and is absolutely not that I have been provided with an advance copy because that would be too even-handed. Rather, the reason I know all these things is that I understand what is really at stake here, Mr. Chairman.

I know this process actually has nothing to do with appointments, civil service regulations, or recordkeeping -- the real subject of this dispute is over equality of opportunity versus equality of results. The real issues here are individual rights versus group rights, nondiscrimination versus color preference, and the struggle between the fair shakers, who started the civil rights movement, and the social engineers, who now presume to speak for it.

Frankly, Mr. Chairman and distinguished members of this subcommittee, I do not believe that nondiscrimination for all means discrimination in favor of some. I remain devoted to the original principles of the civil rights movement as outlined by Dr. Martin Luther King, Jr., Roy Wilkins, and Hubert H. Humphrey. I know that many do not share my beliefs and instead feel that equality of results is the proper goal of civil rights law. Nevertheless, I and many of my colleagues on the Civil Rights Commission remain true to these noble ideals.

It is the fact that these beliefs are once more in the ascendancy on the Civil Rights Commission that has triggered these GAO reports, the fact that the social engineers have lost their ideological monopoly of the Commission. As the distinguished economist Thomas Sowell remarked only two weeks

ago, "The Civil Rights Commission is at a turning point in its history. After many years of being merely an echo of whatever thinking was in vogue in the civil rights establishment, it has at last become the independent agency it was intended to be." The Commission's true independence is what its critics find so offensive.

In other words, this GAO report that we are discussing here today is merely part of a larger effort to discredit the Commission because our ideas are unacceptable and to make a preemptive strike before the outpouring of scholarly reports that are shortly due. This process is not about mismanagement, and, I might also add, that it is not about the style or rhetoric issuing from the new members of the Commission, either. Now I know that you, Mr. Chairman, among others, have accused the Commission's Chairman, Clarence Pendleton, of engaging in inflammatory rhetoric. We can not examine his rhetoric, however, without examining the rhetoric of others, including, sir, yourself. For example, you publicly labeled the Commission last week a "disinformation tool", a term usually reserved for America's enemies.

For that matter, Mr. Chairman, I must say that I find it interesting that those who denounce Chairman Pendleton's rhetoric never seem to cast a very wide net in their search for unacceptable remarks. Why do these same people never take exception when Commissioner Mary Berry characterizes Chairman Pendleton, Attorney General Meese, and Assistant Attorney

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General Reynolds as having "bigotry dripping from their lips?" Where are these critics when Commissioner Berry accuses Chairman Pendleton and Linda Chavez of having "used the agency as if it were their private cookie jar?" Where are these sanctimonious guardians of public discourse when Congressman Parren Mitchell or others call Chairman Pendleton "a low-level kind of houseboy" or "Uncle Tom?"

I will tell you why they look the other way -- because these speakers, no matter how inflammatory their rhetoric, have the correct social engineering ideas. And so it is with this GAO report; it is simply another example of heavy-handed attempts at legislative interference with an independent commission because of its ideas. This is nothing new, of course; Senator McClellan of Arkansas conducted an investigation of the Commission in 1960, charging incompetent management and failure to conform to civil service requirements in hiring staff personnel. Then, as now, the real contest was over ideas, not management, and the Commission was attacked by those who found it difficult to yield up the color preference then known as white supremacy.

Mr. Chairman, distinguished members of this Subcommittee, I must conclude by saying that my lifelong participation in the struggle for civil rights has shaped my deepest moral and political beliefs. I can only ask that we stop hiding behind

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these so-called "audits" that are nothing more than harassment tactics and resume a serious discussion of the vitally important issues of civil rights in this country.

Mr. EDWARDS. Thank you, Mr. Abram. We will recess for 10 minutes while there is a vote in the House of Representatives.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Mr. Pendleton, who would you like to testify next?

Mr. PENDLETON. Mr. Chairman, I feel compelled to do a couple of things before I testify here. One is that I would like to read into the record the letter to you, from Commissioner Abram and me, dated April 18, with respect to Mr. Latham's testimony.

Mr. EDWARDS. Without objection it will be made a part of the record.

[The information follows:]



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20545

HAND CARRY

April 18, 1986

Dear Chairman Edwards:

We note that an invitation to testify before your subcommittee's April 22 hearing on the Commission on Civil Rights was sent to each Commissioner but not to the Staff Director -- a Presidential appointee and the chief executive officer of the agency.

The Staff Director is the individual responsible for and most knowledgeable about the management of the agency -- the topic of your April 22 hearing -- and he is the individual charged with representing the agency to Congress. Section 701.12 of the Rules of the Commission provides that the Staff Director:

"manages the administrative affairs of the agency and conducts agency liaison with the Executive Office of the President, the Congress and other Federal agencies."

We further note that Mr. Latham represented the Commission at the briefing provided by GAO prior to your hearing on March 25.

At our request, therefore, our Staff Director, J. Al Latham, Jr., will be present at the hearing to present testimony on behalf of the agency.

Morris B. Abram
Vice Chairman

Respectfully,

Clarence B. Pendleton, Jr.
Chairman

The Honorable Don Edwards
Chairman, House Subcommittee on Civil
and Constitutional Rights
2307 Rayburn House Office Building
Washington, D.C. 20515

Mr. PENDLETON. The second point is that Mr. Latham had prepared the official agency response.

Mr. EDWARDS. Without objection it will be made part of the record, too.

[The testimony of Mr. Latham, including attachments, follows:]

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

FOR RELEASE ON DELIVERY
EXPECTED AT 1:30 P.M.
APRIL 22, 1986

STATEMENT OF
J. AL LATHAM, JR., STAFF DIRECTOR
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ON
A GENERAL ACCOUNTING OFFICE REPORT OF
MARCH 25, 1986

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear here today to respond to the review of Civil Rights Commission operations recently conducted by the General Accounting Office and publicized by this subcommittee. I regret to report, however, that I find the circumstances of the entire GAO investigation and oversight process disappointingly irregular and partisan.

A Political Hatchet Job

Since it was first created in 1957, the Civil Rights Commission has more than once had its integrity impugned for political reasons. The first such attack came just months after publication of the Commission's landmark First Report in September 1959 -- a report which authoritatively detailed the discrimination against blacks then prevalent throughout American society and gave strong, unambiguous support for principles of equal protection under the law. Unable to block a temporary extension of the Commission's life, Southern Senators initiated an inquiry into its operations startlingly similar in origin and spirit to the one we are here today to discuss. It was alleged then, as now, that the Commission had circumvented civil service requirements in hiring staff personnel. It was charged then, as now, that the agency's leadership was guilty of malfeasance, and a scrutiny of accounts by the General Services Administration was begun in an attempt to find supporting evidence. Commission staff were then, as now, summoned to Congressional hearings, subjected to accusatory

questioning, and prevented from performing the civil rights work for which they had been appointed.

Today, in a very different world, the U.S. Commission on Civil Rights is again investigated, at the behest of members of Congress who are politically hostile to the agency's work. This investigation is a mockery of true government oversight because the investigation has been twisted and pulled into an artificial form that largely predetermines GAO's conclusions.

The four Congressional requesters of the current report brushed aside a request by five other Congressmen and Senators that the report's scope be extended back to 1978 -- an extension that would have demonstrated that management has improved substantially since the Commission was reconstituted in 1983. Until the GAO investigation was completed, the four Congressional requesters would not allow the Commission to know what allegations had been made against it. The four Congressional requesters also directed GAO not to follow its own longstanding, usual, and basic procedures for ensuring accuracy and fairness. Specifically, they ordered GAO to deny the Commission the right to review and make written comments on the draft report and have its comments reflected in the final version. Finally, the Chairman of this subcommittee did not invite the Commission's testimony at the hearing at which GAO's findings were issued, thus ensuring a big media splash for uncontested charges. As is well known, answers draw less attention than charges, especially when steps are taken

to assure that the answers not be heard at the same time the charges are made.

It appears that one object of this carefully orchestrated GAO investigation and oversight process is the manufacture of hollow scandal with which to justify a push to abolish the U.S. Commission on Civil Rights, not unlike the first assault of almost 30 years ago. At least one of the requesters, a member of this subcommittee, has already used the GAO's findings to urge her Hill colleagues to "get rid of" the Commission. One doubts that such critics feel that the work of the Commission is largely done. One suspects instead that they cannot brook its current findings and policies.

Not surprisingly, therefore, the charges and conclusions contained in Mr. Anderson's testimony here last month are largely the product of the partisan structure imposed on GAO's investigation. In the attachments to my statement will be found detailed, point by point rebuttals and explanations for the implied improprieties and deficiencies with which the U.S. Commission on Civil Rights has been charged. Here I will address in summary fashion the most important of them.

Empty Charges of Improper Personnel Practices

It has been alleged that since its 1983 reconstitution the Commission has systematically hired noncareer employees in place of career staff. Although GAO admitted in its oral briefing of the Commission that it does not contend Commission hiring

practices have prejudiced the rights of career employees, GAO has nevertheless conveyed the false impression in its report that we have stocked our rolls with unqualified ideologues. For evidence, GAO has produced a jumble of numbers it clearly does not understand. The report says that 212 noncareer employees were hired by the Commission in the period under review, for example, as against 60 career appointments, and that 73 of those 212 were still at the Commission last December. These numbers are wrong. The Commission has not hired 212 noncareer employees since October 1982; it has taken 212 personnel actions, which involved at most 188 employees, and probably far fewer. And of the 73 employees still at the Commission (as of the end of the reporting period, December 31, 1985), only 9 were in full-time temporary outside-the-register positions. Nearly all of the rest were consultants working, for the most part, less than 3 days a year; special assistants to the Commissioners, working intermittent or part-time schedules; or part-time "bona fide students." The 9 temporary appointments were legally proper, consistent with sound management practices, and in conformance with an official OPM policy that encourages all Federal agencies to employ temporary workers whenever possible. GAO was made aware of OPM's policy but failed to address it in its report.

What would the requested extension in scope of the audit have revealed about Commission personnel practices before 1983? As noted, in the 39 months now under review, this Commission made 212

non-permanent personnel actions. In the preceding 39 months, the old Commission took at least 271 such actions; exact figures are difficult to reconstruct because the agency's official personnel records for the period are in GAO's hands, but probably as many as 290 such actions were taken. Among them were at least 14 more consultant appointments than the present Commission has made, and 65 more temporary appointments. Similar management, in other words, and hardly unusual, but cause for a major agency audit when pursued by the present Civil Rights Commission. Could it be that GAO, reflecting the aims and ideas of the Congressional requesters, objects not to our practices but to our policies?

- GAO has made other allegations of improper personnel procedures at the present Commission that are demonstrably false:
- o GAO has criticized the violation of regulations that do not exist. It has charged the absence of documentation in appointment records that in fact no Federal agency is required to keep. GAO notes, for example, two temporary appointments made from job announcements lacking opening dates. These positions were filled under regulations requiring no formal announcement and thus no formal opening date.
 - o Similarly, because it wrongly claims that none of 31 Commission consultants' personnel files contains sufficient documentation, GAO would have this subcommittee and the public believe that it is unable to determine whether Professors Nathan Glazer, Stephan Thernstrom, and Glenn C. Loury of

Harvard; Claudia Goldin of the University of Pennsylvania; Jacob Mincer of Columbia; Barry Chiswick of the University of Illinois; Christopher Jencks of Northwestern; Bernice Sandler of the Association of American Colleges; or any of a dozen other equally distinguished scholars -- quote -- "possessed the necessary background to render advisory services to the Commission" -- unquote. The General Accounting Office owes these men and women an apology.

- o GAO charges that five consultants performed operating duties contrary to OPM instructions. In two cases it was the Commission itself that discovered the difficulty and corrected it, long before the GAO began its investigation. As to the other three instances, it should first be noted that GAO evaluators did not even speak to one of the individuals concerning the duties she performed while a consultant. In another case, GAO auditors spoke only about duties performed after the employee's appointment to the career civil service. In the third case, GAO spoke to the employee about the duties performed as a temporary employee. When it became apparent to the employee that GAO was confused about when her services as a temporary employee began, the employee informed GAO of the timing of the event and pointedly remarked that her duties had changed, not only in degree, but in kind, when she ceased being a consultant and began service as a temporary.
- o GAO alleges that the Commission has failed to use written

qualification standards for Schedule C appointments and promotions, and it offers several examples as worthy of scrutiny. GAO neglects to mention that 5 C.F.R. 302.101(c)(7) specifically exempts Schedule C appointments from the appointment procedures of Part 302 of the Civil Service Regulations.

- o GAO claims to have discovered eight "special needs" appointments lacking justifying documentation. Until quite recently no requirement for such documentation existed. From the day a requirement was imposed by OPM, all Commission special needs appointments have contained requisite documentation.
- o GAO refuses to acknowledge overwhelming evidence that the Commission has complied fully with Federal regulations governing notification to State employment agencies of job openings. Written documentation in our case files that all appropriate offices have been so notified does not satisfy GAO auditors, nor do slips from such agencies attached to our applications, nor do copies of letters from our personnel office to those agencies.
- o GAO admits that anonymous charges that new hires have been promoted and given awards more often and more substantially than career employees seem groundless, but cannot resist suggesting that "this pattern could be changing." We are surprised at this wording. During GAO's oral briefing of the

Commission, Mr. Anderson confessed that any perceived change was "not statistically significant" and promised that "the offending phrase shall be struck." We are happy to make a belated correction for him now.

Read properly, incidentally, the transcript of that briefing, which we are prepared to make public, is an instructive summary of personnel practices at the Civil Rights Commission. Consider this exchange: "You are not contending that our hiring consultants, temporary employees, and Schedule Cs is improper?" I asked Paul O'Neill, the GAO Group Director supervising our audit. "No," he replied, "absolutely not."

Empty Charges of Improper Operating Procedures

There is more to the report than personnel practices, of course. Two incidents involving Chairman Pendleton are claimed to involve some metaphysical transgression of anti-lobbying restrictions. In the first instance, GAO is forced to admit that no law or regulation prohibits the Chairman of the Commission from expressing views on matters that the agency has not yet officially addressed. In the second instance, GAO sees fit to charge Chairman Pendleton in its summary presentation with appearing to exceed the limits of acceptable official speech, but does not adequately explain the difference between permissible and impermissible speech in the two instances. In fact, in the second instance, the Chairman was communicating officially adopted Commission policies on the so-called Grove City issue.

What, by the way, might the requested extension of GAO's audit have revealed about the Commission's lobbying activities before reconstitution? Did the old Commission's 1981 release of an official statement urging passage of the Equal Rights Amendment -- a statement it paid the National Organization for Women's Legal Defense and Education Fund more than \$17,000 to draft for it -- test the strength of regulations restricting lobbying by government officials? How does Chairman Pendleton's exercise of free speech compare with that? And what does that say about the old Commission's much-vaunted "independence" prior to 1983?

Much of GAO's information concerning the Commission's State Advisory Committees has been delivered to this committee at previous hearings. But it remains instructive to have a clear look at it. GAO notes the racial and gender makeup of the reconstituted SACs and observes that each committee is now limited to 11 members. As the report itself suggests, larger committees are wasteful of public funds, and smaller ones garner better attendance and attention. GAO records a new complaint that some regional Commission officials have been forbidden to confer with the SACs in their jurisdictions. This is untrue and ridiculous on its face. Our regional representatives speak with SACs in their jurisdictions every day and could not otherwise do their work.

Acknowledging the introduction in FY 85 of a new form by which SACs advise the Commission -- the briefing memorandum -- and admitting that such memoranda are an alternative to formal

reports, GAO nevertheless complains that formal reports have been released far less frequently since FY 84. GAO notes the completion of 24 briefing memoranda in FY 85, but fails to announce the expected completion of a similar number over the course of FY 86.

It is important to remember that SACs exist to advise the Commission, not to write for it. GAO seems quite ignorant about that principal function. "Factfinding meetings," says their report, have declined in number from 12 in 1983 to 0 in 1985. Furthermore, GAO claims, no "factfinding meetings" are listed in our FY 87 budget submission. Have the SACs stopped finding facts? No. Our FY 87 budget submission included SAC meetings aimed at factfinding--or community forums as they are also known--under the heading, "Planning Meetings." The SACs typically sponsor their community forums as part of their planning meetings, and these activities are documented in the FY 85 Federal Advisory Committee reports submitted to the General Services Administration. The numerous community forums held in 1985 and the briefing memoranda and reports that resulted conclusively establish that any claimed curtailment of SAC factfinding is illusory.

GAO resuscitates an old charge that a former Commission Staff Director made personal use of an official agency automobile. Despite written statements denying the truth of the report's anonymous, uncorroborable allegation, GAO treats both charge and rebuttal as equally worthy of attention and respect. I am appalled by the aroma of presumed guilt that permeates GAO's

entire report, and it nowhere smells worse than here. I told Mr. Anderson as much during his oral briefing of Commission staff. "Your point is well taken," he answered, and he assured me that "we will eliminate it." They have not eliminated it.

Empty Charges of Financial Mismanagement

Most serious, of course, are allegations of financial mismanagement. I have read in the papers that Congresswoman Schroeder thinks the GAO report makes it "very clear" that the Commission "squanders" its small appropriation and fails to do its appointed work, that the Commission is a fiscal "disaster." One of our own Commissioners, Mary Frances Berry, has publicly claimed that Chairman Pendleton and former Staff Director Linda Chavez "used the agency as if it were their private cookie jar." Because such very serious charges affect the reputations of public men and women, and because the evidence offered to support them is specious and insubstantial, I am surprised that they are made so casually.

Where do they come from? In the first place, it is alleged that the Commission's financial recordkeeping is in poor order. We discovered the condition of our financial records during a files check following adverse actions taken early last year against the two Commission staffers principally responsible for their maintenance: the budget officer and voucher examiner (both career civil servants). GAO was informed of these circumstances, and was told also of the transfer during the first half of FY 85

of the then Assistant Staff Director for Administration (also a career employee). Since these personnel actions were taken, no new problems with financial recordkeeping have been brought to our attention, and the new budget officer and Assistant Staff Director for Administration (both career civil servants) have been working to clear up the residue of past problems.

Stories that have appeared in the media about a missing \$175,000, or about mysteriously altered timecards -- stories derived from GAO's report -- are false in tone and substance, and do harm to the reputations of innocent civil servants.

It is alleged, for example, that the Commission improperly adjusted its overhead allocations to stay within budget activity earmarks imposed by Congress. This is not true, and the GAO acknowledges quite clearly that it "cannot say that the Commission did not comply with the 1985 earmarks." But the report goes on to imply just the opposite. It suggests that the Commission included printing costs in Overhead rather than in Publication Preparation and Dissemination in a deliberate attempt to avoid exceeding its earmark for the latter activity. In fact, we have simply followed historical precedent (for which abundant documentation was provided to GAO).

GAO suggests that the Commission is unable fully to account for \$421,000 it was permitted to shift from other budget activities to pay for a third FY 85 hearing on housing discrimination. Because this hearing was delayed until the second

month of FY 86, the Commission returned \$112,000 to the Treasury at the end of FY 85. \$83,000 had already been incurred in direct salary charges and benefits attributable to the housing discrimination hearing. The remaining \$226,000, including \$51,000 in overhead, is attributable to other "hearings, legal analysis and legal services" budget activity operations.

GAO questions the \$83,000 salary figure, strongly suggesting that the Commission's General Counsel improperly changed his own and several others' time charges before responding to its questions about such salary allocations. Not so. When our figures -- projected salary costs in the Office of the General Counsel for the housing project -- seemed to the Director of our Office of Management to have been significantly underestimated, he asked the General Counsel to investigate. The General Counsel discovered that none of his own or his Deputy's quite extensive time spent preparing for the hearing had been charged to its account, and that no account number had been assigned to the project until quite late in FY 85. He thereupon revised (up from zero) his own office time charges and those of his Deputy. Three other staff members' time charges were amended, and an explanatory memo from the General Counsel was attached to all the sheets. The changed figures involved only working, in-house documents -- not official time cards or payroll records -- which did not form the basis for any actual payments, either of salaries, bills, or travel expenses. No impropriety, in short, was committed or

contemplated. There is no missing money at the U.S. Commission on Civil Rights.

It was alleged that our Chairman, Mr. Pendleton, was billing the Commission on an almost full-time basis for "what were thought to be part-time positions." Thought by whom, Mr. Chairman? The GAO states in its report that there is no limit on the number of days Commissioners can work each year. The GAO also states that no Commissioner's government salary is greater than 50% of his or her total reported income. And in the oral briefing, GAO made it clear that there is no claim any Commissioner has been paid for time not actually worked. But GAO's report engages in what can only be termed a smear of Chairman Pendleton. An unrelated SBA investigation, it tells us, "raises questions" about the accuracy of Mr. Pendleton's reporting of outside income. Yet GAO refuses to say what those questions are. GAO should have left rumor and innuendo like this out of its review of Commission operations.

Finally, there is the matter of official travel. GAO has investigated charges that official travel at the Civil Rights Commission has been on the rise, and that it has been indiscriminate and unusual, involving unauthorized overseas visits and first class accommodations. What has the GAO found? "The number of trips taken by all the Commissioners remained relatively constant" over the entire review period, GAO's report concluded. This despite the fact that the number of Commissioners increased from six to eight in FY 84. In fact, GAO is forced to report that

in at least one Commission office -- that of the General Counsel -- travel has actually declined. A slight increase in total Commission travel costs (including that for staff) is observed, and is to be expected due to inflation.

One Commissioner travels first class for medical reasons certified by a physician and approved by a previous staff director. One overseas trip was made by a Commission staff director during the reporting period. GAO finds nothing to complain of in either instance: "We were advised by the [General Services Administration] staff that Commission personnel, including the Commissioners' Special Assistants, and Staff Directors, have generally been in compliance with GSA travel regulations." So much for charges about official travel, one would think.

But GAO has gone on to allege that the acceptance by our Commissioners of reimbursement by certain outside sources for travel expenses incurred in the course of official business constitutes an unauthorized augmentation of our agency's appropriations. This charge has led to false and malicious news reports suggesting that certain Commissioners have improperly accepted payments from business interests.

In fact, under the Commission's authorizing statute, Public Law 98-183, Commissioners are explicitly exempted from that section of the U.S. Code governing the acceptance by government officials of travel expenses from outside sources. The

Commissioners acted in accordance with the Commission's regulations and on the advice of the Commission's Solicitor and ethics officer, a career employée. The Commission as an agency has accepted no reimbursements from the outside sources in question. Therefore, no augmentation of Commission appropriations by means of outside funding of travel has occurred, nor has any Commissioner acted improperly in accepting travel expenses. "Are you raising any allegation of conflict of interest in the acceptance of travel money?" I asked GAO's Paul O'Neill on March 18, 1986. His answer was simple: "No."

The Federal statutes, regulations, and memoranda relevant to official travel at the Civil Rights Commission are cited in the attachments to this statement, and the law as properly interpreted is explained there in full.

Conclusion

In sum, the General Accounting Office report, controlled to a significant degree by the four members of Congress who requested it, is biased, presumes guilt in the absence of evidence, is riddled with mistakes and half-truths, and fails to highlight a single deliberate violation of law, statute, or regulation, or a single ethically improper act. Referring to members of Congress who request that GAO conduct particular audits, Mr. Anderson of GAO told me in our briefing, "[I]ncreasingly... we're their creature totally rather than doing our own thing." In this instance, Mr. Chairman, I am forced to agree.

EMPLOYMENT TRENDS IN
THE U.S. COMMISSION ON CIVIL RIGHTS

GAO has produced an extensive collection of statistics designed to determine whether Commission "consultants, temporary, and Schedule C employees were hired in place of career staff, leaving career positions vacant." It has concluded that "a large proportion of the employees hired since the Commission's reconstitution were in these three noncareer categories" and that "they were, in fact, hired instead of career staff."

The terms in which this question have been framed are unfair; the information and statistics marshalled in support of GAO's conclusion are misleading and ahistorical; and the conclusion itself is false.

Unfair and Misleading Terminology

To begin with, the Commission's personnel office objects in principle to the use of the term "noncareer" -- which has been interpreted by GAO's Congressional requesters as synonymous with "political" -- to cover the broad category of its "other than permanent" appointments. Although technically many of the appointments with which GAO concerns itself are "noncareer" in that they do not convey "status" to employees, the term "noncareer" is understood by most Federal government personnel officers and by the public at large to connote Schedule C or "political" appointments. To characterize the 212 appointments as GAO has as "noncareer" is therefore highly misleading. And, not surprisingly, GAO has been fully inconsistent in its use of the term. Appointments to positions like Attorney Advisor, which should be "noncareer" by GAO's reckoning in that they do not convey status, have not been included in the report's count of "noncareer" appointments.

Moreover, GAO's use of the words "hires" and "hired" artificially inflates and exaggerates its statistics and suggests the existence of "trends" which are in fact chimerical. What does it mean that the Commission has "hired" its "noncareer" employees in place of career staff? "During the first 3 months of fiscal year 1986," the GAO report asserts at one point, "the Commission hired 10 temporary and 5 Schedule C employees, bringing the total number of noncareer employees hired since fiscal year 1983 to 212." Does this mean that the

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Commission hired 15 new employees in the first 3 months of FY 86? No. Rather, 15 personnel actions occurred, most of which involved individuals already on the employment rolls. Of the GAO's "212 hires," at least 24 were personnel actions involving persons already employed by the Commission; because of GAO's deceptive use of employment categories, we are unable to determine how many more of the remaining 188 personnel actions involved the same employees, but we suspect a considerable further "double counting" has occurred.

For example, GAO finds that 73 of the Commission's 212 "noncareer" appointments involved individuals still employed by the Commission as of December 31, 1985, the end of GAO's reporting period. But only 9 of these individuals served in fulltime temporary outside-the-register positions; almost all of the remainder were consultants working, for the most part, fewer than three days a year; special assistants to the Commissioners working intermittent or part-time schedules; and "bona fide students" working part-time schedules.

GAO has contrasted its "73" "noncareer" employees with "55" permanent career positions reported unfilled at the end of fiscal year 1985. The Commission did not, and does not have 55 unfilled permanent career positions. The Commission has a Fulltime Equivalency (FTE) allocation of 236. At the end of fiscal year 1985, we had 181 permanent employees. GAO has subtracted one number from the other to arrive at its misleading "55 vacancies" figure.

Most Federal agencies operate under an FTE allocation, but the number does not represent the number of actual positions each agency is required or allowed to fill as GAO apparently believes. At the U.S. Commission on Civil Rights, the only position "vacancies" are those for which approval has been granted to recruit and ultimately to hire. The departure of an incumbent to a position does not necessarily create a vacancy, and the number of employees on hand at a given time does not reflect the number of FTEs already or yet to be expended. For the year ending September 30, 1985, the Commission expended 212 FTEs. Hiring 55 additional fulltime permanent employees, as the GAO suggests would be proper, would in fact place the Commission in a position of regulatory noncompliance, and would exceed its allotted number of Fulltime Equivalencies by 31.

Use of Statistics Without Benefit of Historical Comparisons

Repeated requests to GAO that it concurrently review with those at the current Commission personnel operations at the former Commission for purposes of comparison were rebuffed. In the absence of such a review, it has been publicly suggested that personnel operations and employment trends at the reconstituted Commission as "revealed" in GAO's report are somehow "unusual." A look at pre-reconstitution Commission practices makes clear that such suggestions are inaccurate and untrue.

GAO found that for the 39-month period ending December 31, 1985, the Commission made 212 "noncareer" appointments, and has strongly suggested that they were in some way political, improper, and in lieu of otherwise permanent, career appointments. In the 39 months immediately preceding GAO's review period, the Commission made at least 271 such appointments. The official personnel records for this period are in GAO's hands, making exact figures difficult to reconstruct. Additionally, during the period between July 1, 1979, and September 30, 1982, the Commission routinely failed to make and document Schedule C appointments properly. The Commission's personnel office has concluded that 20 or so unidentified Schedule C appointments were made during the 39 months ending September 30, 1982, bringing the total "old Commission" number of "noncareer" appointments to around 290. This figure is more than one-third again larger than that for the present Commission.

GAO found that for the 39-month period ending December 31, 1985, the Commission employed 41 consultants. In the 39 months immediately preceding GAO's review period, the Commission made at least 55 consultant appointments. One consultant appointed during this previous period was later converted to a permanent position; another received his consultancy immediately following his separation from a permanent position.

GAO found that for the 39-month period ending December 31, 1985, the Commission made 151 temporary appointments. In the 39 months immediately preceding GAO's review period, the Commission made at least 216 such appointments.

GAO found that for the 39-month period ending December 31, 1985, the Commission made "only" 60 career appointments. In the 39 months immediately preceding GAO's review period, however, although the Commission had benefit of an FTE ceiling

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always more than 10% higher than it has been at any time since, and although at least 93 permanent employees left the agency during this earlier period, the Commission made only 67 career appointments. Nearly 20% of these "career" appointments were conversions of temporary employees to permanent positions without a break in service.

GAO found that for the 39-month period ending December 31, 1985, the Commission made 21 "special needs" appointments. In the 39 months immediately preceding GAO's review period, the Commission made almost as many -- at least 16 -- such appointments. In at least two cases, special needs appointments were given twice to the same employee in less than one year. At least one employee was converted directly from a special needs appointment to another temporary appointment.

The only conclusion that can be drawn from the above comparison is that since October 1, 1982, the Civil Rights Commission has relied to a much lesser extent on temporary, consultant, and Schedule C appointments than did the previous Commission. In fact, 38 of the 212 such appointments charged by GAO to the present Commission actually involve employees whose initial Commission appointments began during the pre-October 1, 1982, period.

No trend toward other than permanent appointments, in other words, can be accurately discerned at the Commission. Moreover, asked at an oral briefing on March 18, 1986, at Commission headquarters what evidence GAO had that might show such appointments to have acted to the prejudice of any career employees, Paul O'Neill, the GAO Group Director supervising the Commission's audit, admitted that none existed. "We didn't say that," he replied.

It is important to make clear, however, that the Commission's personnel office considers the use of such appointments to be judicious, prudent, efficient and effective. Many of the Commission's activities involve projects or studies of limited duration requiring a very particular expertise; permanent appointments, given such needs, are wasteful of public funds and limited Commission resources. The use of temporary appointments reduces the need for reductions in force once a given project has been completed, permits the Commission to deploy its skills and expertise as projects demand, allows for more punctual recruitment, and

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costs less. Moreover, since the Commission's authorizing statute will expire in 1989, unnecessary increases to its permanent staff seem ill-advised.

Finally, the Commission's use of other than permanent appointments is in conformance with the encouragement of the Office of Personnel Management (OPM) to all Federal agencies to make greater use of temporary employees. OPM Federal Personnel Manual (FPM) letter 316-21, dated January 2, 1985, sets forth OPM policy on temporary employees, identifies their advantages to Federal agencies, and encourages their use.

Misleading Statistics and Information

Throughout its report, GAO presents its statistics and information out of context and without relevant and important explanation. For example, GAO asserts that "the number of consultants more than doubled while the number of Schedule C employees increased nearly four-fold from 1983 to 1984. During this time, the number of temporary employees increased by about one-third."

The following facts about this supposed "phenomenon" were available to GAO but were omitted from its report:

1. In the last quarter of FY 83 alone, the Commission released at least 6 consultants and 15 temporary employees in advance of an agency "shutdown" scheduled to begin October 1, 1983. The great increases in other than permanent appointments GAO has discovered are largely explained by the Commission's "rebirth" after the beginning of FY 84.

2. By OPM regulation, "summer hire" appointments terminate on their own force effective September 30 of each year. GAO's figures do not include such employees at the start of this sample period, but do include them for the finish, thus exaggerating the audit's invented "trend."

3. As previously indicated, the old Commission regularly and improperly encumbered Schedule C positions with "career" employees through such devices as "temporary promotion" and Schedule A attorney advisor authority. Although GAO was specifically advised of this, GAO's report does not include employees who were serving in such appointments on October 1, 1983, in its count of Schedule C staff.

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4. GAO does count individuals on Intergovernmental Personnel Act (IPA) detail from universities and other institutions for 1984 and 1985, although the Commission's IPA positions were not chargeable against our Fulltime Equivalency (FTE) allotment and IPA detailees were not our employees.

GAO has, in other words, spared no effort to present its findings in such a way as to create the false impression that the Commission's other than permanent appointments have dramatically increased since October 1983. GAO's presentation of salary data for other than permanent employees is skewed in precisely the same manner.

USE OF CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEESConsultants

GAO claims to have found procedural violations of OPM requirements in each of the 31 consultant appointments made by the present Commission it has examined. In order, these "violations" are:

I. "None of the files contained a statement of the consultants' duties and responsibilities." This charge is untrue. During the conduct of GAO's audit, GAO's examiners questioned the depth of detail these statements provided, not whether such statements existed or were available. The Commission has historically used only brief statements of duties and responsibilities when describing the tasks to be performed by consultants/experts. Commissioner Berry, for example, was appointed to a consultancy pending her confirmation in 1980. The description of her duties and responsibilities read simply: "until confirmed, I would like to utilize [Dr. Berry's] expertise on program and policy matters." Each of the 31 consultants' files in question contains a statement of duties and responsibilities at least as detailed as that for Commissioner Berry.

In addition to material filed in official personnel folders (OPFs), GAO had available to it a number of source documents concerning the duties and responsibilities of our consultants. GAO was provided copies of the agency's "Quarterly Report on Consultants and Experts." The Commission also had available for GAO review budget information and subject matter files concerning our use of consultants.

We doubt, in any case, that "insufficient information" has caused GAO serious alarm; based on such information, GAO has drawn dozens of conclusions.

II. "None of the files contained the required certification that the consultants' Statement of Employment and Financial Interests had been reviewed and determinations made that no conflicts of interest existed." However, GAO failed to note that Employment and Financial Interest statements had been obtained from every consultant and expert, were on file, showed no apparent conflicts, and were provided to GAO for review in the course of its audit. GAO failed to discover a single conflict of interest involving a Commission consultant or expert.

III. "Twenty-one of the consultants' appointments were extended when their initial appointments expired. In none of the 21 cases was the required documentation on the personnel

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action forms showing the number of days worked under the original appointments." Throughout its audit report, GAO complains of failure to maintain "required" or "mandatory" records or certification that are nowhere in the Federal government either "required" or "mandatory." OPM regulations require that personnel action documents reflect the number of days worked under an original appointment when action being taken involves "conversion to new excepted appointment" without a break in service. But the actions at issue were not conversions; they were extensions. There is no such requirement for extensions. If there were one, its sole purpose would be to ensure that consultants given "intermittent" appointments did not exceed the 130 days limitation on such appointments. GAO failed to note that the Commission's monitoring system permits it to obtain such information on a quarterly basis.

IV. Four of the 31 consultants worked at least "substantially full-time" during appointments supposed to be "intermittent." There is no impropriety involved in such work scheduling. A consultant is given a "temporary appointment" if it is anticipated that he will work more than 130 days in the 12 months following his initial appointment. If it is anticipated that he will work fewer than 130 days in that 12-month period, however, he is given an "intermittent appointment." But intermittent appointments do not preclude their holders from working "fulltime" as commonly understood, nor must consecutive work days be avoided to comply with the law. GAO seems ignorant of the relevant regulations. Its report states at one point that "intermittent employment is occasional or irregular employment on programs, projects, and problems requiring intermittent services as distinguished from continuous employment." Not so. Chapter 304.1-2(5) of the Federal Personnel Manual reads: "Intermittent employment means (A) occasional or irregular employment (B) on programs, projects, problems, or phases thereof, requiring intermittent service." No mention is made of a distinction between intermittent and continuous employment. GAO has also misrepresented the FPM by claiming that OPM requires "strict adherence to the 130-day limit." The same chapter provides that "when an intermittent expert or consultant works more than one-half of full-time employment, i.e., he or she is paid for all or any part of a day for more than 130 days in a service year, the employment automatically ceases to be intermittent and becomes temporary." Even under such circumstances, OPM rules permit the reappointment of the expert or consultant in the next service year as an intermittent employee. Clearly, OPM recognizes and has made provisions for the possibility that the work required of a consultant or expert may exceed initial expectations. Finally, GAO insists that "if at any time, it is

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determined that the employee's work is no longer intermittent in nature, the employment must be terminated immediately." In fact, such a rule applies only to (1) intermittent appointments which follow temporary appointments, and (2) intermittent appointments which follow other intermittent appointments which have been automatically converted to temporary ones.

V. GAO claims that for "none" of the consultancies in question was it possible to "adequately evaluate their qualifications for their assignments." This charge is preposterous. Among our consultants are scholars known internationally for their knowledge of the subjects we are investigating. Is Nathan Glazer, for example, unqualified to advise the Civil Rights Commission on the subject of affirmative action in higher education?

VI. GAO describes five consultancies which it claims are "considered by OPM to constitute illegal employment." Judging by the details of GAO's first such case study, this charge seems to be based on error and ignorance. "In our opinion," their report reads, the appointment of this consultant "was a questionable use of the consultant and temporary appointment authorities to avoid competitive employment procedures." The Commission appoints its consultants under its appropriation statute, Public Law 98-183, section 6(a)(3), as authorized by section 3109 of Title 5, U.S. Code. Federal Personnel Manual Chapter 304.1-5b states that "(u)nder this statute agencies may, when authorized in an appropriation or other statute, employ experts and consultants temporarily (one year or less) or intermittently without regard to the laws for the competitive service, position classification, and the General Schedule pay grades" (emphasis added). Since appointments of consultants are thus explicitly exempted from the operation of competitive employment regulations, GAO's charge is based on nonexistent requirements and is without merit.

In an effort to establish that "Consultant A" performed operating duties outside the proper activities of a consultant, GAO relies primarily on a "summary of duties" written by the consultant herself and contained in a subsequent application. Since Commission management assigns consultant duties, the consultant's supervisor's description of her duties -- consultant "will provide advice and opinions on problems and questions presented by the Commission concerning the Incomes of Americans project" -- might seem a more appropriate basis for judgment. GAO did review this document, dated November 8, 1984. But its report prefers to use the consultant's own self-description, stating that her "duties were described as including 'overseeing' and 'frequent supervision'." These may

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indeed seem to be operating duties. But are they? In the SF 171 self-description in question, the consultant stated that she was responsible for "overseeing the analysis of enrollment trends" and the "frequent supervision of [a] research assistant." These two duties, especially in the context of her supervisor's description, are not necessarily inappropriate for a consultant.

In order to suggest "questionable qualifications to provide consultant services" in this case, GAO is forced to argue that consultant work, to be appropriate, must be equivalent to a higher grade than GS-11, the one at which "Consultant A" was paid. In fact, grade level is not an "indication" of appropriate use of a consultant appointment. Such an argument is in no way supported by regulations. Undeterred, GAO quotes from OPM's Economist Series Position Classification Standard (GS-110, GS-13 level, pp. 30-31) which "describes the GS-13 consultant economist work as 'the lowest level at which a professional economist in the Federal service is expected to provide technical advice which is relied on in decisions concerning official government action....' " GAO's report omits the rest of this quotation: " ... intended to affect important aspects of the economy of the nation." GAO would not, one assumes, be willing to suggest that unless an economist is able to provide advice that will lower the prime rate he is unqualified to serve the Civil Rights Commission as a consultant. Such an interpretation of proper consultancy duties travels far beyond anything contemplated by OPM's definition of "consultant" -- "a person who ... has a high degree of broad administrative, professional, or technical knowledge or experience which should make the advice distinctively valuable to the Agency."

Although nowhere reflected in GAO's report, the Commission's normal review processes had previously identified two of the five consultants as employees working outside the scope of their official appointments, and corrective action had been taken quite a while before the GAO investigation was initiated. We do not know how GAO has reached the conclusion that the remaining three consultants are or were performing unauthorized operating duties. GAO did not speak to one of the three. In another case, GAO only asked about duties performed after the employee's appointment as a career civil servant. In the third case, the employee pointedly informed GAO of the duties she performed as a consultant and informed GAO that her duties changed, not only in degree, but in kind, when she was appointed to a temporary position. The documented duties of these consultancies were well within the scope of those

enumerated by OPM as appropriate. It is evident from GAO's report that its investigators relied for their conclusions on evidence provided by others who had no direct knowledge of the work performed during these consultancies.

Temporary Employees

To support its overall finding that "the Commission has improperly exercised its temporary employment authority," GAO makes a number of specific charges, all of them demonstrably false, misleadingly incomplete, or involving a failure to comply with nonexistent regulations:

I. GAO alleges that "the Commission did not have an applicant supply file policy specifying its temporary appointment procedures," and implies that OPM requires such a written, agency-specific document. Section 1-12c of FPM Chapter 333 requires agencies to "have available for inspection an up-to-date copy of the detailed procedures followed in maintaining the applicant supply system of the agency." But this could simply be the relevant FPM guidance, if the agency has not supplemented the FPM instructions. The Civil Rights Commission has not supplemented those instructions, and our personnel office has on hand the requisite up-to-date copies of the relevant FPM guidance. GAO indicts the Commission for failing to comply with nonexistent regulations.

II. GAO alleges that the Commission has improperly processed employment applications lacking date-stamps that might show when they were received. Not true. GAO may be correctly asserting that the Commission does not date-stamp its received applications mechanically; for reasons of cost, it was decided some time ago to forgo the purchase of a date-stamp machine. No regulation requires mechanical dating of incoming employment applications, however. GAO is aware that the Commission maintains a seriatum applicant receipt log and routinely hand-marks or manually date-stamps all received applications. FPM chapter 333, appendix A-2.b provides that "incoming applications should be date-stamped or have the date of receipt noted in pen and ink" (emphasis added). GAO's apparent dismissal, in several cases, of employment applications with receipt dates that are rubber stamped or marked in pen and ink is not supported by any existing regulation.

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III. GAO complains that the Commission's vacancy announcements for temporary appointments contained "insufficient information ... on the qualifications required and application procedures to be followed." We are dumbfounded by this allegation. In every case, the notifications contained substantially more information concerning the qualifications required of the position than mandated by OPM regulations. The smallest description of qualifications in any of the notifications was 74 words long and included as advice the tip that "complete description including substitution of education for experience is in OPM handbook X-118." Potential applicants were given a name and telephone number (including a TDD number) from which they might obtain more information concerning the position. GAO's contention that these notifications contained insufficient information about "application procedures to be followed" is similarly incomprehensible. Every single notification included, at minimum, a statement beginning "How to Apply." At minimum, that statement read "Send SF171 (and college transcript if applicable) to above address." This statement more than meets OPM requirements.

