

SEXUAL HARASSMENT IN THE VA

HEARING
BEFORE THE
SUBCOMMITTEE OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
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CONTENTS

	Page
OPENING STATEMENTS	
Chairman Everett	1
Hon. Lane Evans, ranking democratic member, Full Committee on Veterans' Affairs	3
Prepared statement of Congressman Evans	105
Hon. Michael Bilirakis, a Representative in Congress from the State of Florida	4
Prepared statement of Congressman Bilirakis	111
Hon. Vic Snyder	5
Hon. Steve Buyer	5
Hon. James E. Clyburn	7
WITNESSES	
Barefoot, Lovia B., Department of Veterans Affairs employee (ret.)	15
Prepared statement of Ms. Barefoot	178
Blumenthal, Ronnie, Director, Office of Federal Operations, Equal Employment Opportunity Commission	37
Prepared statement of Ms. Blumenthal, with attachment	189
Caruana, Susan, Department of Veterans Affairs employee	11
Prepared statement of Ms. Caruana	164
Dawkins, Judy, Department of Veterans Affairs employee	13
Prepared statement of Ms. Dawkins, with attachment	170
Force, Cynthia A., Department of Veterans Affairs employee	8
Prepared statement of Ms. Force	158
Gober, Hon. Hershel, Deputy Secretary, Department of Veterans Affairs accompanied by Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity; Hon. Mary Lou Keener, General Counsel; Jule D. Moravec, Ph.D., Chief Network Officer, Veterans Health Administrator; Leroy P. Gross, M.D., Director, Veterans Integrated Service Network No. 6	49
Prepared statement of Deputy Secretary Gober, with attachment	197
Inzeo, Nicholas M., Deputy Legal Counsel, Equal Employment Opportunity Commission	39
Prepared statement of Mr. Inzeo	194
Jordan, Berry D., National President, Federal Managers Association	98
Prepared statement of Mr. Jordan	238
Merriman, William T., Deputy Inspector General, Department of Veterans Affairs accompanied by Jack Kroll, Assistant Inspector General; Maureen Regan, Counsel; Michael Bennett, Office of Counsel; and Judy Shelly, Office of the Assistant Inspector General	79
Prepared statement of Mr. Merriman	208
Miller, Maura Farrell, Ph.D., ARNP, CS, President, Nurses Organization of Veterans Affairs	95
Prepared statement of Dr. Miller	227
Moore-Russell, Doris A., M.S.W., Department of Veterans Affairs employee	18
Prepared statement of Ms. Moore-Russell	183
Nelms, Dorothy, President, Federally Employed Women, Inc.	93
Prepared statement of Ms. Nelms	218
Peddicord, Kitty, Women's Director, American Federation of Government Employees	96
Prepared statement of Ms. Peddicord, with attachments	231

IV

MATERIAL SUBMITTED FOR THE RECORD

Article:		
"VA's 'Zero Tolerance' Questioned," by David Dahl, <i>St. Petersburg Times</i> , April 14, 1997		153
Chart:		
"Complaints Filed—FY 1991—FY 1996, Veterans Affairs Compared to Government Wide," submitted by Ms. Blumenthal		193
Chronology:		
"Actions of Secretary Brown to Eliminate Sexual Harassment in the Department of Veterans Affairs," submitted by Department of Veterans Affairs		203
Memorandum:		
From David Whatley, Medical Center Director to Leroy P. Gross, M.D., Director, VISN 6 re Network 6 Special Inquiry Report, September 26, 1996		143
Report:		
Special Inquiry—"Alleged Improper Conduct By A Senior Official, VAMC, Fayetteville, NC," November 8, 1996		116
Statements:		
Hon. Eva M. Clayton		188
Donna Grabarczyk		110
Written committee questions and their responses:		
Chairman Everett to Department of Veterans Affairs		244
Congressman Bilirakis to Department of Veterans Affairs		250
Congressman Evans to Department of Veterans Affairs		253
Congressman Evans to Inspector General, DVA		393

SEXUAL HARASSMENT IN THE VA

THURSDAY, APRIL 17, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:37 a.m. in room 334, Cannon House Office Building, Hon. Terry Everett (chairman of the subcommittee) presiding.

Present: Representatives Everett, Stump, Buyer, Bilirakis, Clyburn, Evans and Snyder.

OPENING STATEMENT OF CHAIRMAN EVERETT

Mr. EVERETT. The hearing will come to order. Please cease all conversations.

Good morning. Today's hearing by the Subcommittee on Oversight and Investigations will examine sexual harassment issues in Department of Veterans Affairs. This is the first hearing of the 105th Congress for this subcommittee sitting alone.