IV. GAO charges that the Commission's announcement files contain insufficient documentation to demonstrate how applicant ratings have been derived. Here again, GAO misrepresents OPM requirements; no OPM requirement mandates "rating" applicants for a register of "temporary, competitive" positions. The only "rating" involved in such cases is a determination of basic qualification and/or membership in an appropriate "priority" group (disabled veteran, veteran, or non-veteran). The requirements for "rating" such applicants are established in FPM chapter 333.1-8 and 1-9 and Appendix A-2d. Insofar as "rating" is concerned, FPM chapter 333.1-1c(2)(c) provides only that "qualified and available applicants shall be considered for appointment in established priority order." Simply put, all qualified and available applicants are eligible for selection, except that a non-veteran may not be selected if a veteran is qualified and available, and a veteran may not be selected if a disabled veteran is qualified and available. The Commission's personnel office maintains complete documentation for these limited "ratings" requirements. The further documentation GAO is so eager for goes beyond the requirements of law or necessity.

V. GAO claims to have found past position announcements in our files that lacked "opening dates." Agencies are required to notify relevant state employment service offices and the local Federal Jobs Information Center whenever they intend to fill "temporary, competitive" positions. There is no requirement that such notification be in writing. Agencies are

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required to advise the FJIC and local state offices of an official "opening date," but that date can be and almost always is the date of first notification. The only truly important date in any such notification is the closing date, i.e., the date after which applications can no longer be accepted for consideration. Agencies can accept applications as soon as notification of the appropriate offices has taken place, but they cannot accept applications hand-delivered or post-marked after the official closing date. Since late applications result in ineligibility, all position notifications from the Civil Rights Commission carefully specify closing dates.

VI. GAO alleges that the Commission once accepted an application after the relevant announcement's closing date. The position in question was a temporary, competitive civil rights analyst appointment to be located in the Commission's Rocky Mountain Regional Office in Denver, Colorado. The position was announced in Denver, with a closing date of March 8, 1985, a Friday. On Monday, March 11, 1985, the application was received in the Commission's personnel office in Washington, D.C., noted in the office's seriatum log, and marked date-received, March 11. The post-marked envelope does not survive, but common sense and familiarity with the postal service suggests that the application was submitted in a timely fashion.

VII. GAO contends that the Commission is guilty of "failure to publish vacancy announcements." Whether one considers "publish" in its broadest context (to make publicly known; announce, proclaim, divulge, or promulgate) or narrowest (to write or have written), this contention, as should now be most clear from above discussions of OPM notification requirements, is incorrect.

VIII. GAO challenges the employee credentials involved in 13 specific temporary competitive appointments. GAO claims that "OPM requires that announcements specify the standard to be used in making the determination of eligibility" for such appointments. Blatantly untrue. FPM chapter 316.4-5c(1)(a) states that "appropriate state job service and OPM offices must be notified in accordance with instructions in FPM chapter 330, section 1-5." FPM chapter 330.1-5b holds (1) that "such notification must include the period during which applications will be accepted," and (2) that "notification should also provide information on qualifications." Nowhere in the FPM is there a requirement that position announcements, in GAO's words, "specify the standard to be used." Nor, again, do the regulations specify notification in writing. GAO alleges that a number of the appointments lacked the GAO "required"

competitive qualifications analysis, but FPM chapter 338, Appendix A-1b(2), provides that "when the standard used is specified in Handbook X-118, the title of the position for which rated, when the same as that used in the Handbook, acceptably identifies the standard used." FPM chapter 333, Appendix A-3a(6) goes further, allowing that "when the standard used is in Handbook X-118, the class title of the position for which rated, if the same as that used in the Handbook, is acceptable as identification of the standard used. There will be no need to repeat the notation 'Handbook X-118' on each application" (emphasis added).

IX. GAO asserts that "OPM requires that temporary appointments made outside OPM registers must not be made to avoid merit principles, to extend other temporary appointments or to make non-competitive appointments pending completion of examining, referral, or other competitive processes." Although these requirements are fabricated from whole cloth, GAO strongly implies that the Commission has violated them. In the first place, temporary outside the register appointments in the competitive service are merit appointments by definition; so it is difficult to see how they could be twisted into an attempt to circumvent merit. GAO is confused. Secondly, FPM letter 316-21 explicitly permits the use of temporary appointments to extend other, previous temporary appointments (except special needs and handicapped appointments) as provided in FPM chapter 316, subchapter 4. GAO is mistaken. Last, GAO argues in essence that temporary, competitive appointments must not be made to make temporary, non-competitive appointments. We do not disagree.

GAO cites nine case study examples of the kinds of improper Commission exercise of temporary employment authority discussed above. Not one of them succeeds in avoiding the inventions and misstatements detailed above. Point by point clarifications of the circumstances involved in each appointment questioned by GAO are available upon request.

Special Needs Authority

GAO alleges that none of 21 "special needs" appointments to 18 Commission employees "had documentation establishing the nature of the unusual or emergency circumstances requiring the use of the authority." It further alleges that 7 extensions of such appointments lacked necessary documentation that the original conditions for the appointment continued in force. Here GAO has asserted that special needs appointments are "appropriate only when the legitimate needs of the agency cannot be served through appointment under some existing

authority' and include emergency situations." The correct and complete citation is found in FPM chapter 316.4-8.B(1) and reads: "Agencies are delegated authority to make temporary limited appointments without examination to meet any legitimate need that cannot be served through appointment under some existing authority" (emphasis added). Moreover, the only time "emergency" is a relevant criterion in the exercise of such authority is when the special needs appointment occurs during the "summer employment period" [FPM chapter 316.4-8b(2)(c)]. Still, GAO mistakenly insists that the situation or event giving rise to the exercise of special needs authority must be of an "emergency" or "unusual" nature. GAO can cite no regulation in support of its fictitious requirement.

Since the "unusual circumstances" criterion is nonexistent, it follows that there is no further requirement to document it. Until the recent issuance of Installment 20 of FPM Supplement 296-33, there was not even a requirement to document the basis for special needs appointments on the face of Standard Form 50, the official documentation for any and every personnel action. Installment 20 requires only a notation in the "remarks" section of SF50 setting forth the reason for such an appointment. Even given GAO's misunderstandings about documentation, we are surprised that GAO charged us with failure to properly document these actions without asking for backup information about them.

Schedule C Authority

22 Schedule C appointments were made for 17 individuals employed at the Commission in the period under GAO review. GAO charges "two basic deficiencies" in each of the 22 appointments: "qualification standards were not used and the appointments were not properly documented." GAO claims that the Commission has violated an FPM requirement "that agencies establish qualification standards before appointing employees to excepted service positions." But 5 C.F.R. 302.101 exempts Schedule C appointments from the procedures set out in Part 302 and in FPM 302.

GAO suggests that the Commission has promoted its Schedule C employees faster than is allowed by the time-in-grade restrictions applicable to positions in the General Schedule. Schedule C employees are in the General Schedule, but not subject to those time-in-grade restrictions.

GAO alleges "a general lack of employment controls" governing the Commission's Schedule C employees. Nowhere in the Federal government do "employment controls," whatever GAO intends by the phrase, govern Schedule C employees.

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GAO asserts that OPM did not offer prior approval of three Schedule C upgrades effective March 3, 1985. GAO declines to point out that no advance OPM approval is required in such cases. GAO reports that OPM "could not confirm that OPM had approved" a later Schedule C upgrade at the Commission. GAO could have confirmed that approval by itself; it had available for evaluation copies of all Form 1019s submitted to OPM during the review period, including the one notifying OPM of the specific action. That Form 1019 clearly indicates receipt by OPM's Schedule C section on October 7, 1985, and appropriate OPM approving action on October 9, 1985. Here, as with so many other unsubstantiable GAO charges and half-charges, a simple phone call might have eliminated the need for extensive discussion in its report.

Finally, GAO admonishes the Commission for its failure to "cite the OPM assigned position numbers on the personnel action documents," thereby preventing GAO from verifying that the Commission's Schedule C employees "were performing the duties approved by OPM." This last accusation is completely without merit. The Commission has its own position description numbering system, and appropriate numbers are shown on SF50 forms documenting each Commission personnel action. With each OPM submission (Form 1019) involving changes in the duties of a Schedule C position, the complete position description -- with the agency's number -- is attached. GAO need have looked no further to verify Commission Schedule C employees' duties.

REFERRALS FROM STATE EMPLOYMENT SERVICE OFFICES

GAO has investigated allegations that the Commission has not hired qualified applicants referred to it by the Washington, D.C., employment service office. GAO cannot substantiate those charges. According to FPM chapter 330.1-5, Federal agencies are required to notify local state employment services (SESS) and local OPM Federal Job Information Centers (FJICs) whenever they intend to fill temporary, competitive positions outside OPM's employment registers. GAO has concluded that the Commission "did not have records" -- at least not "sufficient evidence" -- "showing that this had been done." We assume that GAO does not contend that agencies must have "certified, return receipt" evidence of such notification. But it remains the case that GAO has reviewed copies of Commission letters sent to the Washington FJIC, has seen notations on our job announcements concerning notification to OPM and SESS, has reviewed the Commission's distribution list for announcements of such positions, and has examined actual SES referral slips attached to applications we have received. In the absence of the kind of notification GAO is presumably attempting to verify, how could such referrals be on file in the Commission's personnel office?

GAO clearly suggests in its report that there exists some regulatory requirement that notification to appropriate agencies be in writing. Not so. Notification can be verbal, or in the form of a memorandum, letter, or formal job announcement; precise specifications do not exist. Typically, the Washington-area FJIC requests that agencies provide them with written information concerning positions to be filled as "temporary, competitive," but their request is hardly a statutory requirement. The Commission has, however, voluntarily prepared a written notification and delivered it to appropriate SESS and FJICs when it has sought to fill such a position. GAO is unable to state otherwise.

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AFFIRMATIVE ACTION

GAO investigated the extent to which affirmative action was undertaken by the Commission to hire and promote women and minorities. At the time GAO completed its review, the Commission's accomplishment report for 1985 had not been approved by the Staff Director. On March 11, 1986, the Staff Director signed the report and forwarded it to the Equal Employment Opportunity Commission. A copy has been sent to GAO.

GAO complains in its report that because the Commission has not established affirmative action promotion goals it is unable to measure the Commission's success in promoting women and minorities. Promotion goals are not required of the Commission, but we do monitor internal movement, including promotions, as required by EEOC Management Directive 707A.

Over the last three fiscal years the Commission successfully recruited 54 minorities and women in all occupational categories.

AWARDS AND PROMOTIONS

GAO was asked to investigate charges that employees hired after the Commission was reconstituted were receiving favorable treatment insofar as awards and promotions were concerned. GAO found that no such favoritism could be discerned in award and promotion patterns.

Of eleven employees identified as having received one or more awards in less than a year, all but one were career employees who had been hired by the Commission prior to its reconstitution. The one exception involved an employee who had at one time been employed at the pre-reconstituted Commission, had resigned, and had been subsequently reappointed after reconstitution. No OPM regulations limit the number of awards that can be given or received in any one-year period (see FPM chapter 451). In any case, the one employee identified as a recipient of three awards in one year was first appointed at the Commission years before reconstitution.

GAO also investigated the question whether any Commission employees had been promoted in violation of "time in grade" requirements. GAO could not find any such employees. "Time in grade" does not, of course, apply to employees in the Excepted Service. For some reason, nevertheless, GAO's report includes a listing of Excepted Service employees promoted with less than one year in grade.

Despite its finding that "new hires, in general, had not been receiving more favorable treatment," GAO's report suggested without foundation that "this pattern could be changing." At GAO's oral briefing of Commission staff, Mr. Anderson confessed that this perceived change was "not statistically significant" and promised that "the offending phrase" implying a change in treatment of careerists "shall be struck." We are disappointed that Mr. Anderson did not, in fact, strike "the offending phrase."

COMMISSIONERS' AND SPECIAL
ASSISTANTS' BILLINGS

GAO states that "concern was expressed" that the Chairman of the Commission and his Special Assistant billed the agency on an almost full-time basis for what were "thought to be part-time positions." Thought by whom? GAO's Attachment VI cites the relevant section of the Commission's authorizing statute, and notes correctly that there is no statutory limitation on the number of days which may be worked by either the Commissioners or their assistants. Additionally, there was no limit on the number of days that could be worked under the old Commission. The Chairman immediately preceding Mr. Pendleton (Arthur S. Flemming) maintained an office at the Commission, apparently worked there daily on a full-time basis, and was not fully paid for his time only because his status as a retired annuitant necessitated a cap on his personal income.

As demonstrated in GAO's chart, in FY 1983, Commissioner Berry's Staff Assistant billed 261 days, more than Chairman Pendleton's Assistant's highest-billed year (239 days in FY 1985). Finally, as GAO shows, almost one-third of Chairman Pendleton's billed time was spent in transit, largely an unavoidable consequence of his residence in California.

In its oral briefing of Commission staff, GAO acknowledged that its report does not contend that the time billed was not actually worked by Commissioners and their assistants. Some Commissioners and their assistants have had difficulty understanding and completing the salary voucher forms required by the Commission, and we acknowledge the partial lack of vouchers in the file for some Commissioners and their assistants. Accordingly, relevant requirements and procedures are once again being reviewed with the Commissioners. In FY 1986, we established procedures, open to GAO scrutiny, which should avoid a repeat of this occurrence. A further note: the official record from which pay is derived is through time and attendance cards. These cards are submitted to the GSA, Kansas City, on a flow basis for developing the agency payroll. An examination of these cards by GAO, which was not done, would easily verify the official source document of each individual's paycheck.

The GAO report confirms that the reported work of all assistants conformed to the duties described in their job descriptions.

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COMMISSIONERS' AND SPECIAL ASSISTANTS'
FINANCIAL DISCLOSURE REPORTS

After investigation of required financial disclosure forms, GAO has determined that Commission salary represents for no Commissioner — including the Chairman -- more than 50% of the total reported income. Moreover, in the case of the Chairman, almost one-third of his billed hours reflected time in transit, which is largely due to his California residence.

GAO claims that the Small Business Administration's investigation of the Chairman's and his Special Assistant's business dealings "raises questions about the accuracy of their reporting of outside income." GAO refused, however, to state at the oral briefing what questions were allegedly raised. Under these circumstances, GAO is once again advancing an innuendo rather than providing evidence.

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COMMISSION TRAVEL

Included in GAO's discussion of Commission travel is the assertion that the Commission has improperly augmented its appropriation. The basis of this claim is that Commissioners, and to a much lesser extent staff, accepted reimbursement for travel expenses from non-501(c)(3) organizations that had invited them to speak at functions sponsored by the organizations. We disagree.

GAO sets forth its claim in the summary portion of its statement:

Donations from private sources for official travel constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or if the donor qualifies as a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Such donations can also constitute a violation of 18 U.S.C. section 209, which deals with supplementation of salary, but the Civil Rights Commissioners are exempt from the operation of that provision.

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the contributors qualified as 501(c)(3) organizations, and other requirements were met, the Commission travelers had no authority to accept such payments. The Commission has no procedures to insure compliance with the law even though the Office of Government Ethics and the Office of Personnel Management have suggested certain steps that agencies should take to preclude improper augmentation of their appropriations. We also learned that the General Services Administration did not check for unauthorized augmentation of appropriations when reviewing travel vouchers of Commission employees. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur. (pp. 15-16, summary.)

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Attachment VIII to the GAO statement discusses this claim in slightly more detail, but by no means provides an analysis sufficient to determine the validity of GAO's charge. According to the attachment, the Commission is in violation of section 4111 of title 5 of the U.S. Code and regulations issued thereunder which, among other things, require prior written approval of travel reimbursement by an agency official. GAO does not acknowledge that, at the oral briefing, Commission staff disputed GAO's assertion that Commissioners could not accept reimbursement for travel expenses from outside organizations without augmenting the Commission's budget. Furthermore, Commission staff pointed out to GAO in the oral briefing that Commissioners and Commission staff who traveled at the expense of sponsoring organizations did so on the advice of the Solicitor, a longtime career employee of the agency. The transcript of that briefing (pp. 97-99) provides the following exchange:

COMMISSION STAFF DIRECTOR LATHAM: [Are you aware that the travel that you have raised on non-501(c)(3) organizations, both for commissioners and for others, was approved on the advice of career counsel here and our ethics officer?

GAO STAFF: We have talked to him.

LATHAM: All right, will you make a notation that it was approved on the advice of the ethics officer and career solicitor?

GAO STAFF: He told us that it was up to the traveler to see that they comply to that statute [5 U.S.C. 4111].

COMMISSION SOLICITOR: I don't think that's fully correct, Paul [GAO STAFF], and I'm the individual that Mr. Latham was referring to.

SOLICITOR: I was in error. I did not know that the agency could not -- that the traveler could not travel on official business unless -- if it was being paid for by an outside agency -- unless it was a 501(c)(3) organization. But after 30 years, I found out about it. But what I originally told the Commissioners and the Staff Director who took office in 1983, was that,

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yes, they could travel at the expense of outside organizations but they obviously could not receive double reimbursement from the agency.

GAO STAFF: And we are not implying that either.

SOLICITOR: No, I realize there is no implication of that. But as I say, I was in error by not advising them that their outside paid travel was restricted to 501(c)(3) organizations, and that was because I was not aware of that.

LATHAM: Now, one clarification to that. The error runs to non-Commissioners, I take it. Because as to Commissioners, we have called your attention to the statutory provisions.

SOLICITOR: Yes, that would be applicable to the then-Staff Director, and Sydney.

LATHAM: Now, is there any question -- are you raising any allegation of conflict of interest in the acceptance of outside travel money?

GAO STAFF: No.

Despite the Solicitor's correction of GAO's characterization of its discussion with him, GAO made no change in its final report. The fact remains that the Solicitor -- the agency's Designated Ethics Officer -- had previously advised the Commissioners and staff that they could travel at an outside organization's expense, whether or not the organization was tax exempt under 501(c)(3) of the Internal Revenue Code, and they had acted on this advice.

Comptroller General opinions regarding reimbursement for travel expenses from nongovernmental sources have been based on GAO's understanding of 5 U.S.C. section 4111. This statute provides, in relevant part:

(a) To the extent authorized by regulation of the President, contributions and awards incident to training in non-Government facilities, and payment of travel,

subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization described by section 501(c)(3) of title 26 (emphasis added).

Two points must be understood. First, the Commission's organic statute totally exempts our Commissioners from 18 U.S.C. 209 -- so the narrower exemption of 5 U.S.C. 4111, which is limited to payments from 501(c)(3) organizations, does not even affect our Commissioners. Second, the payments at issue were made to the Commissioners, not to the agency, so the agency's appropriation is not involved.

An Office of Government Ethics memorandum dated August 24, 1984, sets forth the generally relevant considerations for acceptance of travel reimbursement from outside organizations. According to that memorandum:

When an executive branch employee is offered payment for travel expenses from a private source for expenses incurred in carrying out his or her official duties, the travel reimbursement expense payments can only be accepted, if at all, by the agency employing the individual on the individual's behalf. The employee may not personally accept the travel expenses without potentially violating 18 U.S.C. 209

The agency may accept the travel expenses only if it has statutory gift acceptance authority to do so or if the gift qualifies under 5 U.S.C. 4111 Otherwise the agency will be improperly augmenting its appropriations and running afoul of the Comptroller General's Decision B-128527 dated March 7, 1967 (46 Comp. Gen. 689) (emphasis added).

The Commission's interpretation of 5 U.S.C. 4111 and its rejection of GAO's claim of augmentation is consistent with the reasoning set forth in the Office of Government Ethics memorandum. According to the memorandum, individuals are prohibited from accepting travel reimbursements by 18 U.S.C. 209. But the Commissioners are exempt from 18 U.S.C. 209 and may, therefore, personally accept reimbursements. The agency, the memorandum states in addition, may not accept reimbursements unless it has statutory gift acceptance or the gift qualifies under 5 U.S.C. 4111. But the Commission itself never accepted any reimbursements, and therefore, cannot have augmented its appropriation.

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The Office of Government Ethics memorandum cites 55 Comp. Gen. 1293, which is useful for its sharp delineation between reimbursements to individual government officials and reimbursements to government agencies. At issue there was a request by the Internal Revenue Service for permission to implement a policy whereby the Service would pay for the travel by its employees to 501(c)(3) functions and accept direct reimbursement from the organizations. The Comptroller General denied the request, stating:

Section 4111 provides a specific exemption to the prohibition against officers and employees of the Executive Branch of Government receiving any salary, or any contribution to or supplementation of salary, from any source other than the Government of the United States (18 U.S.C. 209). It allows an employee to accept from eligible tax-exempt organizations payment, in cash or in kind, towards some or all of his or her personal expenses incurred in the scope of the employee's official duties while attending a meeting. However, this exemption is personal with the officer or employee, and does not extend to the employing agency or department of Government. Moreover, the exemption cannot be read to authorize the agency to accept voluntary payments for the purpose of reimbursing its employees for expenses they incur in the activities mentioned in 5 U.S.C. 4111. That is, the statute is directed primarily at the authority of Government employees and not of Government agencies. In the absence of statutory authority allowing it to accept and retain voluntary contributions, an agency is bound by the provisions of 31 U.S.C. 484, requiring deposit in miscellaneous receipts. Therefore, there is no authority for Internal Revenue Service's (IRS) proposal to accept contributions directly and use the funds to pay the employee's expenses (emphasis added).

Thus, the individual Commissioners who accepted travel reimbursements acted properly under our Act's exemption of Commissioners from 18 U.S.C. 209 (which, like 5 U.S.C. 4111, is "personal with the officer or employee, and does not extend to the employing agency or department of Government"). And the agency did not augment its budget because it did not receive the reimbursements. GAO's interpretation of section 4111 in

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55 Comp. Gen. 1293 is thus flatly contrary to GAO's reasoning in its charge that the Commission has augmented its appropriation.

Statutes should be interpreted so as to effectuate their manifested purpose. On these grounds also, GAO's claim that the Commission has improperly augmented its appropriation by virtue of the acceptance by some Commissioners of travel reimbursements fails. 18 U.S.C. 209 was intended by Congress to prevent conflicts of interest from arising on the part of Federal employees. That same rationale underlies the limitation in 5 U.S.C. 4111 to 501(c)(3) organizations. Take, for example, the following House testimony by GAO in 1958 on the provision of the Government Employees Training Act later enacted as 5 U.S.C. 4111:

Mr. Chairman, that is a difficult question, and one I think cannot be answered, categorically, "Yes" or "No." As to the scientific personnel, the people attending meetings of nonprofit organizations which are for the purpose of making known information in scientific fields, I think, perhaps, there would be no problem. If, though, the meeting is sponsored by a profit-making organization with which this employee of the agency might have dealings on behalf of the Government, it might raise a situation where he either may be, or may be thought to be, subjected to some measure of, let us say, influence, and, perhaps, it is just as bad if the public thinks he is subjected to such influence as if he actually is. . . . (emphasis added)

Testimony in 1957 Senate hearings by Princeton University Professor Stephen K. Bailey is further illustrative of the purpose of 5 U.S.C. 4111:

[W]ithin the last year the Comptroller General has ruled that no Federal agency may share with a private institution the cost of an educational venture for a Government employee without running afoul of 18 U.S.C. 1914 [now section 209], one of the so-called conflict-of-interest statutes. In practice this means that if Princeton University wishes to grant free tuition to a Government employee who is on Government salary, it may not do so.

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The conflict of interest statutes were passed with a perfectly reasonable intent: That Federal employees should not be subject to the possible corruption of having part of their salary or real income made available by a private enterprise which might have ulterior reasons for wanting to favor a particular employee or a particular agency. But surely a bona fide educational institution or foundation cannot be compared to a private interest which might have a direct concern with influencing executive agency behavior. (p. 119).

The statement by the National Civil Service League in the Senate hearings further pointed out:

Current rulings by the Comptroller General indicate the possibility of the conflict of interest laws applying to special grants from private sources for training of federal people if they continue to receive federal salaries. We believe the government has much to gain by working out plans to continue the salaries of individuals properly chosen, who may then receive special scholarships or awards, private sources, in approved programs, which will enhance their public service careers. (p. 6.)

The testimony cited above makes manifest that section 4111 is in fact an exemption to the conflict of interest statute from which the Commissioners are exempt, viz., 18 U.S.C. 209. It cannot be denied that the purpose of the section is to remove conflict of interest concerns from the acceptance of travel reimbursements or similar payments from outside organizations. And as the following exchange between the Commission Staff Director and GAO staff at the oral briefing on March 18 attests, GAO's claim that the Commission violated section 4111 does not involve any conflict of interest concerns:

LATHAM: Now, is there any question -- are you raising any allegation of conflict of interest in the acceptance of outside travel money?

GAO STAFF: No.

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FISCAL YEAR 1985 APPROPRIATION EARMARKS

GAO has investigated the charge that the Commission improperly adjusted its overhead allocations to stay within budget activity earmarks imposed by Congress. The GAO concluded that it "cannot say that the Commission did not comply with the 1985 earmarks." The report, however, goes on to imply just the opposite. It suggests that the Commission included printing costs in Overhead rather than in Publication Preparation and Dissemination in a deliberate attempt to avoid exceeding its earmark for the latter activity. In fact, we have simply followed historical precedent (for which abundant documentation was provided to GAO).

GAO suggests further that the Commission is unable fully to account for \$421,000 it was permitted to shift from other budget activities to pay for a third FY 85 hearing on housing discrimination. Because this hearing was delayed until the second month of FY 86, the Commission returned \$112,000 to the Treasury at the end of FY 85. \$83,000 had already been incurred in direct salary charges and benefits attributable to the housing discrimination hearing. The remaining \$226,000, including \$51,000 in overhead, is attributable to other "hearings, legal analysis and legal services" budget activity operations.

GAO questions the \$83,000 salary figure, strongly suggesting that the Commission's General Counsel improperly changed his own and several others' time charges before responding to its questions about such salary allocations. Not so. When our figures — projected salary costs in the Office of the General Counsel for the housing project — seemed to the Director of our Office of Management to have been significantly underestimated, he asked the General Counsel to investigate. The General Counsel discovered that none of his own or his Deputy's quite extensive time spent preparing for the hearing had been charged to its account, and that no account number had been assigned to the project until quite late in FY 85. He thereupon revised (up from zero) his own office time charges

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and those of his Deputy. Three other staff members' time charges were amended, and an explanatory memo from the General Counsel was attached to all the sheets. The changed figures involved only working, in-house documents -- not official time cards or payroll records -- which did not form the basis for any actual payments, either of salaries, bills, or travel expenses. No impropriety, in short, was committed or contemplated. There is no missing money at the U.S. Commission on Civil Rights.

Moreover, the GAO admits that about two-thirds of the additional days charged to the housing project were those of the General Counsel and the Deputy General Counsel, charges which the GAO apparently does not dispute. Since the salary rates of those two officials were higher than those of the other employees involved, well over two-thirds of the personnel costs reattributed are not subject to question by the GAO. In addition, since the total reallocation of personnel costs added \$35,500 to a previous allocation of \$47,500 (for a total of \$83,000), the amount of reallocation questioned by the GAO is less than two-thirds of \$35,500, or roughly \$10,000.

In other words, the only bookkeeping inaccuracy that GAO could possibly allege involves the reattribution of approximately \$10,000 to a housing discrimination hearing -- against a budget activity of nearly \$2,000,000. While we believe the \$10,000 reattribution was proper, based on the General Counsel's observations of work performed in his office, this is not in any event a major point.

As with so many of these allegations, the GAO's final word on the subject is that "we cannot conclude that any violation of the Anti-Deficiency Act [the relevant statute] occurred."

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LOBBYING ISSUES

The GAO inquired into whether certain letters or speeches by Chairman Pendleton violated any federal anti-lobbying restrictions. With respect to the letters (July 29, 1985, letters to Congressmen expressing views on a pending bill that would have required the imposition of employment quotas in the State Department's Foreign Service), the GAO concluded that the letters were perfectly proper and that no law was violated.

The GAO report does not state that any of the Chairman's speeches violated any anti-lobbying restriction either, although the report indirectly raises some question as to the propriety of the Chairman's speaking in opposition to the Civil Rights Restoration Act of 1985 (Grove City issue). The Chairman's remarks were consistent with an officially adopted Commission position. Moreover, as the GAO correctly acknowledges, there probably has never been a prosecution under the relevant anti-lobbying statute. Although the GAO contends that the speech in question "appears to represent the type of remarks the restrictions on lobbying by government officials attempt to limit," there is no support cited for this assertion. In fact, one of the major court cases construing the statute pointed out that the law's "obscurity may render impossible a precise judgment concerning the intent of Congress in passing the legislation." National Association for Community Development v. Hodgson, 356 F. Supp. 1399, 1403 (D.D.C. 1973).

In summary, the GAO found nothing of note on lobbying issues.

STATE ADVISORY COMMITTEES

GAO was requested to examine three issues with respect to the Commission's State Advisory Committees:

- (1) the rechartering of the SACs in 1985 and whether they met the standards of diverse membership set forth in Commission regulations;
- (2) the extent to which committee reports have been printed and released to the public and whether reports are still awaiting review by the Staff Director; and
- (3) whether the role of the committees has changed, including whether regional offices are allowed to provide assistance to the committees.

QUESTION ONE

While GAO does not directly respond to the question whether the Commission's rechartering of its state advisory committees complied with its regulations requiring that the composition of the committees be diverse, it implies that it has not at page 21 of its summary:

[T]he rechartered committees are now about 59 percent white vs. 49 percent previously and almost 65 percent male vs. about 54 percent in the previous charter. Committee chairs are now 72 percent white vs. 29 percent previously, and 92 percent of the chairs are male compared to 61 percent previously.

What, in fact, do the Commission's regulations require? The relevant language is contained in Section 703.5(b):

Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age and handicap status.

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Whether the composition of the SACs conforms to this regulation can be fairly well ascertained from GAO's own analysis of the SACs' composition:

<u>Race</u>		<u>Religion</u>	
American Indian	4.4 percent	Catholic	22.5 percent
Asian American	2.7	Jewish	20.9
Black	25.1	Protestant	45.7
Hispanic	8.5	Other	10.9
White	58.9		
Other	.4		

<u>Sex</u>		<u>Political Affiliation</u>	
Female	35.3	Democrat	45.7
Male	64.7	Republican	35.2
		Independent	19.1

Age

Under 40	21.3
Over 40	78.7

Clearly, GAO should have concluded on the basis of these figures that the composition of the state advisory committees generally and to a reasonable extent complied with the requirements cited above in the Commission regulations. But rather than do so, GAO goes beyond what is required in the Commission's regulations and focuses on the composition of the SAC chairs. Its claims in that regard do a disservice to the well-qualified men and women who were appointed as chairmen; prompt the obvious suspicion that behind these claims is an attempt to discredit the Commission despite the absence of legitimate grounds for criticism; and raise the detestable insinuation that because, for example, a SAC chairman is white, he has no interest in protecting the civil rights of nonwhites.

Testimony given by Chairman Clarence Pendleton and Acting Staff Director Max Green on September 19, 1985, before the House Subcommittee on Civil & Constitutional Rights addressed the same issues raised by GAO with regard to the SACs. Rep. Don Edwards, Chairman of the subcommittee and one of four House Democrats who requested the GAO audit of the Commission, convened the hearing to examine the rechartering of the Commission's SACs. Emphasizing that the rechartering was conducted more mindful of the need for talent and diversity than a distorted view of digital justice, Chairman Pendleton testified:

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We examined each state committee individually and lent it balance so that all views could be represented. Many of the persons we appointed are long-time civil rights advocates who have become skeptical of race-conscious strategies; many are more favorably disposed to racial preferences. Our only litmus test was talent — informed citizens who understood and cared about civil rights in our country.

"Instead of judging our [SAC] chairmen by their race," Chairman Pendleton argued further,

look at them as individuals. Indeed Mr. [Edwards], if you have any objection to any one of our staff chairs, I would be interested in hearing of it. These men and women are, by no means, conformists. They were not chosen to toe the party line. Like the SACs, themselves, the views of our chairmen encompass the spectrum of debate on busing, comparable worth and the whole range of civil rights topics.

The requirement that the SACs be balanced in terms of the points of view represented is in fact mandated by the Federal Advisory Committee Act. The presence of differing points of view on the SACs is all the more important because of the debate that is taking place across the country on various civil rights policies. The SACs now reflect that debate. They did not reflect that debate before the rechartering.

GAO appears also to find fault with the manner in which names were placed in nomination for SAC membership:

Before the 1985 rechartering of the Commission's state advisory committees, the Commissioners had selected committee members based mainly on recommendations from the Commission's regional offices. . . . For the 1985 rechartering, the regions continued to make their recommendations, however, headquarters' officials controlled the nominating process. (p. 78)

The implication is that something was amiss in the rechartering process. In fact, there is no requirement in the Commission's regulations or elsewhere that the regional directors be the source of nominations for SAC membership.

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Commission headquarters should control the nominating process, and it is in its discretion whether to solicit recommendations for SAC members from the regional directors. Indeed, as GAO acknowledges, the regional directors initially recommended names for all of the 561 SAC positions. Headquarters accepted half of them, and substituted names for the other half. Commission staff in the Washington office would be remiss if they did not screen recommendations from the regional offices.

QUESTION TWO

GAO was also asked to "determine the extent to which committee reports have been printed and released to the public and whether reports are still awaiting review by the Staff Director" (p. 77).

GAO asserts in response that prior to fiscal year 1985, the SACs' primary method of advising the Commission was in formal, published reports. Beginning in fiscal year 1985, GAO further acknowledges, SACs began submitting to the Commissioners less formal briefing memoranda as an agreed-to alternative to the reports. SAC reports dropped in number between 1983 and 1985, according to GAO, from 36 in 1983 to 2 in 1985. In 1985, the GAO report notes, the SACs submitted 24 briefing memoranda.

The question regarding the number of SAC reports released by the Commission since its reconstitution by Congress is not unfamiliar. This same concern was raised by Rep. Edwards at the September 19, 1985, subcommittee hearing on the SAC rechartering. At that time, Chairman Pendleton testified:

I said, in my statement, that it took a year or so to recharter the SACs. . . . But these SACs have just been rechartered, and they're looking at the issues.

Acting Staff Director Max Green added:

I can tell you this, that very, very few reports have been turned down for publication, and that the majority will be approved as written or will be approved after revisions are made.

Following the Commission's September 19 testimony, Chairman Edwards sent a letter to Chairman Pendleton dated October 4, 1985, requesting that he respond to eight additional questions concerning the SACs. The Commission's response to that letter

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detailed the number of reports actually received from the SACs between January 1, 1984, and September 19, 1985, a 21-month period. Presumably GAO was given a copy of the Commission response, dated December 20, 1985, since shortly prior to that, GAO inquired of Commission staff when the Commission planned to submit its response to Rep. Edwards' staff, even though Commission staff had not told GAO staff that the Commission was drafting a response to a letter from Rep. Edwards concerning the SACs.

The Commission's response to Rep. Edwards lends support to Mr. Green's testimony that "very, very few reports have been turned down for publication." During the 21-month period between January 1, 1984, and September 19, 1985, thirteen reports or concepts were approved. Between September 19, 1985, and the date of Chairman Pendleton's response, three more concepts were approved, and seven more reports.

In response to Rep. Edwards' request that the Chairman detail any SAC reports or concepts returned to the SACs between January 1, 1984, and September 19, 1985, Chairman Pendleton replied that one report had been returned on legal sufficiency grounds

because it did not distinguish between de facto and de jure segregation, ignored Supreme Court rulings, and set forth unsupported findings. The State Advisory Committee decided to drop the report.

Chairman Pendleton further advised Chairman Edwards that four reports were returned to the SACs during the same 21-month period for jurisdictional reasons. Two of the four have been revised and subsequently were approved by the Commissioners for publication. Two concepts were returned during this 21-month period on jurisdictional grounds; one of the two has since been revised and approved.

Moreover, Commission staff provided GAO with more recent data with respect to the period since September 1985, which indicates that Commission headquarter's review and approval of SAC projects has continued to accelerate. Since September, the Staff Director has approved six more SAC project concepts and four more proposals. The Commission recently approved a report by the SACs in Iowa, Kansas, Missouri, and Nebraska on State enforcement of civil rights in education. Moreover, at its meeting last month, the Commission adopted a statement in support of efforts by the Wisconsin SAC to alleviate tensions

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between the Indian and non-Indian communities in Northern Wisconsin. All of this may have been what prompted GAO official Ron Cormier to testify at last month's hearing that the trend with respect to SAC projects has noticeably improved in recent months.

With the rechartering of the SACs completed (save one), the Commission expects that the quantity of reports and briefing memoranda will continue to increase. But, more importantly, their quality will also increase, since the rechartering has left in place very competent and concerned citizens who bring with them to the advisory committees differing perspectives on the many important civil rights concerns.

QUESTION THREE

The final question that GAO was directed to look into with respect to the SACs was "whether the role of the committees has changed, including whether regional offices are allowed to provide assistance to the committees" (p. 77). GAO asserts that according to "those 12 regional officials we interviewed" (p. 85), administrative assistance to the SACs by the regional offices has not changed with the rechartering in 1985. However, GAO goes on to say, "the nature of their involvement with the committees has changed" (p. 85):

Several officials indicated that the current committees are obtaining less input from regional staff in identifying issues. They said that they cannot express views to the committees as they have in the past; one said that he must get headquarters' approval before presenting ideas to the committees. Another said that he was directed by headquarters not to suggest projects or issues. Before the 1985 rechartering, according to several of the regional officials, regional staff exercised more control over the committees in project identification. (p. 85)

Without details of the discussions between GAO and regional officials, the accuracy of these comments cannot be determined. They are, however, very dubious, unless understood in the sense of an instruction to regional officials that they abide by the provisions of the Federal Advisory Committee Act, which prohibits Commission officials from inappropriately influencing the advice of its advisory committees, ensuring

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that their advice instead be the result of the advisory committee's independent judgment. Certainly, however, regional representatives confer on a daily basis with SACs in their jurisdictions.

GAO included in its discussion of the SACs a section on SAC committee meetings. Two significant points are made: The first is that "[t]he total number of committee meetings increased during the fiscal year 1983 to 1985 time period" (from 261 in 1983 to 294 in 1985) (pp. 85-86). The second point is that SAC factfinding and conference meetings decreased during this period "from 12 in fiscal year 1983 to none in 1985" (p. 85).

Commission staff attempted to explain to GAO officials in the oral briefing that meetings directed toward factfinding, known also as community forums, are for budgetary purposes now included under the heading of planning meetings. GAO chose to ignore this explanation, and their report is wrong on this point. The various community forums held by the SACs during 1985 are a matter of public record, in information provided to the General Services Administration as mandated by the Federal Advisory Committee Act.

USE OF COMMISSION AUTOMOBILE

GAO has investigated the allegation "that the former Staff Director used a Commission chauffeur and car to provide her with transportation between home and work." Although GAO was provided written and verbal statements by the former Staff Director and the employee then designated to drive the car -- statements that the agency vehicle was only used for Commission business -- its report claims to be unable to "verify that the Commission automobile was used only for official purposes while it was stationed at Commission headquarters or its warehouse." Trip logs covering at least part of a 22-month period, which GAO asserts are critical to its ability to judge whether use of the car was consistent with Federal regulations, were mistakenly thrown away by the designated driver six months after he left the Commission.

GAO has omitted two significant points from its report. First, during a March 18 briefing of Commission staff, GAO representatives were asked whether they had "any evidence that, in fact, Linda [Chavez] had home-to-work transportation" during her tenure as Staff Director. "No, we said that we don't," replied GAO's Paul O'Neill. No evidence exists that the Commission automobile was ever used for anything but official transportation. Second, as GAO was made aware, the Commission paid for a monthly parking sticker for Staff Director Chavez during her entire employment, which ought strongly to suggest that she always had ready access to her own home-to-work transportation, and did not require a chauffeur.

In late 1984, without the knowledge of the Staff Director, the Deputy Staff Director leased for the Commission a new Chrysler New Yorker and arranged for the creation of a new clerk position which was understood to involve certain chauffeur responsibilities. Upon learning of these actions, the Staff Director immediately ordered the Deputy Staff Director to nullify the lease, and the would-be clerk-chauffeur position was downgraded to a GS-303 clerk appointment. It was this clerk who operated the Commission's leased 1983 Ford Escort station wagon during the January-April 1985 period.

We note with regret that the Congressional prohibition against GAO's apprising the Commission of specific allegations against it has caused confusion and has necessitated additional work by both GAO and the Commission on this point in particular.

CONTRACTING TO SUPPORT THE COMMISSION'S MISSION

According to the GAO report, it has been alleged that contractors have been used by the Commission to perform work that should have been done by the Commission's career staff. GAO's extensive examination of work contracted by the Commission, including its cost and justification, however, reveals no evidence to support such a charge. As a result, GAO declines to repeat the allegation in its summary statement, and does not offer support for it in its documenting attachment.

GAO was further asked to determine whether mission-related contracts were subject to legally mandated competitive bidding. Federal acquisition regulations generally require competitive bidding for contracts exceeding \$25,000. Only two Commission contracts were this large during the period under GAO review, both of them in FY84. One was competitively bid. The other, a \$53,280 initial contract awarded to the National Committee Against Discrimination in Housing to prepare a nationwide directory of private fair housing agencies, was not competitively bid.

Federal acquisition regulations [48 C.F.R. subparts 6.3 and 15.5] set forth the criteria that permit noncompetitive contracting via unsolicited proposals, as in the case of this contract. The National Committee Against Discrimination in Housing did, in fact, as its official Commission file clearly indicates, submit an unsolicited proposal that was, by the terms of these regulations, sufficiently unique and beneficial to our agency's mission. The Committee, moreover, was the one responsible source that could perform the task described in its proposal, had prepared the proposal without government supervision, and had received a favorable comprehensive evaluation. The Commission's Solicitor, who was the contracting officer at the time, has confirmed that all criteria necessary to establish the eligibility of this proposal for noncompetitive bidding were met.

The acquisition regulations also require that files for such contracts contain a reference to the specific authority under which they are awarded. In this case, the Commission neglected to cite in the contract itself or in a memorandum for the file the relevant legal authority [41 U.S.C. section 253 (c)(1)] and applicable Federal regulations [48 C.F.R. subparts 6.3 and 15.5]. There was no violation of law or regulation in the awarding of this contract. A clerical error resulted in the omission of two citations from a standard contract.

Mr. PENDLETON. I will give the response as the official agency response; and letting you clearly understand that I am not the day-to-day manager of the agency. I am not responsible for its work; but I feel as though it is important to the day-to-day response to give this testimony.

And without objection, I will so do.

Mr. EDWARDS. Mr. Pendleton, it is 50, or 60, or 70 pages; can you summarize?

Mr. PENDLETON. I have no intention of going that long, Mr. Chairman. But what I think is clear here is that I have as a few pages, we have voluminous attachments to this report. I don't intend to give those attachments at all.

But I do think it is important to give the official agency response, and that this is the staff director's testimony which I am being forced to give. It is to go into the record that way, and the attachments to be—

Mr. SENSENBRENNER. Mr. Chairman, in the interest of saving time, let me renew my unanimous request that Mr. Latham be permitted to summarize his statement. I certainly don't think that we would want to have an undue amount of time of Mr. Pendleton merely reading someone else's statement. I know this would be a great switch because Mr. Pendleton is no one's parrot, and I don't think we should want to start today.

Mr. PENDLETON. I understand; but one thing, that if GAO had considerable amount of time to give their testimony, I can summarize as best we can, this testimony.

I am sorry—he cannot do it?

Mr. SENSENBRENNER. I don't see why we can't let Mr. Latham take credit for what he wrote rather having you—

Mr. PENDLETON. I misunderstood, sir.

Can I give my testimony, or do you want this given—

Mr. EDWARDS. We have already voted on that.

Will you proceed, Mr. Pendleton, please.

Mr. PENDLETON. To make this one more time clear, that this is the staff director's testimony.

Mr. Chairman, I am pleased to appear to respond to the review of the Civil Rights Commission's operations recently conducted by the Government Accounting Office and publicized by this subcommittee. I regret to report, however, that I find the circumstances of the entire GAO investigation and oversight process disappointingly—

Mr. SENSENBRENNER. Mr. Chairman, I would ask unanimous consent that Mr. Latham's testimony be included in the hearing record at this point in time.

Mr. EDWARDS. Without objection so ordered.

Mr. SENSENBRENNER. I don't see any reason why Mr. Pendleton has to use his time to read Mr. Latham's testimony. I think Mr. Pendleton can speak for himself, he has established an admirable record for doing that.

Mr. EDWARDS. Mr. Pendleton, you have testimony of your own.

Mr. PENDLETON. Having been muzzled once again, I will try.

Mr. Chairman, I want to thank you for the opportunity to appear before you today with respect to the audit of the management of the U.S. Commission on Civil Rights for the period since its recon-

stitution. As I have indicated earlier, that Mr. J. Al Latham, Jr., the staff director of the Commission, and a presidential appointee accompanies me.

As anyone who reads the newspapers knows, since the beginning of this audit almost 9 months ago, I have several times expressed objections to the manner in which it was being carried out. I must say, that I also have some concerns about the amount of money that was expended complying with this audit. There are questions about money here, and it cost us some \$50,000 to comply.

Oftentimes these objections centered on denial of due process to the commission by the four members of Congress who requested the audit. The point I raised in this regard, was that the congressional request that specifically told GAO that they could not follow—and I will quote from GAO's own policy manuals—their "usual, basic, and long-standing policy" of obtaining advance written comments from the audited agency and if necessary, including those comments in the GAO's audit report.

The purpose of this usual policy—to quote further from GAO documents—is to insure that its "reports are fair, accurate, and complete."

Had GAO been permitted to follow its customary advance review and comment procedure, its report might have been fair, accurate, and complete. Because the advance review and comment procedure was not followed, however, the report is unfair, inaccurate, and incomplete.

In fact, because GAO was specifically requested not to permit the commission to review a draft of its report and comment thereon, the questions raised by the report, detailed in GAO's March 25 testimony before this subcommittee, were reported by the press throughout the country without benefit of Commission response. This resulted in damage to the Commission's reputation, which we can only hope to rectify today.

Based upon my conversations with our staff director, I have no question that every issue raised by GAO can be fully addressed. My only concern is whether or not our explanations will get as much attention in the press as the allegations.

Mr. Chairman, Vice Chairman Morris Abram and I wrote you on last Friday to advise you that we had instructed Mr. Latham to prepare and to present to this subcommittee, a detailed response to the GAO audit. Under the Commission's regulations, Mr. Latham is the agency's chief executive officer, as such, he is responsible for the day-to-day management and operation of the agency. He is familiar with the facets of the commission's operations examined by the GAO and is, therefore, the official qualified to present the Commission's response.

Mr. Chairman, this ends my brief statement. We will be glad to answer questions when the time comes. But I would imagine now Commissioner Berry would like to give her testimony.

[The testimony of Mr. Pendleton follows.]

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

FOR RELEASE ON DELIVERY
EXPECTED AT 1:30 P.M.
APRIL 22, 1986

STATEMENT OF
THE HONORABLE CLARENCE M. PENDLETON, JR., CHAIRMAN
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ON
A GENERAL ACCOUNTING OFFICE REPORT OF
MARCH 25, 1986

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before you today with respect to the GAO audit of the management of the U.S. Commission on Civil Rights for the period since its reconstitution. With me is Mr. J. Al Latham, Jr., Staff Director of the Commission.

As anyone who reads newspapers knows, since the beginning of this audit almost nine months ago, I have several times expressed objections to the manner in which it was being carried out. Often times, these objections centered on the denial of due process to the Commission by the four members of Congress who requested this audit. The point I raised in this regard was that the Congressional requesters specifically told GAO that they could not follow -- and I will quote from GAO's own policy manuals -- their "usual, basic, and longstanding policy" of obtaining advance written comments from the audited agency, and if necessary, including those comments in GAO's audit report. The purpose of this usual policy -- to quote further from GAO documents -- is to ensure that its reports are "fair, accurate, and complete."

Had GAO been permitted to follow its customary advance review and comment procedure, its report might have been fair, accurate, and complete. Because the advance review and comment procedure was not followed, however, the report is unfair, inaccurate, and incomplete.

In fact, because GAO was specifically requested not to permit the Commission to review a draft of its report and comment thereon, the questions raised by the report, detailed in GAO's March 25 testimony before this Subcommittee, were reported by press throughout the country without the benefit of a Commission response. This resulted in damage to the Commission's reputation which we can only hope to rectify today. Based on my conversations with our Staff Director, I have no question that every issue raised by GAO can be fully addressed. My only concern is whether our explanations will get as much attention in the press as the allegations.

Mr. Chairman, Vice Chairman Morris Abram and I wrote to you last Friday to advise you that we have instructed Mr. Latham to prepare, and present to this subcommittee, a detailed response to the GAO audit. Under the Commission's regulations, Mr. Latham is the agency's chief executive officer. As such, he is responsible for the day-to-day management and operation of the agency. He is familiar with the facets of the Commission's operations examined by GAO, and is therefore the Commission official qualified to present the Commission's response. I trust that you will permit him to present the entirety of his summary, as you permitted GAO to present its summary.

I will of course be glad to answer questions directed to me once Mr. Latham completes his summary.

Mr. EDWARDS. Mr. Destro, do you want to go next?

Mr. DESTRO. It makes no difference to me.

Mr. DESTRO. Mr. Chairman, members of the subcommittee, I didn't prepare written comments today because I have some very, very simple points to make.

Let me just start to say that I find this process to be not only a bit irregular, but also very frustrating. I was the individual who, at the very first meeting of the new Commission, asked specifically for, and obtained a unanimous vote to ask for, the GAO audit of the Commission in the manner of a "book-closing audit" on the old commission, so that we would be painted, if at all, with our own sins and not the sins of prior administrations.

The reason for that request was that I thought that if we didn't have an audit one day we would be sitting here in a committee meeting exactly like this one, defending ourselves against charges that may, or may not, relate our own time on the watch here. So, generally, my position is that I applaud the oversight of the committee, but attempts such as this one, are not oversight.

Real audits speak to the conditions and problems of the agency, not to partial information and innuendo, like this GAO report has. We were told at the beginning of the process—when we asked for a GAO audit—that we had to tell the auditors what they were supposed to look for. The request was for a book-closing audit, and a statement of condition as we took over the agency.

I could have called Peat, Marwick, Mitchell or any of the other top eight accounting firms in the country and made that same request and not have been faced, as we basically were, with a blank stare, and a claim that GAO does not do audits that way.

The Securities and Exchange Commission, for example, would never allow corporate directors to tell their auditors what to look for when the issue is the condition of the corporation. I think we have to be frank here about what is going on.

If the issue here were really the condition of the agency, the audit would not have been limited in either scope or time, as it was. If it were the management of the agency, there would have been an audit of the prior Commission to compare it with present management of the Commission. If the issue were the number of reports that we issue or their quality, there would be discussion of the time and effort it takes to do a report, as well as of the time and effort it took the old Commission to do its studies. If the issue were the administration of the Commission, one would have to look at the whole scope of administrative issues, not just some of them.

In fact, as an individual looking at some of the allegations that have been made against the Chairman, I feel somewhat in a catch-22. One of the first trips that I took on behalf of the Commission raised the question of reimbursement.

It took me months to get an answer regarding what to do about reimbursement of expenses. I did not want to be in the position of taking expenses out of sorts.

I had to have the Solicitor of the Commission do a report. I had to have a legal opinion addressed to the question of whether or not I could take the expenses offered.

And finally, in frustration, I went ahead and took the expense reimbursement, and had to fight with the Commission staff to have it deposited in the general receipts account of the U.S. Treasury, because I knew from the beginning that I couldn't have it. I didn't want it.

But one question here is that we live in a time of deficits. One would think that we would be applauded for saving money, but we now find that taking reimbursement, though not improper or illegal, is somehow tainted. But if we go ahead and charge the Commission for our trips, we are painted into the corner with the charge of spending too much on travel.

So I have to speak to this from the perspective of my job as a commissioner, which is to listen, speak out to interested people in the public to explain what we are doing, and to investigate. This costs money. Investigations cost money.

The Commission asked for an audit. We were told, basically, to audit ourselves, to come up with questions. If you come up with the questions for the auditors, you might as well do the audit yourself!

This isn't proper; and neither are partial audits, like this one. Again, my reference is to the Securities and Exchange Commission. Their standards refer to complete audits. Partial audits are inherently misleading. I think this one is.

I am waiting with bated breath for the rest of the audit from the GAO. I certainly hope it is more complete than the last one was.

As far as I am concerned as an individual Commissioner, this hearing is a bit premature; we don't have all the facts. And to lead anybody to believe that this is the entire story on the Commission, I think, is not only misleading, but strikes me as not an impartial observer, but more than a bit partisan.

Mr. EDWARDS. Thank you, Mr. Destro.
Commissioner Berry.

Ms. BERRY. Thank you, Mr. Chairman, and members of the subcommittee.

I could spend whatever time I have explaining that my colleagues in the majority here should be the last people in the world to assert that anyone is engaged in a rush to judgment on any issue, since they have established a public record, which is available for anyone to see, since their first meeting in January 1984, of making decisions first and then determining the facts later. As a matter of fact, they have prided themselves in statements that they don't need to know the facts before they know their conclusions.

As I understand it, those people who have made conclusions already about the Commission's financial irregularity and mismanagement, at least base it on a GAO report, and not visceral reactions.

I also find it puzzling for people to spend all their time attacking the GAO, which as every Member of Congress knows, does numerous reports on all manners of subjects, of all varieties for Members

every day. There is no reason to assume that the GAO, on this particular occasion, decided to do a hatchet job on the Commission. If you believe that—

Mr. EDWARDS. Can you move the mike a little bit, Commissioner.

Ms. BERRY [continuing]. If you believe that, and you believe that GAO responds only in terms of what the Members who request the investigation ask for, then some conclusions would apply to the Republican members who asked for an audit of the Commission back to 1978. I don't believe that; but if some persons believe it then they ought say in advance that they expect GAO to come up with whatever they want GAO to find.

If the GAO finds something wrong with the Commission going back to any time when I have been a Commissioner, I will not be up here saying, "the GAO, the GAO." What I will be doing is trying to answer the questions.

I could also spend time detailing the rhetoric used by my colleagues in statements that they have made, including Mr. Pendleton, in order to comment on their comments about rhetoric that other people have used. But I won't do that either. Because this hearing isn't about personalities; and it isn't about people's rhetoric; and it isn't about base motives that some Members of Congress may have had. People may have the best of motives for what they ask. Our job is to answer the questions.

I also won't sit here and pretend that the Commissioners, who have the sole statutory authority to run the Commission, have nothing to do with it and, therefore, the chief executive officer is the staff director, and he is the only one who should be held accountable to answer questions.

My colleagues cannot have it both ways. When they don't want us to talk about the mismanagement of Staff Director Linda Chavez, they say, well, the Commission is responsible. When they do not want us to talk about what they did, or what they are responsible for, they say, the staff director, the staff director is responsible. But I won't hide behind any of that.

I will address the report, just very briefly, Mr. Chairman, and my reaction, along with my colleague's, Blandina Cardenas Ramirez, for whom I am testifying also. I hope, Mr. Chairman, that my testimony and hers can be included in the record.

Is there any objection to do so, Mr. Chairman?

Mr. EDWARDS. Without objection, so ordered.

Ms. BERRY. Thank you, Mr. Chairman.

Mr. Chairman, when Blandina Ramirez and I first came to the Civil Rights Commission in mid-1980, before the 1980 elections, the Civil Rights Commission had a Republican chairman, a rather distinguished chairman, a staff director, who was appointed by President Nixon, in 1972, and a career civil service assistant staff director for administration, who had been there since 1968. There was nothing in any information that anybody had that would indicate that this tiny little agency, with civil service dedicated, career civil service staff, and a minimum of political appointees was doing anything that smacked, as far as they can tell, of going beyond their mandate, which was to be a safety valve for those who thought they were discriminated against, and to be a modest, mostly non-contentious, advisory body to the Congress and the President.

Now as I read the GAO report, we are an agency whose staff directors, Linda Chavez and Max Green, engorged the staff with political appointees and created a mess of paperwork and administrative confusion.

We are an agency where, contrary to law, reports are supervised by consultants, where earmarks added by Congress to assure appropriate use of funds failed in their purpose, and where accounting reports for time spent get changed when somebody asked questions, and where Commissioners may, if they choose, and some apparently do choose, to receive whatever maximum payments they find the law permits, and where the staff director, with complete disdain for the administrative regulations of the Commission, can, unrestrained, hire, assign personnel, shift money around, control information, all without most of the Commissioners even showing any interest or being involved in any way.

I had hoped that my colleagues would come up here, and along with the staff director, say what I used to say when I ran education programs at HEW when I got a GAO audit report; namely, I promised to strengthen administration and management, and to avoid any defects cited in the GAO report, answer the questions and proceed. That has not happened.

Instead we have some written testimony by the staff director, who wasn't even at the Commission when the activities analyzed by GAO occurred, which attempts to defend all the actions that took place.

I have read the staff director's testimony, and I am sure you have, and it fails to undermine any of the analysis done by the General Accounting Office. The first three pages of it go on, and on, and on, about possible political motives for the GAO investigation.

As I have already pointed out, the motives for the GAO, or the Members of Congress who asked for this investigation, are irrelevant. Good management, and attention to procedural requirements, are necessary for good government, fair dealing, and the wise use of taxpayers' money. And if management is defective, all else may be called into question.

The issue is not why there was an investigation, but was management and administration in good order at the Commission. The answer is, "no," according to GAO.

Now, I am sure the GAO and everybody else will analyze in great detail what the staff director wrote in his response. But I would just make points on three of the sections that occur to me immediately upon just reading.

Charges of improper personnel practices made by the GAO. Politicizing the Commission, that is what that is about. There is nothing in the staff director's testimony which refutes the GAO's statement that there were 73 noncareer employees at the Commission as of December 1985—and remember this is a small agency—and that these people had been at the Commission since the beginning of fiscal year 1983.

The point is that we had an engorgement of political appointees. GAO didn't say how these people got converted to career positions.

The staff director says, well, they were career people by this time, most of them. But the point is not how did they get to be

career, a lot of people come in Government as political appointees and find a way to get converted to career appointments. The problem is that their initial employment was coming in as noncareer people rather than civil servants, which used to be the rule at the Commission.

I don't know what GAO will find going back to 1978, but I do know that during my time at the Commission, the old Commission, that the staffing patterns reveal people got hired through the career civil service route for virtually all of the jobs, rather than those in the staff director's office, or working directly for a Commissioner.

You might say, why, is that important? It is because you can't rule out all bias in any kind of operation that depends on investigation and research, but you can make the best effort possible to minimize bias.

You also want to have a time line, you want experience to build up with people who have been doing these studies, who have a knowledge base. So the idea was that if we had mostly career civil servants, with the political people at the top, that would produce better reports and studies.

Anybody who believes it is OK to engorge the agency with noncareer people ought to answer the question as to whether they think you will get the least biased reports in that way.

Under the second section, charges of improper operating procedures, we are very disturbed, Commissioner Ramirez and I, about the statements about the State Advisory Committees. I won't bore you, or add to the time by going on about the changes that were made in the State Advisory Committees and their memberships, but one point, the staff director in his written testimony tries to rebut GAO, which says that there is a decrease in factfinding meetings for the SACs, by saying that community forums have increased and community forums are factfinding meetings. That is plain wrong; that is false.

Fact-finding involves field investigations, and a hearing-like forum, with testimony taken from witnesses, and the most important thing is that you produce reports after the fact finding which can be sent out to the public and be sent out to agencies. Community forums do not result in reports, all they result in is a briefing memo that goes to the commission and never sees the light of day unless something else is done.

And finally, Mr. Chairman, on the charges of financial mismanagement, which I think are the heart of this report, in my opinion. The staff director has in his written testimony, and at least one the commissioners sitting here, complain of innuendo. In this section of the testimony our staff director tries to shift the blame for whatever happens in formal recordkeeping to a man who was the assistant staff director for administration before Ms. Chavez was appointed and during the first year of her tenure. This man is a career civil servant with 15 years in office at the time that she became staff director.

As we read the GAO report the mismanagement described took place largely after his reassignment, after he was reassigned out of the office in December 1984. In fact, we understand that one of the reasons that he got reassigned was because he advised Ms. Chavez

that playing fast and loose with management administration would cause just the kinds of problems that we have been up here talking about.

I hope, Mr. Chairman, that you will let assistant staff director come up here to testify, along with his successor. Then, Mr. Chairman, the staff director tells us that there is no missing money at the commission, that it is wrong to say there is missing money. There is no missing money at the commission.

Well, the point is not that there is money missing, but the point is what was the money spent for. There is no answer in the staff director's report as to what happened to the money, that \$421,000 unaccounted for, \$83,000 is involved in the great time-sheet mystery, that is who changed the time sheets and when did they change them, that is \$83,000; \$120,000 was turned back to the Treasury, but there is a remaining \$226,000, which is described as being used to cover overhead costs of \$51,000—and get this—other unidentifiable costs in the hearings budget activity; whatever that is.

The question still exists, what did the staff director, Linda Chavez, use the fiscal year 1985 housing hearing funds that were appropriated specifically for that purpose. What did she use the money for?

I would like to know. I have been trying to find out and nobody has told me, I hope this committee can find out.

Mr. Chairman, finally, I think we should not lose sight of the importance of these issues. Money is supposed to be used for a purpose, and there is no way to tell what has been used for that purpose if management and administration are not carefully executed.

Commissioners have a duty under the statute in discharging their duties to be collectively responsible ultimately for the agency. And we can't do that if we aren't assured that proper procedures are in place.

I don't think the Congress should let this situation continue. I think, for example, this year the Commission has asked for greater flexibility in its appropriation. I think this report demonstrates the need for less flexibility rather than more flexibility.

Also, I think, Mr. Chairman, that you might consider trying to do something about instructing the staff director to at least to follow the—to be instructed by Congress to abide by the laws and regulations governing management, appointment and promotion of employees at the Commission.

I just think that there ought to be some way that the Congress can stanch this continuing flow of the taxpayers' money into the management mess the Commission has become.

Thank you very much.

[The testimony of Ms. Berry follows:]

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

STATEMENT OF
BLANDINA CARDENAS RAMIREZ AND MARY FRANCES BERRY, COMMISSIONERS
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ON
A GENERAL ACCOUNTING OFFICE REPORT OF
MARCH 25, 1986

APRIL 22, 1986

Mr. Chairman and Members of the Subcommittee:

The Commission on Civil Rights, as described in the GAO audit, is an agency out of control. In mid-1980 when we first came to the agency, it had a Republican Chairman, a Staff Director appointed by President Nixon in 1972, and a career civil service Assistant Staff Director for Administration who had been there since 1968; procedural and administrative regularity, even-handed dealings with all Commissioners, a handful of political employees, all in the Staff Director's office or working for Commissioners, and a dedicated career civil service staff that managed and controlled all projects in an effort to contain bias in its research and fact-gathering. It had Commissioners who pored over reports before and in meetings, line by line, and asked questions of civil service office directors responsible for the projects and clean, brief audit reports of its management from GSA. In addition, State Advisory Committees were appointed primarily upon the recommendation of regional office civil service staff who tried to obtain balanced slates from people concerned and involved with the issues under the Commission's jurisdiction. Indeed the Commission tried to operate in a way to exercise its original mandate as a safety valve for those who thought they were discriminated against and a modest, mostly non-contentious, advisory body to the Congress and the President on matters of civil rights in the Nation.

Now, according to the GAO report, we are an agency whose Staff Directors, Linda Chavez, and Max Green, engorged the staff with political appointees and created a mess of paperwork and administrative confusion. We are an agency from our own personal experience where reports are voted up or down after heated debate about philosophy by the Commission, where some reports are apparently supervised by consultants, where earmarks added by Congress to insure appropriate use of funds fail in their intended purpose, where accounting reports for time spent get changed when questions are asked, and where Commissioners may, if they choose and some apparently choose, receive whatever maximum payments they find the law permits, and where the Staff Director with disdain for the administrative regulations of the Commission can, unrestrained, hire, assign personnel, shift funds around, control information--all without any interest or involvement of most of the Commissioners.

We had hoped the Staff Director would come here prepared to promise to strengthen administration and management and to avoid the defects cited in the GAO report. That has not happened. Instead we have testimony by the Staff Director, who was not even at the Commission when the activities analyzed by GAO occurred, which defends the actions of previous Staff Director Linda Chavez and Acting Staff Director Max Green.

The Staff Director's testimony fails to undermine any of the analysis done by the General Accounting Office. The first three pages of it concerning possible political motives for the GAO investigation are irrelevant. Good management and attention to procedural requirements are necessary for good government, fair dealing and wise use of taxpayer funds. If management and administration are defective, all else may be called into question. The issue is not why an investigation was made; but was management and administration in good order at the Commission. Apparently the answer is no.

GAO will have to analyze the technical aspects of the Staff Director's response, as will we, in due course, given the fact that we received this testimony only hours before this hearing. But some observations can be made immediately.

I. Charges of Improper Personnel Practices

Nothing in the Staff Director's testimony refutes the GAO statement that "as of December, 1985, 73 of the non-career employees hired since the beginning of the fiscal year 1983 were still at the Commission." GAO's concern was not whether these employees had been converted to career positions. GAO was only pointing out that the non-career route to initial employment at the Commission was becoming more and more the rule rather than the exception. We will await with interest the GAO report on personnel actions taken at the Commission

before 1983, but we know that the policy of the "old" Commission and the staffing patterns reveal employment through the career civil service route for virtually all employees other than those in the Staff Director's office or working directly for a Commissioner.

II. Charges of Improper Operating Procedures.

Aside from the Staff Director's failure to understand that when persons refer to the "independence" of the Commission, they mean independent of influence by the White House or Congress on its policy pronouncements and not the policy it makes, the testimony on the State Advisory Committees (SAC's) is disturbing. The Staff Director is wrong to assert that community forums for SAC's are fact-finding meetings. Fact-finding meetings involve field investigations before hearing testimony from witnesses, and most importantly, a resulting report which can be published, sent to affected agencies for a response, and disseminated publicly. Community forums are opportunities for concerned people to discuss an issue, but no report results and the briefing memorandum for the Commission is an internal document which is not disseminated to the public. A reduction of fact-finding meetings reduces the opportunity for the SAC's to play an effective, visible, public role in their states.

III. Charges of Financial Mismanagement.

The Staff Director complains of innuendo, but in this section he tries to shift the blame for the improprieties in formal recordkeeping to the Assistant Staff Director for Administration, a career civil servant with fifteen years in office at the time Ms. Linda Chavez became Staff Director. As we read the GAO report, the mismanagement described took place largely after his reassignment in December, 1984. In fact, we understand that one of the reasons he was reassigned was because he advised Ms. Linda Chavez that playing fast and loose with management and administration would cause exactly the kinds of problems GAO has now cited. We hope this Committee will permit the former Assistant Staff Director for Administration to testify along with his successor, the current incumbent of the office, both of whom have direct knowledge of the events which occurred.

Mr. Chairman and Members of the Committee, the Staff Director states with emphasis: There is no missing money at the Commission. Well, the GAO did not say the money was missing. The question is what was it spent for? The answer to that question will help to tell us whether the then-Staff Director violated the earmarks established by Congress to insure efficient use of taxpayers' funds at the agency.

GAO could not tell for sure whether the Commission was operating within the earmarks. They said: "Because of the way that the earmarks were established, the discretion that the Commission has in allocating costs, and the poor condition of the Commission's records, we cannot say that the Commission did not comply with the 1985 earmarks." The GAO does say, however, that "If the Commission has charged its printing costs to the publications budget activity, the appropriation earmark for the activity would have been exceeded." The Staff Director's testimony does nothing to rebut the GAO's statements. Whether or not his statement is true that allocating printing to overhead, which kept the agency within the earmarks, was based on historical precedent is irrelevant. The earmarks did not exist historically and were put in precisely to try to control the Commission's expenditures.

The funds allocated for the Housing hearing remain unaccounted for after Mr. Latham's testimony. When were the accounting time sheets changed to reflect more expenditures for the hearing in fiscal 1985, and why were they changed, remain unanswered. Mr. Latham slides by the GAO statement that "We questioned four other staff members who are still at the Commission; only one agreed that the changes to his time sheet were correct."

He also ignores the GAO statement that of \$421,000 in question, only \$83,000 is involved in the time sheet mystery, \$112,000 was turned back to the Treasury, but a "remaining \$226,000 was used to cover overhead costs of \$51,000 and other unidentifiable costs in the hearings budget activity. The question still exists. How did the Staff Director use the Hearings funds?

Mr. Chairman, as GAO and others begin to analyze the details of the Staff Director's response, we should not lose sight of the importance of the issues: funds are supposed to be used for a purpose. There is no way to tell whether they are being used properly if management and administration are not carefully executed. As Commissioners, there is no way for us properly to discharge our duties to be collectively responsible for the agency under the law if we cannot be assured that proper procedures are in place and are being followed by the Staff Director. Many of the difficulties have occurred because having the Staff Director as a presidential appointed in a mixed commission has provided too many opportunities for management beyond the control of those Commissioners appointed by the Congress.

We believe the Congress should not permit the situation at the Commission to continue. We are aware that the Commission has this year asked for an appropriation with its activities combined under one line item to provide more flexibility. This GAO report, if it does anything, underscores the need for less rather than more flexibility. We would make several suggestions for recreating order out of chaos. First, the funds appropriated for the Commission should be used to hire no non-career civil service staff except for one assistant assigned to each Commissioner. We believe also that the Staff Director should be a top-level career civil servant with management experience. At the very least, the Staff Director should be instructed by the Congress to abide by laws and regulations governing the management, appointment, and promotion of employees, and frequent, detailed reporting requirements on the status and use of funds ought to be obtained from the Commission by this Committee and other relevant committees. There must be some way to stanch this continuing flow of the taxpayers' money into the management mess the Commission has become.

Mr. EDWARDS. Thank you, Ms. Berry.

Mr. KASTENMEIER?

Mr. PENDLETON. Mr. Chairman.

Mr. EDWARDS. We will recognize you next, Mr. Pendleton.

Mr. KASTENMEIER. Yes; I will be brief, Mr. Chairman, I know that there is another vote on.

I do want to commend you for the hearing. Regrettably up to this point I think too much has been emphasized about the nature of the GAO report, or motivations, or the rhetoric in back of the whole thing. But as one who is used to the legislative process, I am well aware that there are many GAO reports. If my friend, Mr. Sensenbrenner, from my State, for example, would get one on the Legal Services Corporation, there is no point in questioning his motives. That sort of thing is part of the process.

I think whoever said that notwithstanding, any agency, independent office, has to accept the GAO audit, partial or complete at face value, really that is what the game is. I think the best response is your own informed testimony on the issues raised, rather than on the other aspects, which tend to, I think, have crowded this hearing.

In that regard, of course, we know that each of you is not personally familiar with all the facts, and would not have been necessarily at the time of the audit. I assume that Mr. Latham, who has not been with the Commission long, at least not in his present capacity, of his own knowledge would not necessarily know all the facts. But you do have access to the records, that each inform yourselves, if you care to, and to the extent that you are able to do so, and respond, and that is what this is all about.

I hope that in this hearing, and if there is an ensuing hearing, we can fully flush out these questions and the public can reach a conclusion about them.

I know that Mr. Pendleton concerned himself about whether or not the panel would have as great an attention as the GAO report itself. I think the indication is from the media attention here, the press and television today, that the answer is yes, you have—and from this full committee room—your responses are entitled to, and will get, full public attention. I hope we can objectively now analyze the response.

I yield back my time.

Mr. EDWARDS. We will recess for 10 minutes for a vote in the Chamber of the House.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Since Mr. Kastenmeier had the first 5 minutes—and we will be operating under the 5 minute rule—I recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I don't think I am going to take the full 5 minutes.

I would just like to point out that the testimony that Commissioner Berry submitted, and the lack of allowing Mr. Latham to respond, shows the patent unfairness of the procedure that the chairman and the Democratic majority of the committee have conducted this hearing under. Mr. Latham and the commission members, with the exception of Commissioner Berry, complied with the spirit

of our advance filing rule, and they filed all of their testimony yesterday, which the staff on both sides had the time to review it.

However, Commissioner Berry's testimony was not received until noon today, and that gave her the time to review Mr. Latham's testimony. Commissioner Berry's testimony refutes the testimony that Mr. Latham was not allowed to give, on a point by point basis.

Now, that is just plain patently unfair, and would flunk any court review of procedural due process, which this committee has been so zealous in protecting. I don't think that it is really worthwhile in asking questions relative to this issue, again, because Mr. Latham's testimony was a matter of public record last night. Commissioner Berry responded to it. Commissioner Berry's response was given at this hearing, but Mr. Latham was not allowed to even say what the response was to.

I would hope, Mr. Chairman, that a committee that is supposed to guard the civil rights of all Americans would be ashamed of this process, as I am ashamed of this process, and that we would never undergo this kind of an exercise again.

Thank you.

Ms. BERRY. Mr. Chairman, may I say something?

Mr. SENSENBRENNER. No, Ms. Berry, I didn't ask you a question.

Ms. BERRY. Oh, you have got—

Mr. SENSENBRENNER. I am just pointing out that you had a chance to respond to Mr. Latham's testimony, which your supporters on this committee didn't allow Mr. Latham to give.

Now, you had your chance to speak; Mr. Latham was not given a chance to speak, and I think that speaks for itself.

Mr. EDWARDS. The gentleman from Michigan, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, first I wanted to thank Dr. Berry for toning us down. I never heard Commissioner Abram before, or Commissioner Destro and I was struck by the rhetoric, by the deep passion, and really, perhaps, the inappropriate tone for the setting of these hearings. Being only human, I was prepared to meet that tone with my own tone, which would have raised it several decibels higher.

Fortunately, Commissioner Berry, you intervened with your testimony, and you brought us down. You raised the issues that is really the purpose of us being here. And so I am very grateful to you for that.

My first question is, How do you recommend that this committee, charged with oversight, find out where the \$226,000 went?

Ms. BERRY. Yes, Mr. Conyers, I will be happy to answer that, but first just let me say that my testimony did not arrive here until today because I was not given the Commission's testimony prepared by the staff director until yesterday, therefore, I didn't know what the Commission was going to testify to, so there was no way for me to write anything. And my testimony is written with reference to Mr. Latham's because I understood he was submitting it for the Commission. So there was no attempt to try to fool anybody.

To try to answer your question, I think that the way that we ought to try to find out what happened with the \$226,000 is to—if I were doing it, I would call up here the people who were involved in the timesheet mystery, I would also call up here the assistant staff

director for management, the one who is in office now as well as the one who was in office before, and ask GAO, first of all, to go out and talk to them again and see if they could find out what happened to the funds. I am sure no one is accusing—I am certainly not, GAO didn't—anyone of peculation, as Mr. Abram put it, which I think means, that they didn't steal anything and nobody profited by it. But I am just interested in where the money went. So if I were going to do it at least I would ask those people, and maybe I would ask Ms. Chavez the staff director at the time if she has any knowledge of—

Mr. CONYERS. You mean we would have to call her back to the subcommittee?

Ms. BERRY. I don't know.

You asked my suggestion. I guess she should know, she should be the person who would know.

Mr. CONYERS. Now, is Commissioner Bunzel here?

He is not here?

Was he invited?

He was the Commissioner that recommended the resignation of the Chairman, if I believe—is that correct?

Yes.

So I was very anxious to get a hold of him and to meet him today. That was a very unusual request, Mr. Chairman.

And I wanted to—since you are here, Mr. Pendleton, I haven't seen you since that came out—I wanted counsel you to hang in there. I don't want you to quit.

I don't want you to give up. I don't you to get overburdened with the criticism and flack of your personal and public activities that are under such minute scrutiny.

You stay right in there, because I have got a lot of things that you said that I plan to make public, and they don't have anything to do with the subcommittee's oversight.

You know this is an election year, and so I want to prove the bad faith of this operation by merely quoting you. Now, if you weren't the chairman, it would be all water under the bridge—you know how these things come and go so fast. Who would care?

So I am planning to “dis-elect,” or let's put it more positively, I am planning to bring on board, new Members of Congress, based on some almost incredible statements that you are reported to have made. I would, if I were going to increase the decibel level of this hearing, I would repeat them to you and ask you to under oath tell me that you said it, but following Commissioner Berry, I am not going to do that.

Mr. SENSENBRENNER. Would the gentlemen yield?

Mr. CONYERS. Not at this moment but a little later.

Mr. SENSENBRENNER. OK.

Mr. CONYERS. Now is the staff director of this operation here?

Would he raise his hand.

OK; put it down.

Now, Mr. Staff Director, I want to ask you just one question. Do you promise to follow the law on consultant hiring, promotions, and the filing of papers appropriate to the spending of the money that comes into the Commission?

Mr. LATHAM. Yes.

Mr. CONYERS. Thank you very much, I am very reassured to have your promise to do that.

Now, I want to yield to my colleague from Wisconsin.

Mr. SENSENBRENNER. I just want to ask my friend from Michigan if he has his "Abram for Chairman" button on today?

Mr. CONYERS. I forgot it; I am sorry.

Ladies and gentlemen, what has happening here is lowering of the function of a very important commission. The tone, the highly valued personal opinions, this overarching credentialism of "what I believe", and "what I have done." We are all civil rights leaders, everybody on both sides of the committee, everybody in this room.

We just passed today, the extension of the Martin Luther King Commission, for which I congratulated nearly the entire Congress for an incredible legislative act, and one that is very important. Here you are charged with reducing racial tensions in and out of the Government, and we get into the incredible political atmosphere of talking about who is a social engineer and who isn't. What in God's name is a social engineer; and am I one?

Mr. ABRAM. Yes.

Mr. CONYERS. But if I am, what difference does it make?

This is not what we came here to do. Not to accuse one another of how we see the civil rights struggle.

It is not that you are not entitled to your opinion, but as a public Presidentially appointed member of a national advisory commission, we are really not here—and nor it is your job in your own hearings, nor certainly not on the public trail making all these darn private speeches that I hear so much, coming from the chairman, in particular—we are not here to find out what you personally think about the civil rights movement, its leaders, the Congress, or anything else. All of that demeans the role for which you were appointed.

So please, join with me, one who is capable of matching rhetoric decibels at any level, in toning this stuff down. Let's try to disagree with as little politics as possible.

It won't matter to me or the committee, but it does matter to America. You have got a historic role.

We are still trying to educate millions of Americans about overt and unconscious racism. And many of the things that we do make a mockery of the goals that we both do hold in common.

And now I will yield to any member at the witness table who would like to make an observation or a comment.

Yes, sir, Mr. Abram.

Mr. ABRAM. Mr. Chairman, may I be recognized on the request of the distinguished Congressman from Michigan?

Mr. EDWARDS. Are you asking a question, Mr. Conyers, or are you asking for a statement.

Mr. CONYERS. No; I am asking for a brief response.

Mr. ABRAM. Your point goes, Representative Conyers, to the heart of an issue. The civil rights movement is concerned with equal opportunity, individual rights, and color-blind nondiscriminatory society. That is the civil rights movement.

That is what we are designed to protect and overlook in the Civil Rights Commission. We are not charged with respect to recommending certain levels of food stamps, no matter how desirable

they may be; certain levels of welfare payments, no matter how desirable they may be, as political matters on the political agenda.

What I mean, sir, and I described it in an article that will appear Monday in the Harvard Law Review, is the contest over two issues. One, issues of civil rights, which was a mighty movement in this country, which you, and as you say others joined, in which there was no debate, and shouldn't be any debate, and those are the fair shakers, the civil rights movement. On the other hand, there are those who believe in certain levels of expenditure for various social purposes, certain results they wish to see achieved in America, and they are entitled to their views, sir. And you may be right, or I may be right, and maybe we agree, I am just simply saying that social engineering should be conducted in the congressional and political debates, but has nothing to do with civil rights, of which we are the overlookers on the Civil Rights Commission. That is all that is involved.

Mr. EDWARDS. The time of the gentleman has expired.

The gentleman from California, Mr. Dannemeyer.

Mr. DANNEMEYER. Thank you, Mr. Chairman.

I think the cause of the work of the Commission would be well served if we would openly state, I think, what issue is at the bottom of the controversy, as I sense it today, and that is everyone in the room agrees with the existence of the concept of equality of opportunity.

We are now struggling with those who favor equality of results through the mandate of law, and those who choose to leave that to the marketplace and individual abilities of people striving through their God-given talents. If we would recognize that there are legitimate points of view on both sides, and go about our business, I think the interests of the Commission would be well served along with the commissioners.

But what I see is happening is that those who espouse the philosophy of equality of results through the mandate of law, are using their position on the Commission as a means of stirring up as much trouble as they possibly can, in order to cause a cloud to come into existence and nurture the tendency of this town to feed upon those who come to serve. Whether or not they will be successful in that objective of driving from office a very capable person, remains yet to be seen.

But I suspect those who use the pen, and those who use the voice, to think, to help frame what we Americans think about through the media, are having a field day on this dispute of a fundamental issue at the bottom of this whole controversy.

With that modest observation, let me get to some questions that hopefully may shed some light. To any of the commissioners who would choose to respond.

Were any restrictions imposed or threatened against Commission testimony, or witness, or this hearing by subcommittee member or staff? If, yes, what were those restrictions, and were reasons given?

Mr. LATHAM. Congressman, if I may respond.

May I hear the questions one more time, please?

Mr. DANNEMEYER. Were any restrictions imposed, or threatened against Commission testimony, or witnesses for this hearing, by

subcommittee member or staff? If yes, what were those restrictions and were any reasons given?

Mr. LATHAM. Congressman, as I understand it, from one of my aides, majority counsel attempted to have us come down here much sooner after the GAO report was initially released, and we said we needed more time to prepare the testimony that I prepared, and it is my understanding that at that time there was an attempt to say that if we were to get more time to prepare our testimony, and have a later hearing date, we would have to agree not to raise issues of due process, such as how the GAO audit was, in fact, conducted.

Specifically, I have a memorandum from one member of my staff who said, and if I may, it is a short memorandum, I will read it. This is a memorandum from William A. Lewis, Jr., Acting Assistant Staff Director for Congressional and Public Affairs, and he is by the way a career civil servant. This memorandum is addressed to me dated, March 31, 1986:

I held a lengthy meeting with Stuart Ishimaru this morning regarding the possible postponement of the hearing where the Commission will formally respond to the recent GAO testimony of March 25. Mindful of your desire to have the hearing no earlier than April 21, 1986, I approached Stuart about delaying it until that week. Stuart responded that he felt the Commission had been given an adequate amount of time to review the GAO testimony findings and that he was inclined to stay with the tentative April 10th date.

I should point out, Congressman, parenthetically, that the GAO had many months to work on its report. It was presented March 25, and we are talking here about a proposal for a April 10 date.

"Moreover, he"—that is referring to Mr. Ishimaru—

reiterated that he was "personally insulted" during his conversation with Helen White

Who is another one of my aides—

and that "he was used to working with cordial people, like the Staff Director or you." Once he had that off his chest, we began to make some progress.

I eventually got Stuart to move from the 10th to a later date but he refused to be pinned down to a date certain. Moreover, in exchange for moving the hearing back to the week of the 14th or 21st (I made it clear that is the week I want)

To wit the 21st—

he set several preconditions in order to facilitate this accommodation.

(1) He would want the Commission statement testimony to deal solely with the merits of the GAO findings. That is, he would assume the Commission would not raise any "fairness" (i.e. equity) or "timeliness" arguments if the hearing is delayed.

(2) He would want a working draft of our written statement testimony 7 days in advance, and the final document at least 48 hours in advance (the 48-hours advance, according to Stuart, is merely Judiciary Committee policy).

(3) He would want an agreement to the above conditions in writing prior to the formal invitation to testify being sent to the Commission.

The final paragraph reads:

In short, I found Stuart difficult to negotiate with regarding this matter. He is quite upset with the Commission at this point and it was only at the end of our conversation that he said he wanted to "be reasonable" and "accommodate" our request. I believe he will agree to the week of the 21st if he is satisfied with our efforts regarding the conditions precedent he has set out.

So there was an effort, in response to your question, Congressman, to get us to not to raise the issue of fairness.

Mr. DANNEMEYER. Thank you.

How have the interests of the American people been damaged by not having an objective audit of the Commission for the 1978-85 period in accordance with due process rights in the GAO manual and pursuant to a bipartisan request?

Mr. DESTRO. Mr. Congressman, if I may attempt an answer to the question. I may have a slightly different approach to this.