Only yesterday we had a joint hearing with the Subcommittee on Health on another very important topic, the illness being suffered by Persian Gulf veterans.

Our hearing is at the request of Mr. Bilirakis of Florida, one of the most senior and active members of the full committee. He specifically requested a hearing on sexual harassment after learning of the demotion and transfer of a former VA medical center director of a Fayetteville VA Medical Center in North Carolina to the Bay Pines VA Medical Center in Florida.

Without objection, his letter of March 5, 1997, will be made a part of the record.

His district is served by the medical center, and he has asked to participate in this hearing, although he is not assigned to this subcommittee. We are happy to have him here, and I commend him for taking this serious action.

Unfortunately, this is not the first time sexual harassment issues have been before this committee. Over 4 years ago when our present full committee Ranking Democratic Member, Mr. Evans, was chairman of this subcommittee, similar hearings occurred. I believe our Ranking Member, Mr. Clyburn, who will join us shortly, took an active in the second one back when he and I were relatively new to the committee.

We are not new anymore, and we are disappointed in what we have seen.

During the Subcommittee on Oversight and Investigations hearing in September 1992, Ms. Donna Grabarczyk, a VA employee who still is on leave without pay status, stated in testimony, and I quote, "Since when is a transfer a disciplinary action? Transfers are not the solution for habitual harassers, and by transferring these people the VA merely enables them in their illegal behavior and avoids disciplinary action."

As a result of these hearings 4 years ago, the committee unanimously reported and the House passed a bipartisan bill, H.R. 1032, in April 1993 to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the VA. That, of course, includes sexual harassment.

However, Secretary Brown took the position that such a bill was unnecessary and that administrative actions combined with proposed legislation to cover the entire government would address the problems.

The Senate did not take up the House bill. The government-wide legislation was not enacted. Given what has happened, Mr. Evans and I intend to pick up where the previous legislation effort left off, and there will be more action soon.

I do not question Secretary Brown's sincerity or his commitment to the zero tolerance policy he has implemented in the VA. Quite the contrary, it was a positive and necessary step.

However, nothing has been done to effectively remedy the problem the House legislation would have addressed. While the VA has a zero tolerance policy, it still has a long way to go in reaching zero tolerance and needs some help.

Back in 1993, Bob Stump, our now full committee Chairman, said the oversight hearings revealed a lack of employee confidence in fairness and timeliness of VA's EEO system, as well as fears of reprisal. Based on my review of the statements by today's witnesses, I believe the same lack of confidence and fears still exist.

Until the EEO's process in the VA becomes essentially independent of local management, I do not see how the trust of rank and file employees in the VA EEO system can be improved. I will be most interested in exploring this with our VA witnesses.

During this hearing we will have witnesses from the Fayetteville Medical Center, the EEOC, the VA, the VA Inspector General's Office, and from federal employee unions and associations.

Because the first panel of witnesses will testify about specific sexual harassment and abusive treatment which allegedly occurred at Fayetteville, I wish to advise any parents with children here today to exercise discretion in allowing them to stay.

The subcommittee's distinguished Ranking Democratic Member, Mr. Clyburn, prior to coming to Congress, was South Carolina's Human Affairs Commissioner and so his interest and expertise in EEO and sexual harassment are particularly welcome, and we will hear from him later today.

At this particular time, I would like to recognize the chairman of the full committee, Mr. Stump, for any statement he would like to make.

Mr. STUMP. I do not have an opening statement. Thank you.

Mr. EVERETT. Mr. Evans, our Ranking Member on the full committee.

**OPENING STATEMENT OF HON. LANE EVANS, RANKING
MEMBER, FULL COMMITTEE ON VETERANS' AFFAIRS**

Mr. EVANS. Thank you, Mr. Chairman, and I want to thank you and Jim Clyburn for holding this hearing.

Obviously this is a great issue for us, and we are pursuing it on a bipartisan basis, and I look forward to working with you in terms of following up on those hearings in 1992.

Some of you may recall the compelling testimony we heard during the 1992 hearing from Donna Grabarczyk. She testified that she had been sexually assaulted by the Chief of Fiscal Service at the Lyons, New Jersey Veterans Hospital where she worked. It took the VA 7 months to investigate her allegations, and in the meantime, she was forced to live in the constant fear of another confrontation with her assailant.

Once the VA completed its investigation, the proposed resolution was to encourage her to transfer to another facility. Her harasser was allowed to take disability retirement.