One of the main restrictions that we are laboring under here, is not even so much a due process problem, as it is a lack of information. It is not that the Commission is opposed to having the GAO do an audit, as I indicated the Commission voted unanimously at its first meeting in Hunt Valley, MD, to ask for a GAO audit to give us the condition of the agency.

What we are really talking about, and what Commissioner Berry mentioned, is that we should respond to questions—legitimate questions—concerning the condition of the agency. The problem that I, as a member of the Commission coming before you today is that we have only partial responses to questions. If we had provided you with a copy of the tape of the GAO response, and of the GAO discussion with the Commission staff, it would have been clear to you that the problem is that those requesting the audit dictate to the GAO what the questions are. If the question isn't asked, the GAO isn't going to give an answer to it. That was the frustrating thing I found as the maker of the original motion for a GAO audit that we basically had to give the GAO the questions on which we wanted to be audited.

Now, I don't believe in self audit. I think we do have an obligation to this committee, and to the American people to answer questions as to how we spend our budget money, but the problem, as in all endeavors, is that if you ask the wrong questions, you get the wrong answers. If you don't ask all the questions, you don't get all the answers.

If the American people don't have the benefit of all the questions, there is no point in continuing. There is a point in continuing the full process, but it is just that we should be called in to answer all the questions at the same time. Otherwise we give people a misleading impression.

And that really, I think, sums up what I consider to be the constraints, of this process. It is not a formal constraint by anything that this committee has done. The constraint is that if we don't have all the information from GAO, we can't make a judgment as to what we should fix, because we don't know either what it is broken, or where the cause lies.

I think, as a member of the Commission, or as members of the Commission, we want to fix whatever problems exist. We do have a position of public trust. But it certainly doesn't make me very comfortable, as a person holding such a public trust, not to be able to have access to all the information that I need in order to carry out that trust. I think that is the limitation that I feel.

Mr. DANNEMEYER. Thank you.

My question for Ms. Berry. In 1981 and 1982 you traveled at Commission expense to the west coast over the Christmas and New Year holidays; what official business, if any, was conducted during these trips?

Ms. BERRY. I have no idea at this time, but I will be happy to provide it for the record.

If I had know you were going to ask me that—I just don't have it with me.

[The information follows:]



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

July 31, 1986

AUG 12 1986

Honorable Don Edwards
Chairman, House Subcommittee on Civil
and Constitutional Rights
House of Representatives
Washington, DC 20515

Re: Oversight Hearing on GAO Audit of Commission, 4/22/86

Dear Chairman Edwards

In response to Mr. Dannemeyer's question: In 1981 and 1982 you traveled at commission expense to the West Coast over the Christmas and New Year holidays; what official business, if any, was conducted during these trips? (Transcript, p. 69):

Response

According to records kept at the time, I spent 16 hours in transit and in meetings with local education officials in Los Angeles to discuss civil rights issues. I also spent 32 hours, cumulative, reading material related to ongoing Commission projects and preparing commentary and analysis in connection with these materials.

Sincerely,


Mary Frances Berry
Commissioner

Mr. DANNEMEYER. Yes.

Is it true that you had a large suite, at Commission headquarters, which was luxuriously furnished with a top-grade furniture at Commission expenses; at the time that you had this suite did any other commissioner impose a similar expense on the Commission?

Ms. BERRY. When I first was appointed to the U.S. Commission on Civil Rights, as a matter of policy, the Commissioners' authorized the Chairman of the Commission and myself, I was the Vice Chairman then, to have an office at the Commission, and that each Commissioner could have an office at the regional headquarters nearest to where they lived, in the cities where they worked. And that was a policy made by the Commission.

Pursuant to that policy, sir, I indeed did have an office at the Commission, whether you call it luxurious that is a matter of doubt, but let's assume it was luxurious. It had furniture which was bought by the Commission, which is now in the staff director's office. It is still at the Commission.

Mr. DANNEMEYER. We have gotten at the core of the controversy.

Ms. BERRY. The chairman had a office at the Commission, too, and that was all done pursuant to policy at that time, sir.

Mr. DANNEMEYER. Before the formal request for this audit did you have discussion with any subcommittee member or staff person concerning a request for this type of audit.

Ms. BERRY. Did I have a discussion before the request—not that I remember. I don't know the exact date when this was requested, at this time, but I do not remember discussing that, no.

Mr. EDWARDS. The time of gentleman from California has expired.

The gentlewoman from Colorado?

Mrs. SCHROEDER. Thank you, Mr. Chairman.

Mr. Abram, I chair the Civil Service Subcommittee and, like you, worry a lot about whether or not we emphasize merit. That is the whole focus of the Civil Service Subcommittee.

The GAO details a number of irregular promotion patterns at the commission that worries me a lot. There are two individuals that were hired at GS-7 level, one was promoted to GS-11 within 9 months. I can tell you that is quite extraordinary. And the other to a GS-12 within 13 months; and that is even more extraordinary.

I understand one of these employees is the former roommate of your son, and the other one was a good friend. In fact, one of them wrote an article in this magazine talking about how he got his job through "pluck, grit and nepotism," when it is really supposed to be merit.

I don't like to bring these out, but these are the kind things that—we have had so much rhetoric floating around—these are the kind of things that were in the GAO report. They are very disturbing to us.

Mr. ABRAM. Mrs. Schroeder, I know nothing about that. If you want Mr. Latham to testify, I am sure he would be glad to do so. But he should have been permitted to testify.

Mrs. SCHROEDER. Do you know if you were used as a reference by either of the two?

Mr. ABRAM. Oh, I have been used as a reference by several people.

Mrs. SCHROEDER. Do you know if you used by either Matthew Cooper or David Schwartz as a reference.

Mr. ABRAM. Yes, I was.

Mrs. SCHROEDER. Don't you find it rather extraordinary—

Mr. ABRAM. They are extraordinary people. A graduate, one of Columbia, and one Harvard, I believe. Or maybe both are from Columbia. They are extraordinary people. What can I say to you.

Mrs. SCHROEDER. Did they have any special expertise, or civil rights' experience.

Mr. ABRAM. They had very splendid academic records as young people do when they start out and get jobs in my law firm. They have that kind of expertise.

I have no apology to make for recommending them. I suspect you have recommended two people who had less qualifications. Because I think they are splendid.

Mrs. SCHROEDER. Sir, do you think I only know people with less qualifications?

Mr. ABRAM. I don't know. We all do. We all know people—

Mrs. SCHROEDER. I think these are some of the problems—the tone of this thing makes it very difficult to deal with it.

Mr. ABRAM. It does indeed, Mrs. Schroeder.

Mrs. SCHROEDER. The GAO audit is an audit. They went through and they found these two people.

I can tell you, as I look at this every single day in my job as a committee chairman, that people don't get that kind of promotion—

Mr. ABRAM. I had nothing to do with anyone's promotion or anyone's grade level. If you want to have a response to that, I am sure the personnel officer will be glad to give you a response under oath.

Mrs. SCHROEDER. As I say, that is one of the things that concerned me a lot about this, this rapid acceleration that has not been seen in any agency, and with your name as a recommender. This article where the guy is almost admitting—Mr. Chairman, I would like to put the article in the record, if you don't mind?

Mr. EDWARDS. Without objection.

Mr. SENSENBRENNER. Reserving the right to object.

What is the source of the article?

Mrs. SCHROEDER. The source of the article is the "Diary of a Mad Bureaucrat," and it is by Matthew Cooper, who is the gentleman that we are asking about. It was written by him and he is talking about his job at the Civil Rights Commission.

Mr. SENSENBRENNER. Further reserving the right to object.

Where was this article published?

Mrs. SCHROEDER. Columbia.

Mr. SENSENBRENNER. Is there a specific publication that you can—

Mrs. SCHROEDER. "Columbia Magazine," I think it is called.

Mr. SENSENBRENNER. I withdraw my reservation.

Mr. EDWARDS. It is so ordered.

[The article from Columbia College Today, Winter 1985-1986, follows:]

[From Columbia College Today, Winter 1985-86.]

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The Lion's Den

An open forum for opinion, humor, and philosophy.



Diary of a Mad Bureaucrat

The Bursar's Office was nothing compared to Washington.

by Matthew Cooper '84

It figures. Who else but veterans of Morningside Heights could create the confusion of the Federal bureaucracy? It was 53 years ago that Professors Rexford Tugwell, Adolph Berle, and a cabal of Columbia types sped to Washington to form Franklin Roosevelt's brain trust. Somewhere along the way—while fighting the Nazis and rescuing the Joad family—they turned that sleepy southern town into a Dantesque circle of paper, paper and paper. Thirty square miles of bursar's office—with monuments.

Last fall I plunged resumé-first into the Capital Culture they built. Through pluck and grit and nepotism I landed a job at the U.S. Commission on Civil Rights, the agency which issues mammoth—and seldom-read—studies on discrimination. With 200 employees and a \$13 million budget, it's puny compared to titanic departments like Defense or Commerce. But it, too, has its share of Systems Analysts, SR 171's and Flextime Scheduling Modes. After a few weeks on the job, I decided it might be interesting to record my experiences in a diary.

Five weeks: The epiphany comes when I go to cash my first paycheck. Getting it requires a diplomatic parry and thrust worthy of Metternich. Finally, though, I can pay the rent, buy gas, and dine somewhere besides greasy spoons.

Or so I think. Tina, my teller, says it will take "14 business days" for my check to clear.

"But it's a Federal paycheck."

"Sir," she snaps, "it's out of town." Looking down, I see the thing is routed through Kansas City—even though I work two blocks from the Treasury. I spend the rest of the lunch hour wolfing Big Macs.

Six weeks: Everything looks efficient. Supervisors dart through hallways, grimacing. Secretaries are pounding their IBM's by 8:30 each morning. Only after a while do I begin to wonder what these people do all day.

"Support staff," explains the GS-13 who is my Sacajawea of the Paper Forest. "They're Social Systems Analysts, Liaison Specialists. You know. The people who make sure you get paid on time." Hmnn.

Seven weeks: I learn that the social life of a bureaucrat isn't all it's cracked up to be. When I tell my peers where I work their reactions fall into two utterly predictable categories. The Yuppies think I am a sucker to be working for the Federal government when I could be hawking Krugerrands. The other crowd, humorless public interest types and budding academics, assume that anyone working on civil rights under Reagan must be a Klansman. I used to try and tell these people that the Commission does good work. I used to

explain that Reagan hasn't chewed up antidiscrimination laws, he's just barked at them. I used to defend myself.

Now I don't even bother. "Hi, Matt Cooper," I introduce myself. "I'm with the States' Rights Commission. Hey, don't scowl. It takes two hands to turn back the clock."

Eight weeks: It doesn't do a lot for morale to have giant signs asking you to report fraud, waste and abuse (FWA, in the G.S. vernacular). They even give you an 800 number to call. What are we supposed to do, call up and say, "I'm looking at Gladys right now and she hasn't done a lick of work all morning?"

Nine weeks: I discover that bureaucrats and academics have a lot in common. Both make a decent salary; both feel underpaid. Bureaucrats have less to gripe about: Their salaries are commensurate with those in the private sector and they get plush perks. (For every dollar a Federal employe tucks in his pension, the taxpayers kick in four.) But the best tidbit is job security. It takes so much blood, sweat and paperwork to fire a civil servant that no one bothers. A mere one-seventh of one percent of Federal civilian employees are fired. Sound like tenure?

Eleven weeks: Will someone please ask the President why we have to work on Christmas Eve, but get off Inauguration Day. C'mon, what happened to "family values"?

Fourteen weeks: Press coverage of the Commission couldn't be shoddier. Today we release the first half of a study, on comparable worth. The new torch of the women's movement, this doctrine would require equal pay, not for equal work, but for "comparable" workers like secretaries and truck drivers. It's controversial, and like anything having to do with civil rights it triggers adrenalin, not analysis.

Our report, composed of eight essays for and eight against the idea, is a tribute to balance and tact. We're all proud. But soon we learn that the press has chosen to ignore the report and devour our chairman, Clarence Pendleton, who dubbed comparable worth the "loooniest idea since Looney Tunes came on the screen." The headline writers have a field day: RIGHTS CHIEF BLASTS EQUAL PAY. Embarrassed, I feel like a kid whose father showed up at the Little League game wearing shorts and black knee-highs. I decide not to tell people where I work.

Sixteen weeks: I arrive in New Orleans to address a panel on voting rights at the American Political Science Association convention. Since my speech is in English, I'm worried about how I'll be received, so I call home for the first time in eons. My father, the son of an immigrant, teases me about my "fancy trip." "N'Awrlings!" he squeals. "Look," I say deadpan, "when April 15 rolls around we'll know we got our money's worth." He laughs. "Besides, Dad, the Pentagon gets \$7,000 coffee pots."

Matthew Cooper '84 is a GS-7 Social Science Analyst with the U.S. Commission on Civil Rights. Needless to say, these are his personal views.

Mrs. SCHROEDER. Let me ask you another question. Supposedly, \$421,000 was to be used for the third hearing in 1985, and even GAO couldn't find the last \$175,000 of it; does anybody know where it went?

Mr. PENDLETON. Who are you asking?

Mrs. SCHROEDER. Anybody; we are wondering where the money went.

Mr. PENDLETON. I would defer to Mr. Latham.

Mr. LATHAM. The answer is in my testimony.

May I read my testimony?

Mrs. SCHROEDER. I will read it, you just tell me what part of it. I can read.

I may not have as well qualified—

Mr. LATHAM. You will not allow me to give you the answer here because it is my testimony.

Mrs. SCHROEDER. OK. I tell you what, why don't you tell us for the record, and we will have an answer there then.

Mr. LATHAM. But you don't want me to do it in front of all these cameras and press people, I take it?

Mrs. SCHROEDER. Well, can you tell me what \$175—

Mr. LATHAM. If I may read my statement, you would have known long ago.

Mrs. SCHROEDER. The problem is we have limits on our time, and you don't.

Let me ask the Commissioners this question.

Have you ever had a policy of capping the number of days that a commissioner can bill?

I understand from your statements that there are no limits placed on the number of days that a Commissioner can bill. Has that ever been taken up in this era of Gramm-Rudman?

Mr. PENDLETON. Not that I am aware of.

Mrs. SCHROEDER. Do you think that it might be a good idea?

Well, then let me ask you another question. The New York Times today reported that the Commission approved last November a State advisory report on minority set-asides. This report said that set-asides have been highly effective, but it has never been printed by the Civil Rights Commission.

Is there no money for it? why was the State Advisory Committee report that was approved last November, and it is now April, not printed, does anyone know?

Mr. LATHAM. That point, which was not addressed in the GAO audit and, therefore, it is not in my testimony, has to do with the requirement in Federal law that we give people, or organizations who are degraded or defamed by Commission statements, an opportunity to respond. We intend to live up to that opportunity, and the defame and degrade review will be undertaken before that is published.

When the defame and degrade review is finished, it will be published, unless the Commission makes any other decision.

Mrs. SCHROEDER. My understanding on the procedure was you were to do that before the report went to the Commission for a vote, is that correct?

Ms. BERRY. I was going to say, Congresswoman Schroeder, that until I read the New York Times article, I was not really sure why

the report hadn't been published. I had planned to raise it at our last Commission meeting and forgot.

But the Commission procedure, as I have always understood it, requires that the defame and degrade analysis be done before the report is voted on by the Commission, so I understood that when we voted on it, that defame and degrade was already done. I was surprised to find out that it hadn't been done.

I am also curious, because as I read our statute, defame and degrade is in terms of defaming and degrading any person. And what I read in the paper this morning—and that is where I had to read it, to find out what was going on—that the staff director said something about it being defaming and degrading some organization, which confused me further.

The procedure, as I understand it, requires a defame and degrade analysis to be done before the Commission votes, and we did vote on that report and approved it. I don't know why it hasn't been published yet.

Mr. LATHAM. May I respond to that?

Mrs. SCHROEDER. Certainly, because I understood the law to be the same as Commissioner Berry.

Mr. LATHAM. Well, first of all, with the question of whether defame and degrade applies to corporations and organizations, I am confident that it legally does.

Second, as to when the review is conducted, it is true that we like conduct a defame and degrade review of matters before they go to the Commission, where those documents come to the Commission with a recommendation that they be approved for publication. In this case the then acting staff director recommended that it not be published, for reasons that did not—

Mrs. SCHROEDER. Did the Commissioners not know that?

Mr. LATHAM. The Commissioners knew that it was recommended not to be published, but not on the defame and degrade basis. When the Commissioners voted that it be published, it was necessary, statutorily required that we do a defame and degrade review.

I might point out further, that at the same meeting at which the State Advisory Committee report, of which you speak, was raised, the Commissioners voted to publish another State advisory report out of Kansas which deals with set-asides and recommends set-asides; that one has already been published. So the fact that set-asides are at issue in these State Advisory Committee reports has nothing to do with what was published when.

Ms. BERRY. May I say one other thing, please.

Mrs. SCHROEDER. Certainly.

Ms. BERRY. I find somewhat troubling, what the staff director said, to you in his response, because the staff director assumed that we were not going to vote in favor of something, he thought, the staff director thought, it was unnecessary to follow the procedure and to do the defame and degrade in advance. There is sort of an assumption that we will vote for whatever the staff director recommends.

The procedure doesn't say that. The procedure says that the defame and degrade is supposed to be done in advance. I thought it had been done. I didn't know for sure that it had not been done until I heard him say that is why the report hasn't been published.

Mrs. SCHROEDER. I find it troubling, too, because as I read the law it appears to me very clear, and it also says, "any person."

I would ask unanimous consent to put this section of the law in the record at this point because I think it would make it clear, Mr. Chairman?

Mr. EDWARDS. Without objection, so ordered.

[The information follows:]

RULES OF PROCEDURE OF THE COMMISSION HEARINGS

SEC. 3.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpoena additional witnesses. If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commission's power to except from the answer such matter as it determines has been inserted scandalously, prejudicially or unnecessarily.

42 U.S.C. 1975a

Mrs. SCHROEDER. We have had a lot of testimony from people about how "pro-civil rights" they are. I have a question that has disturbed me, and I would hope disturbs the Commissioner, that the Commission's Office of Federal Civil Rights Evaluation, has not issued a single analysis since the reconstituted Commission came into being. That strikes me as very strange.

I would hope that you would look into the effects of the *Grove City* decision. I think whether title VII employment discrimination laws are being enforced—I can give you a whole long list. I guess my question is do you not have money for that; has it been spent on other things; do you not consider those things important?

This to me was the heart and soul of what the Civil Rights Commission was supposed to be doing, and we don't have those kinds of reports, not a single analysis.

Mr. LATHAM. Well, you are asking a question that goes to looking at the effectiveness of our civil rights laws in general, whether they work, and so forth, and how well they are enforced. That kind of stuff is done all the time at the agency.

You mentioned *Grove City*. The Commission has a statement on the *Grove City* issue, for example.

And that is the next phase of the GAO audit, apparently, is looking at how well we meet our overall issues, I mean, our overall responsibilities. But there are, in fact, have been, and are in fact, projects underway along those lines, not only in that department, but elsewhere.

Ms. BERRY. Mrs. Schroeder, may I just say that at the Commission Commissioner Ramirez and I had asked after the *Grove City* case was decided, for a report of the impact on enforcement in the agencies. Some time ago we got a draft report, and analysis, and it was supposed to go back and be updated, we haven't gotten it yet. It has been what, 2 years, since *Grove City* was decided?

Mrs. SCHROEDER. Yes.

Ms. BERRY. I did raise this question at the last meeting. This staff director wasn't at the agency at the time that it was first raised, and he said he would look into it. I hope we will get something.

But you are quite right it has been 2 years now since the—

Mr. EDWARDS. If the gentlewoman would yield at that point.

I think it is apropos to point out that the General Accounting Office report reflects that in at least 10 speeches of the chairman, he exhorts the audience to go out and do everything they can to defeat the Civil Rights Restoration Act, which would reverse *Grove City*.

Mrs. SCHROEDER. That concerns me, because apparently that is what the money is being spent for. I know some of the commissioners in their statement mentioned all sorts of civil rights leaders who are now deceased, that they agreed with, and it is always very hard to cross-examine someone who is deceased. But the ones who I know that are alive, tend to think that these are very important issues, and we don't see the Civil Rights Commission acting on them.

So I think what we want to know is why are they not acting on the things that people who are alive, the current civil rights lead-

ers feel are important. And that is very disconcerting to me as I look at how the resources are being allocated.

They are being allocated apparently much more for speech-giving about how there are no civil rights issues. That is what drove me to say, why are we wasting money on a Civil Rights Commission when the chairman says there are no civil rights problems.

Now, look, I don't agree with him, but we are wasting the money, I think, if you have a commission out there saying there are no problems, in using all the money that we give them to go do that rather than help us make sure we are continuing to bring more people on board. I find that very disturbing, and mean that in a very sincere way.

Mr. EDWARDS. The time of the gentlewoman has expired.

My time, I don't really have very many questions. I am interested in the remarks of Mrs. Schroeder about *Grove City*.

I know that the chairman, Mr. Pendleton, is very much opposed and makes of his opposition in many speeches of the Civil Rights Restoration Act.

How does Mr. Destro feel about it? Are you for or against the Civil Rights Restoration Act of 1985-86?

Mr. DESTRO. Congressman, I would have to respond that are many, many civil rights issues involved in the Civil Rights Restoration Act. I have testimony that I submitted in the Senate with respect to the issue of filling the gaps with the Civil Rights Restoration Act.

I find that there are indeed gaps in coverage of civil rights laws, and I have testified in the Senate to that effect with respect to religious discrimination, discrimination on the basis of national origin, other than the ones that are mentioned. One of the issues that I have raised in other capacities was this gap, and it raises those same civil rights issues.

I am not going to take a position on the Civil Rights Act of 1985 until all civil rights concerns are addressed. I think it would be disingenuous of me at best to indicate that I would be for an act which purports to fill the gaps when, in fact, there are gaps large enough in that act to drive a truck through. Those issues relate to particular areas of expertise of mine, and I think are legitimate civil rights concerns.

I voted on the statement that the Commission made, that is a statement of public record, that is the statements of the Commission. My own feeling is that there are problems with the act, and I would like those addressed before I take a position either for or against it. But that is part of my position as a Commissioner: to do some fact finding.

One of the facts that I saw in my review of the act is that the act is incomplete.

Mr. EDWARDS. Well, I would hope that in the coming months while this issue is the largest civil rights issue in the United States, that the Commission would report to the American people. That is what it is being paid to do; what the effects of the *Grove City* decision of the Supreme Court have been and how much discrimination has resulted from it in the four major areas that the *Grove City* decision affects.

Mr. SENSENBRENNER. Will the gentleman yield?

It would be helpful if the Judiciary Committee would file its report that was issued on May 23, 1985, to the American people on that subject.

It seems to me that if we criticize the Civil Rights Commission for not filing reports, we ought to look at our own record.

Mr. EDWARDS. Lastly, I don't have any other questions, except—Mr. Abram?

Mr. ABRAM. Mr. Chairman, it may be instructive, and I mean it in this sense, since we have talked at lot about the GAO and its audits, as a matter of principle for me to repeat the words of Mr. Anderson, who was the person who gave the staff director an oral report, instead of a written report, of the findings. And he said something, and I think the Congress should listen to this because it really runs far beyond the concerns here today. It runs to the generic report.

Now, this is Mr. Anderson, of the GAO speaking:

"Increasingly we"—that is the GAO—"are their"—that is Congress—"creature totally, rather than doing our own thing." That is on tape, sir.

Now, if that be the case with respect to GAO, I think the issue is much larger than their treatment of this small Commission. I think, you might, sir, be very interested in looking into that statement from the man who wrote or had substantial part in writing this report.

Mr. EDWARDS. Well, I thank you for your observations, Mr. Abram. Of course, I think we all are disappointed that the Commissioners, actually with the exception of Commissioner Berry, has seen fit not to address the issues and the items brought up by the audit of the General Accounting Office. Instead, you have come once again with your charges of politics.

Let me straighten you out on one thing. There is no politics involved in this Member's, or any Member here that I know of, interest in civil rights. I have been here nearly a quarter of a century, and there is no politics here.

It is a matter of deep personal conviction. It goes to the bottom of my soul, my commitment to civil rights.

When you say politics, you leave me. I don't like that kind of word, and I resent very much anybody saying it. We don't say that to you about politics, and you shouldn't say it about us.

The gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I have some questions of Mr. Abram.

Do you have a son named Josh Abram?

Mr. ABRAM. Yes, I do, sir.

Mr. CONYERS. Did he have a roommate named Matthew Cooper?

Mr. ABRAM. He did, sir.

Mr. CONYERS. Did Matthew Cooper apply for a job with Commission?

Mr. ABRAM. I believe he—I know he did, sir.

Mr. CONYERS. And used you as a reference?

Mr. ABRAM. He did use me as a reference.

Mr. CONYERS. And got a job?

Mr. ABRAM. He got a job, and I made no recommendations with respect to his grade or to his progress in the Commission, ever.

Mr. CONYERS. I am happy to know that.

Mr. ABRAM. All right.

Mr. CONYERS. And no one has suggested that—

Mr. ABRAM. And will recommend him again.

Mr. CONYERS. Just a moment. What I am trying to find out—but I am glad to know that—is that he did get a job and he is a graduate of either Columbia or Harvard?

Mr. ABRAM. I think it is Columbia.

Mr. CONYERS. You think it is Columbia.

That is an undergraduate degree.

Mr. ABRAM. That is true, sir.

Mr. CONYERS. And that would make him, what, about 22, 23, 24 years old at that time?

Mr. ABRAM. I really don't know, I guess somewhere in that range.

Mr. CONYERS. I presume he had just recently graduated from undergraduate school?

Mr. ABRAM. I think he had—yes, sir.

Mr. CONYERS. OK.

Mr. ABRAM. With a distinguished record.

Mr. CONYERS. Matthew Cooper was hired on October 29, 1984, for 30-special needs appointment, as a social science analyst in grade 7, which happens, for your information, to pay between \$17,800 a year to \$23,200 a year. So this able young man was, as we say, off to a flying start. And then after that 30-day job he got an extension for another 30-day job, apparently the same one, I guess, social science analyst, grade 7. That ended on December 27, 1984.

Then on January 3, 1985, he got a 1-year temporary appointment as a social scientist, and that was as a grade 7, with the salary range somewhere in the figures that I have described. Did you know that?

Mr. ABRAM. No, sir, I did not know that.

Mr. CONYERS. Then, apparently, doing very good work, in July of the same year that he got the 1-year job, he was made a special assistant, schedule C appointment, which carries grade 11, which can net you somewhere between \$26,400 and \$34,300 a year. Did you know that?

Mr. ABRAM. I did not. But I do know this, sir, that he has an outstanding academic qualification. And as a matter of fact, sir—

Mr. CONYERS. Now, look, if he went to Columbia or Harvard we are not quarreling with his educational background.

Mr. ABRAM. I am not quarreling with anything the Commission may have done with respect to him. Mr. Bunzel, who is an extraordinary scholar, I know has used him as a special assistant. He must be very good.

Mr. CONYERS. He must be.

As a matter of fact I am asking the chairman to bring him before this subcommittee, I would love to meet him.

Mr. ABRAM. He might like to meet you; I hope he would.

Mr. CONYERS. Let me ask you this. Did you ever see him in the course of his work and in the course of your work?

Mr. ABRAM. Who?

Mr. CONYERS. Who? Who we have been talking about for the last 10 minutes.

Mr. ABRAM. You have talked about two people, Mr. Conyers.

Mr. CONYERS. Well, I will talk about David Cooper.

Mr. ABRAM. David Cooper, there is no such person, that I know of.

Mr. CONYERS. All right. Well, at least you know who it isn't. How about Matthew Cooper?

Mr. ABRAM. I do know Matthew Cooper.

Mr. CONYERS. All right. Then I will repeat the question since we are getting very lawyer like here.

Mr. ABRAM. I am not getting very lawyer like; I just want the man's right name.

Mr. CONYERS. Just a moment, sir. Did you in the course of your work every meet Matthew Cooper in the course of his work?

Mr. ABRAM. I have seen him in the office, sir.

Mr. CONYERS. Once?

Mr. ABRAM. I have seen him several times.

Mr. CONYERS. A hundred?

Mr. ABRAM. Oh, not a 100, I haven't been there a 100 times.

Mr. CONYERS. Has he ever done any work for you?

Mr. ABRAM. No; not that I know of.

Mr. CONYERS. Do you know what work products he has ever done?

Mr. ABRAM. I do not know what work products, but Dr. Bunzel could tell you and the staff director, if you want to hear his testimony, could tell you.

Mr. CONYERS. Well, now, let's talk about David Schwartz, and then I will be through.

Do you know David Schwartz?

Mr. ABRAM. I do know David Schwartz.

Mr. CONYERS. Is he a friend of your son?

Mr. ABRAM. He is a friend.

Mr. CONYERS. Did he go the same school your son went to?

Mr. ABRAM. He did.

Mr. CONYERS. Did they share a room together?

Mr. ABRAM. I do not know.

Mr. CONYERS. Did you ever see him at work?

Mr. ABRAM. I did.

Mr. CONYERS. Once?

Mr. ABRAM. I don't know how many times.

Several times; he is now——

Mr. CONYERS. I am interested to know that. But then did he ever do any work for you?

Mr. ABRAM. Not that I know of.

Mr. CONYERS. OK; that is it.

Mr. ABRAM. But I might add that he is now in Duke law school, making a very fine record. They are both very fine brilliant young men.

I don't know anything about the grade at which they were appointed; or any of their promotions; and I have never spoken to anybody about it.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Mr. Chairman, I felt bad because I know the staff director wanted to talk about the \$175,000 that we are miss-

ing. During the interim I have been able to find the part of his testimony, and I still can't find the \$175,000.

I am reading on page 13, which is the subject. You start out by saying the remaining \$226,000 including, \$51,000 in overhead is attributed to other hearings, legal analysis, legal services, and budget activity operations.

So I take \$226,000 minus \$51,000 I still end up with \$175,000. Don't you have any line item on that; is it just some kind of a kitty?

There is also the questions, too, about the changing of the time sheets, that is very disconcerting to me, for a group concerned about merit.

Mr. LATHAM. Bear with me while I find the relevant appendix so I can answer the the question.

Mrs. SCHROEDER. It is page 13 of your testimony, sir. That top paragraph.

Mr. LATHAM. May I be permitted to read my appendix 9, to my report, that will answer your question?

Mrs. SCHROEDER. We have got appendix 9 here too, and still doesn't say. It says the remaining \$226,000, including \$51,000 in overhead is attributable to other hearings, legal analysis, legal services, budget activity, operations.

Mr. LATHAM. What you need to understand about that, in regard to appendix attachment 9, is that what GAO was requesting from us was an artificial backout of accounting of how money was spent. It is artificial in this sense.

Seventy-percent of the agency's budget is personnel cost. Another 20 percent is fixed; so it is all a question of how much time of the professionals, lawyers, and nonlawyers in other departments, is spent on particular projects.

What happened in this instance was after the fact, GAO asked us how lawyers' time was spent on this particular project—

Mrs. SCHROEDER. And after—

Mr. LATHAM. If I may complete my answer?

Mrs. SCHROEDER. OK.

Mr. LATHAM. And we backed out of the total amount expended in that budget activity, the amount that we felt was properly and rightly attributable to the preparation for that third hearing in terms of lawyer time. Now, having done that, what remains would go to salaries, overhead, fixed costs, expenses, paper, paperclips, everything else that goes on in terms of paying the people and doing the work that is done within the legal services budget activity.

Mrs. SCHROEDER. But GAO gave you the overhead. And this other stuff is—I can't believe that you can't break down the \$175,000 more precisely than that.

Mr. LATHAM. It went to all of the salaries to pay the solicitor, the general counsel, their staffs, who are working on a number of other projects.

Mrs. SCHROEDER. Well, let me ask, then, why did GAO find that three staff members time charges were amended?

Mr. LATHAM. The problem with the accounting of the time was that someone in the office was keeping time for purposes of book-keeping as to what is spent on the project, who had not communicated with the general counsel or the deputy general counsel about

their time spent on the project. That individual recorded zero time for the general counsel, zero time for the deputy general counsel, because that person, who by the way was a supervisor, but was not one of the top two people in that department, had not bothered to check with the general counsel and the deputy general counsel.

When it became necessary to go back to those records, which by the way are not payroll records, are not timecards, contrary to what has been said in the press, and ascertain how much time was spent it was found that those records were erroneous. What the general counsel did was correct those records including putting an attachment on the relevant file showing exactly what he had done and there was nothing underhanded about it whatsoever.

Mrs. SCHROEDER. Commissioner Berry.

Ms. BERRY. I was only saying that I read all that, and I heard all that, but as we say in our testimony, it still doesn't answer the question about the three people whose timesheets were changed, and who said that they did what they did in the first place, and why did somebody change them?

I haven't heard any answer to that yet.

I would also like to hear from the staff director, I would also like—if you don't mind—I also would like to hear from the employees involved, if, indeed, that becomes necessary.

Mrs. SCHROEDER. I find the same thing. I still don't understand that, and I still do not. I just hear you saying the \$175,000 went to this generic pool. We do better bookkeeping in our office. We may not be quite as merit oriented, but we certainly are accounting oriented.

Mr. LATHAM. Do you have a record of time of how much you spend on considering civil rights matters, how much you spend on considering noncivil rights matters, and so forth?

That is the type of issue we are dealing with.

Mrs. SCHROEDER. That is right.

Mr. LATHAM. We deal with many issues in the office of general counsel and in the solicitor's office, which is also under that budget category. And the \$175,000 was—

Mrs. SCHROEDER. But law firms do that—

Mr. LATHAM [continuing]. Spent, would be fractured among all of the other expenditures in that category, other hearings, other writing, other research, other travel, other overhead, other paperclips. It is just not attributable to the third hearing; it is attributable to other legitimate Government business.

Mrs. SCHROEDER. Well, I find it very suspicious, especially with the allegation that people went back and amended their charges. And I find it a very significant sum to have just kind of, vanished, and we are just supposed to say it is out there.

Law firms, which I am familiar with, and everything else, have to deal with this every day, and they would never get away with this type of thing.

Mr. LATHAM. I was in a private law practice in which I kept time by, as I recall, the sixth or eighth of an hour, but I don't keep time and bill the Government that way, nor could we if we were to get our work done. The general counsel's office—

Mrs. SCHROEDER. Could you see someone saying to the IRS, "oh, well, we got a \$175,000 of expenses here; we don't quite know where it is; we——"

Mr. LATHAM. I have answered your question, Congresswoman.

Ms. BERRY. May I just say something else?

I was a little bothered by part of the staff director's answer, because if I heard him correctly, he said, money was spent for various projects, and it was spread out over this, and that, and not just for hearing, and as I understood it the money was to be used for——

Mrs. SCHROEDER. Was for the hearing.

Ms. BERRY [continuing]. The hearing, that was the request.

I also believe we are losing sight of something again, the whole purpose of the earmarks, we keep forgetting that, was because the Congress, those who voted for the earmark, determined that the Commission needed to have less flexibility, so that people could keep better track of what the Commission is doing.

If the earmarks are supposed to do that then it seems to me that it requires some accounting of what the money is spent for so that you could figure out whether the earmarks worked.

It was Congress' idea even if it seems silly and I'm not saying it is, to try to keep track better of the funds, and to simply dismiss the issue by a generic term, seems to me doesn't get at the answer.

Mrs. SCHROEDER. Well, I think you make a point. Obviously, there have been a lot of silly ideas that come this place, and maybe it was a silly one. But as I remember when we discussed the earmarking, it was because we wanted the accounting; we were nervous about the accounting. We now look into the accounting and we are being yelled out for being political and conducting witch hunts, and everything else. But that was the whole purpose. I think it gave the Commission notice.

I think a reasonable, prudent commissioner, reading the law, saying we are earmarking these funds and we want to know where they go, but would assume that is notice that Congress would want a little tighter accounting system then there appeared to be.

I don't think that that is a political statement. I think that is a reality statement. I just don't find the way you dealt with that satisfactory, sir. I am sorry.

Mr. CONYERS. Mr. Chairman.

Mr. EDWARDS. Mr. Conyers.

Mr. CONYERS. May I make a closing comment?

First of all, I want to thank earnestly the members of the Civil Rights Commission and their staff director for appearing here today. These are not pleasant hearings.

They certainly stir the emotions of the Congress and yourselves in an inordinate way. I do think it is important for us to recognize that the chairman has called these hearings on this subject, and I want to commend him.

With all the things we have got to do we could be doing something else. But the concern for civil rights advancement runs very deep throughout this committee, I can assure you of that. And I have been impressed by your commitment to this cause.

The fact that we have different jobs inside the Government for this responsibility is what brings us here. This may be the beginning of a considerable number of further inquiries into this matter.

I am just getting into this, it is not the No. 1 issue in my list of priorities, but I do think it is worthy of our attention. We are your oversight committee; we are your authorizing committee; we are all in this together. It is in that spirit, since I am meeting many of you for the first time, that I want to thank you for appearing before the committee, and I hope that we will continue to have these important exchanges.

I thank you, Mr. Chairman.

Mr. EDWARDS. I say, amen, to what my colleague from Michigan said.

We are grateful for your appearance here today. We hope that we will be able to communicate with you and converse with you again.

[Whereupon, at 4:25 p.m., the hearing adjourned.]

APPENDIXES

APPENDIX 1

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

23 JUL 1986

The Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

As you requested by your Assistant Counsel, we reviewed the response by the Staff Director of the U.S. Commission on Civil Rights to our review of the Commission's operations, as presented to the Subcommittee in a hearing held on March 25, 1986. In a Subcommittee hearing on April 22, 1986, the Staff Director submitted his response to our findings. In addition to reviewing the data presented in his statement, we requested additional information from the Commission to support the contentions. However, after analyzing his statement and the information provided by the Commission subsequent to the hearing, we concluded that they presented no new evidence that would change any of our findings.

Enclosed for insertion in the record is our response to the specific points raised by the Commission. Our response follows each of the enclosed attachments to the Staff Director's statement.

Sincerely yours,


Rosslyn S. Kleeman
Senior Associate Director

Enclosure

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ATTACHMENTS TO STATEMENT

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EMPLOYMENT TRENDS IN
THE U.S. COMMISSION ON CIVIL RIGHTS

GAO has produced an extensive collection of statistics designed to determine whether Commission "consultants, temporary, and Schedule C employees were hired in place of career staff, leaving career positions vacant." It has concluded that "a large proportion of the employees hired since the Commission's reconstitution were in these three noncareer categories" and that "they were, in fact, hired instead of career staff."

The terms in which this question have been framed are unfair; the information and statistics marshalled in support of GAO's conclusion are misleading and ahistorical; and the conclusion itself is false.

Unfair and Misleading Terminology

To begin with, the Commission's personnel office objects in principle to the use of the term "noncareer" -- which has been interpreted by GAO's Congressional requesters as synonymous with "political" -- to cover the broad category of its "other than permanent" appointments. Although technically many of the appointments with which GAO concerns itself are "noncareer" in that they do not convey "status" to employees, the term "noncareer" is understood by most Federal government personnel officers and by the public at large to connote Schedule C or "political" appointments. To characterize the 212 appointments as GAO has as "noncareer" is therefore highly misleading. And, not surprisingly, GAO has been fully inconsistent in its use of the term. Appointments to positions like Attorney Advisor, which should be "noncareer" by GAO's reckoning in that they do not convey status, have not been included in the report's count of "noncareer" appointments.

Moreover, GAO's use of the words "hires" and "hired" artificially inflates and exaggerates its statistics and suggests the existence of "trends" which are in fact chimerical. What does it mean that the Commission has "hired" its "noncareer" employees in place of career staff? "During the first 3 months of fiscal year 1986," the GAO report asserts at one point, "the Commission hired 10 temporary and 5 Schedule C employees, bringing the total number of noncareer employees hired since fiscal year 1983 to 212." Does this mean that the

Commission hired 15 new employees in the first 3 months of FY 86? No. Rather, 15 personnel actions occurred, most of which involved individuals already on the employment rolls. Of the GAO's "212 hires," at least 24 were personnel actions involving persons already employed by the Commission; because of GAO's deceptive use of employment categories, we are unable to determine how many more of the remaining 188 personnel actions involved the same employees, but we suspect a considerable further "double counting" has occurred.

For example, GAO finds that 73 of the Commission's 212 "noncareer" appointments involved individuals still employed by the Commission as of December 31, 1985, the end of GAO's reporting period. But only 9 of these individuals served in fulltime temporary outside-the-register positions; almost all of the remainder were consultants working, for the most part, fewer than three days a year; special assistants to the Commissioners working intermittent or part-time schedules; and "bona fide students" working part-time schedules.

GAO has contrasted its "73" "noncareer" employees with "55" permanent career positions reported unfilled at the end of fiscal year 1985. The Commission did not and does not have 55 unfilled permanent career positions. The Commission has a Fulltime Equivalency (FTE) allocation of 236. At the end of fiscal year 1985, we had 181 permanent employees. GAO has subtracted one number from the other to arrive at its misleading "55 vacancies" figure.

Most Federal agencies operate under an FTE allocation, but the number does not represent the number of actual positions each agency is required or allowed to fill as GAO apparently believes. At the U.S. Commission on Civil Rights, the only position "vacancies" are those for which approval has been granted to recruit and ultimately to hire. The departure of an incumbent to a position does not necessarily create a vacancy, and the number of employees on hand at a given time does not reflect the number of FTEs already or yet to be expended. For the year ending September 30, 1985, the Commission expended 212 FTEs. Hiring 55 additional fulltime permanent employees, as the GAO suggests would be proper, would in fact place the Commission in a position of regulatory noncompliance, and would exceed its allotted number of Fulltime Equivalencies by 31.

Use of Statistics Without Benefit of Historical Comparisons

Repeated requests to GAO that it concurrently review with those at the current Commission personnel operations at the former Commission for purposes of comparison were rebuffed. In the absence of such a review, it has been publicly suggested that personnel operations and employment trends at the reconstituted Commission as "revealed" in GAO's report are somehow "unusual." A look at pre-reconstitution Commission practices makes clear that such suggestions are inaccurate and untrue.

GAO found that for the 39-month period ending December 31, 1985, the Commission made 212 "noncareer" appointments, and has strongly suggested that they were in some way political, improper, and in lieu of otherwise permanent, career appointments. In the 39 months immediately preceding GAO's review period, the Commission made at least 271 such appointments. The official personnel records for this period are in GAO's hands, making exact figures difficult to reconstruct. Additionally, during the period between July 1, 1979, and September 30, 1982, the Commission routinely failed to make and document Schedule C appointments properly. The Commission's personnel office has concluded that 20 or so unidentified Schedule C appointments were made during the 39 months ending September 30, 1982, bringing the total "old Commission" number of "noncareer" appointments to around 290. This figure is more than one-third again larger than that for the present Commission.

GAO found that for the 39-month period ending December 31, 1985, the Commission employed 41 consultants. In the 39 months immediately preceding GAO's review period, the Commission made at least 55 consultant appointments. One consultant appointed during this previous period was later converted to a permanent position; another received his consultancy immediately following his separation from a permanent position.

GAO found that for the 39-month period ending December 31, 1985, the Commission made 151 temporary appointments. In the 39 months immediately preceding GAO's review period, the Commission made at least 216 such appointments.

GAO found that for the 39-month period ending December 31, 1985, the Commission made "only" 60 career appointments. In the 39 months immediately preceding GAO's review period, however, although the Commission had benefit of an FTE ceiling

always more than 10% higher than it has been at any time since, and although at least 93 permanent employees left the agency during this earlier period, the Commission made only 67 career appointments. Nearly 20% of these "career" appointments were conversions of temporary employees to permanent positions without a break in service.

GAO found that for the 39-month period ending December 31, 1985, the Commission made 21 "special needs" appointments. In the 39 months immediately preceding GAO's review period, the Commission made almost as many -- at least 16 -- such appointments. In at least two cases, special needs appointments were given twice to the same employee in less than one year. At least one employee was converted directly from a special needs appointment to another temporary appointment.

The only conclusion that can be drawn from the above comparison is that since October 1, 1982, the Civil Rights Commission has relied to a much lesser extent on temporary, consultant, and Schedule C appointments than did the previous Commission. In fact, 38 of the 212 such appointments charged by GAO to the present Commission actually involve employees whose initial Commission appointments began during the pre-October 1, 1982, period.

No trend toward other than permanent appointments, in other words, can be accurately discerned at the Commission. Moreover, asked at an oral briefing on March 18, 1986, at Commission headquarters what evidence GAO had that might show such appointments to have acted to the prejudice of any career employees, Paul O'Neill, the GAO Group Director supervising the Commission's audit, admitted that none existed. "We didn't say that," he replied.

It is important to make clear, however, that the Commission's personnel office considers the use of such appointments to be judicious, prudent, efficient and effective. Many of the Commission's activities involve projects or studies of limited duration requiring a very particular expertise; permanent appointments, given such needs, are wasteful of public funds and limited Commission resources. The use of temporary appointments reduces the need for reductions in force once a given project has been completed, permits the Commission to deploy its skills and expertise as projects demand, allows for more punctual recruitment, and

costs less. Moreover, since the Commission's authorizing statute will expire in 1989, unnecessary increases to its permanent staff seem ill-advised.

Finally, the Commission's use of other than permanent appointments is in conformance with the encouragement of the Office of Personnel Management (OPM) to all Federal agencies to make greater use of temporary employees. OPM Federal Personnel Manual (FPM) letter 316-21, dated January 2, 1985, sets forth OPM policy on temporary employees, identifies their advantages to Federal agencies, and encourages their use.

Misleading Statistics and Information

Throughout its report, GAO presents its statistics and information out of context and without relevant and important explanation. For example, GAO asserts that "the number of consultants more than doubled while the number of Schedule C employees increased nearly four-fold from 1983 to 1984. During this time, the number of temporary employees increased by about one-third."

The following facts about this supposed "phenomenon" were available to GAO but were omitted from its report:

1. In the last quarter of FY 83 alone, the Commission released at least 6 consultants and 15 temporary employees in advance of an agency "shutdown" scheduled to begin October 1, 1983. The great increases in other than permanent appointments GAO has discovered are largely explained by the Commission's "rebirth" after the beginning of FY 84.

2. By OPM regulation, "summer hire" appointments terminate on their own force effective September 30 of each year. GAO's figures do not include such employees at the start of this sample period, but do include them for the finish, thus exaggerating the audit's invented "trend."

3. As previously indicated, the old Commission regularly and improperly encumbered Schedule C positions with "career" employees through such devices as "temporary promotion" and Schedule A attorney advisor authority. Although GAO was specifically advised of this, GAO's report does not include employees who were serving in such appointments on October 1, 1983, in its count of Schedule C staff.

4. GAO does count individuals on Intergovernmental Personnel Act (IPA) detail from universities and other institutions for 1984 and 1985, although the Commission's IPA positions were not chargeable against our Fulltime Equivalency (FTE) allotment and IPA detailees were not our employees.

GAO has, in other words, spared no effort to present its findings in such a way as to create the false impression that the Commission's other than permanent appointments have dramatically increased since October 1983. GAO's presentation of salary data for other than permanent employees is skewed in precisely the same manner.

GAO Response:

The Commission objected to our use of the term "noncareer" as a characterization of consultants, temporary, and Schedule C employees. The Commission is correct that the three employee categories do not represent the total noncareer workforce. In fact, we referred to these types of appointments as "these three noncareer categories" on page 2 of our statement. We defined each of the three categories on page 1 of the attachment to our statement and consistently used the terminology as defined thereafter.

The Commission also contended that our use of the terms "hires" and "hired," permits double counting of the actual number of persons employed, since some employees received more than one appointment. That is correct in some instances, and we so indicated such on pages 5 and 6 of our statement and page 7 of the attachment. We believe that our meaning of these terms was clear. We see no inconsistency in the use of the term "hire" to describe an appointment action used to fill a new position. Conversely, a count of only the individual employees hired would not accurately represent the number of consultant, temporary, and Schedule C positions the Commission established and filled because some employees received more than one appointment.

Even though the Commission objected to our statement that it had 55 unfilled permanent positions at the end of fiscal year 1985, that information came from the Commission. Since the Commission did not maintain vacancy data on unfilled positions for 1985 similar to fiscal years 1983 and 1984, we had to rely on the Commission's fiscal year 1987 budget request for this information. The budget request showed the Commission had 236 permanent positions at the end of fiscal year 1985, including 55 that were unfilled.

We have not reviewed the Commission's workforce statistics cited for the 39-month period immediately preceeding its reconstitution. We are currently reviewing the Commission's operations before its reconstitution, from 1978 to 1982.

Similarly, the Commission states that the "old Commission" improperly encumbered Schedule C positions with career employees. While OPM regulations prohibit persons serving under an excepted appointment, such as Schedule A or C, from performing "the work of a position in the competitive service without prior approval of OPM," there is no similar prohibition against career employees, even under temporary promotion, from performing confidential or policy-determining duties, such as those normally performed by Schedule Cs.

The Commission contended that the staffing levels we showed for specific dates in fiscal years 1983, 1984, and 1985 are misleading. The Commission, however, was not able to provide us with the staffing levels for the same dates in each of the 3 years. We agree that these statistics are only a snapshot of the workforce at a particular point in time. However, combining these statistics with the appointment statistics for consultants, temporary, and Schedule C employees confirms an increase in employment activity in these categories during fiscal years 1984 and 1985 over fiscal year 1983.

The Commission contended that we should not have counted Intergovernmental Personnel Act appointments because they were not Commission employees and did not count against the Commission's full-time equivalency allotment. We agree that such appointments are not counted against the allotted ceiling. However, our staffing counts were not intended nor did they attempt to represent full-time equivalent positions. Our tables on staffing were simply counts of the various types of employees. Two Intergovernmental Personnel Act detailees were included.

USE OF CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEESConsultants

GAO claims to have found procedural violations of OPM requirements in each of the 31 consultant appointments made by the present Commission it has examined. In order, these "violations" are:

I. "None of the files contained a statement of the consultants' duties and responsibilities." This charge is untrue. During the conduct of GAO's audit, GAO's examiners questioned the depth of detail these statements provided, not whether such statements existed or were available. The Commission has historically used only brief statements of duties and responsibilities when describing the tasks to be performed by consultants/experts. Commissioner Berry, for example, was appointed to a consultancy pending her confirmation in 1980. The description of her duties and responsibilities read simply: "until confirmed, I would like to utilize [Dr. Berry's] expertise on program and policy matters." Each of the 31 consultants' files in question contains a statement of duties and responsibilities at least as detailed as that for Commissioner Berry.

In addition to material filed in official personnel folders (OPFs), GAO had available to it a number of source documents concerning the duties and responsibilities of our consultants. GAO was provided copies of the agency's "Quarterly Report on Consultants and Experts." The Commission also had available for GAO review budget information and subject matter files concerning our use of consultants.

We doubt, in any case, that "insufficient information" has caused GAO serious alarm; based on such information, GAO has drawn dozens of conclusions.

II. "None of the files contained the required certification that the consultants' Statement of Employment and Financial Interests had been reviewed and determinations made that no conflicts of interest existed." However, GAO failed to note that Employment and Financial Interest statements had been obtained from every consultant and expert, were on file, showed no apparent conflicts, and were provided to GAO for review in the course of its audit. GAO failed to discover a single conflict of interest involving a Commission consultant or expert.

III. "Twenty-one of the consultants' appointments were extended when their initial appointments expired. In none of the 21 cases was the required documentation on the personnel

action forms showing the number of days worked under the original appointments." Throughout its audit report, GAO complains of failure to maintain "required" or "mandatory" records or certification that are nowhere in the Federal government either "required" or "mandatory." OPM regulations require that personnel action documents reflect the number of days worked under an original appointment when action being taken involves "conversion to new excepted appointment" without a break in service. But the actions at issue were not conversions; they were extensions. There is no such requirement for extensions. If there were one, its sole purpose would be to ensure that consultants given "intermittent" appointments did not exceed the 130 days limitation on such appointments. GAO failed to note that the Commission's monitoring system permits it to obtain such information on a quarterly basis.

IV. Four of the 31 consultants worked at least "substantially full-time" during appointments supposed to be "intermittent." There is no impropriety involved in such work scheduling. A consultant is given a "temporary appointment" if it is anticipated that he will work more than 130 days in the 12 months following his initial appointment. If it is anticipated that he will work fewer than 130 days in that 12-month period, however, he is given an "intermittent appointment." But intermittent appointments do not preclude their holders from working "fulltime" as commonly understood, nor must consecutive work days be avoided to comply with the law. GAO seems ignorant of the relevant regulations. Its report states at one point that "intermittent employment is occasional or irregular employment on programs, projects, and problems requiring intermittent services as distinguished from continuous employment." Not so. Chapter 304.1-2(5) of the Federal Personnel Manual reads: "Intermittent employment means (A) occasional or irregular employment (B) on programs, projects, problems, or phases thereof, requiring intermittent service." No mention is made of a distinction between intermittent and continuous employment. GAO has also misrepresented the FPM by claiming that OPM requires "strict adherence to the 130-day limit." The same chapter provides that "when an intermittent expert or consultant works more than one-half of full-time employment, i.e., he or she is paid for all or any part of a day for more than 130 days in a service year, the employment automatically ceases to be intermittent and becomes temporary." Even under such circumstances, OPM rules permit the reappointment of the expert or consultant in the next service year as an intermittent employee. Clearly, OPM recognizes and has made provisions for the possibility that the work required of a consultant or expert may exceed initial expectations. Finally, GAO insists that "if at any time, it is

determined that the employee's work is no longer intermittent in nature, the employment must be terminated immediately." In fact, such a rule applies only to (1) intermittent appointments which follow temporary appointments, and (2) intermittent appointments which follow other intermittent appointments which have been automatically converted to temporary ones.

V. GAO claims that for "none" of the consultancies in question was it possible to "adequately evaluate their qualifications for their assignments." This charge is preposterous. Among our consultants are scholars known internationally for their knowledge of the subjects we are investigating. Is Nathan Glazer, for example, unqualified to advise the Civil Rights Commission on the subject of affirmative action in higher education?

VI. GAO describes five consultancies which it claims are "considered by OPM to constitute illegal employment." Judging by the details of GAO's first such case study, this charge seems to be based on error and ignorance. "In our opinion," their report reads, the appointment of this consultant "was a questionable use of the consultant and temporary appointment authorities to avoid competitive employment procedures." The Commission appoints its consultants under its appropriation statute, Public Law 98-183, section 6(a)(3), as authorized by section 3109 of Title 5, U.S. Code. Federal Personnel Manual Chapter 304.1-5b states that "(u)nder this statute agencies may, when authorized in an appropriation or other statute, employ experts and consultants temporarily (one year or less) or intermittently without regard to the laws for the competitive service, position classification, and the General Schedule pay grades" (emphasis added). Since appointments of consultants are thus explicitly exempted from the operation of competitive employment regulations, GAO's charge is based on nonexistent requirements and is without merit.

In an effort to establish that "Consultant A" performed operating duties outside the proper activities of a consultant, GAO relies primarily on a "summary of duties" written by the consultant herself and contained in a subsequent application. Since Commission management assigns consultant duties, the consultant's supervisor's description of her duties -- consultant "will provide advice and opinions on problems and questions presented by the Commission concerning the Incomes of Americans project" -- might seem a more appropriate basis for judgment. GAO did review this document, dated November 8, 1984. But its report prefers to use the consultant's own self-description, stating that her "duties were described as including 'overseeing' and 'frequent supervision'." These may

indeed seem to be operating duties. But are they? In the SF 171 self-description in question, the consultant stated that she was responsible for "overseeing the analysis of enrollment trends" and the "frequent supervision of [a] research assistant." These two duties, especially in the context of her supervisor's description, are not necessarily inappropriate for a consultant.

In order to suggest "questionable qualifications to provide consultant services" in this case, GAO is forced to argue that consultant work, to be appropriate, must be equivalent to a higher grade than GS-11, the one at which "Consultant A" was paid. In fact, grade level is not an "indication" of appropriate use of a consultant appointment. Such an argument is in no way supported by regulations. Undeterred, GAO quotes from OPM's Economist Series Position Classification Standard (GS-110, GS-13 level, pp. 30-31), which "describes the GS-13 consultant economist work as 'the lowest level at which a professional economist in the Federal service is expected to provide technical advice which is relied on in decisions concerning official government action....'" GAO's report omits the rest of this quotation: "... intended to affect important aspects of the economy of the nation." GAO would not, one assumes, be willing to suggest that unless an economist is able to provide advice that will lower the prime rate he is unqualified to serve the Civil Rights Commission as a consultant. Such an interpretation of proper consultancy duties travels far beyond anything contemplated by OPM's definition of "consultant" -- "a person who ... has a high degree of broad administrative, professional, or technical knowledge or experience which should make the advice distinctively valuable to the Agency."

Although nowhere reflected in GAO's report, the Commission's normal review processes had previously identified two of the five consultants as employees working outside the scope of their official appointments, and corrective action had been taken quite a while before the GAO investigation was initiated. We do not know how GAO has reached the conclusion that the remaining three consultants are or were performing unauthorized operating duties. GAO did not speak to one of the three. In another case, GAO only asked about duties performed after the employee's appointment as a career civil servant. In the third case, the employee pointedly informed GAO of the duties she performed as a consultant and informed GAO that her duties changed, not only in degree, but in kind, when she was appointed to a temporary position. The documented duties of these consultancies were well within the scope of those

enumerated by OPM as appropriate. It is evident from GAO's report that its investigators relied for their conclusions on evidence provided by others who had no direct knowledge of the work performed during these consultancies.

GAO Response:

The Federal Personnel Manual requires agencies to place in official personnel folders statements of consultants' duties and responsibilities "in enough detail to show that the position actually requires an expert's or consultant's services." The Commission did not meet this requirement. In none of the 31 cases we reviewed did the folders contain statements of the duties and responsibilities; rather, memorandums cited by the Commission typically included only the name of the project for which the consultant was being hired and, in some cases, a brief description of the consultant's background. Further, the Personnel Officer told us that he advised managers not to go into detail about consultant duties in the memorandums in order not to restrict the consultants' use. He also told us that such detail is not required. We disagree, based on the Federal Personnel Manual requirement.

The Commission did not dispute our finding that none of the files contained the required certification that the consultants' Statement of Employment and Financial Interests had been reviewed and determinations made that no conflicts of interest existed. The Personnel Officer told us that no such certifications were made for consultants until the end of January 1986.

We cannot agree with the Commission's contention that the disclosure statements were obtained from every consultant and expert, were on file, and showed no apparent conflicts. For the 31 consultants we reviewed, the Commission could only furnish 22 such statements, including one that was not obtained until after the consultant was converted to a Schedule C appointment. On

June 12, 1986, the Commission provided us four additional statements and told us the others were not available because the employees had separated and their official personnel folders were no longer at the Commission. However, the Federal Personnel Manual requires agencies to retain these statements "for no less than five years following the employee's separation from the agency". Our review did not attempt to identify possible conflicts of interest by the consultants. This is the Commission's responsibility.

The Commission's claim that there is no requirement to document the consultant's days worked when an appointment is extended is incorrect. The Federal Personnel Manual supplement on processing personnel actions requires such notation on the extension personnel action forms.

The Commission also asserts that it is able to monitor days worked by consultants through its quarterly reporting system. We agree. However, these reports do not meet the requirements for documenting the number of days worked at the time the appointment is extended. Because the reports are prepared quarterly, they do not provide sufficient controls to assure that time limits are being observed.

The Commission stated that the substantially full-time work schedules we noted for four consultants with intermittent appointments were not improper. However, we believe the Commission's interpretation of the distinctions between intermittent and temporary employment is contrary to the Federal Personnel Manual and its Comptroller General decision citations. According to the Commission, temporary appointees are anticipated to work more than 130 days and intermittent

appointees less than 130 days in a 12-month period. The Comptroller General has held that temporary consultant employment is employment for 1 year or less, covers continuous employment, and could include periods of less than 130 days. (35 Comp. Gen. 90 (1955) and B-180698, August 19, 1974.) The Comptroller General has also held that an intermittent appointment cannot be regarded as intermittent if the employment is not actually occasional or irregular. (B-193170, May 16, 1979.) Intermittent consultants may work regular schedules if it has been documented that intermittent employment was actually intended and there was an inability to reasonably anticipate the need for the services on a full-time basis. (B-110914, July 29, 1952 and B-180698, August 19, 1974.) Because the four consultants never worked intermittently, there was no basis to conclude that the Commission intended them to work on an occasional or irregular basis.

We disagree with the Commission that intermittent consultant appointments must be terminated only in the two circumstances it cited. The Commission contends that the requirement to terminate intermittent consultants who work full-time schedules applies only to follow-on appointments and not to initial appointments. The Federal Personnel Manual and relevant Comptroller General decisions do not make such a distinction between subsequent and initial intermittent appointments.

The Commission stated that the qualifications of its consultants should have been apparent to us since the consultants included internationally known scholars in the subjects it investigates. The stature of the Commission's consultants was not an issue in our review. Because the Commission did not prepare statements of consultants' duties and responsibilities, an evaluation of these appointments could not be made. Even the qualifications of noted scholars must be evaluated within the context of their assignments which clearly describe work requiring their expertise. While the scholars

referred to by the Commission may be well known in the civil rights area, other consultants worked much more extensively at the Commission, and these appointments, as noted in the following paragraphs, caused us much greater concern.

The Commission contends that its employment of consultants is exempt from the operations of competitive employment regulations; however, it recognizes that its authority to employ consultants under 5 U.S.C. § 3109 is subject to the employment standards set forth in chapter 304 of the Federal Personnel Manual. An agency which believes it had a statutory exception to these procedures must have OPM concurrence before employing consultants without regard to those requirements. The Commission does not have such an exception. As stated in the attachment to our statement, the improper employment of consultants under chapter 304 of the Federal Personnel Manual is not only illegal, it is also wasteful and destroys the morale of career specialists. Under these procedures, it is improper to employ a consultant to do a job that could be done as well by career employees; to do a full-time continuous job; to avoid competitive employment procedures; to avoid General Schedule pay limits; or to supervise career staff in performance of operating duties.

The Commission disagrees with our conclusion on one of the five consultants who appeared to us to be performing operating duties. The Commission contended that Consultant A was properly performing consultant duties based on her supervisor's written description of her duties and her equivalent grade level. In our view, the pattern of employment must be considered, not simply individual employment actions, in determining the appropriateness of the consultant appointment. Consultant A's appointment immediately followed her temporary appointment at the same pay rate, occupation, and office as her consultant appointment. Thus, the Commission's actions represented an appearance of employing this person in a job that could have been performed by a career employee through competitive appointment procedures.

Furthermore, we did not consider the supervisor's description of Consultant A's duties to be adequate. The supervisor's statement was written prior to the day the consultant was appointed. The employee's statement of her duties as a consultant was detailed, written after performing such duties, and certified by the employee to be true, complete, and correct. Therefore, we believe her description was more useful than the supervisor's statement for determining the nature of the work she performed. The Commission also contends that supervision is not necessarily inappropriate for a consultant. However, the former Staff Director signed the required pre-employment certificate which stated, in part, that her assignment "does not include the performance or supervision of operating functions." According to the Federal Personnel Manual, supervising career staff in performance of operating duties is always improper for a consultant.

The Commission disagrees with our opinion that the GS-11 equivalent of Consultant A's salary was an indication of questionable qualifications for the appointment. Our interpretation of the classification standards indicated that the GS-13 level would be appropriate for consultant services. Consultant A was assigned to the Incomes in America project. The Commission initiated the project because civil rights legislation and policies in the United States have recognized and were directed at eliminating labor market discrimination. The project was to examine the growth in Americans' earnings over a 40 year period demographically classified by race, ethnicity and sex. We believe such work meets the standard's GS-13 criteria "to provide technical advice which is relied on in decisions concerning official government action intended to affect important aspects of the economy of the nation." While the project itself warranted consultant services at the GS-13 level at minimum, it is doubtful that a person hired below that grade level could provide adequate advice at a level appropriate for consultant services.

The Commission stated that we did not recognize that corrective actions had been taken on two consultants we identified as performing operating duties. On page 17 of the attachment to our statement, we noted that the Commission terminated Consultant D's appointment. However, we also noted that Consultant D was then converted to a questionable special needs temporary appointment. The Commission informed us after our briefing on March 18, 1986, that corrective action was also taken on Consultant E. We found no documentation, nor could the Commission provide the evidence of any corrective action upon request. Further, our review of the Commission's personnel actions for Consultant E indicated that this appointment was terminated when his project was completed.

The Commission's allegation that we relied on individuals with no direct knowledge of their work in reaching conclusions on Consultants A, B, and C is incorrect. Our conclusions for these consultants were based on evidence in the Commission's files. We also interviewed eight staff of four Commission projects that used consultants. We interviewed Consultants A and B in their later capacity as project staff at the time of our review.

Temporary Employees

To support its overall finding that "the Commission has improperly exercised its temporary employment authority," GAO makes a number of specific charges, all of them demonstrably false, misleadingly incomplete, or involving a failure to comply with nonexistent regulations:

I. GAO alleges that "the Commission did not have an applicant supply file policy specifying its temporary appointment procedures," and implies that OPM requires such a written, agency-specific document. Section 1-12c of FPM Chapter 333 requires agencies to "have available for inspection an up-to-date copy of the detailed procedures followed in maintaining the applicant supply system of the agency." But this could simply be the relevant FPM guidance, if the agency has not supplemented the FPM instructions. The Civil Rights Commission has not supplemented those instructions, and our personnel office has on hand the requisite up-to-date copies of the relevant FPM guidance. GAO indicts the Commission for failing to comply with nonexistent regulations.

II. GAO alleges that the Commission has improperly processed employment applications lacking date-stamps that might show when they were received. Not true. GAO may be correctly asserting that the Commission does not date-stamp its received applications mechanically; for reasons of cost, it was decided some time ago to forgo the purchase of a date-stamp machine. No regulation requires mechanical dating of incoming employment applications, however. GAO is aware that the Commission maintains a seriatim applicant receipt log and routinely hand-marks or manually date-stamps all received applications. FPM chapter 333, appendix A-2.b provides that "incoming applications should be date-stamped or have the date of receipt noted in pen and ink" (emphasis added). GAO's apparent dismissal, in several cases, of employment applications with receipt dates that are rubber stamped or marked in pen and ink is not supported by any existing regulation.

ATTACHMENT II

ATTACHMENT II

III. GAO complains that the Commission's vacancy announcements for temporary appointments contained "insufficient information ... on the qualifications required and application procedures to be followed." We are dumbfounded by this allegation. In every case, the notifications contained substantially more information concerning the qualifications required of the position than mandated by OPM regulations. The smallest description of qualifications in any of the notifications was 74 words long and included as advice the tip that "complete description including substitution of education for experience is in OPM handbook X-118." Potential applicants were given a name and telephone number (including a TDD number) from which they might obtain more information concerning the position. GAO's contention that these notifications contained insufficient information about "application procedures to be followed" is similarly incomprehensible. Every single notification included, at minimum, a statement beginning "How to Apply." At minimum, that statement read "Send SF171 (and college transcript if applicable) to above address." This statement more than meets OPM requirements.

IV. GAO charges that the Commission's announcement files contain insufficient documentation to demonstrate how applicant ratings have been derived. Here again, GAO misrepresents OPM requirements; no OPM requirement mandates "rating" applicants for a register of "temporary, competitive" positions. The only "rating" involved in such cases is a determination of basic qualification and/or membership in an appropriate "priority" group (disabled veteran, veteran, or non-veteran). The requirements for "rating" such applicants are established in FPM chapter 333.1-8 and 1-9 and Appendix A-2d. Insofar as "rating" is concerned, FPM chapter 333.1-1c(2)(c) provides only that "qualified and available applicants shall be considered for appointment in established priority order." Simply put, all qualified and available applicants are eligible for selection, except that a non-veteran may not be selected if a veteran is qualified and available, and a veteran may not be selected if a disabled veteran is qualified and available. The Commission's personnel office maintains complete documentation for these limited "ratings" requirements. The further documentation GAO is so eager for goes beyond the requirements of law or necessity.

V. GAO claims to have found past position announcements in our files that lacked "opening dates." Agencies are required to notify relevant state employment service offices and the local Federal Jobs Information Center whenever they intend to fill "temporary, competitive" positions. There is no requirement that such notification be in writing. Agencies are

required to advise the FJIC and local state offices of an official "opening date," but that date can be and almost always is the date of first notification. The only truly important date in any such notification is the closing date, i.e., the date after which applications can no longer be accepted for consideration. Agencies can accept applications as soon as notification of the appropriate offices has taken place, but they cannot accept applications hand-delivered or post-marked after the official closing date. Since late applications result in ineligibility, all position notifications from the Civil Rights Commission carefully specify closing dates.

VI. GAO alleges that the Commission once accepted an application after the relevant announcement's closing date. The position in question was a temporary, competitive civil rights analyst appointment to be located in the Commission's Rocky Mountain Regional Office in Denver, Colorado. The position was announced in Denver, with a closing date of March 8, 1985, a Friday. On Monday, March 11, 1985, the application was received in the Commission's personnel office in Washington, D.C., noted in the office's seriatum log, and marked date-received, March 11. The post-marked envelope does not survive, but common sense and familiarity with the postal service suggests that the application was submitted in a timely fashion.

VII. GAO contends that the Commission is guilty of "failure to publish vacancy announcements." Whether one considers "publish" in its broadest context (to make publicly known; announce, proclaim, divulge, or promulgate) or narrowest (to write or have written), this contention, as should now be most clear from above discussions of OPM notification requirements, is incorrect.

VIII. GAO challenges the employee credentials involved in 13 specific temporary competitive appointments. GAO claims that "OPM requires that announcements specify the standard to be used in making the determination of eligibility" for such appointments. Blatantly untrue. FPM chapter 316.4-5c(1)(a) states that "appropriate state job service and OPM offices must be notified in accordance with instructions in FPM chapter 330, section 1-5." FPM chapter 330.1-5b holds (1) that "such notification must include the period during which applications will be accepted," and (2) that "notification should also provide information on qualifications." Nowhere in the FPM is there a requirement that position announcements, in GAO's words, "specify the standard to be used." Nor, again, do the regulations specify notification in writing. GAO alleges that a number of the appointments lacked the GAO "required"

competitive qualifications analysis, but FPM chapter 338, Appendix A-1b(2), provides that "when the standard used is specified in Handbook X-118, the title of the position for which rated, when the same as that used in the Handbook, acceptably identifies the standard used." FPM chapter 333, Appendix A-3a(6) goes further, allowing that "when the standard used is in Handbook X-118, the class title of the position for which rated, if the same as that used in the Handbook, is acceptable as identification of the standard used. There will be no need to repeat the notation 'Handbook X-118' on each application" (emphasis added).

IX. GAO asserts that "OPM requires that temporary appointments made outside OPM registers must not be made to avoid merit principles, to extend other temporary appointments or to make non-competitive appointments pending completion of examining, referral, or other competitive processes." Although these requirements are fabricated from whole cloth, GAO strongly implies that the Commission has violated them. In the first place, temporary outside the register appointments in the competitive service are merit appointments by definition, so it is difficult to see how they could be twisted into an attempt to circumvent merit. GAO is confused. Secondly, FPM letter 316-21 explicitly permits the use of temporary appointments to extend other, previous temporary appointments (except special needs and handicapped appointments) as provided in FPM chapter 316, subchapter 4. GAO is mistaken. Last, GAO argues in essence that temporary, competitive appointments must not be made to make temporary, non-competitive appointments. We do not disagree.

GAO cites nine case study examples of the kinds of improper Commission exercise of temporary employment authority discussed above. Not one of them succeeds in avoiding the inventions and misstatements detailed above. Point by point clarifications of the circumstances involved in each appointment questioned by GAO are available upon request.

GAO Response:

The Commission contends that there is no requirement for it to supplement the Federal Personnel Manual's guidance by establishing an applicant supply file system specifying its procedures for acceptance, rating, and referral of applicants for temporary appointments. The Federal Personnel Manual states that the general applicant supply system procedures outlined in the Manual are considered to be the minimum necessary and that an agency program should be developed in accordance with these guidelines to insure the appointment of the best qualified and available individuals. According to the Federal Personnel Manual "The [OPM] does not consider it practicable to establish a standard procedure to be followed by all agencies in setting up an applicant supply file, applying standards and recording considerations and selections." The need for the Commission to supplement the OPM guidance is illustrated by the irregularities we found which occurred in the absence of a detailed applicant supply file policy. These include:

- No Commission policy specifying how it will document the required analysis of applicant qualifications which resulted in appointments without qualifications analysis documentation and/or questionable appointee qualifications.
- No Commission policy specifying how and when it will accept and document temporary employment applications; thereby allowing the Commission to accept an application after the closing date and issue announcements without opening dates.
- No Commission policy specifying how and when it will document its required notification to state employment service and OPM offices; therefore, the Commission cannot demonstrate that these offices were consistently and adequately informed of such vacancies.

The Commission contends that its employment applications are properly date-stamped and there is no regulation requiring mechanical dating of incoming employment applications. We did not intend to imply that mechanical date-stamping of applications is required. In the case of Employee 2 on page 23 of the attachment to our statement, we found no date-stamp, mechanical or otherwise. Although a mechanical stamp is preferable, pen and ink notations are acceptable, as was the case of temporary Employee 8 on page 27 of our attachment. However, in this case, the application was hand-marked after the closing date of the announcement.

The Commission stated that, in every case, its vacancy announcements contained more information than OPM required on qualifications needed and application procedures to be followed. We disagree based on the announcements we reviewed. For example, the qualification section for Employee 2's announcement read: .

"Complete description of the qualification requirements including possible substitution of education for experience are contained in OPM Handbook X-118, which is located in any Federal Personnel Office."

In another instance, the Commission announced a position vacancy for a Program Specialist, GS-301 and again referred applicants to the OPM Handbook X-118. However, even if an applicant was able to locate or had access to a copy of the Handbook, it contains no specific qualification standard for the position. The Handbook refers applicants to another standard, the Multi-Group Standard for Administrative Positions. This standard specifies quantity of experience, but quality of experience must be deciphered from the specific duties of the actual position, which were only vaguely stated in the announcement.

We believe such information, which the Commission characterized as substantially more than required, does not serve as adequate notice to the public. According to the Federal Personnel Manual:

"Announcements, recruiting bulletins, or similar issuances serve as official notices to the general public that applications are being accepted to fill certain types of positions in the Federal service in accordance with merit system principles. The announcement should contain enough information to enable a prospective applicant to determine reasonably well: (1) whether he is qualified and wishes to apply; and (2) how, when and where to apply."

We also believe it is unreasonable to expect a member of the general public to adequately interpret the qualification criteria contained in OPM's Handbook X-118, particularly for positions not covered by a specific occupational standard.

Similarly, we cannot agree that the Commission's application procedures meet OPM requirements. For example, the vacancy announcements do not identify the forms needed to document veterans' preference or indicate where these and other required forms may be obtained. The procedures also do not specify OPM's suggested procedure for persons to indicate their intention to apply and what additional time will be allowed for filing an official application.

The Commission objected to our use of the term "rating" to describe the determination of an individual's qualifications for appointment consideration. It maintained there is no OPM requirement mandating the rating of applicants. Our use of the term rating is consistent with the Federal Personnel Manual description. While OPM's requirements are minimal and do not

involve numerical ranking scores, the Federal Personnel Manual requires agencies to evaluate applicants' experience and education against OPM qualification standards. The Commission contends that it maintains complete documentation for these ratings requirements. However, we found the Commission's records had insufficient documentation of how applicant ratings were derived. For example, the records did not show how Employee 3's background met the specialized experience requirements for her appointment or what basis was used to justify the selective qualification factor used. Similarly, Employee 6 was determined to be qualified for a position requiring completion of a 4-year course of study even though the employee's job application indicated this requirement had not been met. Employee 4's rating form was not in the files, nor did the files contain a required writing sample for Employee 9.

We disagree with the Commission that vacancy announcement notices to OPM and state employment service offices do not have to be in writing and need not specify opening dates for position announcements. The Federal Personnel Manual specifically states that these vacancy notices "must include the period during which applications will be accepted." Furthermore, agencies are required to maintain a continuous list of the positions for which the agency is recruiting showing "the opening date for acceptance of applications and the date that recruitment for the position closed."

The Commission's explanation of the circumstances surrounding the employment of an individual (Employee 8) whose application was received after the closing date of the announcement notice is questionable. The Commission contends the application was submitted in a timely fashion because it received the application on Monday, March 11, 1985, following the Friday, March 8, 1985, closing date. However, we found that the individual signed and dated his application Friday,

March 15, 1985, four days after the application was reportedly received by the Commission. This particular case is also a further illustration of why the Commission needs a policy on when applications will be accepted.

We disagree with the Commission's contention that vacancies need not be published. However, publication was not our concern. We found no vacancy announcements or other evidence that the required OPM competitive selection procedures had been followed for 7 of 23 temporary appointments.

The Commission contends that the Federal Personnel Manual does not require vacancy announcements to specify which qualification standard will be used. The Federal Personnel Manual provisions cited by the Commission do not contradict the requirement that vacancy announcements must specify the qualification standard used in making the determination of eligibility for competitive, temporary appointments. According to the Manual, documentation of the qualification standard used must be on the application form if it is not shown on the announcement. Because the Commission did not show the qualification standards used on its application forms, the standard must be shown on the announcements. Additionally, the two Federal Personnel Manual citations do not refute the requirement for a competitive qualifications analysis. The two citations are the Federal Personnel Manual's guidance on how to document the standard used in making that analysis.

We obtained the Commission's point-by-point clarifications for the nine temporary employees discussed in the attachment to our statement. However, they contained no evidence or documentation we had not already reviewed.

Special Needs Authority

GAO alleges that none of 21 "special needs" appointments to 18 Commission employees "had documentation establishing the nature of the unusual or emergency circumstances requiring the use of the authority." It further alleges that 7 extensions of such appointments lacked necessary documentation that the original conditions for the appointment continued in force. Here GAO has asserted that special needs appointments are "appropriate only when the legitimate needs of the agency 'cannot be served through appointment under some existing authority' and include emergency situations." The correct and complete citation is found in FPM chapter 316.4-8.B(1) and reads: "Agencies are delegated authority to make temporary limited appointments without examination to meet any legitimate need that cannot be served through appointment under some existing authority" (emphasis added). Moreover, the only time "emergency" is a relevant criterion in the exercise of such authority is when the special needs appointment occurs during the "summer employment period" [FPM chapter 316.4-8b(2)(c)]. Still, GAO mistakenly insists that the situation or event giving rise to the exercise of special needs authority must be of an "emergency" or "unusual" nature. GAO can cite no regulation in support of its fictitious requirement.

Since the "unusual circumstances" criterion is nonexistent, it follows that there is no further requirement to document it. Until the recent issuance of Installment 20 of FPM Supplement 296-33, there was not even a requirement to document the basis for special needs appointments on the face of Standard Form 50, the official documentation for any and every personnel action. Installment 20 requires only a notation in the "remarks" section of SF50 setting forth the reason for such an appointment. Even given GAO's misunderstandings about documentation, we are surprised that GAO charged us with failure to properly document these actions without asking for backup information about them.

GAO Response:

The Commission defended its frequent use of the noncompetitive special needs employment authority by emphasizing OPM's instructions that it can be used to meet "any legitimate need." However, we believe the more significant language in OPM's guidance is that the special needs appointment authority be used only when the agency's needs "cannot be served through appointment under some existing authority." Thus, by its nature, the special needs appointment is the authority of last resort for unusual circumstances. All other exceptions to competitive temporary appointment procedures require specific appointee qualifications or must only be used in specific circumstances. Because of the unusual nature of the circumstances which would justify this exception to competitive procedures rather than use of some other appointment authority, OPM requires that agencies may properly employ individuals beyond the initial 30 day limit only if the work "is essential to agency operations, as in the case of natural disasters or acts of God," clearly emergency situations.

The Commission contended that the only time special needs appointments would include emergency situations would be if they occurred during the summer employment period. The Federal Personnel Manual guidance cited by the Commission permits special needs appointments during the summer only if the appointments are necessary to employ persons otherwise prohibited by regulations, such as relatives in emergency situations. Furthermore, the Federal Personnel Manual permits that the special needs authority would also apply to emergency appointments of such individuals outside the summer employment period. Although not appointed during the summer, the Commission made an "emergency appointment" of temporary Employee 1 discussed on page 23 of the attachment to our statement and an "emergency extension" of his appointment using the special needs

authority. The Commission's actions in this case contradict its interpretation of the emergency special needs appointment provision.

Although the Commission did not document the reasons for the special needs appointments on the personnel action forms, it suggested "backup information about them" was available that we did not ask for in our review. OPM's overall recordkeeping requirements, which were in effect prior to the period of our review, state that the employee's official personnel folder must contain the facts which establish the correctness of the appointment even when no specific documentation requirements are stated. Retention of such information in other files does not meet this requirement, and none of the official personnel folders that we reviewed contained such documentation. Neither did the Commission present any such information in its response to our findings, or to our subsequent request of May 22, 1986.

Schedule C Authority

22 Schedule C appointments were made for 17 individuals employed at the Commission in the period under GAO review. GAO charges "two basic deficiencies" in each of the 22 appointments: "qualification standards were not used and the appointments were not properly documented." GAO claims that the Commission has violated an FPM requirement "that agencies establish qualification standards before appointing employees to excepted service positions." But 5 C.F.R. 302.101 exempts Schedule C appointments from the procedures set out in Part 302 and in FPM 302.

GAO suggests that the Commission has promoted its Schedule C employees faster than is allowed by the time-in-grade restrictions applicable to positions in the General Schedule. Schedule C employees are in the General Schedule, but not subject to those time-in-grade restrictions.

GAO alleges "a general lack of employment controls" governing the Commission's Schedule C employees. Nowhere in the Federal government do "employment controls," whatever GAO intends by the phrase, govern Schedule C employees.

GAO asserts that OPM did not offer prior approval of three Schedule C upgrades effective March 3, 1985. GAO declines to point out that no advance OPM approval is required in such cases. GAO reports that OPM "could not confirm that OPM had approved" a later Schedule C upgrade at the Commission. GAO could have confirmed that approval by itself; it had available for evaluation copies of all Form 1019s submitted to OPM during the review period, including the one notifying OPM of the specific action. That Form 1019 clearly indicates receipt by OPM's Schedule C section on October 7, 1985, and appropriate OPM approving action on October 9, 1985. Here, as with so many other unsubstantiable GAO charges and half-charges, a simple phone call might have eliminated the need for extensive discussion in its report.

Finally, GAO admonishes the Commission for its failure to "cite the OPM assigned position numbers on the personnel action documents," thereby preventing GAO from verifying that the Commission's Schedule C employees "were performing the duties approved by OPM." This last accusation is completely without merit. The Commission has its own position description numbering system, and appropriate numbers are shown on SF50 forms documenting each Commission personnel action. With each OPM submission (Form 1019) involving changes in the duties of a Schedule C position, the complete position description -- with the agency's number -- is attached. GAO need have looked no further to verify Commission Schedule C employees' duties.

GAO Response:

The Commission's contention that 5 C.F.R. 302.101 exempts it from establishing qualification standards for its Schedule C appointments is incorrect. The regulation exempts Schedule C appointments from the specific employment procedures in those regulations but not the guidance in the Federal Personnel Manual. According to the Federal Personnel Manual, as confirmed by an OPM representative responsible for Schedule C appointments, agencies must establish their own qualification standards for positions in the excepted service with some exclusions. Schedule Cs are not excluded.

The Commission defends its rapid promotions of Schedule C employees by observing that time-in-grade restrictions do not apply to such employees. This is true. The Commission also states that there are no employment controls governing Schedule C employees anywhere in the federal government. The Commission is overlooking the intent of the time-in-grade restrictions and other requirements in the Federal Personnel Manual which agencies may follow to insure that too rapid promotions or other excessive deviations from normal practices do not occur even for positions to which the restrictions do not apply.

The Commission claims that prior OPM approval was not required for the three promotions which it referred to as upgrades. The Commission's personnel action documents referred to these three actions as promotions. We were unable to determine whether prior approval was required because the Commission did not properly document the basis for these promotions. Under OPM's procedures, prior approval from OPM is required for Schedule C positions "When an agency changes the duties or grade of a position, its organizational location, or its reporting relationships, ..." Prior approval is not required for "a change in grade level only because of greater responsibility, without any other essential change..." However, the personnel actions did not document any increased responsibilities associated with the promotions.