In the meantime, Ms. Grabarczyk was diagnosed with post-traumatic stress disorder because of harassment by the Director of an institution that is supposed to be helping veterans deal with their post-traumatic stress disorder problems.

Two months after her 1992 testimony, Ms. Grabarczyk was placed on leave without pay from the VA because of her harassment-related illness. She has been receiving regular medical care and therapy since December 1992. Her doctor has diagnosed her with a temporary total disability, and she is currently receiving worker's compensation because of her illness.

She tells us she presently takes three different medications each day to treat her PTSD.

Mr. Chairman, Donna Grabarczyk's story is not a happy one. When we heard her testimony in 1992, most of us may have reasonably concluded that the worst was behind her and that there would be only minimal long-term effects from her harassment.

Obviously her troubles have not gone away since 1992. It is a tribute to the leadership of this subcommittee that the interest in this issue has not subsided since that time.

Until the VA truly addresses sexual harassment at the regional and facility levels, stories like the ones we have heard from Donna Grabarczyk, and stories like the ones we will be hearing today, will continue to be played throughout the halls of the Department of Veterans Affairs.

I believe it is our responsibility to do all we can as members of the committee to see to it that there is no need for this type of hearing 5 years from now.

In closing, I want to make it clear that I do not question Secretary Brown's personal commitment to eradicate the festering problem of sexual harassment in the VA. The Secretary's zero tolerance policy instituted in 1993 was a strong step in the right direction.

But until the VA can show that its policy has teeth, we will continue to keep the heat on the VA on this issue in the months and years to come. Our veterans and our employees of the VA who served us well should expect and deserve no less.

Thank you, Mr. Chairman, and at this point I would like to enter into the record a statement from Donna Grabarczyk, dated April 17, 1997. Unfortunately, because of a very serious illness in her family, she is not able to join us today, despite her willingness to do so, and I would ask that this statement be made part of the record.

Mr. EVERETT. Without objection, so ordered.

[The attachment appears on p. 110.]

Mr. EVANS. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you, Lane.

Mr. Bilirakis.

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BILIRAKIS. Mr. Chairman, thank you, and my thanks to Chairman Stump for responding to the request for scheduling today's hearing and also for giving me the opportunity to be a part of it.

During the 102nd Congress, as mentioned by both you and Mr. Evans, when the sexual harassment hearing was held, I served as the Ranking Minority Member of this same committee with Mr. Evans. At that time we heard from several VA employees who had been the victims of sexual harassment. It took a great deal of courage for these women to come forward and share their experiences with our committee, and many of these women were also subjected to acts of retaliation by their abusers and other VA employees.

Their perception, and I believe you mentioned this, which was shared by many other employees was that the VA did not take sexual harassment complaints seriously. There is a great deal of suspicion and distrust caused by too many years of apparent toleration of unacceptable behavior.

Without question, that hearing revealed that the process in place at the VA for investigating sexual harassment complaints was seriously flawed, and consequently, Mr. Chairman, this committee unanimously approved legislation which was later passed by the House to address the problems at the VA, and that was H.R. 1032, which would have provided for improved and expedited procedures for resolving complaints of employment discrimination, including sexual harassment complaints.

When we considered H.R. 1032, Secretary Brown opposed the passage because he preferred to take administrative action instead. The Senate did not act on the bill, and it was never enacted into law.

To his credit, as mentioned by both you and Mr. Evans, and I certainly endorse your remarks in that regard, Secretary Brown did establish a policy of zero tolerance within the department early in his tenure as Secretary, and I guess the question facing us today is whether or not that policy is sufficient.

Almost 5 years after our first hearing, we're faced with a similar situation at the VA. Mr. Evans certainly set this out very, very clearly. Of course, this has been brought to our attention, I suppose, principally because of the Director of the Fayetteville Medical Center who was found to have sexually harassed one female employee, et cetera, et cetera.

The Director, as we know, was transferred to the Bay Pines VA Medical Center in St. Petersburg, which serves many of the veterans of my congressional district. He was allowed to retain a salary of more than \$100,000 in a position created specifically for him.

I have, and I am sure all of us have heard from many of our constituents who are outraged by the department's actions on this matter. They do not believe that the VA took any punitive action against a senior VA employee.

I, too, have reviewed the testimony of today's witnesses. Sadly their stories do mirror those that we first heard in 1992, and despite the Secretary's zero tolerance policy, it appears that the VA has failed to adequately implement sufficient administrative procedures that deal with such complaints.