The Commission continues the defense of its Schedule C practices by indicating that we had available a properly approved OPM Form 1019 for "a later Schedule C upgrade" for which we had indicated OPM approval could not be confirmed. The action we questioned was an appointment action, not an "upgrade" for the employee. The Commission did not provide us with a copy of a Form 1019 for this action, nor did OPM have this form in its files. On June 12, 1986, the Commission advised us that this appointment action was erroneously processed and has been cancelled.

Finally, the Commission defends its decision not to use the OPM-assigned position numbers on its personnel actions for Schedule C appointments by stating it has its own position description numbering system. Title 5 CFR 213.3301 requires that the OPM-assigned number be used on personnel actions. OPM assigns a position number to each description of duties submitted by the agency for approval under Schedule C exceptions to competitive appointment procedures. Although the Commission assigns its number to a description of duties when it requests OPM approval to fill the position, the description is retained by OPM and an OPM number is assigned and placed on the Form 1019 which is returned to the agency. By not using the OPM-assigned number on its actions, there is no record in the Commission's files or in the employee's official personnel folder to document that the duties being performed by the employee are those approved by OPM. Neither the Commission nor OPM maintains a cross index of its position numbering system.

REFERRALS FROM STATE EMPLOYMENT SERVICE OFFICES

GAO has investigated allegations that the Commission has not hired qualified applicants referred to it by the Washington, D.C., employment service office. GAO cannot substantiate those charges. According to FPM chapter 330.1-5, Federal agencies are required to notify local state employment services (SESS) and local OPM Federal Job Information Centers (FJICs) whenever they intend to fill temporary, competitive positions outside OPM's employment registers. GAO has concluded that the Commission "did not have records" -- at least not "sufficient evidence" -- "showing that this had been done." We assume that GAO does not contend that agencies must have "certified, return receipt" evidence of such notification. But it remains the case that GAO has reviewed copies of Commission letters sent to the Washington FJIC, has seen notations on our job announcements concerning notification to OPM and SESSs, has reviewed the Commission's distribution list for announcements of such positions, and has examined actual SES referral slips attached to applications we have received. In the absence of the kind of notification GAO is presumably attempting to verify, how could such referrals be on file in the Commission's personnel office?

GAO clearly suggests in its report that there exists some regulatory requirement that notification to appropriate agencies be in writing. Not so. Notification can be verbal, or in the form of a memorandum, letter, or formal job announcement; precise specifications do not exist. Typically, the Washington-area FJIC requests that agencies provide them with written information concerning positions to be filled as "temporary, competitive," but their request is hardly a statutory requirement. The Commission has, however, voluntarily prepared a written notification and delivered it to appropriate SESSs and FJICs when it has sought to fill such a position. GAO is unable to state otherwise.

GAO Response:

The Commission correctly stated that we could not substantiate the allegation that it did not hire qualified applicants referred by the Washington, D.C., employment service office. However, as discussed in our statement, we were unable to assess the merits of this allegation because the Commission had no separate records on how many people were referred by employment service offices or, of them, how many were hired. The Commission's statement did not suggest, nor did it provide any evidence during our review, that any such referrals were hired.

We do not agree with the Commission's position that there is no requirement for notifications to state employment service and OPM offices to be in writing. The Commission said the Federal Personnel Manual provides only that these offices be notified of such vacancies. While the section of the Federal Personnel Manual cited by the Commission does not specifically address the issue of whether the notification be in writing, the Federal Personnel Manual does require that "Agencies will maintain information and records in such a manner that review at any time by representatives of OPM will disclose whether there has been compliance with the civil service rules and regulations, and OPM's instructions." This requirement places the burden of evidence of compliance on the Commission. Without such documentation, neither we nor any other reviewer can determine whether the Commission complied with the statute on which the OPM requirement is based.

We did not say or imply that the Commission failed to notify state employment and OPM offices of the job vacancies. Our concern was that there was insufficient evidence to show whether the right and/or necessary information was provided to these offices for the appointments we reviewed.

The Commission statements pertaining to the documents we reviewed are misleading. The Commission contends that we reviewed copies of letters sent to the local OPM Federal Job Information Center; we found copies of three such letters for the 13 appointments we reviewed requiring such notice. The Commission stated that we reviewed its distribution list for such announcements; the list is, in fact, an OPM bulletin that provides addresses for the Washington, D.C., metropolitan area state employment offices. However, maintaining a distribution list does not provide evidence that these offices were adequately notified of Commission vacancies. Lastly, the Commission said we examined state employment service referral slips attached to job applications; it could only find applicant referral slips for 6 of 15 job vacancies requiring such notification. We believe that this demonstrates the inadequacy of relying upon referral slips to document compliance with state employment service office notification requirements.

AFFIRMATIVE ACTION

GAO investigated the extent to which affirmative action was undertaken by the Commission to hire and promote women and minorities. At the time GAO completed its review, the Commission's accomplishment report for 1985 had not been approved by the Staff Director. On March 11, 1986, the Staff Director signed the report and forwarded it to the Equal Employment Opportunity Commission. A copy has been sent to GAO.

GAO complains in its report that because the Commission has not established affirmative action promotion goals it is unable to measure the Commission's success in promoting women and minorities. Promotion goals are not required of the Commission, but we do monitor internal movement, including promotions, as required by EEOC Management Directive 707A.

Over the last three fiscal years the Commission successfully recruited 54 minorities and women in all occupational categories.

GAO Response:

We received the Commission's fiscal year 1985 accomplishment report of affirmative action on April 3, 1986. Similar to its hiring experience in 1983 and 1984, the Commission reported hiring a number of women and minorities in 1985; however, the report shows the Commission, again, did not achieve the specific hiring goals for the job categories set in its affirmative action plans. The Commission partially met its goal in the professional job category, but it did not meet its goals in the three other job categories. The following table shows the Commission's hiring goals and accomplishments for fiscal year 1985.

The Commission's statement that affirmative action promotion goals are not required is correct. The attachment (p. 36) to our statement clearly pointed out that such goals are not required. We reported the sex and racial composition for most Commission promotions since 1983. However, we did not criticize the promotion actions from an affirmative action standpoint.

The Commission's Affirmative Action
Hiring Goals and Achievements
Fiscal Year 1985

<u>Job category</u>	<u>Goals</u>	<u>Achievements</u>	<u>Other hires</u>
Professional	1 White Female 1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native	2 White Females	2 White Males 1 Black Male
Administrative	1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native	0	2 White Females 4 White Males
Technical	1 White Female 1 American Indian/ Alaskan Native	0	1 Black Female
Clerical	1 Hispanic Male 1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native	0	1 White Female 4 Black Females 1 Hispanic Female
Other	No goals		None

AWARDS AND PROMOTIONS

GAO was asked to investigate charges that employees hired after the Commission was reconstituted were receiving favorable treatment insofar as awards and promotions were concerned. GAO found that no such favoritism could be discerned in award and promotion patterns.

Of eleven employees identified as having received one or more awards in less than a year, all but one were career employees who had been hired by the Commission prior to its reconstitution. The one exception involved an employee who had at one time been employed at the pre-reconstituted Commission, had resigned, and had been subsequently reappointed after reconstitution. No OPM regulations limit the number of awards that can be given or received in any one-year period (see FPM chapter 451). In any case, the one employee identified as a recipient of three awards in one year was first appointed at the Commission years before reconstitution.

GAO also investigated the question whether any Commission employees had been promoted in violation of "time in grade" requirements. GAO could not find any such employees. "Time in grade" does not, of course, apply to employees in the Excepted Service. For some reason, nevertheless, GAO's report includes a listing of Excepted Service employees promoted with less than one year in grade.

Despite its finding that "new hires, in general, had not been receiving more favorable treatment," GAO's report suggested without foundation that "this pattern could be changing." At GAO's oral briefing of Commission staff, Mr. Anderson confessed that this perceived change was "not statistically significant" and promised that "the offending phrase" implying a change in treatment of careerists "shall be struck." We are disappointed that Mr. Anderson did not, in fact, strike "the offending phrase."

GAO Response:

The Commission questions our conclusion that, while new hires, in general, had not received more favorable treatment, the pattern could be changing. Information obtained from the Commission, which it does not dispute, shows that most promotions went to career employees and employees hired before December 1, 1983, until the first quarter of fiscal year 1986. In that quarter, 6 of 9 promotions went to employees hired after December 1, 1983, and 5 of the 9 promotions were to noncareer employees. We believe it is apparent that, with new hires getting 14 percent of all promotions in fiscal year 1984, 50 percent in 1985, and 67 percent in the first quarter of 1986, the pattern could be changing.

The Commission maintains that we acknowledged in the oral briefing that the above conclusion was inappropriate and agreed to delete it. In fact, the wording used in the oral briefing, which we agreed to change, was a stronger conclusion that the situation "seems to be changing." We revised the wording from "seems to be changing" to "pattern could be changing" to more accurately reflect the facts we had gathered.

The Commission questions why we reported that 10 employees were promoted without serving 1 year in the prior grade, since the employees were not in positions subject to time-in-grade restrictions. We reported the promotions because we were asked by the requesters to identify any employees receiving promotions without serving a year in grade. Our response made it very clear that the time-in-grade restrictions did not apply to the promotions. Moreover, as pointed out on page 30 of the attachment to our statement, OPM has cautioned agencies to assure that their promotion programs do not permit excessively

rapid promotions for employees not subject to the restrictions. Thus, we believe it was appropriate to report this promotion information.

The Commission's statement that OPM regulations do not limit the number of awards that can be given or received in any one-year period is correct. We did not suggest that any such limitation exists.

COMMISSIONERS' AND SPECIAL
ASSISTANTS' BILLINGS

GAO states that "concern was expressed" that the Chairman of the Commission and his Special Assistant billed the agency on an almost full-time basis for what were "thought to be part-time positions." Thought by whom? GAO's Attachment VI cites the relevant section of the Commission's authorizing statute, and notes correctly that there is no statutory limitation on the number of days which may be worked by either the Commissioners or their assistants. Additionally, there was no limit on the number of days that could be worked under the old Commission. The Chairman immediately preceding Mr. Pendleton (Arthur S. Flemming) maintained an office at the Commission, apparently worked there daily on a full-time basis, and was not fully paid for his time only because his status as a retired annuitant necessitated a cap on his personal income.

As demonstrated in GAO's chart, in FY 1983, Commissioner Berry's Staff Assistant billed 261 days, more than Chairman Pendleton's Assistant's highest-billed year (239 days in FY 1985). Finally, as GAO shows, almost one-third of Chairman Pendleton's billed time was spent in transit, largely an unavoidable consequence of his residence in California.

In its oral briefing of Commission staff, GAO acknowledged that its report does not contend that the time billed was not actually worked by Commissioners and their assistants. Some Commissioners and their assistants have had difficulty understanding and completing the salary voucher forms required by the Commission, and we acknowledge the partial lack of vouchers in the file for some Commissioners and their assistants. Accordingly, relevant requirements and procedures are once again being reviewed with the Commissioners. In FY 1986, we established procedures, open to GAO scrutiny, which should avoid a repeat of this occurrence. A further note: the official record from which pay is derived is through time and attendance cards. These cards are submitted to the GSA, Kansas City, on a flow basis for developing the agency payroll. An examination of these cards by GAO, which was not done, would easily verify the official source document of each individual's paycheck.

The GAO report confirms that the reported work of all assistants conformed to the duties described in their job descriptions.

GAO Response:

There is little in the Commission's remarks on this issue that questions or challenges any of our findings. However, we believe the remarks are misleading in two areas, as follows.

Former Chairman's Billings

The statement that former Chairman Flemming apparently worked at the Commission on a full-time basis is not supported by Commission records or by Dr. Flemming's statements to us. Commission records showed that he generally worked on a daily basis, however, it was less than full-time.

Dr. Flemming was appointed as Commission Chairman on March 21, 1974. His appointment ended on April 4, 1982. Commission records showed Dr. Flemming billed the following number of equivalent 8-hour days from January 1979 through the end of his appointment. The days for fiscal year 1979 account for three-quarters of the year and for 1982 one-half of the year.

<u>Fiscal year</u>	<u>Days</u>
1979	76
1980	132
1981	119
1982	64

We discussed the Commission's comments with Dr. Flemming. He stated that to the best of his recollection, the above stated days worked by him were correct and that he billed the Commission for all the time he worked on Commission business.

The Commission's observation that Dr. Flemming was not fully paid for his work is essentially correct. As a reemployed federal annuitant, Dr. Flemming's salary was reduced by the amount of his annuity.

Controls Over Salary Payments

We believe the Commission's response to our findings on controls over salary payments to Commissioners and Special Assistants understates the problems we found. The Commission acknowledged a "partial lack" of salary vouchers in the files, which it attributed to misunderstanding by some Commissioners and Special Assistants on how to complete the salary voucher forms.

The problems we found were more than missing salary vouchers. As shown on page 50 of the attachment to our statement, the Commission files contained salary vouchers that agreed with the payments to only 5 of the 17 Commissioners and Special Assistants employed during fiscal year 1985. In four cases, the vouchers showed fewer days charged than paid and in eight cases, the vouchers showed more days charged than paid. We also found instances where the nature of the services performed was not shown on the vouchers, and some vouchers were not signed by the claimant or the approving official.

We have not reviewed the new procedures the Commission said it adopted to strengthen its controls over salary payments.

ATTACHMENT VII

ATTACHMENT VII

COMMISSIONERS' AND SPECIAL ASSISTANTS'
FINANCIAL DISCLOSURE REPORTS

After investigation of required financial disclosure forms, GAO has determined that Commission salary represents for no Commissioner -- including the Chairman -- more than 50% of the total reported income. Moreover, in the case of the Chairman, almost one-third of his billed hours reflected time in transit, which is largely due to his California residence.

GAO claims that the Small Business Administration's investigation of the Chairman's and his Special Assistant's business dealings "raises questions about the accuracy of their reporting of outside income." GAO refused, however, to state at the oral briefing what questions were allegedly raised. Under these circumstances, GAO is once again advancing an innuendo rather than providing evidence.

GAO Response:

As of June 17, 1986, the SBA investigation referred to was still underway.

COMMISSION TRAVEL

Included in GAO's discussion of Commission travel is the assertion that the Commission has improperly augmented its appropriation. The basis of this claim is that Commissioners, and to a much lesser extent staff, accepted reimbursement for travel expenses from non-501(c)(3) organizations that had invited them to speak at functions sponsored by the organizations. We disagree.

GAO sets forth its claim in the summary portion of its statement:

Donations from private sources for official travel constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or if the donor qualifies as a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Such donations can also constitute a violation of 18 U.S.C. section 209, which deals with supplementation of salary, but the Civil Rights Commissioners are exempt from the operation of that provision.

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the contributors qualified as 501(c)(3) organizations, and other requirements were met, the Commission travelers had no authority to accept such payments. The Commission has no procedures to insure compliance with the law even though the Office of Government Ethics and the Office of Personnel Management have suggested certain steps that agencies should take to preclude improper augmentation of their appropriations. We also learned that the General Services Administration did not check for unauthorized augmentation of appropriations when reviewing travel vouchers of Commission employees. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur. (pp. 15-16, summary.)

Attachment VIII to the GAO statement discusses this claim in slightly more detail, but by no means provides an analysis sufficient to determine the validity of GAO's charge. According to the attachment, the Commission is in violation of section 4111 of title 5 of the U.S. Code and regulations issued thereunder which, among other things, require prior written approval of travel reimbursement by an agency official. GAO does not acknowledge that, at the oral briefing, Commission staff disputed GAO's assertion that Commissioners could not accept reimbursement for travel expenses from outside organizations without augmenting the Commission's budget. Furthermore, Commission staff pointed out to GAO in the oral briefing that Commissioners and Commission staff who traveled at the expense of sponsoring organizations did so on the advice of the Solicitor, a longtime career employee of the agency. The transcript of that briefing (pp. 97-99) provides the following exchange:

COMMISSION STAFF DIRECTOR LATHAM: [A]re you aware that the travel that you have raised on non-501(c)(3) organizations, both for commissioners and for others, was approved on the advice of career counsel here and our ethics officer?

GAO STAFF: We have talked to him.

LATHAM: All right, will you make a notation that it was approved on the advice of the ethics officer and career solicitor?

GAO STAFF: He told us that it was up to the traveler to see that they comply to that statute [5 U.S.C. 4111].

COMMISSION SOLICITOR: I don't think that's fully correct, Paul, [GAO STAFF], and I'm the individual that Mr. Latham was referring to.

SOLICITOR: I was in error. I did not know that the agency could not -- that the traveler could not travel on official business unless -- if it was being paid for by an outside agency -- unless it was a 501(c)(3) organization. But after 30 years, I found out about it. But what I originally told the Commissioners and the Staff Director who took office in 1983, was that,

ATTACHMENT VIII

ATTACHMENT VIII

yes, they could travel at the expense of outside organizations but they obviously could not receive double reimbursement from the agency.

GAO STAFF: And we are not implying that either.

SOLICITOR: No, I realize there is no implication of that. But as I say, I was in error by not advising them that their outside paid travel was restricted to 501(c)(3) organizations, and that was because I was not aware of that.

LATHAM: Now, one clarification to that. The error runs to non-Commissioners, I take it. Because as to Commissioners, we have called your attention to the statutory provisions.

SOLICITOR: Yes, that would be applicable to the then-Staff Director, and Sydney.

LATHAM: Now, is there any question -- are you raising any allegation of conflict of interest in the acceptance of outside travel money?

GAO STAFF: No.

Despite the Solicitor's correction of GAO's characterization of its discussion with him, GAO made no change in its final report. The fact remains that the Solicitor -- the agency's Designated Ethics Officer -- had previously advised the Commissioners and staff that they could travel at an outside organization's expense, whether or not the organization was tax exempt under 501(c)(3) of the Internal Revenue Code, and they had acted on this advice.

Comptroller General opinions regarding reimbursement for travel expenses from nongovernmental sources have been based on GAO's understanding of 5 U.S.C. section 4111. This statute provides, in relevant part:

(a) To the extent authorized by regulation of the President, contributions and awards incident to training in non-Government facilities, and payment of travel,

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subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization described by section 501(c)(3) of title 26 (emphasis added).

Two points must be understood. First, the Commission's organic statute totally exempts our Commissioners from 18 U.S.C. 209 -- so the narrower exemption of 5 U.S.C. 4111, which is limited to payments from 501(c)(3) organizations, does not even affect our Commissioners. Second, the payments at issue were made to the Commissioners, not to the agency, so the agency's appropriation is not involved.

An Office of Government Ethics memorandum dated August 24, 1984, sets forth the generally relevant considerations for acceptance of travel reimbursement from outside organizations. According to that memorandum:

When an executive branch employee is offered payment for travel expenses from a private source for expenses incurred in carrying out his or her official duties, the travel reimbursement expense payments can only be accepted, if at all, by the agency employing the individual on the individual's behalf. The employee may not personally accept the travel expenses without potentially violating 18 U.S.C. 209

The agency may accept the travel expenses only if it has statutory gift acceptance authority to do so or if the gift qualifies under 5 U.S.C. 4111 Otherwise the agency will be improperly augmenting its appropriations and running afoul of the Comptroller General's Decision B-128527 dated March 7, 1967 (46 Comp. Gen. 689) (emphasis added).

The Commission's interpretation of 5 U.S.C. 4111 and its rejection of GAO's claim of augmentation is consistent with the reasoning set forth in the Office of Government Ethics memorandum. According to the memorandum, individuals are prohibited from accepting travel reimbursements by 18 U.S.C. 209. But the Commissioners are exempt from 18 U.S.C. 209 and may, therefore, personally accept reimbursements. The agency, the memorandum states in addition, may not accept reimbursements unless it has statutory gift acceptance or the gift qualifies under 5 U.S.C. 4111. But the Commission itself never accepted any reimbursements, and therefore, cannot have augmented its appropriation.

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The Office of Government Ethics memorandum cites 55 Comp. Gen. 1293, which is useful for its sharp delineation between reimbursements to individual government officials and reimbursements to government agencies. At issue there was a request by the Internal Revenue Service for permission to implement a policy whereby the Service would pay for the travel by its employees to 501(c)(3) functions and accept direct reimbursement from the organizations. The Comptroller General denied the request, stating:

Section 4111 provides a specific exemption to the prohibition against officers and employees of the Executive Branch of Government receiving any salary, or any contribution to or supplementation of salary, from any source other than the Government of the United States (18 U.S.C. 209). It allows an employee to accept from eligible tax-exempt organizations payment, in cash or in kind, towards some or all of his or her personal expenses incurred in the scope of the employee's official duties while attending a meeting. However, this exemption is personal with the officer or employee, and does not extend to the employing agency or department of Government. Moreover, the exemption cannot be read to authorize the agency to accept voluntary payments for the purpose of reimbursing its employees for expenses they incur in the activities mentioned in 5 U.S.C. 4111. That is, the statute is directed primarily at the authority of Government employees and not of Government agencies. In the absence of statutory authority allowing it to accept and retain voluntary contributions, an agency is bound by the provisions of 31 U.S.C. 484, requiring deposit in miscellaneous receipts. Therefore, there is no authority for Internal Revenue Service's (IRS) proposal to accept contributions directly and use the funds to pay the employee's expenses (emphasis added).

Thus, the individual Commissioners who accepted travel reimbursements acted properly under our Act's exemption of Commissioners from 18 U.S.C. 209 (which, like 5 U.S.C. 4111, is "personal with the officer or employee, and does not extend to the employing agency or department of Government"). And the agency did not augment its budget because it did not receive the reimbursements. GAO's interpretation of section 4111 in

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55 Comp. Gen. 1293 is thus flatly contrary to GAO's reasoning in its charge that the Commission has augmented its appropriation.

Statutes should be interpreted so as to effectuate their manifested purpose. On these grounds also, GAO's claim that the Commission has improperly augmented its appropriation by virtue of the acceptance by some Commissioners of travel reimbursements fails. 18 U.S.C. 209 was intended by Congress to prevent conflicts of interest from arising on the part of Federal employees. That same rationale underlies the limitation in 5 U.S.C. 4111 to 501(c)(3) organizations. Take, for example, the following House testimony by GAO in 1958 on the provision of the Government Employees Training Act later enacted as 5 U.S.C. 4111:

Mr. Chairman, that is a difficult question, and one I think cannot be answered, categorically, "Yes" or "No." As to the scientific personnel, the people attending meetings of nonprofit organizations which are for the purpose of making known information in scientific fields, I think, perhaps, there would be no problem. If, though, the meeting is sponsored by a profit-making organization with which this employee of the agency might have dealings on behalf of the Government, it might raise a situation where he either may be, or may be thought to be, subjected to some measure of, let us say, influence, and, perhaps, it is just as bad if the public thinks he is subjected to such influence as if he actually is. . . . (emphasis added)

Testimony in 1957 Senate hearings by Princeton University Professor Stephen K. Bailey is further illustrative of the purpose of 5 U.S.C. 4111:

[W]ithin the last year the Comptroller General has ruled that no Federal agency may share with a private institution the cost of an educational venture for a Government employee without running afoul of 18 U.S.C. 1914 [now section 209], one of the so-called conflict-of-interest statutes. In practice this means that if Princeton University wishes to grant free tuition to a Government employee who is on Government salary, it may not do so.

The conflict of interest statutes were passed with a perfectly reasonable intent: That Federal employees should not be subject to the possible corruption of having part of their salary or real income made available by a private enterprise which might have ulterior reasons for wanting to favor a particular employee or a particular agency. But surely a bona fide educational institution or foundation cannot be compared to a private interest which might have a direct concern with influencing executive agency behavior. (p. 119)

The statement by the National Civil Service League in the Senate hearings further pointed out:

Current rulings by the Comptroller General indicate the possibility of the conflict of interest laws applying to special grants from private sources for training of federal people if they continue to receive federal salaries. We believe the government has much to gain by working out plans to continue the salaries of individuals properly chosen, who may then receive special scholarships or awards, private sources, in approved programs, which will enhance their public service careers. (p. 6.)

The testimony cited above makes manifest that section 4111 is in fact an exemption to the conflict of interest statute from which the Commissioners are exempt, viz., 18 U.S.C. 209. It cannot be denied that the purpose of the section is to remove conflict of interest concerns from the acceptance of travel reimbursements or similar payments from outside organizations. And as the following exchange between the Commission Staff Director and GAO staff at the oral briefing on March 18 attests, GAO's claim that the Commission violated section 4111 does not involve any conflict of interest concerns:

LATHAM: Now, is there any question -- are you raising any allegation of conflict of interest in the acceptance of outside travel money?

GAO STAFF: No.

GAO Response

The Commission disagrees that the payment of Commissioners' travel and lodging expenses by other sources was an improper augmentation of its appropriation. It is of the opinion that the Commissioners are totally exempted from the applications of 18 U.S.C. § 209; therefore, the provisions of 5 U.S.C. § 4111 do not apply to Commissioners' travel and they may accept reimbursements personally. This argument holds that since the Commissioners accept the payments personally, the Commission itself does not receive any payment and, therefore, does not augment its appropriation.

This line of reasoning ignores the official nature of the government business that made reimbursement permissible under government travel orders. It also presumes that Congress intended for the Commissioners to limitlessly extend the scope of the Commission's official business through the unfettered resort to private sector travel reimbursements. We disagree.

While the Commissioners, but not the staff, are exempted from 18 U.S.C. § 209, that does not exempt their official travel from the strict application of 5 U.S.C. § 4111. In addition to, rather than as a result of any impact under 18 U.S.C. § 209, private contributions to the salary or expenses of a federal employee are improper as unauthorized augmentations. To the extent the private contribution replaces the employee's entitlement to government-paid expenses, it is a direct augmentation of the Commission's appropriation. To the extent that the payment supplements the government-paid expenses, it is an indirect augmentation of the Commission's

appropriation because it provides more funding for that activity than Congress appropriated by law. As a rule, all expenses of an activity must be borne by the appropriations made by Congress unless Congress specifically provides otherwise.

Thus, since the Commissioners are performing official duties for which they are entitled to reimbursement by the government, the fact that they personally may accept reimbursement from the private sector without being subject to 18 U.S.C. § 209 does not obviate the fact that the Commission's appropriation is augmented because it does not have to pay the expenses; and the fact that there is no other limitation on the scope of this private sector-supported official travel clearly thwarts the legislative intent of Congress.

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FISCAL YEAR 1985 APPROPRIATION EARMARKS

GAO has investigated the charge that the Commission improperly adjusted its overhead allocations to stay within budget activity earmarks imposed by Congress. The GAO concluded that it "cannot say that the Commission did not comply with the 1985 earmarks." The report, however, goes on to imply just the opposite. It suggests that the Commission included printing costs in Overhead rather than in Publication Preparation and Dissemination in a deliberate attempt to avoid exceeding its earmark for the latter activity. In fact, we have simply followed historical precedent (for which abundant documentation was provided to GAO).

GAO suggests further that the Commission is unable fully to account for \$421,000 it was permitted to shift from other budget activities to pay for a third FY 85 hearing on housing discrimination. Because this hearing was delayed until the second month of FY 86, the Commission returned \$112,000 to the Treasury at the end of FY 85. \$83,000 had already been incurred in direct salary charges and benefits attributable to the housing discrimination hearing. The remaining \$226,000, including \$51,000 in overhead, is attributable to other "hearings, legal analysis and legal services" budget activity operations.

GAO questions the \$83,000 salary figure, strongly suggesting that the Commission's General Counsel improperly changed his own and several others' time charges before responding to its questions about such salary allocations. Not so. When our figures -- projected salary costs in the Office of the General Counsel for the housing project -- seemed to the Director of our Office of Management to have been significantly underestimated, he asked the General Counsel to investigate. The General Counsel discovered that none of his own or his Deputy's quite extensive time spent preparing for the hearing had been charged to its account, and that no account number had been assigned to the project until quite late in FY 85. He thereupon revised (up from zero) his own office time charges

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and those of his Deputy. Three other staff members' time charges were amended, and an explanatory memo from the General Counsel was attached to all the sheets. The changed figures involved only working, in-house documents -- not official time cards or payroll records -- which did not form the basis for any actual payments, either of salaries, bills, or travel expenses. No impropriety, in short, was committed or contemplated. There is no missing money at the U.S. Commission on Civil Rights.

Moreover, the GAO admits that about two-thirds of the additional days charged to the housing project were those of the General Counsel and the Deputy General Counsel, charges which the GAO apparently does not dispute. Since the salary rates of those two officials were higher than those of the other employees involved, well over two-thirds of the personnel costs reattributed are not subject to question by the GAO. In addition, since the total reallocation of personnel costs added \$35,500 to a previous allocation of \$47,500 (for a total of \$83,000), the amount of reallocation questioned by the GAO is less than two-thirds of \$35,500, or roughly \$10,000.

In other words, the only bookkeeping inaccuracy that GAO could possibly allege involves the reattribution of approximately \$10,000 to a housing discrimination hearing -- against a budget activity of nearly \$2,000,000. While we believe the \$10,000 reattribution was proper, based on the General Counsel's observations of work performed in his office, this is not in any event a major point.

As with so many of these allegations, the GAO's final word on the subject is that "we cannot conclude that any violation of the Anti-Deficiency Act [the relevant statute] occurred."

GAO Response:

The Commission correctly reiterated our conclusion that we could not say that the Commission did not comply with the 1985 earmarks. However, a more complete quotation of our statement would tell why we arrived at that conclusion. The full conclusion reads as follows

"Because of the way that the earmarks were established, the discretion that the Commission has in allocating costs, and the poor condition of the Commission's budget records, we cannot say that the Commission did not comply with the 1985 earmarks."

We could not reach a more definitive conclusion because we could not determine whether printing costs should have been charged to overhead as was done in 1985, or to the Publications Preparation and Dissemination budget activity. We could not determine how the Commission treated printing costs in its budget proposal for fiscal year 1985 for the various reasons mentioned in our statement and attachment.

We acknowledged the fact, on page 72 of the attachment to our statement, that the Commission's Budget Officer told us that printing costs had been charged to overhead in previous years. However, neither the Budget Officer nor the Commission in its statement dispute that, initially, the Commission's fiscal year 1985 budget proposal included printing costs in the publications budget activity. The Budget Officer told us that charging printing costs to overhead would permit the Commission to stay within its 1985 appropriation earmarks.

The Commission stated that "abundant" documentation was provided to us showing that printing costs were included in overhead in past years. After requesting information on how overhead was treated in the past and reviewing the Commission's budget files for prior years, we found one package of hand written, and unsigned papers showing a breakdown of the various cost elements among the budget activities. The breakdown showed printing costs in overhead. The Assistant Staff Director for Administration, after the Commission's testimony, confirmed that this was the "abundant" documentation referred to by the Commission. We did not consider these documents adequate to establish prior years' treatment of these costs.

In regard to the Commission's statement on missing money, we did not say or suggest that money was missing. Rather, our point was that the Commission could not tell us how it spent \$175,000 of the appropriation for the Hearings, Legal Analysis, and Legal Services in the budget activity. We reported on page 69 of our attachment that, according to Commission officials, \$175,000 was spent on various other, unidentifiable, program activities within the budget activity. The Commission's response to our statement states only that the funds were attributable to "other" budget activity operations.

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LOBBYING ISSUES

The GAO inquired into whether certain letters or speeches by Chairman Pendleton violated any federal anti-lobbying restrictions. With respect to the letters (July 29, 1985, letters to Congressmen expressing views on a pending bill that would have required the imposition of employment quotas in the State Department's Foreign Service), the GAO concluded that the letters were perfectly proper and that no law was violated.

The GAO report does not state that any of the Chairman's speeches violated any anti-lobbying restriction either, although the report indirectly raises some question as to the propriety of the Chairman's speaking in opposition to the Civil Rights Restoration Act of 1985 (Grove City issue). The Chairman's remarks were consistent with an officially adopted Commission position. Moreover, as the GAO correctly acknowledges, there probably has never been a prosecution under the relevant anti-lobbying statute. Although the GAO contends that the speech in question "appears to represent the type of remarks the restrictions on lobbying by government officials attempt to limit," there is no support cited for this assertion. In fact, one of the major court cases construing the statute pointed out that the law's "obscurity may render impossible a precise judgment concerning the intent of Congress in passing the legislation." National Association for Community Development v. Hodgson, 356 F. Supp. 1399, 1403 (D.D.C. 1973).

In summary, the GAO found nothing of note on lobbying issues.

GAO Response:

We cannot agree with the Commission's summary statement that we found nothing of note on lobbying issues. The Commission correctly pointed out that we did not state that the Chairman's speeches violated the anti-lobbying statute. Because such a violation would be a criminal act, this determination would have to be made by the Department of Justice.

While the Commission feels the Chairman's remarks were consistent with a Commission-adopted position, our concern was with a different point. That issue was whether the Chairman, regardless of the Commission's position, violated 18 U.S.C. § 1913 by implicitly requesting members of the public to contact their elected representatives to defeat legislation pending in Congress.

In an apparent attempt to play down the significance of the anti-lobbying statute, the Commission cited a court case that characterized the statute as obscure. In National Association for Community Development v. Hodgson, the issue before the court was whether the plaintiffs could rely on a penal statute as a basis for instituting a civil cause of action. The court observed that the intent of Congress in passing the criminal statute was an important consideration. It then went on to point out that

"Unfortunately, in section 1913 plaintiffs have dusted off a statute which, because of its obscurity, may render impossible a precise judgment concerning the intent of Congress in passing the legislation. * * *.

"However, the fact that there is no specific statement of the intent of Congress does not necessarily mean that plaintiffs' case should fall for failure to meet the . . . criteria. Obviously, Congress intended to remedy some problem or further some cause, otherwise they would not have bothered enacting the statute. The fact that there is no specific statement of intent to be found in the legislative history of the bill of which section 1913 was a part, simply means that the court must extract congressional intent from analogous legislation and from the words of the statute itself."

The Commission did not show how the point made by the court in Hodgson, i.e., that it could not precisely discern congressional intent of the anti-lobbying statute, calls into question the conclusion we reached. Our conclusion, that the Chairman's statements appeared to represent the type of remarks the restrictions on lobbying by government officials attempt to limit, was based on our interpretation of the words of the statute itself. Our conclusion is unaffected by the absence of any specific statement of intent in the legislative history of 18 U.S.C. § 1913.

STATE ADVISORY COMMITTEES

GAO was requested to examine three issues with respect to the Commission's State Advisory Committees:

- (1) the rechartering of the SACs in 1985 and whether they met the standards of diverse membership set forth in Commission regulations;
- (2) the extent to which committee reports have been printed and released to the public and whether reports are still awaiting review by the Staff Director; and
- (3) whether the role of the committees has changed, including whether regional offices are allowed to provide assistance to the committees.

QUESTION ONE

While GAO does not directly respond to the question whether the Commission's rechartering of its state advisory committees complied with its regulations requiring that the composition of the committees be diverse, it implies that it has not at page 21 of its summary:

[T]he rechartered committees are now about 59 percent white vs. 49 percent previously and almost 65 percent male vs. about 54 percent in the previous charter. Committee chairs are now 72 percent white vs. 29 percent previously, and 92 percent of the chairs are male compared to 61 percent previously.

What, in fact, do the Commission's regulations require? The relevant language is contained in Section 703.5(b):

Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age and handicap status.

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Whether the composition of the SACs conforms to this regulation can be fairly well ascertained from GAO's own analysis of the SACs' composition:

Race

American Indian	4.4 percent
Asian American	2.7
Black	25.1
Hispanic	8.5
White	58.9
Other	.4

Religion

Catholic	22.5 percent
Jewish	20.9
Protestant	45.7
Other	10.9

Sex

Female	35.3
Male	64.7

Political Affiliation

Democrat	45.7
Republican	35.2
Independent	19.1

Age

Under 40	21.3
Over 40	78.7

Clearly, GAO should have concluded on the basis of these figures that the composition of the state advisory committees generally and to a reasonable extent complied with the requirements cited above in the Commission regulations. But rather than do so, GAO goes beyond what is required in the Commission's regulations and focuses on the composition of the SAC chairs. Its claims in that regard do a disservice to the well-qualified men and women who were appointed as chairmen; prompt the obvious suspicion that behind these claims is an attempt to discredit the Commission despite the absence of legitimate grounds for criticism; and raise the detestable insinuation that because, for example, a SAC chairman is white, he has no interest in protecting the civil rights of nonwhites.

Testimony given by Chairman Clarence Pendleton and Acting Staff Director Max Green on September 19, 1985, before the House Subcommittee on Civil & Constitutional Rights addressed the same issues raised by GAO with regard to the SACs. Rep. Don Edwards, Chairman of the subcommittee and one of four House Democrats who requested the GAO audit of the Commission, convened the hearing to examine the rechartering of the Commission's SACs. Emphasizing that the rechartering was conducted more mindful of the need for talent and diversity than a distorted view of digital justice, Chairman Pendleton testified:

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We examined each state committee individually and lent it balance so that all views could be represented. Many of the persons we appointed are long-time civil rights advocates who have become skeptical of race-conscious strategies; many are more favorably disposed to racial preferences. Our only litmus test was talent — informed citizens who understood and cared about civil rights in our country.

"Instead of judging our [SAC] chairmen by their race," Chairman Pendleton argued further,

look at them as individuals. Indeed Mr. [Edwards], if you have any objection to any one of our staff chairs, I would be interested in hearing of it. These men and women are, by no means, conformists. They were not chosen to toe the party line. Like the SACs, themselves, the views of our chairmen encompass the spectrum of debate on busing, comparable worth and the whole range of civil rights topics.

The requirement that the SACs be balanced in terms of the points of view represented is in fact mandated by the Federal Advisory Committee Act. The presence of differing points of view on the SACs is all the more important because of the debate that is taking place across the country on various civil rights policies. The SACs now reflect that debate. They did not reflect that debate before the rechartering.

GAO appears also to find fault with the manner in which names were placed in nomination for SAC membership:

Before the 1985 rechartering of the Commission's state advisory committees, the Commissioners had selected committee members based mainly on recommendations from the Commission's regional offices. . . . For the 1985 rechartering, the regions continued to make their recommendations, however, headquarters' officials controlled the nominating process. (p. 78)

The implication is that something was amiss in the rechartering process. In fact, there is no requirement in the Commission's regulations or elsewhere that the regional directors be the source of nominations for SAC membership.

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Commission headquarters should control the nominating process, and it is in its discretion whether to solicit recommendations for SAC members from the regional directors. Indeed, as GAO acknowledges, the regional directors initially recommended names for all of the 561 SAC positions. Headquarters accepted half of them, and substituted names for the other half. Commission staff in the Washington office would be remiss if they did not screen recommendations from the regional offices.

GAO Response:

In effect, the Commission's remarks maintain that the composition of the state advisory committees meets all legal and regulatory requirements and suggest that we should have reached the same conclusion. The Commission further defends the changes to the committees' composition in the 1985 rechartering by indicating that balanced points of view on various civil rights policies were not represented in the committees as they existed before the 1985 rechartering.

The Federal Advisory Committee Act requires that membership of all federal advisory committees be fairly balanced in terms of the points of view represented and the functions to be performed. Commission regulations also require committee membership to be reflective of the ethnic, racial, and religious composition of each state as well as representative with respect to sex, political affiliation, age, and handicap status.

According to the Commission's regulations, the characteristics of each committee are to be reflective of the various population groups in each state, not that the aggregate population characteristics of the nation be reflected in the committees as a whole. To determine whether the criteria were met would require an extremely judgmental assessment of the makeup of each of the 50 state committees, which we did not attempt to do. Thus, any conclusion on our part about committee membership was inappropriate. Moreover, as discussed in the attachment to our statement, our interviews with the regional directors and staff in 4 of the 10 Commission regional offices revealed no consensus among them on whether they believed the current committee membership met the regulatory criteria.

We believe it was important to the objective of our review to report the overall composition of the new committees as they were rechartered in 1985 in comparison to previous committees. Further, even though the Commission believes it was inappropriate for us to point out the significant changes in the composition of committee chairs in the 1985 rechartering, we believed this information also was relevant to the issue in view of the chairs' influence over committee operations.

We have no basis for comment on the Commission's statement that the committees did not reflect balanced points of view on civil rights policies before the 1985 rechartering. However, this statement represents an apparent change in the Commission's position on the earlier committees. In its 1983 and 1984 annual reports to the General Services Administration's Committee Management Secretariat, which is responsible for overseeing federal advisory committee activities, the Commission certified that the committees met the balanced point of view requirements.

We agree with the Commission's observation that its regulations do not prescribe how prospective committee members will be selected for nomination. In reporting that regional officials had less control over the nominations in the 1985 rechartering than in previous years, we did not suggest that any regulatory requirements were violated. Rather, our purpose was to compare the nomination process for the 1985 rechartering with the way nominations had previously been made. The Commission did not disagree with our explanation of how the process worked.

QUESTION TWO

GAO was also asked to "determine the extent to which committee reports have been printed and released to the public and whether reports are still awaiting review by the Staff Director" (p. 77).

GAO asserts in response that prior to fiscal year 1985, the SACs' primary method of advising the Commission was in formal, published reports. Beginning in fiscal year 1985, GAO further acknowledges, SACs began submitting to the Commissioners less formal briefing memoranda as an agreed-to alternative to the reports. SAC reports dropped in number between 1983 and 1985, according to GAO, from 36 in 1983 to 2 in 1985. In 1985, the GAO report notes, the SACs submitted 24 briefing memoranda.

The question regarding the number of SAC reports released by the Commission since its reconstitution by Congress is not unfamiliar. This same concern was raised by Rep. Edwards at the September 19, 1985, subcommittee hearing on the SAC rechartering. At that time, Chairman Pendleton testified:

I said, in my statement, that it took a year or so to recharter the SACs. . . . But these SACs have just been rechartered, and they're looking at the issues.

Acting Staff Director Max Green added:

I can tell you this, that very, very few reports have been turned down for publication, and that the majority will be approved as written or will be approved after revisions are made.

Following the Commission's September 19 testimony, Chairman Edwards sent a letter to Chairman Pendleton dated October 4, 1985, requesting that he respond to eight additional questions concerning the SACs. The Commission's response to that letter

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detailed the number of reports actually received from the SACs between January 1, 1984, and September 19, 1985, a 21-month period. Presumably GAO was given a copy of the Commission response, dated December 20, 1985, since shortly prior to that, GAO inquired of Commission staff when the Commission planned to submit its response to Rep. Edwards' staff, even though Commission staff had not told GAO staff that the Commission was drafting a response to a letter from Rep. Edwards concerning the SACs.

The Commission's response to Rep. Edwards lends support to Mr. Green's testimony that "very, very few reports have been turned down for publication." During the 21-month period between January 1, 1984, and September 19, 1985, thirteen reports or concepts were approved. Between September 19, 1985, and the date of Chairman Pendleton's response, three more concepts were approved, and seven more reports.

In response to Rep. Edwards' request that the Chairman detail any SAC reports or concepts returned to the SACs between January 1, 1984, and September 19, 1985, Chairman Pendleton replied that one report had been returned on legal sufficiency grounds

because it did not distinguish between de facto and de jure segregation, ignored Supreme Court rulings, and set forth unsupported findings. The State Advisory Committee decided to drop the report.

Chairman Pendleton further advised Chairman Edwards that four reports were returned to the SACs during the same 21-month period for jurisdictional reasons. Two of the four have been revised and subsequently were approved by the Commissioners for publication. Two concepts were returned during this 21-month period on jurisdictional grounds: one of the two has since been revised and approved.

Moreover, Commission staff provided GAO with more recent data with respect to the period since September 1985, which indicates that Commission headquarter's review and approval of SAC projects has continued to accelerate. Since September, the Staff Director has approved six more SAC project concepts and four more proposals. The Commission recently approved a report by the SACs in Iowa, Kansas, Missouri, and Nebraska on State enforcement of civil rights in education. Moreover, at its meeting last month, the Commission adopted a statement in support of efforts by the Wisconsin SAC to alleviate tensions

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between the Indian and non-Indian communities in Northern Wisconsin. All of this may have been what prompted GAO official Ron Cormier to testify at last month's hearing that the trend with respect to SAC projects has noticeably improved in recent months.

With the rechartering of the SACs completed (save one), the Commission expects that the quantity of reports and briefing memoranda will continue to increase. But, more importantly, their quality will also increase, since the rechartering has left in place very competent and concerned citizens who bring with them to the advisory committees differing perspectives on the many important civil rights concerns.

GAO Response:

We find nothing in the Commission's remarks that disagrees with our findings on state advisory committee products.

QUESTION THREE

The final question that GAO was directed to look into with respect to the SACs was "whether the role of the committees has changed, including whether regional offices are allowed to provide assistance to the committees" (p. 77). GAO asserts that according to "those 12 regional officials we interviewed" (p. 85), administrative assistance to the SACs by the regional offices has not changed with the rechartering in 1985. However, GAO goes on to say, "the nature of their involvement with the committees has changed" (p. 85):

Several officials indicated that the current committees are obtaining less input from regional staff in identifying issues. They said that they cannot express views to the committees as they have in the past; one said that he must get headquarters' approval before presenting ideas to the committees. Another said that he was directed by headquarters not to suggest projects or issues. Before the 1985 rechartering, according to several of the regional officials, regional staff exercised more control over the committees in project identification. (p. 85).

Without details of the discussions between GAO and regional officials, the accuracy of these comments cannot be determined. They are, however, very dubious, unless understood in the sense of an instruction to regional officials that they abide by the provisions of the Federal Advisory Committee Act, which prohibits Commission officials from inappropriately influencing the advice of its advisory committees, ensuring

that their advice instead be the result of the advisory committee's independent judgment. Certainly, however, regional representatives confer on a daily basis with SACs in their jurisdictions.

GAO included in its discussion of the SACs a section on SAC committee meetings. Two significant points are made: The first is that "[t]he total number of committee meetings increased during the fiscal year 1983 to 1985 time period" (from 261 in 1983 to 294 in 1985) (pp. 85-86). The second point is that SAC factfinding and conference meetings decreased during this period "from 12 in fiscal year 1983 to none in 1985" (p. 85).

Commission staff attempted to explain to GAO officials in the oral briefing that meetings directed toward factfinding, known also as community forums, are for budgetary purposes now included under the heading of planning meetings. GAO chose to ignore this explanation, and their report is wrong on this point. The various community forums held by the SACs during 1985 are a matter of public record, in information provided to the General Services Administration as mandated by the Federal Advisory Committee Act.

GAO Response:

The Commission apparently believes its regional officials' remarks to us suggest the regional officials must have misunderstood instructions given to them to avoid inappropriately influencing the advice of the committees. Nevertheless, it is clear from our interviews that regional officials believe the degree of their involvement with the committees in identifying projects and issues has lessened.

We cannot agree with the Commission's position that community forums, which we included in the planning meeting category, should have been categorized as factfinding meetings. The Commission's own definitions of the two types of meetings do not support this contention. Factfinding meetings are held

to obtain information on a topic under study by a committee. Community forums are designed to hear about problems at the local level and may be the basis for planning future studies. The Commission's administrative instruction, which has not been finalized, defines a community forum as

"An activity of a State Advisory Committee designed to hear from informed members of the community about civil rights problems in the local area. Results are summarized in a briefing memorandum to the Commissioners and may be the basis for planning future projects to examine selected issues in depth."

Moreover, as the Commission acknowledged, its budget requests included community forums in the planning meeting category.

USE OF COMMISSION AUTOMOBILE

GAO has investigated the allegation "that the former Staff Director used a Commission chauffeur and car to provide her with transportation between home and work." Although GAO was provided written and verbal statements by the former Staff Director and the employee then designated to drive the car -- statements that the agency vehicle was only used for Commission business ---its report claims to be unable to "verify that the Commission automobile was used only for official purposes while it was stationed at Commission headquarters or its warehouse." Trip logs covering at least part of a 22-month period, which GAO asserts are critical to its ability to judge whether use of the car was consistent with Federal regulations, were mistakenly thrown away by the designated driver six months after he left the Commission.

GAO has omitted two significant points from its report. First, during a March 18 briefing of Commission staff, GAO representatives were asked whether they had "any evidence that, in fact, Linda [Chavez] had home-to-work transportation" during her tenure as Staff Director. "No, we said that we don't," replied GAO's Paul O'Neill. No evidence exists that the Commission automobile was ever used for anything but official transportation. Second, as GAO was made aware, the Commission paid for a monthly parking sticker for Staff Director Chavez during her entire employment, which ought strongly to suggest that she always had ready access to her own home-to-work transportation, and did not require a chauffeur.

In late 1984, without the knowledge of the Staff Director, the Deputy Staff Director leased for the Commission a new Chrysler New Yorker and arranged for the creation of a new clerk position which was understood to involve certain chauffeur responsibilities. Upon learning of these actions, the Staff Director immediately ordered the Deputy Staff Director to nullify the lease, and the would-be clerk-chauffeur position was downgraded to a GS-303 clerk appointment. It was this clerk who operated the Commission's leased 1983 Ford Escort station wagon during the January-April 1985 period.

We note with regret that the Congressional prohibition against GAO's apprising the Commission of specific allegations against it has caused confusion and has necessitated additional work by both GAO and the Commission on this point in particular.

GAO Response:

We cannot agree with the Commission's assertion that we were provided written statements from the former Staff Director and driver that the automobile was used only for Commission business. The written statements they provided to the Assistant Staff Director for Administration at his request in December 1985, stated that the automobile was used for official purposes and cited examples of official trips. However, the statements did not specifically say the automobile was used only for official business. In an interview with the former driver in November 1985, we specifically asked whether he transported any Commission employee between home and work. He said he did not, but this point was not mentioned in his written statement to the Commission less than 1 month later.

The Commission stated that, in its view, our statement omitted two significant points about the automobile, (1) that we had no evidence that the former Staff Director had home-to-work transportation and (2) that the Commission paid for the Staff Director's monthly parking during her entire tenure. Given the circumstances, we feel we worded our statement properly. First, we could not conclude that the automobile was used only for official purposes because of the missing trip logs and the lack of a statement by the two former employees that the automobile was used only for official purposes. Second, the payment of monthly parking is not adequate evidence that home-to-work transportation was not provided just as the lack of paid parking would not be adequate evidence that home-to-work transportation was provided. Additionally, the allegation we were asked to examine -- that the former Staff Director used a Commission chauffeur and car for transportation between home and work -- did not specify whether the frequency was routine or occasional.

CONTRACTING TO SUPPORT THE COMMISSION'S MISSION

According to the GAO report, it has been alleged that contractors have been used by the Commission to perform work that should have been done by the Commission's career staff. GAO's extensive examination of work contracted by the Commission, including its cost and justification, however, reveals no evidence to support such a charge. As a result, GAO declines to repeat the allegation in its summary statement, and does not offer support for it in its documenting attachment.

GAO was further asked to determine whether mission-related contracts were subject to legally mandated competitive bidding. Federal acquisition regulations generally require competitive bidding for contracts exceeding \$25,000. Only two Commission contracts were this large during the period under GAO review, both of them in FY84. One was competitively bid. The other, a \$53,280 initial contract awarded to the National Committee Against Discrimination in Housing to prepare a nationwide directory of private fair housing agencies, was not competitively bid.

Federal acquisition regulations [48 C.F.R. subparts 6.3 and 15.5] set forth the criteria that permit noncompetitive contracting via unsolicited proposals, as in the case of this contract. The National Committee Against Discrimination in Housing did, in fact, as its official Commission file clearly indicates, submit an unsolicited proposal that was, by the terms of these regulations, sufficiently unique and beneficial to our agency's mission. The Committee, moreover, was the one responsible source that could perform the task described in its proposal, had prepared the proposal without government supervision, and had received a favorable comprehensive evaluation. The Commission's Solicitor, who was the contracting officer at the time, has confirmed that all criteria necessary to establish the eligibility of this proposal for noncompetitive bidding were met.

The acquisition regulations also require that files for such contracts contain a reference to the specific authority under which they are awarded. In this case, the Commission neglected to cite in the contract itself or in a memorandum for the file the relevant legal authority [41 U.S.C. section 253 (c)(1)] and applicable Federal regulations [48 C.F.R. subparts 6.3 and 15.5]. There was no violation of law or regulation in the awarding of this contract. A clerical error resulted in the omission of two citations from a standard contract.

GAO Response:

We cannot agree with the impression that the Commission's statement attempts to convey that the official Commission file for the fair housing agency directory contract "clearly indicates" that all regulatory criteria for awarding a noncompetitive contract were met. The regulation allows the awarding of a negotiated noncompetitive contract when an unsolicited proposal is innovative or unique, independently originated and developed by the offeror, prepared without government supervision, could benefit the agency's research or other mission responsibilities, receives a favorable comprehensive evaluation, and facts and circumstances exist to preclude competition.

The only evidence we found in the contract file concerning the awarding of the contract was a memorandum from the Staff Director to the Commission's Solicitor stating that she had "received an unsolicited request for a contract", and that "the proposed directory would serve a useful purpose." The memorandum also stated the Staff Director would approve the preparation of a contract if contracting regulations could be met. As discussed in our statement, the Solicitor informed us that all regulatory requirements were met. There was no other evidence of compliance in the contract file.

APPENDIX 2

NEILL, MULLENHOLZ SHAW & SEEGER

ATTORNEYS AT LAW

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

900 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

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(202) 463-8400

TELEX:

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NEIMUL

July 24, 1986

The Honorable Don Edwards
Chairman, Subcommittee on
Civil and Constitutional
Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515-6220

Dear Congressman Edwards:

We have been retained by Mr. Bert Silver to represent him concerning testimony presented before your subcommittee by Mr. J. Al Latham, Staff Director and Mr. Morris Abram, Vice Chairman of the U.S. Commission on Civil Rights. The testimony was presented on April 22, 1986, and dealt with a March 25, 1986, General Accounting Office Report on the Operations of the United States Commission on Civil Rights.

Portions of the statements by Mr. Latham and Mr. Abram cast unwarranted aspersions on Mr. Silver's record as the career Assistant Staff Director for Administration, a position he held for over 16 years. The statements concerning our client were not only unwarranted, but were incorrect and contained errors of facts. Mr. Silver attempted, through the Commission's administrative grievance procedure to persuade Mr. Latham and Mr. Abram to correct the record. That request was denied without benefit of a hearing. (Copies of the grievances and the Commission's responses are enclosed.)

The Honorable Don Edwards
Page 2

July 24, 1986

Having failed to gain relief through use of the Commission's administrative procedures, and having been denied due process within the Agency, we now respectfully request that your subcommittee re-open the hearings and call Mr. Silver as a witness. At such a hearing Mr. Silver would have the opportunity to present testimony which would clear his reputation, as well as provide factual information to the Committee so that the public record would be accurate.

Sincerely,



G. Gerry Shaw

Attachments:
2 Grievance letters
2 Agency responses

Attachment I

NEDLI M. GILLENHOLZ SHAW & SIEGER

ATTORNEYS AT LAW

A PARTNERSHIP OF PROFESSIONAL CORPORATION

1515 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005TELEPHONE
202 462-4344
TELEX
279305
NEIMUL

April 28, 1986

Mr. J. Al Latham, Jr.
Staff Director
U.S. Commission on Civil Rights
Room 800
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Dear Mr. Latham:

We have been retained by Mr. Bert Silver to represent him in attempting to resolve the grievance contained in his memorandum to you of April 22, 1986. This grievance is over the misleading reference to him on pages 11 and 12 of your April 22, statement submitted to the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives. Mr. Silver's grievance constitutes an attempt to have this matter resolved through the informal procedure contained in the Commission's Administrative Instruction 2-7, Grievance Procedure. Attached are documents which support the statement made in Mr. Silver's grievance, and to which he referred in the grievance letter.

We wish to meet with you on behalf of Mr. Silver to resolve this grievance as quickly as possible. The resolution we seek is submission of a letter to the Subcommittee on Constitutional Rights clarifying your statement (on pages 11 and 12 of your testimony) that GAO was told of:

"the transfer during the first half of FY 1985 of the then Assistant Director for Administration (also a career employee). Since these personnel actions were taken no new problems with financial record keeping have been brought to our attention, and the new budget officer, and Assistant Staff Director for Administration (both career civil servants) have been working to clear up the residue of past problems . . ."

was not intended to cast aspersions upon Mr. Silver; that his reassignment by Linda Chavez had nothing to do with the financial record keeping problems cited by GAO; that Mr. Silver's

Mr. J. Al Latham, Jr.
Page 2

April 28, 1986

reputation for honesty, integrity and propriety is of the highest order, and was not meant to be sullied; and that there was no intent to impugn his outstanding record as a career manager and civil servant which spans 32 years. In addition, we wish copies of your letter to the Subcommittee to be sent to the GAO and the eight Civil Right Commissioners, and to be released along with a press release to the media, so that the tarnish on Mr. Silver's reputation can be removed.

We look forward to hearing from you to set a time for our meeting at your earliest convenience.

Sincerely,



Jerry Shaw

Enclosure

GJS/dmg

Attachment 2

NEILL MULLENHOLZ SHAW & SEEGER

ATTORNEYS AT LAW

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

900 SEVENTEENTH STREET N.W.
WASHINGTON, D.C. 20006TELEPHONE
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NEIMUL

May 2, 1986

Mr. J. Al Latham, Jr.
Staff Director
U. S. Commission on Civil Rights
Room 800
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Subject: Grievance Over Statements
of Morris Abram,
Vice-Chairman, USCOCR

Dear Mr. Latham:

We have been retained by Mr. Bert Silver to represent him in a grievance over his concern and dissatisfaction about the testimony submitted by Vice-Chairman Abram to the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, House of Representatives, on April 22, 1986. This grievance is being submitted in accordance with the provisions of the Commission's Administrative Instruction 2-7, entitled Grievance Procedure. Since we are not aware of a process available to submit a grievance directly with the Vice-Chairman, we are submitting the grievance to you as Staff Director, the highest administrative level available within the Commission.

On April 22, 1986, Vice-Chairman Morris Abram of the Commission on Civil Rights delivered testimony to the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee. On pages 3 and 4 of the testimony, Mr. Abram stated as follows:

"However, with respect to the matters in the GAO report, all I can say is that I well remember the day when former Staff Director Chavez told me that she had just learned of the existence, after weeks in office, of an official Commission car which had been kept

Mr. J. Al Latham
Staff Director
Page 2

May 2, 1986

concealed from her by the staff of the agency. The management responsible for that type of irregularity has been removed, and extensive subsequent efforts have been made by the new Assistant Staff Director for Administration, Albert Maltz, to impose tighter procedures at the Commission."

Since Mr. Bert Silver had served as Assistant Staff Director for Administration for many years prior to the appointment of Mr. Maltz, and since Mr. Silver had been transferred from that position by Linda Chavez, the reference to him in Mr. Abram's testimony is clear and unmistakable. This is especially true in light of other testimony submitted on the same day by the Commission which also made disparaging references to Mr. Silver, and which is currently the subject of another grievance.

The allegation of Mr. Abram, made by implication in the statement, that Mr. Silver was responsible for purposefully withholding information from Director Chavez concerning Commission automobiles is without support. The allegation that Mr. Silver was removed from his position because of the alleged irregularity of withholding information about agency automobiles from Director Chavez is also without support.

The resolution we seek is submission of a letter to the Subcommittee on Civil and Constitutional Rights, Judiciary Committee, U. S. House of Representatives by Vice-Chairman Abram stating that he has no evidence to support his statement that Mr. Silver had concealed information from Director Chavez about an official Commission car; that he has no evidence to support his statement that Mr. Silver "as management" was responsible for that type of irregularity and that he had been "removed" for that type of "irregularity"; that Mr. Silver's reputation for honesty, integrity and competence is of the highest order, and that he has no information or evidence that would lead to any other conclusion; and that he did not intend to impune Mr. Silver's outstanding record as a career manager and civil servant, which record spans 32 years of government service. In addition, we wish copies of such letter to be sent to the General Accounting Office, the other seven Civil Rights Commissioners and released to the media, so that the tarnish on Mr. Silver's reputation can be removed.

Mr. J. Al Latham
Staff Director
Page 3

May 2, 1986

We look forward to hearing from you to set a time for a meeting on this grievance at your earliest convenience. We are sending a copy of the grievance to Mr. Abram for his information, and we would hope that he also would be present at such a meeting concerning the grievance.

Sincerely,



G. Jerry Shaw

GJS/mlp

cc: Mr. Morris B. Abram
Vice-Chairman
U.S. Commission on Civil Rights
Room 800
1120 Vermont Avenue, N.W.
Washington, D.C. 20425

DESIGNATION OF REPRESENTATIVE

I hereby designate the firm of Neill, Mullenholz, Shaw and Seeger to act as my representative in any and all matters related to my employment with the Commission on Civil Rights. I understand that the firm is authorized to act on my behalf, and I expressly request that all correspondence in these matters be directed to them with a copy to me.

Date

4/27/86Bert Silver

NEILL, MULLENHOLZ, SHAW & SEEGER

ATTORNEYS AT LAW

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

900 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20006TELEPHONE
(202) 463-5400

TELEK:

879066

NEINUL

June 18, 1986

Mr. Al Latham, Jr.
Staff Director
U. S. Commission on
Civil Rights
1121 Vermont Avenue, N.W.
Room 800
Washington, D.C. 20425

Re: Formal Grievance of Bert Silver

Dear Mr. Latham:

This letter constitutes the formal grievance of our client, Bert Silver stemming from the two informal grievances filed by Mr. Silver on April 28, 1986, and May 2, 1986. This grievance is filed pursuant to Administrative Instruction 2-7 and 5 CFR Part 771.

Although both informal grievances were filed with you, you delegated your authority to hear the grievance to then General Counsel James B. Mann. Mr. Mann met with Mr. Silver and his representative on several occasions and issued a memorandum to the record dated June 10, 1986, pursuant to §8.04 of Administrative Instruction 2-7. Mr. Silver received that memorandum on June 11, 1986. Thus, Mr. Silver has five working days from that date, or until June 18, 1986, to file this formal grievance with you.

The subject of this grievance concerns, in part, the matter involving former Vice-Chairman Abram. Furthermore, although you delegated your authority in the informal grievance, you were the official with responsibility to resolve that matter. For these reasons, we believe the grievance deciding official should be Chairman Pendleton. We recognize that Chairman Pendleton has delegated all authority for day-to-day management of the Commission to the Staff Director. However, we contend that the Commission has an obligation to address any matter of concern of an employee covered by the grievance procedure. The regulations published by the Office of Personnel Management at 5 CFR Part 771 clearly establish this agency obligation. Accordingly, we contend that continued delegation to you for further consideration of Mr. Silver's grievance is inappropriate.

Mr. Al Latham, Jr.,
Staff Director
Page 2

June 18, 1986

We also contend that consideration of this grievance requires the appointment of an Administrative Law Judge from outside the U. S. Commission on Civil Rights to serve as fact finder in resolving the factual disputes contained herein. As explained below, factual disputes clearly exist. Thus, both your regulations and the OPM grievance regulations require that an impartial fact finder be appointed. Section 8.07 of Administrative Instruction 2-7 specifically authorizes the appointment of a fact finder from outside the agency. Our position is that the only credible way to resolve this grievance is to have such an impartial and independent fact finder appointed.

As mentioned above, the subject of this grievance involves two distinct matters concerning Mr. Silver. We have attached at Tab A copies of the informal grievances and their enclosures explaining our position. We incorporate these informal grievances herein by reference. Further, the following discussion explains our position in this formal grievance and responds to the assertions by Mr. Mann in his June 10, 1986, memorandum for the record concerning those informal grievances.

A. April 28, 1986, Informal Grievance Concerning Testimony by Al Latham, Jr.

The subject of this informal grievance was the testimony you presented on April 22, 1986, to the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives. In responding to the informal grievance, Mr. Mann specifically found that Mr. Latham's testimony appeared to be factually accurate, and that Mr. Silver's grievance rested solely on making unreasonable inferences from this testimony. For these reasons, Mr. Mann found the grievance to be without merit.

In response, we contend that the documents we attached to our informal grievance clearly establish that Mr. Latham's testimony was not factually accurate. The clear implication in the testimony that is the subject of this grievance was that Mr. Silver was responsible for problems with financial record-keeping and the other problems addressed in the GAO report. The GAO report addressed the difficulty with the appointment of consultants and problems with financial recordkeeping with respect to earmarks. The documents we submitted with the informal grievance establish that Mr. Silver was diligent in his responsibilities in to addressing these problems. Mr. Silver

Mr. Al Latham, Jr.,
Staff Director
Page 3

June 18, 1986

recognized the difficulties pointed out in the GAO report and promptly brought them to management's attention. Accordingly, Mr. Silver can in no way be found to have been responsible for these actions as implied by your testimony.

That testimony leaves no reasonable implication other than the one discussed above. Accordingly, Mr. Silver's reputation and career have been severely damaged. Steps should now be taken to correct this injustice.

As relief, we request that you sign a letter stating that your testimony was not intended to cast aspersions upon Mr. Silver, that his re-assignment by Linda Chavez had nothing to do with the financial record keeping problems cited by GAO; that Mr. Silver's reputation for honesty, integrity and propriety is of the highest order and was not meant to be sullied; and that there was no intent to impune his outstanding record of 32 years service as a career manager and civil servant. We ask that this letter be sent to the Subcommittee on Civil and Constitutional Rights and that a copy of it be mailed to the GAO and the Civil Rights Commissioners, accompanied by a press release to the media.

B. May 2, 1986 Informal Grievance Concerning the Statement by Mr. Abram.

The May 2, 1986, informal grievance concerned testimony by Mr. Abram, formerly Vice-Chairman of the U. S. Commission on Civil Rights. Mr. Abram referred to an allegation concerning Mr. Silver's alleged improper concealing of information from then Staff Director Linda Chavez. Mr. Abram specifically stated that Mr. Silver had been removed for this irregularity.

In response to our grievance, Mr. Mann denied the applicability of this grievance to Mr. Abram. As we mentioned above, the agency is responsible for addressing an employee's grievance with respect to any matter concerning employment over which the agency has control. This matter is not specifically excluded from the grievance procedure but is beyond the full and immediate control of the current Staff Director since it involves the former Vice-Chairman.

Mr. Al Latham, Jr.,
Staff Director
Page 4

June 18, 1986

Our contention is that this may not result in a failure to consider the grievance. Certainly, the grievance could be decided by the Chairman. Moreover, certain actions are within your control, such as correcting the obvious misstatements made by former Vice-Chairman Abram in his testimony.

The documents we attached at Tab B establish that Mr. Silver did not intend to hide any information from Linda Chavez. The explanation by Mr. Silver shows that he properly informed her about the automobile in question. Documents had previously been submitted to Ms. Chavez setting forth information about the Commission's automobiles. Also, the statement by Vice-Chairman Abram that this incident occurred a few weeks after Ms. Chavez's appointment is obviously inaccurate. The documents clearly show that Ms. Chavez's allegation occurred approximately one year after she began her employment.

Again, Mr. Silver has been made the scapegoat by a high level Commission official. The damage to his reputation is real and unjustified. We contend that the U. S. Commission on Civil Rights now has an obligation to Mr. Silver to correct the record. Accordingly, as relief for this portion of the grievance we request that the Commission submit a letter to the Subcommittee on Civil and Constitutional Rights stating that no evidence supports the testimony by former Vice-Chairman Abram that Mr. Silver had concealed information from Director Chavez about an official Commission car; that no evidence exists to support the statement by Mr. Abram that Mr. Silver "as management" was responsible for that type of irregularity and that Mr. Silver had been "removed" for that type of "irregularity"; that Mr. Silver's reputation for honesty, integrity and competence is of the highest order, and that he has no information or evidence that would lead to any other conclusion; and that Mr. Abram did not intend to impugn Mr. Silver's outstanding record as a career manager and civil servant, which record spans 32 years of government service. We also ask that copies of this letter be sent to the GAO, the other Civil Rights Commissioners and that a copy be released to the media.

Mr. Al Latham, Jr.,
Staff Director
Page 5

June 18, 1986

CONCLUSION

For the foregoing reasons, we request that you grant the relief outlined above. The obvious factual disputes should be resolved by an independent fact finder. We ask that this fact finder's report be relied upon by you in resolving this grievance.

Respectfully submitted,


G. Jerry Shaw
William L. Bransford

Enclosures

WLB/mlp



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Fall
[Signature]

July 17, 1986

MEMORANDUM

From: Staff Director

To: Mr. Bert Silver, Assistant Staff Director for Regional Programs

Subj: Final Agency Decision on Administrative Grievance dated April 28, 1986

1. By letter dated April 28, 1986, you submitted a grievance under the administrative procedure charging that, on April 22, 1986, I made certain unwarranted remarks concerning your employment with the U. S. Commission on Civil Rights in testimony presented to the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, House of Representatives.
2. By letter dated May 16, 1986, I informed you of my decision to treat the April 28, 1986, submission as an "informal" grievance. The matter was not resolved to your satisfaction during informal processing and is now before me for a final agency decision. The administrative grievance procedure does not provide for a final agency decision by anyone other than the Staff Director.
3. I conclude that the matter raised by your April 28, 1986, grievance is outside the scope of the administrative grievance procedure. At issue in your grievance are statements made in Congressional testimony. The scope of the administrative grievance procedure cannot be extended to testimony before Congress. Accordingly, your grievance is hereby rejected as outside the scope of the administrative grievance procedure.
4. Even if your grievance were within the scope of the administrative grievance procedure, I find after careful consideration that your contentions are not sustained by the evidence. Accordingly, your grievance is hereby also denied on its merits.
5. In accordance with Administrative Instruction 2-7, this is the final agency decision on your April 28, 1986, grievance. The Staff Director's decision is final and not subject to further review.

J. Al Latham, Jr.
J. AL LATHAM, JR.

Copy to:
Mr. G. Jerry Shaw, Esq.



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

July 17, 1986

MEMORANDUM


From: Staff Director

To: Mr. Bert Silver, Assistant Staff Director for Regional Programs

Subj: Final Agency Decision on Administrative Grievance dated May 2, 1986

1. By letter dated May 2, 1986, you submitted a grievance under the administrative procedure charging that, on April 22, 1986, Vice Chairman Morris Abram made certain unwarranted remarks concerning your employment with the U. S. Commission on Civil Rights in testimony presented to the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, House of Representatives.
2. By letter dated May 16, 1986, I informed you of my decision to treat the May 2, 1986, submission as an "informal" grievance. The matter was not resolved to your satisfaction during informal processing and is now before me for a final agency decision. The administrative grievance procedure does not provide for a final agency decision by anyone other than the Staff Director.
3. I conclude that the matter raised by your May 2, 1986, grievance is outside the scope of the administrative grievance procedure. First, actions of Commissioners such as those here at issue are not "subject to the control of agency management" (i.e., the Staff Director) within the meaning of Administrative Instruction (AI) 2-7, section 3.01. Secondly, at issue in your grievance are statements made in Congressional testimony. The scope of the administrative grievance procedure cannot be extended to testimony before Congress. Accordingly, for these reasons, your grievance is hereby rejected as outside the scope of the administrative grievance procedure.
4. Even if your grievance were within the scope of the administrative grievance procedure, I find after careful consideration that your contentions are not sustained by the evidence. Accordingly, your grievance is also hereby denied on its merits.

5. In accordance with AI 2-7, this is the final agency decision on your May 2, 1986, grievance. The Staff Director's decision is final and not subject to further review.



J. AL LATHAM, JR.

Copy to:
Mr. G. Jerry Shaw, Esq.

APPENDIX 3

11705 Devilwood Court
Potomac, Maryland 20854
August 18, 1986

The Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515-6216

Dear Congressman Edwards:

As suggested by you in your August 11, 1986 letter to G. Jerry Shaw, my attorney, I am submitting a written statement to correct statements made about me at the April 22, 1986 subcommittee hearing.

Sincerely yours,


Bert Silver

cc: G. Jerry Shaw

Mr. Chairman and members of the committee, I am the Assistant Staff Director for Regional Programs at the U.S. Commission on Civil Rights. From September 1968 until December 1984, I served as the Assistant Staff Director for Administration.

I appreciate the opportunity you have given me to correct the erroneous references concerning me made before this Subcommittee in the statements of Morris Abram and J. Al Latham on April 22, 1986. I previously sought relief by filing grievances within the structure of the Civil Rights Commission's administrative grievance procedure. However, relief was not granted. The Staff Director declined to meet with me and did not respond to my request that an administrative law judge be appointed as a fact finder and that the Chairman of the Commission decide the grievance since it was filed against the vice chairman and the staff director. Instead the Staff Director, against whom the grievance was filed, took on the role of investigator, judge and jury and ruled that my grievance was outside the scope of the grievance procedure. Even though there were substantial issues of fact, he refused to allow fact-finding to take place. Instead, he simply dismissed my case, saying it had no merit.

I would like to first deal with the April 22 testimony of Mr. Abram, the vice chairman of the U.S. Commission on Civil Rights who stated:

However, with respect to the matters in the GAO report, all I can say is that I well remember the day when former Staff Director Chavez told me that she had just learned of the existence, after weeks in office, of an official Commission car which had been kept concealed from her by the staff of the agency. The management responsible for that type of irregularity has been removed, and extensive subsequent efforts have been made by the new Assistant Staff Director for Administration, Albert Maltz, to impose tighter procedures at the Commission.

On June 19, 1986 my attorney sent Mr. Abram proof that whatever Ms. Chavez may have told him about "concealment" of an official car, which Mr. Abram repeated in Congressional testimony, was not true. We invited Mr. Abram to set the record straight. He has not responded to our request. I am, therefore, providing, in attachments 1 through 4, the evidence that Ms. Chavez knew, or should have known, that the Commission had leased vehicles, one of which was used for delivering publications from the warehouse, and that clearly this information was not concealed from her. As is also clear, the event Mr. Abram described did not take place "weeks" after Ms. Chavez took office, as he stated he could "well remember", but a year following her arrival.

2.

The automobile incident was one of several which I believe Ms. Chavez used as a pretext to display her pique. I believe her unhappiness with me was caused by my attempts to dissuade Ms. Chavez from acting in ways, in both fiscal and personnel matters, which I sincerely believed violated regulations as well as Congressional intent. Mr. Abram may have been misinformed by Ms. Chavez concerning particular incidents. Even if he was, he should have attempted to substantiate the information before repeating improper allegations about me before the Subcommittee. He clearly had at least a moral obligation to authenticate hearsay information before using it publicly to impugn my integrity and professionalism.

Mr. J. Al Latham's statement of April 22, 1986, submitted to this subcommittee, also included innuendo about my performance. Mr. Latham, the Staff Director of the U.S. Commission on Civil Rights, said:

GAO...was also told of the transfer during the first half of FY 1985 of the then Assistant Staff Director for Administration (also a career employee). Since these personnel actions were taken, no new problems with financial record keeping have been brought to our attention, and the new budget officer, and Assistant Staff Director for Administration (both career civil servants) have been working to clear up the residue of past problems...

Had Mr. Latham asked me, I would have told him that the Commission's difficulties cited by GAO were for the most part caused by some Civil Rights Commission political appointees refusal to take my advice or the advice of other career staff, concerning the proper way to handle the Congressionally imposed fiscal earmarks, fiscal controls, small purchasing, and the hiring of consultants and temporary employees. Attachments 5 through 15 consist of memoranda from me to members of the Commission's hierarchy which were largely ignored. I ask you to especially note attachment 9, a memorandum from me citing the misuse of a consultant. Mr. Latham, in his statement, cited the finding and correction of this misuse as an agency accomplishment. I believe that if the advice of experienced career professionals had been accepted when offered, GAO would not have been able to point to many of the other deficiencies it finally cited.

There is an implication in Mr. Latham's statement that my transfer by Ms. Chavez was an adverse reelection on my performance of the duties concerning fiscal record keeping. That is clearly not reflected in attachments 16 through 18 which consist of evaluations of, and comments on, my work by Ms. Chavez and her deputy, all of which are complimentary. Mr. Latham's implication that my performance caused the problems, when in

3.

truth I was transferred for calling the problems to my superior's attention, is a classic case of scapegoating.

As further evidence that administrative practices and procedures, including fiscal matters, were in excellent condition when I was Assistant Staff Director for Administration, I refer you to an August 17, 1984 letter from the Acting Inspector General of GSA to Ms. Chavez (attachment 19). This constitutes the final report of GSA's audit of the Commission, consists of less than four pages and cites no major problems, as Mr. Marion A. Bowden, the Deputy Staff Director, noted in his August 31, 1984 response (attachment 20). I can also unequivocally state that, when I was transferred in December 1984, the fiscal records were intact, the vouchers for Commissioners and their assistants were in their binders, accurate and comprehensive Status of Funds reports were issued to Commissioners and Executive Staff on a monthly basis and Project Accounting Reports, showing how much was spent on each project, were prepared and distributed on a quarterly basis. The latter were accurate and not altered to distort time spent on any hearing or project.

Mr. Latham's statement that since my transfer in December 1984 "no new problems with financial record keeping have been brought to our attention" is clearly not accurate as shown by the following:

1. GAO's finding that the Commission can not say how \$175,000, which was supposed to be used for a third hearing in FY 1985, was spent.
2. GAO's assertion that records for time charged to a hearing held in early FY 1986 were altered.
3. An audit report of approximately 30 pages from the GSA Assistant Inspector General, dated February 28, 1986, dealt with deficiencies in FY 1985, after I was transferred.
4. GAO's finding that vouchers, which had been available during my tenure, backing up time worked by Commissioners and their assistants were currently missing.
5. GAO's assertion that printing costs were charged to overhead in FY 1985.

In conclusion, I must say that Mr. Latham's reference to me in his statement of April 22 was personally dismaying. Mr. Latham was not with the Commission during the period covered by the GAO audit. He failed to consult me or any of the other career executive staff members who were with the Commission when

4.

Ms. Chavez arrived in August 1983 (with the exception of the Solicitor) about the facts. I do not know how Mr. Latham was able to determine the accuracy of the GAO findings without discussing them with many of the principals involved. Had he discussed the findings or his proposed response with me, I certainly would have given him the benefit of the information I had.

Thank you for this opportunity Mr. Chairman. At least, with the inclusion of my statement in the record, the facts are now available for all to examine.

UNITED STATES COMMISSION ON CIVIL RIGHTS
Attachment 1

Washington, D. C. 20425



STAFF DIRECTOR

DATE: August 16, 1984
 REPLY TO
 ATTN OF: ✓ OSD
 SUBJECT: Official Car
 TO: Bert Silver

On numerous occasions; beginning last August, I have inquired whether or not this agency owns or leases an official car. On all such occasions I have been told that the agency does not own or lease a car. The Chairman has made similar inquiries with the same results. My inquiries have been directed to you and to the previous Acting Staff Director, John Hope. I have been told that at one time the agency did in fact lease cars for official use, but due to budgetary reasons the procedure was abandoned. I have raised such questions because the Chairman and I make frequent appearances outside the Commission offices. It is sometimes exceedingly difficult--nigh unto impossible--to travel by public transportation, particularly when the Chairman or I are accompanied by members of the staff.

Today, as I was driving to the office in my own car, after having made an appearance on behalf of the agency on Capitol Hill and finding it exceedingly difficult to find parking there, I found myself in traffic on 14th Street behind a black Ford station wagon bearing an insignia inside the left rear windshield "Official Vehicle of the U.S. Commission on Civil Rights." The car bore a D.C. temporary tag number DX 39146 with an expiration date of August 22, 1984. You can imagine my surprise after having been told the agency has no official vehicle.

I would like, by COB today, a full disclosure of information that has obviously been denied me and will consider what action to take after you have explained this matter.


 LINDA CHAVEZ

cc: Marion Bowden



Attachment 2

UNITED STATES
COMMISSION ON
CIVIL RIGHTS1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: August 16, 1984
REPLY TO: OM
ATTN OF:
SUBJECT: Agency Car
TO: Linda Chavez
Staff Director

I, of course, do not know the contents of any conversation you had with John Hope but I do remember you asking me about an official car for the use of the Staff Director sometime after you came on board. I told you that we did not have an official car for the Staff Director. I also told you that John Buggs had used one which was driven on a part-time basis by a mailroom employee. I also told you that Louis Nunez continued that arrangement but had so much difficulty with it that he removed the employee and cancelled the lease. Since that time the Staff Director has used taxis for travel around the city and has not had an official car. You seemed to accept that explanation and I do not recall you questioning me about it further.

The station wagon you saw on 14th street today is used by our warehouse located in Alexandria to pick up mail and to pick up and deliver publications for the main building and other points in the city. The "Official Vehicle" sign is, I believe, used in an attempt to avoid parking tickets which is not always successful.

Three regional offices have GSA or leased vehicles which are used by field representatives to attend SAC meetings and other such functions in nearby states. They use leased cars because some regional offices find it cheaper and more convenient to use vehicles rather than commercial transportation for short trips.

I am sorry that you feel I have denied you information. I am not and have not been in the habit of denying information to any of the five Staff Directors for whom I have worked; I believe this is the first time I have ever been accused of that.

If you want any additional information, I would be pleased to discuss this with you at your convenience.



BERT SILVER
Assistant Staff Director
for Administration

cc: Marion Bowden



Attachment 3

UNITED STATES
COMMISSION ON
CIVIL RIGHTS1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: October 7, 1983

REPLY TO
ATTN OF: OM

SUBJECT: Close Down Timetable

TO: Linda Chavez
Staff Director

As you requested we have prepared a timetable of actions that would have to be taken if in fact the Commission had to close down on November 29th, which is 60 days after the expiration date of September 30th.

We have assumed that funds, either through a continuing resolution or in an appropriation, would continue to be available until November 29th. All of the Commission staff would, therefore, continue working on the final report, the projects in progress or other close down activities until November 29th. We have made no plans about what would happen to the Commission's unfinished program projects after the close down date.

We propose the following close out schedule covering: personnel, property, fiscal, procurement, contracts and documents.

October 24

Equipment and furniture owned by the Commission would be declared excess to GSA. GSA would prepare to dispose of the equipment and furniture following the close down date.

The Personnel Office would begin counseling employees and explaining retirement options, health benefits, life insurance, the displaced employee program, reemployment procedures, etc.

Contact will be made with the records center to arrange for the retirement of agency records. Information would be sent to program office staff on how to handle files. Program staff would begin packing and indexing files for shipment to a records center.

October 25

The Superintendent of Documents of the Government Printing Office (GPO) would be contacted to establish which publications

stored in our warehouse GOP would want. Those GPO does not want would have to be disposed of as the Commission sees fit.

October 28

GSA would be informed that the space in the central and regional offices will be vacated and returned to GSA after November 29th.

The GSA motor pool and the companies from which we lease automobiles would be informed that all vehicles will be returned on November 29th and leases cancelled.

GSA payroll in Kansas City would be contacted and instructions obtained on how to close out time and attendance activity.

Laborers would be brought in to begin packing the Commission library books to be turned over to the Library of Congress.

October 31

Personnel Office would enroll employees in the Office of Personnel Management's Displaced Employees Program and the Volunteer Interagency Placement Program.

November 1

The United States Postal Service would be informed about the close down. Arrangements would be made to handle mail sent to the agency after the close down.

The contractors holding contracts would be notified of the close down, told to continue to work on the contracts until November 29th but told to prepare termination claims.

November 14

The Personnel Office would begin to type Form 50's terminating staff.

All outstanding training actions would be cancelled.

Any orders for goods and services not received would be cancelled. Receiving reports for goods or services received but not paid for would be sent to GSA to provide it with authority to make payment when billed.

November 21

The agency personnel records would be prepared for storage.

November 22

All leases for equipment would be cancelled.

Termination financial reports from covered individuals would be turned in to the Solicitor.

November 25

The imprest fund would be turned back to the Treasury Department.

GSA would be told to cut off telephone service after November 29th.

November 29

Presumably by close of business all records will have been disposed of and GSA would have been notified to assume responsibility for property.

All keys, passes, etc. would be collected from staff. Form 50's terminating staff would be issued.



BERT SILVER
Assistant Staff Director
for Administration


LAWRENCE GLICK
Solicitor

UNITED STATES COMMISSION ON CIVIL RIGHTS

Attachment 4

Washington, D. C. 20425



STAFF DIRECTOR

DATE: November 1, 1983

REPLY TO
ATTN OF: OSD

SUBJECT: Commission Extension

TO: All Commission Employees

At the general staff meeting on October 24th I announced that we would hold off close down activities for one more week. However, so as to give employees an opportunity to be placed in other jobs by the Office of Personnel Management I did instruct the Office of Management to proceed with the counseling and training of employees. This week we began registering employees with the Office of Personnel Management's Displaced Employees Program and the Volunteer Interagency placement Program.

I have held off beginning close out activities affecting "things" as distinct from people. If, however, no action is taken this week to extend the Commission we will have to institute other close down activities, according to the following schedule, beginning the week of November 7th:

November 7th

Equipment and furniture will be declared excess to allow GSA to dispose of the equipment and furniture after November 29th.

GSA will be informed that space will be vacated and returned after November 29th.