I know from their testimony that our witnesses believe that their harasser was not properly or adequately punished. In fact, they feel he was rewarded, and that is certainly the feeling that I had when I found out about it. He was clearly rewarded for his actions, not that that was the intent, but it would seem that way. Being sent to St. Petersburg, FL, certainly does not seem to me to be a very punitive type of thing.

He got to be there with a raise in salary. This certainly appears to be the case. I am concerned that the VA's policy of zero tolerance has, at best, not been implemented uniformly and, at worst, has been ignored, and, Mr. Chairman, that is the reason you are holding this hearing.

The rest of my statement I would ask unanimous consent to be made a part of the report, and thank you so very much, sir, for being so diligent.

[The prepared statement of Congressman Bilirakis appears on p. 111.]

Mr. EVERETT. Thank you. Mr. Snyder.

OPENING STATEMENT OF HON. VIC SNYDER

Mr. SNYDER. Thank you, Mr. Chairman.

Let me just say briefly I am real interested as a new member. Coming in the middle of the movie, the issues that are going to concern me are: do we have the right policy? Do we have the right people enforcing the policy? And then the third issue: are there other legal obstructions to the enforcement of that policy that we may need to look at and make changes to help the VA fulfill its goal of having zero tolerance?

And I appreciate the participation of everyone today.

Thank you, Mr. Chairman.

Mr. EVERETT. Thank you. Mr. Buyer.

OPENING STATEMENT OF HON. STEVE BUYER

Mr. BUYER. Mr. Chairman, I have to you an inquiry before I make a statement. I was under the understanding with you in a conversation at least 3 weeks ago that you were going to be sending out an invitation to Secretary Brown for him to appear here today, and I would like for you to explain to me whether or not that invitation ever went to the Secretary, and if so, did he respond, and what was that response?

Mr. EVERETT. Mr. Buyer, the Secretary was invited. We invited the Secretary himself to this hearing today.

Mr. BUYER. Do you know what the date of that letter is that went out?

Mr. EVERETT. I have the staff now looking it up.

April 2.

Mr. BUYER. On April 2. All right, and what kind of response did you get from the Secretary?

Mr. EVERETT. The Secretary said he would be unable to attend, but he did designate the Assistant Secretary or Deputy.

Mr. BUYER. Did the Secretary say why he was unable to attend here today?

Mr. EVERETT. No, I have no knowledge why.

Mr. BUYER. Do you know what the date of his response was to us?

Mr. EVERETT. Can we have a copy of that letter?

Mr. BUYER. This is it, his response? April 14?

Mr. EVERETT. Right.

Mr. BUYER. I had a conversation with someone from the Secretary's staff in the hall yesterday after our meeting in which I asked. I had heard that the Secretary may not appear, and she said the Secretary was in California at a ceremony for the opening of a homeless shelter, but they never informed you of that?

Mr. EVERETT. No, I was not informed.

Mr. BUYER. I also was informed that the Secretary is back in town today and arrived perhaps about 2 hours before this hearing.

I only want to bring that to your attention because it concerns me. Several of you are colleagues of mine on the National Security Committee, and you are well aware that I have been tasked by the chairman, Floyd Spence, to conduct the inquiry into sexual harassment, misconduct, fraternization in the U.S. military.

We also know about the zero tolerance policy we have in the U.S. military, and it appears that as we do this all-Service review with Tillie Fowler and Jane Harmon that a policy is great on paper, and that while the military is under many different attacks with regard to culture, I have a clear understanding that it is the leadership that sets the tone of the environment.

And I just wanted to say to you, Mr. Chairman, that I am disappointed the Secretary is not here, and that I will be a good listener throughout this, but I will ask of you whether or not there will be a follow-up hearing and if so, request the Secretary be here.

I have read the documents that you submitted to us last night, and I was left with a very strong sense that it appears that the VA has a "Club Med" level of punishment for sexual harassment that is unacceptable, and I want to have follow-on conversations with you in private.

Mr. EVERETT. I would be glad to. I would tell the gentleman that this is not the last hearing that we will have. I will also tell the gentleman that we will probably have continuous hearings on this matter until the issue is resolved to the satisfaction of this committee.

Mr. BUYER. Mr. Chairman, in the National Security Committee, the Secretaries of the Navy, the Army, the Air Force, all come and respond to us. The Secretary of Defense responds to us on this

issue, and for the Secretary of the VA not to come here and respond and to be publicly accountable is unacceptable.

Mr. EVERETT. I thank the gentleman.

The chair will now recognize Mr. Clyburn, our Ranking Member of the subcommittee.

OPENING STATEMENT OF HON. JAMES E. CLYBURN

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

I am pleased to be here and join with you today, and I thank you for calling this important hearing, and I apologize for trying to get too much crowded into the morning.