GSA personnel will be contacted concerning closing down the time and attendance activity after November 29th.

The U. S. Postal Service will be informed of the close down and arrangements will be made to handle mail sent to the agency after the close down.

Contractors holding contracts will be notified of the close down and told to prepare termination claims while continuing to work on the contracts.

November 8th

Staff in offices responsible for records will be instructed to begin screening files and informed when to pack and index the remaining files for shipment to a records center.

November 14th

The Personnel Office will begin preparing Form 50's to terminate staff.

All outstanding training actions will be cancelled.

Orders for goods and services not received will be cancelled and receiving reports for goods and services received but not paid for will be sent to GSA as its authority to make payment when billed.

November 15th

Travel will be stopped.

Telephone credit cards will be collected.

November 16th

The motor pool and companies from whom automobiles are leased will be informed that vehicles will be returned and leases cancelled on November 29th.

November 21st

Agency personnel records will be prepared for storage.

Laborers will begin packing the Commission library books for shipment to the Library of Congress.

November 22nd

Leases for equipment will be cancelled.

Termination financial reports from covered individuals will be collected by the Solicitor.

Employees will begin clearance procedures on a staggered schedule.

November 25th


The Imprest fund will be turned back to the Treasury Department

November 28th

GSA will be told to cut off telephone service after November 29th.

November 29th

Form 50's terminating staff will be issued.


LINDA CHAVEZ
Staff Director



Attachment 5

UNITED STATES
COMMISSION ON
CIVIL RIGHTS1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: August 13, 1984
REPLY TO
ATTN OF: OM
SUBJECT: Effect of Proposed Reorganization on
Fiscal Activity Structure
TO:
Linda Chavez
Staff Director
Thru: Marion A. Bowden
Deputy Staff Director

According to the August 3, conference committee report on the FY 1985 appropriation the House proposed provision earmarking our appropriation by each of seven activities remains in the final bill. Assuming that the bill becomes law, we would not be able to transfer funds among activities without an act of Congress.

This earmarking would affect parts of the proposed reorganization plan. If we transferred the regional attorneys from ORP to OGC, in my opinion, we would have to move their salaries and associated costs from Activity 3 to Activity 2 and the amount in Activity 2 would exceed the earmark. Similarly, making other personnel transfers across activity lines could also affect the other activities.

To avoid changing the amounts in the activities you have suggested that we transfer the regional attorneys to OGC but continue to charge their salaries and expenses to Activity 3 (Field Operations). You argue that since the regional attorneys would continue to service the regional offices their duties would remain essentially unchanged. Your contention is logical if we approach the assignment of staff to activities only on a functional basis. However, after considering the history of the activity structure, how it has operated in the past and what I view as the intent of Congress, I do not recommend we do that for a number of reasons:

1. The current activity structure was established around 1969 in consultation with our BOB examiner. The intent was to establish activities which closely paralleled the organizational structure so that programs could easily be translated into dollars and vice versa. With some modifications because of subsequent reorganizations that activity structure is the one in use today.
2. We have by past practice not charged lawyers' salaries to other program offices even when the functions performed fit into those offices. For example, lawyers have reviewed reports of OPPR and OFCRE for legal sufficiency and have helped SACs hold open meetings. Their salaries were charged to OGC not to the offices they were servicing because it was understood that the part of the appropriated funds allocated to OGC was to be used, among other things, to provide legal support to other offices.
3. On July 16, you sent letters to the chairmen of both Appropriations Subcommittees informing them of the pending reorganization. The letters said in part that regional attorneys would report to the General Counsel and that funds in activities would be adjusted to show the change. Were we now to say that the change will not be reflected in activity changes we would have to explain why we changed our minds.
4. Last week at your suggestion, I discussed with the clerk of the Senate subcommittee whether we could change the method of charging expenses to activities. He told me that his committee would agree to such a change, but also said that I should also discuss it with staff of the other Subcommittee.
5. During this year's appropriation hearings the civil rights organizations and members of Congress who may or may not have been speaking for their caucuses, tried to have the Commission defunded. According to Chairman Neal Smith, the earmarking by activity was an alternative to defunding. Changing how we charge staff to activities without the concurrence of the subcommittee could be viewed as an attempt to circumvent the Appropriations Committee and could add impetus to a defunding effort next year.

I offer two suggestions to possibly resolve this issue:

1. Ask the Solicitor for a legal opinion concerning what we can or cannot do based on the Congressional action should it become law.
2. Let me speak to the clerk of the House subcommittee to suggest that transferring the regional attorneys would not affect the activity structure since their duties would not change.

We obviously have an honest difference of opinion over what we may do and still be responsive to the recent Congressional action. I think it is my responsibility to offer my best advice based on my experience in the Commission and the government so as to help you accomplish the mission of the agency and to protect the interests of the Commission. Please advise me how you want me to proceed.



BERT SILVER
Assistant Staff Director
for Administration

Attachment 6

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

DATE: March 19, 1984

REPLY TO OM
ATTN OP:

SUBJECT: Budget and Program Planning

TO: Linda Chavez
Staff Director

I have reviewed Helen Loukas' March 14th memorandum to you on program planning for Fiscal Years 1984, 1985, and 1986. I thought I should raise with you some of my concerns about the budget process which depends on the program planning process.

At the beginning of May, I should be sending out instructions for preparing the Fiscal Year 1986 budget request. In previous years the Commissioners met in January or February to discuss proposed programs. Based on those discussions the staff thought about and worked on program proposals. When the May instructions were issued program staff translated those proposals into budget format.

When staff presented budget and program plans to the Commissioners at the July meeting, the plans were based on ideas Commissioners had at the winter retreat. This year we have not had such a retreat and plans for Fiscal Years 1984 and 1985 have not yet been developed.

The Fiscal Year 1986 budget estimate has to be submitted to OMB by September. The Commissioners do not meet in August. The July meeting is therefore the decisive one for the Fiscal Year 1986 budget. At this point staff has no basis on which to develop Fiscal Year 1986 plans and budget estimates for the Commission.

There are a number of questions I think need answering and points I want to raise for your consideration when considering the 1984, 1985 and 1986 planning process.

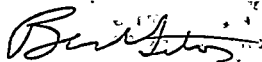
1. The appropriation for Fiscal Year 1984 is set and that for Fiscal Year 1985 will soon be set. They cannot be increased so the plans staff are developing have to fit within the appropriations. To my knowledge cost estimates are not being developed for the projects being proposed. The aggregate cost of projects being developed could cost more than the funds that are available.

2. When we testified before the House Appropriations Subcommittee we assured them that the costs of the activities they had before them would not change. (We had little choice but to give such an assurance.) If we overload some offices we must shift funds among activities. The Appropriations Committee only allows a ten percent lee way in making such shifts without first getting their approval.

3. I have heard rumors about a half million dollar contract for one project and large amounts for contracts for other projects. Seventy-five percent of our appropriation is earmarked for salaries; that limits how much we can spend in other objects unless we reduce the size of the staff. Also, adding a half million dollar contract to an activity where it was not previously budgeted again raises the question about overspending in an activity.

4. In the internal control report we sent to Congress in response to P.L. 97-255 and OMB Circular A-123, we said one of our objectives was to insure agency-wide compliance with policies and procedures for developing and implementing Commission projects contained in Administrative Instruction 5-1. We should therefore follow the guidelines of the Administrative Instruction or change them. The present process is missing a "hub" from which the project preparation process radiates. In the past OPPE has played that coordinating role. Because no one seems to be doing it this time, projects may be developing with little thought to their effect on the overall budget or program.

Could we meet to discuss some of these issues?



BERT SILVER
Assistant Staff Director
for Administration

cc: Helen Loukas

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

Attachment 7

DATE: April 24, 1984

REPLY TO: OM
ATTN OF:

SUBJECT: Use of Consultants, Experts and Temporary Employees

TO: Linda Chavez
Staff Director

On April 16, the union asked me for a list of consultants and experts hired since December, their rates of pay and what duties they performed. The union then asked for a meeting on the subject which was held April 20th.

At the meeting the union representative asked about methods, in addition to consultant and expert appointments, we were using or might use to hire persons on other than permanent staff. I explained the use of temporary and term employees. They also asked about the use of persons under contract. I explained how contracts could be used but added that I was not aware of such use of contracts since December.

After discussion it turned out that the union's concern stems from rumors heard around the agency that outsiders are being used to develop project proposals and that those outsiders will then be hired to run the projects. The union cited two incidents. A Ms. Thernstrom from Boston had allegedly attended a meeting on the voting rights project and, according to the union, had attempted to tell staff how the project should be designed. They also cited an instance in which a person in California, not a government employee, was alleging that he would head up the social indicators project. (In a telephone conversation with me after the meeting, a union representative also mentioned a rumor that James Coleman had worked on specifications for the school desegregation contract.)

I told the union we had no Thernstrom on staff or on contract. They then asked if we were not still prohibited from accepting volunteer help.

I can vouch for the fact that I have heard some of the rumors that the union described. Some senior people in the Commission have told me that they are not sure of the relationship of the consultants and outsiders to their projects and do not know how they impact on their offices. I mention this because this

has created moral problems which I know would concern you and also, more importantly, because I believe that at a time when we are in an adversary relationship with the union over contract provisions and our funding is being questioned on the Hill we should be especially sensitive to the impact such activities may have on the work force.

The personnel officer and I have discussed the use of various appointing authorities with you and your staff. I want to lay out for you what those options are and which ones are appropriate in various situations.

1. Before we hire a consultant or expert you sign a certification that the position is legitimately that of an expert or consultant as defined in FPM Chapter 304. The FPM defines a consultant as "a person who serves primarily as an advisor to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant provides views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions."

The FPM defines an expert as "a person with excellent qualifications and a high degree of attainment in a professional scientific, technical or other field. An expert's knowledge and mastery of the principles, practices, problems, methods and techniques of a field of activity, or of a specialized area in a field, are clearly superior to those usually possessed by ordinary competent persons in that activity."

2. The FPM authorizes the use of 30 day "temporary limited" appointments without examination to meet any appropriate agency need that cannot be served through appointment under some existing authority.

3. Term appointments are used "to fill positions that last longer than one year but are clearly of a project nature and will terminate upon completion of the project. Work is considered of a project nature when it meets all of the following conditions: It cannot be accomplished by the regular work force, (2) it is to be completed within a specified timeframe that is appropriate for term appointment, (3) it is not part of the regular workflow of the organization, and (4) it is generated by a circumstance or situation which is not continuing."

4. Schedule C appointments may be used only for "positions of a confidential or policy determining character."

For further clarification I am attaching the appropriate FPM reference for consultants, experts, temporary limited appointments and Schedule C appointments with pertinent sections highlighted.

The Personnel Office has many tools that it can use to meet Agency personnel needs. The type of tool used depends on what is appropriate to a situation within the constraints of the merit system. I believe that Larry Hicks and I could be more useful to you in helping meet your objectives within those constraints if we were provided with more advanced and detailed information concerning those objectives. That would permit the Personnel Office to be more responsive to your needs and also eliminate the awkwardness encountered when a late request is received to appoint an individual only to find that the individual cannot be appointed under the requested authority.



BERT SILVER
Assistant Staff Director
for Administration

Attachments

Attachment 8

Washington, D.C. 20525

DATE: April 26, 1984

REPLY TO
ATTN OF: OM

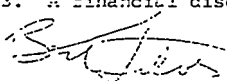
SUBJECT: Consultancy for Nathan Glazer

TO: Max Green
Special Assistant to the
Staff Director

In her April 25th memorandum to Larry Hicks, the Staff Director suggested that you be called if Personnel has any questions regarding her request to appoint Nathan Glazer as a consultant for 90 days. Since this request has a very direct bearing on the issues I raised in my April 24th memorandum to the Staff Director concerning the appointment of consultants, experts, temporaries, etc., Larry Hicks and I agreed that I should respond to you.

There is no legal method that either Larry Hicks or I know to pay someone for days worked in January or February based on an April request to appoint him as a consultant. We could, of course, now appoint Mr. Glazer as a consultant for a period not to exceed 90 days but to do that we need the following additional information:

1. A statement for the file stating what Mr. Glazer's duties will be.
2. A notation on his resume indicating what rate of pay he received on some of his recent assignments or consultancies (I do not doubt Mr. Glazer's qualifications as an eminent social scientist, however, the regulations require that the rate we pay an expert or consultant be commensurate with his or her usual fee. We therefore need to know his fee on recent assignments.
3. A financial disclosure Form 29 (attached).


BERT SILVER
Assistant Staff Director
for Administration

cc: Linda Chavez
Larry Hicks

Attachment 9


 UNITED STATES
 COMMISSION ON
 CIVIL RIGHTS

 1121 Vermont Avenue, N.W.
 Washington, D.C. 20425

DATE: August 24, 1984

REPLY TO
ATTN OF: OM

SUBJECT: Experts and Consultants

TO: Marion A. Bowden
Deputy Staff Director

The consultant/expert agreement with the Office of Personnel Management requires that you and I review the status of consultants and experts every quarter to determine that the duties of record are being performed, the duties are still those properly assigned to experts and consultants, that time limitations are being observed and that the services of each are still required. Responding to my request for information for the quarter ending June 30, Rodney Cash sent me the attached August 13 memorandum.

Mr. Cash reports that many of the experts and consultants have worked, but have not put in claims. He has contacted them to ask them to submit vouchers. We cannot accurately obligate funds if bills are not submitted promptly.

More worisome, the duties being performed by Harold Orlans are not those enumerated in the memorandum requesting his appointment. Mr. Orlans is now reported to be assisting in the preparation of the Affirmative Action in Higher Education project design. That is work which should be performed by a Commission employee. Mr. Orlans should either promptly be reassigned to bonafide expert work or his appointment should be terminated. If we do not take corrective action, OPM could terminate our delegation of authority to appoint consultants/experts.

BERT SILVER
 Assistant Staff Director
 for Administration

Attachment

cc H. b. s



Attachment 10

 UNITED STATES
 COMMISSION ON
 CIVIL RIGHTS

 1121 Vermont Avenue, N.W.
 Washington, D.C. 20425

DATE: September 11, 1984

REPLY TO
 ATTN OF: OM

SUBJECT: Travel Voucher - Finis Welch

TO: Max Green
 Acting Assistant Staff Director
 Office of Programs and Policy

Our budget analyst handling travel received the two attached travel vouchers for Finis Welch for \$855 and \$1,581.50 on September 4. We have no authorizations to cover either trip.

Mr. Welch purchased first class tickets. Government travel regulations require the use of coach fare under government contract. I understand that Mr. Welch is handicapped and this may be an acceptable reason to travel first class but the need has not been documented as required by AI 4-4.

Six taxi reimbursements in excess of \$15 each were claimed. The regulations require that a receipt be submitted for any taxi fare in excess of \$15. Also, the first trip was completed on June 18 and the second on July 20; the vouchers were not submitted until September 4. Our travel regulations require that travel be vouchered within 5 days after it is completed.

In addition to violating regulations, Mr. Welch has presumably been out of pocket \$2,300 for three or four months. I am surprised that he has not complained about the inconvenience.

If there are other outstanding travel or salary expenses, I urge that you submit the necessary documentation so that we can encumber and pay the bills. The fiscal year is coming to a close on September 30 and we need to get all of the bills paid before then.

OM staff is ready to assist you in properly processing the necessary documents. If you need any help interpreting

the travel regulations I suggest that you contact Frank Matthews. If you need help on timecard regulations, I suggest that you contact Natalie Proctor.



BERT SILVER
Assistant Staff Director
for Administration

Attachment

Attachment 11


 UNITED STATES
 COMMISSION ON
 CIVIL RIGHTS

 1121 Vermont Avenue, N.W.
 Washington, D.C. 20425

DATE: September 24, 1984

REPLY TO
 ATTN OF: OM

SUBJECT: Consultant Travel Vouchers

TO: Marion A. Bowden
 Deputy Staff Director

On September 24th the Financial Management Division received nineteen travel authorizations totaling \$11,000 for trips dating back as far as June for consultants working for Max Green's projects. Mr. Green's secretary has informed me that she will submit information on salaries for the consultants to us on September 25th.

I am pleased that Pat Ellis is cleaning us the problems which she inherited. However, I wanted to bring this situation to your attention because it is symptomatic of the operating problems we had previously discussed. Only 6 days before the end of the fiscal year we receive documentation for what may be close to \$20,000 in travel and salaries that are not on the books. Not only is this dangerous from a fiscal point of view but it could prove down right embarrassing for the agency. We owe all this money to consultants because no previous effort had been made to pay them.

Incidentally, we are holding up purchase orders for personal computers for the Personnel Office and the Boston and Kansas City Regional Office until we see if there is now enough money to pay for them after paying off the above unanticipated expenditure.

BERT SILVER
 Assistant Staff Director
 for Administration

cc: Reginald Haley ✓



Attachment 12

 UNITED STATES
 COMMISSION ON
 CIVIL RIGHTS

 1121 Vermont Avenue, N.W.
 Washington, D.C. 20425

DATE: September 25, 1984

REPLY TO
 ATTN OF: OM

SUBJECT: Fiscal Controls

TO: Max Green
 Assistant Staff Director
 Office of Programs and Policy

You are no doubt aware that your secretary yesterday submitted to the Financial Management Division 19 travel authorizations totaling \$11,000 for trips for consultants dating back as long ago as June. Pat Ellis has informed me that she will submit information to us on salaries for these consultants by COB today.

I am pleased that Ms. Ellis is cleaning up these problems. There are only 5 days left before the end of the fiscal year. Those travel and salary expenses were unbudgeted and unanticipated. To make sure we do not overspend we have been forced to hold purchase orders for personal computers for the Personnel Office, the Boston Regional Office and the Kansas City Regional Office. That would not have been necessary had you notified us of your expenditures before they were made.

I understand that our Budget Officer has worked up an operating budget for the Office of Programs and Policy for fiscal year 1985. If you anticipate taking future recruitment action or plan a trip for yourself, your staff or consultants, you should check your budget to see if you have funds available. If funds are not available, we will not be able to process the documents.

Staff of the Office of Management stand ready to work with you to ensure proper fiscal controls while carrying out the mission of your office. Any problems concerning funds should be referred to Reginald Haley, the Budget Officer. Travel is handled by Frank Matthews; time and attendance by Natalie Proctor and, of course, Larry Hicks will continue to assist you in personnel actions. If you have any questions I will be happy to meet with you personally.

BERT SILVER
 Assistant Staff Director
 for Administration

cc: Marion A. Bowden



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Attachment 13

DATE: November 5, 1984
REPLY TO: OM
ATTN OF: Request to Employ Elizabeth Farkas
SUBJECT: Marion A. Bowden
TO: Deputy Staff Director

On October 29 I wrote the attached memorandum outlining the efforts made to employ Elizabeth Farkas. On November 2 the Personnel Office notified Mr. Max Green that OPM had notified it that Ms. Farkas would not be certified to the Commission before the expiration date of her temporary appointment. Mr. Green then told Personnel that he would submit papers to have Ms. Farkas appointed as a consultant. Today, I received a November 2 memorandum from the Staff Director (copy attached) asking Personnel to hire Ms. Farkas as a consultant not to exceed 130 days.

I do not think that Mr. Green is doing what is in the Staff Director's best interest by making this request. I doubt whether he has read the requirements of AI 2-15 and I have doubts that employing Ms. Farkas as a consultant meets those requirements.

I have attached a copy of the AI with the significant portions outlined. We do not have a statement of duties which meet the requirements of Section 9.03a. There is every indication that Ms. Farkas' appointment would not meet general requirements 1 through 4 in Section 4.

There is nothing that has been submitted by Mr. Green to indicate that Ms. Farkas will not continue to do the same work on the project which she is now doing as a temporary employee. That would be a violation of our regulations and of our experts and consultants agreement with OPM. OPM could withdraw our delegated authority based on this action.

I urge that the situation be fully explained to the Staff Director.

BERT SILVER
Assistant Staff Director
for Administration

Attachments



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: October 29, 1984
REPLY TO: OM
ATTN OF:
SUBJECT: Attempts to Employ Elizabeth Farkas
TO: Marion A. Bowden
Deputy Staff Director

On September 6, 1984, at the request of Max Green, we sent a name request to OPM for a GS-11 economist asking that Elizabeth Farkas be certified. On September 10, 1984, Ms. Farkas was employed by the Personnel Office on a 30 day special need appointment as a GS-11 economist. I am told that Ms. Farkas resigned from her previous position because she was under the impression that Mr. Green had offered her a job with the Commission.

On October 12, 1984, OPM notified us that Ms. Farkas was not qualified as an economist. That same day Personnel asked OPM to certify her to us as a GS-11 social science analyst. On October 18, 1984, OPM notified us that Ms. Farkas was not qualified as a social science analyst.

At Max Green's request, on October 22, 1984, the Personnel Office asked OPM to certify Ms. Farkas as a program specialist. In the meantime, Ms. Farkas' special need appointment had been extended once; it runs out on November 9th and cannot be extended.

You have told me that the Staff Director has said that she wanted persons working on research projects to have hard social science backgrounds in professional series. It might create problems to be hiring a program analyst at the same time we are converting civil rights analyst positions to those in professional social science series.

BERT SILVER
Assistant Staff Director
for Administration

cc: Max Green
Larry Hicks



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

Washington, D.C. 20543

DATE: November 2, 1984
 REPLY TO: OSD
 ATTN OF:
 SUBJECT: Consultant
 TO: LARRY HICKS
 Personnel Officer

Please take the necessary steps to hire Lisa Farkas as a consultant. She should serve for a period not to exceed 130 working days.

Ms. Farkas will be working on the Incomes in America project.

Attached are a resume, Expert/Consultant form, and an SF-52 to effectuate the requested action.


 LINDA CHAVEZ
 Staff Director

Attachments

cc: Bert Silver



Attachment 14

UNITED STATES
COMMISSION ON
CIVIL RIGHTS1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: November 2, 1984
REPLY TO: OM
ATTN OF: OM
SUBJECT: OPP Budget, Staffing and Functions
TO: Marion A. Bowden
Deputy Staff Director

Reginald Haley, our budget officer, met with Max Green today to try to develop an operating budget for the Office of Programs and Policy. Mr. Green told him that during the year he planned to hire two more GS-14's, a GS-12 and a GS-11. In addition he would put on about 5 more consultants and have 5 staff members from OR and one from OGC detailed to OPP.

Several weeks ago I discussed with you the need to straighten out between OR and OPP which office has the functional responsibility for projects. I proposed a plan which you presented to the Staff Director. She called me with questions and then said she would call a meeting after she returned from her trip. The meeting has not been held and perhaps the press of business has not allowed her to hold it. The need for such a meeting has not diminished.

Four projects are now apparently under Max Green's direction even though they were planned for and budgeted in OR. These are Affirmative Action and Higher Education, New Perspectives on Desegregation, Redistricting and Elementary and Secondary School Desegregation. In addition to the budget problem already cited, there are concomitant problems that need to be resolved:

1. Administrative Instruction 1-2 lists the functions of OPP as developing concepts and recommending the initiation of programs and projects. It does not list as its function the direction of projects. If the AI is changed to add that function to OPP it might be interpreted as a reorganization.

2. Because of OPP's functions as listed in the AI, we are charging its expenses to overhead. If projects are to be run out of OPP a decision needs to be made on how they should be charged. Otherwise, we run the risk of distorting the Congressional earmarks by activity.

3. Harold Orlan is a Schedule C, GS-15 assigned to OPP as a special assistant to Max Green. His position was made a Schedule C because it was identified as being of a confidential policy making type. Max Green has told me, and it is common knowledge in the Agency, that Mr. Orlan is directing one of the projects. Project directors are classified as GS-14's and are not Schedule C's.

5. Caroline Gleiter is listed as project officer on the Elementary and Secondary Desegregation Study. In fact Max Green has been functioning as project officer in meetings with the contractor and the advisory committee.

I have proposed solutions to the problems. I urge that the Staff Director consider my proposals or adopt other solutions. The longer the situation goes unattended the more difficult it will be to correct.



BERT SILVER
Assistant Staff Director
for Administration

cc: Reginald Haley
Larry Hicks



Attachment 15

 UNITED STATES
 COMMISSION ON
 CIVIL RIGHTS

 1121 Vermont Avenue, N.W.
 Washington, D.C. 20425

DATE: August 20, 1984

REPLY TO
ATTN OF: OM

SUBJECT: Court Reporting Services

TO: Marion Bowden
Deputy Staff Director

Around July 25th you told me that the court reporting company which had transcribed the last Commission meeting had not provided satisfactory service and asked me to look into it. I called Rodney Cash and learned that the transcript had been delivered 3 workdays late. I informed him that we would no longer use Legal Personnel Inc. for court reporting and we would try to get a firm that could provide 3 day service.

On July 25th I sent a memorandum to Daniel Garcia and Natalie Proctor, with a copy to you, telling them to inform Legal Personnel Inc. that the service had not been satisfactory, to reduce the amount of payment to reflect the late delivery and to check prices of a number of reputable firms in the Washington area for 3 day and 5 day transcript delivery. I also told them to check references and get the information to me by August 1st.

You commended me on the action taken and told me to make sure that we got a quote from ACE Federal Reporters, since Nancy Watson, the Staff Director's secretary, had used them before and had been very satisfied with their work.

On August 1st Daniel Garcia sent me a copy of a memorandum from Ruth Ford to Natalie Proctor reporting that she had contacted 5 firms. The least expensive for a 3 day transcript was Milton Reporting Corporation at \$4.30 a page. ACE Federal quoted \$4.85 a page which was third among the five companies. Each of the reference checks turned out more than satisfactory. The reference check on Milton Reporting Corporation, the lowest bidder, was "Fantastic." and "Tried other companies, always go back to Milton." I told Daniel Garcia to tell his staff to write a purchase order to Milton to transcribe the next Commission meeting.

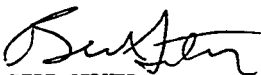
On August 13th, Nancy Watson informed Ms. Proctor that we were to use ACE Federal Reporting for the next Commission meeting and that the reporter we should ask ACE to provide

was Claire Tepper. Since we had obtained 5 telephone quotes, ACE Federal was not the lowest quote, and the references for all the firms were good, we thought we had no basis to use ACE. We consulted Lawrence Glick, the Solicitor and the agency's contracting officer. Mr. Glick advised us that given the absence of negative information on Milton, ACE could not be used since it was not the lowest bidder.

At 2:00 p.m. on August 14th Ms. Proctor told Ms. Watson we could not write a purchase order to ACE based on the FAR regulations which govern procurement. Shortly thereafter Ms. Watson came to Mr. Garcia's office and told him that on the Staff Director's instructions we should arrange for ACE to report the meeting and if Mr. Glick disagreed he should call Ms. Chevez. I informed Mr. Glick and instructed Mr. Garcia to issue the purchase order to ACE Federal Reporting on the Staff Director's order but to document the file.

On August 15th, I received a memorandum from the Staff Director informing me that beginning with the September meeting the Office of the Staff Director would assume responsibility for securing court reporters for all Commission meetings and hearings and that her secretary would call one of my staff members to get a purchase order number to be used to get any court reporting company "we so choose."

I am writing this memorandum to you because I undertook this project at your direction. At one point the secretary to the Staff Director, who apparently had no knowledge of your request to me, countermanned what I was doing. Nancy Watson does not know all of the facts and the Staff Director therefore probably thinks we were not carrying out her orders. That is not the impression I want to leave her with. I am also concerned about the procurement process not being followed. Can we talk about this?



BERT SILVER
Assistant Staff Director
for Administration

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425



STAFF DIRECTOR

DATE: August 15, 1984

REPLY TO
ATTN OF: OSD

SUBJECT: Commission Meeting Transcripts

TO: Bert Silver

Starting with the September meeting, the Office of the Staff Director will assume responsibility for contacting and securing a court reporter for all Commission meetings, hearings, etc.

My secretary will call Mr. Myers for a purchase order number which will be used for whichever company we so choose for that meeting. When the bill is received from the company, Mr. Myers should at that time do a confirming order. This will be done in order to avoid overestimating the cost of a reporter.


LINDA CHAVEZ

UNITED STATES COMMISSION ON CIVIL RIGHTS

CR 310.50813

Washington, D. C. 20425

DATE : August 20, 1984
REPLY TO :
ATTN OF: OSD
SUBJECT : Court Reporter
TO : William Myers

We are contacting Ace Federal for their services
for the September Commission meeting in Nashville.

Nancy Watson
Nancy Watson

Attachment 16



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: January 19, 1984
REPLY TO: OM
ATTN OF: Request for Audit
SUBJECT:
TO: Linda Chavez
Staff Director

At their January 17th meeting the Commissioners unanimously voted to ask the General Accounting Office (GAO) to conduct an audit of the agency. I got the impression from the discussion that preceded the vote that the Commissioners do not know what type of fiscal system we have, what fiscal reports we provide, and that we are audited annually by the General Services Administration's (GSA) Inspector General. I was not asked for any of that information nor was I in a position to offer comments. So that the Commissioners will not conclude that we are in fiscal disarray, I ask that you give them the following information.

*They were
asked to
prepare
the
report
which
has
been
attached*

The Commission's payroll and accounting system is handled by GSA under contract. GSA performs these service for many other small agencies. The GSA accounting system has been approved by GAO and I assume that GAO periodically audits it. We spend funds against an operating budget broken down by offices and within offices by object classes. Each month we receive a report from GSA and based upon that report we prepare a fiscal report for the Staff Director and each office director which compares expenditures against the operating plan. The Commissioners receive a monthly agencywide fiscal report before each Commission meeting. A copy of the report issued at the end of fiscal year 1983 and a copy of the report for the month ending December 31, 1983, are attached. I would appreciate it if you would share these with the Commissioners.

The GSA Inspector General's office audits us approximately once a year. The audit covers timekeeping, travel, procurement, property, credit cards, telephone toll charges and the imprest fund. A copy of the last audit report dated May 10, 1983, is attached for the Commissioners information as is the then Staff Director's response. The audit report does not detail everything the auditors looked at. It discusses problems found.

I recognize that since the Commissioners voted to have a GAO audit, we will have one. It will put an added strain on the resources of the Office of Management which are already stretch thin. As you know, I lost my top two personnel and top two budget and fiscal people who took early retirement when it appeared the Commission would go out of business in November. The workload of OM has been inordinately heavy preparing next year's budget request and processing an enormous amount of paperwork for the more than 20 people who retired or resigned in November.

I will, of course, direct my staff to cooperate in every way possible with the auditors. I believe we run a good fiscal and administrative shop and I am confident the audit will bear this out. I do wish I had been consulted and had been given the opportunity to explain our system and how it works to the Commissioners before they made their decision.



BERT SILVER
Assistant Staff Director
for Administration

cc: Daniel Garcia
Joseph Zambrano
Joseph Swanson

The concerns Commissioners had are not related to anything over which you (and for that matter) have control. Their concerns include very long in which Commissioners account for their time, the lack of guidelines on the amount of time Commissioners can spend on agency business, & a series of other Commissioners are also concerned about the relatively high GS ranking of certain agency positions - some have questioned agency propriety. These matters have little bearing on your record-keeping or audit procedures - you ought not to consider them a reflection on your work.

J.

Attachment 17



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: April 26, 1985
 REPLY TO: Marion A. Bowden *Marion A. Bowden 4/26/85*
 ATTN OF:
 SUBJECT: Appraisal Upon Reassignment
 TO: Bert Silver

In view of your reassignment effective December 16, 1984, to the position of Assistant Staff Director for Regional Programs, I am submitting this memorandum evaluating your performance for the period October 1, 1984, to December 15, 1984.

As Assistant Staff Director for Administration, you had three critical performance elements: (1) Budget Formulation and Control; (2) Operation of Effective Personnel System; and (3) Publication Management. In each of these areas, significant adjustments were required due to the Agency reorganization, budgetary earmarks, and sweeping personnel changes. Under the Budget Formulation and Control element, controls were developed to monitor the expenditure of funds by activity so as to avoid violation of the budgetary earmarks. Through these efforts, the Staff Director was alerted to possible overspending by activity and a coherent plan to control overspending through organizational modifications was prepared and submitted.

Under the Operation of Effective Personnel System element, the Agency management team pursued a more productive relationship with the union through contract negotiations and informal meetings with the union leadership. In addition, a new performance appraisal system for bargaining unit employees was developed and implemented with OPM approval.

Regarding Publications Management, the third critical element, the standards for completing publications were met, if not exceeded, often under difficult circumstances. Further, the Agency's word processing system was updated and expanded.

Your critical accomplishments during this abbreviated period were remarkable and extremely valuable to the Agency. The pressures of working with new leadership and personnel magnify your achievements. While this appraisal memorandum does not really address the non-critical elements, I want to commend you particularly for the forthright and constructive way in which you advised both subordinates and superiors of their responsibilities in the areas of budget and personnel. Though your competent counsel was often unsought and sometimes unappreciated, your dedication to promoting the Agency's mission within the regulatory and legal requirements is in keeping with the finest traditions of Senior Executive Service.

U. S. COMMISSION ON CIVIL RIGHTS
 PERFORMANCE ELEMENT AND APPRAISAL SUMMARY FOR MERIT PAY AND SES EMPLOYEES
 (Read instructions on reverse side before completing)

CCR FORM 92 A
 OM/Per (March 1981)

1. NAME Bert Silver GRADE SE JOB TITLE Assistant Staff Director for Administration
 OFFICE/DIVISION OM RATING PERIOD From October 1, 1982-8/16/83 To September 30, 1983

2. PERFORMANCE ELEMENTS (List elements in order of importance and note critical elements with an asterisk "**")	3. Rating
1. BUDGET FORMULATION AND CONTROL*	Outstanding
2. OPERATION OF EFFECTIVE PERSONNEL SYSTEM*	Outstanding
3. PUBLICATIONS MANAGEMENT*	Superior
4. OPERATION OF EFFECTIVE ADMINISTRATIVE SERVICES	Superior
5. OFFICE MANAGEMENT	Superior
6. OPERATION OF EFFECTIVE LIBRARY SYSTEM	Outstanding
7. ADVISE, COLLEAGIAL ACTIVITY AND SELF DEVELOPMENT	Outstanding
8. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION	Outstanding

4. OVERALL PERFORMANCE APPRAISAL: Outstanding Superior Fully satisfactory Minimally Satisfactory Unsatisfactory

5. DEVELOPMENT OF PERFORMANCE ELEMENTS/CRITERIA/STANDARDS SIGNATURES:
 (Signature indicates that the attached 15 (number) pages describing elements, criteria and standards of performance have been reviewed and discussed with the employee.)

EMPLOYEE Bert Silver Date 8/26/82
 RATER John Thomas H Date 2/24/83
 REVIEWER _____ Date _____

6. REVIEW AND DISCUSSION OF PERFORMANCE APPRAISAL SIGNATURES:
 (Signature indicates that the attached 15 (number) pages describing the performance appraisal have been reviewed and discussed with the employee.)

EMPLOYEE Bert Silver Date 10/17/83
 RATER John Thomas H Date 10/7/83
 REVIEWER [Signature] Date 10/14/83



Attachment 19

AUG 17 1984

Ms. Linda Chavez
Staff Director
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, DC 20425

Subject: Final Report on Review of the Administrative Practices and Procedures of the United States Commission on Civil Rights (A40492/O/F/840817)

Dear Ms. Chavez:

The Office of Audits has completed a review of the administrative practices and procedures of the United States Commission on Civil Rights. The current administrative practices and procedures, were generally satisfactory with no major problems. However, administrative concerns were noted in the imprest fund, travel, and property and equipment, which are discussed in subsequent sections.

The review included selected tests of records pertaining to the imprest fund, travel, property and equipment, procurement, credit cards, timekeeping, and personnel. The review covered transactions for the period October 1983 to June 1984, and was conducted between April and June 1984, at the Commission and GSA's National Capital Region. We also reviewed recommendations made in the previous audit report (May 1983) and found that corrective actions were satisfactorily implemented. The review was conducted in accordance with generally accepted Government auditing standards. We did not audit the financial statements of the Commission or determine whether the Commission is efficiently, effectively, and economically managing its resources, nor did we evaluate the program results of the Commission's activities.

Following are the results of our review of the Commission's administrative practices and procedures:

Imprest Fund

Our review of the imprest fund, covering transactions during November 1983 through April 1984, revealed that the fund was in good operating order with no major problems. The cash and reimbursable receipts comprising the imprest fund are segregated and properly safeguarded. In addition, the cashier has been

2

duly authorized to perform imprest fund duties, but there is no alternate cashier. We suggest that the Commission designate an alternate cashier who will function in this capacity during the absence of the principal cashier.

In October 1983, the Commission discovered a \$3,018 shortage in the fund. The shortage occurred prior to November 1983 and was reported to the appropriate authorities for investigation. After the shortage was detected, the Commission transferred the imprest fund to the new cashier, purchased a new cash box, and changed the safe combination. Since the Commission has been operating the imprest fund with the shortage during this time period, management should evaluate the fund's balance to determine if the authorized fund level can be lowered considering current and anticipated needs.

Travel

We reviewed 30 travel advances processed by the imprest fund representing all travel advances over \$100 issued since October 1983. All travel advances were properly charged to the correct appropriation number and were properly approved except in one instance where the advance was not signed. Review of Government Travel Requests (GTR's) revealed that one employee, who was not authorized, approved his own GTR for \$249. We brought these areas to management's attention and they agreed to ensure this would not occur in the future.

Blanket travel authorizations were not extended beyond the current fiscal year and employee's travel advances outstanding were collected at the time of employee terminations. In addition, the Commission was properly safeguarding and controlling the use of Government transportation requests and travel vouchers are generally being submitted for payment in a timely manner.

Property and Equipment

The Commission's management of property and equipment was generally satisfactory. However, we noted the following:

- The Commission uses a computer listing in lieu of GSA Form 715 to account for and control personal property and equipment. The computer listing contains sufficient information to provide adequate control over the Commission's property and equipment inventory. However, the Commission does not send quarterly adding machine tapes, or an equivalent, representing the value of Commission-owned property, to GSA as required by Administrative Support Services Handbook WADM P 1070.1, Chapter 11, para. 3(b).

- A review of 51 of 621 sensitive items showed that items were generally accounted for, except that three of the items were in a different physical location than specified on the computer listing. The Commission's property and equipment control officer was aware of the physical location change for two items but had not yet updated the computer listing. The property and equipment control officer was not aware of the physical location for the third item valued at \$629.
- The Commission maintains Reports of Property Survey, GSA Form 526, for inventory adjustments when equipment is lost, misplaced, damaged or stolen. We reviewed 31 survey reports and found that 6 were still open ranging from 5 months to over 3 1/2 years. However, during July 1984, the Commission closed four of the six reports and is currently reviewing the remaining two.
- The Commission coded 8 entries representing 14 items of capitalized equipment, valued at \$3,241, for the Administrative Equipment account maintained by GSA. However, the Commission's property officer omitted these purchases from the accountability records.
 - In eleven instances totalling \$5,584, the Commission and GSA recorded different amounts for equipment purchased on their respective accounting records. For example, a \$4,116 difference between equipment inventory records existed when the Commission accounting records showed a laser printing system at the purchase order price of \$21,116 but GSA recorded the equipment at the invoice price of \$17,000.

We advised management of the above deficiencies and were informed that corrective actions would be taken.

Procurement

Procurements of materials and services followed proper procedures and were approved prior to payment. The amounts listed for materials and services appeared to be reasonable.

Timekeeping

The Commission maintains the necessary time, leave and payroll records. Time and attendance clerks have knowledge of employees presence or absence before making entries on the time and attendance records. Supervisors are kept currently informed of employee's attendance or absence.

4

Credit Cards

The Commission was properly safeguarding and controlling the use of GSA Credit Cards at Headquarters. We did not verify the safeguarding or controlling of credit cards at regional locations.

We appreciate the courtesy and cooperation extended by the Commission's staff. If you have any questions please contact Mr. Rhudy Tennant, Director, Washington Operations Division on 566-1887.

Sincerely,

CHARLES R. GILLUM
Acting Inspector General



Attachment 20

UNITED STATES
COMMISSION ON
CIVIL RIGHTS1121 Vermont Avenue, N.W.
Washington, D.C. 20425

C

August 31, 1984

Mr. Charles R. Gillum
Acting Inspector General
Office of Inspector General
General Services Administration
Washington, D. C. 20405

Dear Mr. Gillum:

This letter is in response to your report of August 17, 1984, addressed to the Staff Director, summarizing your review of the administrative practices and procedures of the U.S. Commission on Civil Rights covering the period October 1983 through June 1984.

I am pleased that your audit revealed no major problems and that you found the Commission's current administrative practices and procedures during this period to be satisfactory.

I would like to inform you of corrective action Commission staff have taken or plan to take in response to your report.

Imprest Fund

Commission staff have taken the necessary steps to appoint an alternate cashier to the principal imprest fund cashier. We have completed a review and evaluation of the imprest fund's balance and have determined that the fund's level should not be lowered at this time given anticipated travel needs for Commission staff.

Travel

We have called the single exception of an inappropriate authorization raised in your report to the attention of appropriate staff. Hopefully it will not recur.

Property and Equipment

The Office of Management has reviewed your comments concerning the computer listing of property and equipment.

- Staff will take steps to assure that GSA periodically receives machine tapes or the equivalent representing the value of Commission-owned property as required by GSA regulations.
- Steps will be taken to assure the timely notation of the physical location of all property and equipment on the agency's computer listing.
- We have also taken steps to close out the two outstanding reports of property survey for lost and stolen equipment.
- The Commission's property officer will take necessary action to assure that all equipment purchases are recorded on accountability records; and
- Staff have reconciled the purchase order price versus the invoice price for the laser printer and will assure future recording of purchase order prices reflect the actual amount paid.

Other Administrative Areas

I am pleased that your report states that in the areas of procurement, timekeeping and use of GSA credit cards we were complying with proper procedures and regulations. The Commission will continue to exercise sufficient internal management controls in these areas to assure that all procurements follow proper procedures; that time and attendance procedures and regulations are complied with to assure that timekeepers and supervisors have knowledge of employees' presence or absence for the proper recording of time and payroll records; and that all Government credit cards are safeguarded.

Please thank your auditors for their professionalism in carrying out the recent audit. We appreciate the care with which it was conducted. It is always good to find out that we are carrying out our administrative practices in a responsible manner.

Sincerely,

MARION A. BOWDEN
Deputy Staff Director

LIBRARY
U.S. COMMISSION ON CIVIL RIGHTS