There have been numerous and disturbing reports of the VA fostering a work environment in which women are discouraged from filing charges of sexual harassment and which insulated the most senior level officials from disciplinary action, even in light of substantiated allegations of harassment.

My close association with the Department of Veterans Affairs goes back many years, long before my joining this committee. My wife retired in 1993 from the Dorn Veterans' Hospital in Columbia after almost 30 years of service. I know this department very well.

I am particularly concerned with the serious allegations involving some of the Department's most senior career managers. I am even more concerned about the Department's handling of these cases, and what has been reported as insufficient disciplinary actions with regard to the perpetrators of these abuses.

Subsequent to this committee's hearings on this issue, in the 103rd Congress Secretary Brown announced and implemented a zero tolerance policy for sexual harassment. As mentioned by Chairman Everett, prior to coming to the Congress I spent 18 years as the South Carolina Commissioner of Human Affairs, heading an agency whose mission and authority include insuring fairness and equality in the work place.

I am interested in finding out how the Department of Veterans Affairs insures the same fairness in its work place and protects its employees from sexual harassment, how it investigates charges, and disciplines those who violate its policies.

I look forward to this testimony this morning, and I am hopeful when it is all said and done we will, in fact, have a zero tolerance policy.

Mr. EVERETT. I thank the gentleman, and I state again that the gentleman's expertise in this field is welcomed not only by this committee, but by this Congress.

Mr. CLYBURN. Thank you.

Mr. EVERETT. I would like to welcome all of the witnesses testifying today. I realize some of our witnesses have taken time from their daily lives and have had to travel some distance to testify. I want to thank all of you in advance for being here today.

For those witnesses who are essentially private citizens and happen to be VA employees, it takes real courage to make public statements about difficult experiences and highly personal matters, and I understand that and appreciate it.

Because of the nature of some of today's testimony, I am taking an unusual step for this subcommittee hearing and have decided to have the witness panels who have direct knowledge of events

testify under oath. All of these witnesses have involvement with Fayetteville or decisions made about this case.

Prior to seating the first panel of witnesses and in order to facilitate questioning, I ask unanimous consent to place the following documents in the hearing record.

Number one, the VA OIG report Number 7PR-GO2-007, dated November 8, 1996, alleged improper conduct by senior official, VA Medical Center, Fayetteville, NC, redacted.

Number two, VA Network 6 special inquiry report, subject, management effectiveness at VA Medical Center, Fayetteville, NC, dated September 26, 1996. The VA refers to this as the Whatley report. David Whatley, the author, is the VAMC Director in Augusta, GA.

Number three, VA letter of proposed removal from Dr. Leroy Gross to Jerome Calhoun, dated October 23, 1993.

Number four, VA letter of rescission of proposed adverse action from Dr. Leroy Gross to Jerome Calhoun, dated September 6, 1996.

Number five, VA agreement of informal resolution, Jerome Calhoun, executed by Jerome Calhoun and Dr. Leroy Gross on January 14, 1997, and by Dr. Jule Moravec on January 16, 1997.

I ask that each witness limit your oral testimony to 5 minutes, and I so order that those documents be put in the record.

(See. p. 116.)

Mr. EVERETT. I ask each witness to limit your oral testimony to 5 minutes. Your complete written statements will be made part of the official hearing record.

I ask that we hold our questions until the entire panel has testified.

Will the first panel please rise and raise your right hands and repeat after me?

[Witnesses sworn.]

Mr. EVERETT. Please be seated.

The committee will now recognize our first witness, Ms. Cynthia Force.

STATEMENT OF CYNTHIA A. FORCE, DEPARTMENT OF VETERANS AFFAIRS EMPLOYEE

Ms. FORCE. Good morning. Thank you for convening this hearing and inviting me.

Mr. EVERETT. Ms. Force, would you please pull that mic just a little bit closer to you, ma'am.

Ms. FORCE. Okay. Is that better?

Mr. EVERETT. That is better.

Ms. FORCE. Prior to being forced to relocate to my current position, I had been assigned to work at the VA Medical Center, Fayetteville, NC. I worked as a budget analyst after being forced to ask for reassignment from my position as Chief, Medical Care Cost Recovery.

For the relevant period of time which I was employed at the VA Medical Center, Fayetteville, Jerome Calhoun served as Director. I, however, worked under the direct supervision of the Chief, Fiscal Service. It was Jerome Calhoun's unlawful behavior that forced me to leave the Fayetteville Medical Center where I had worked for 23 years.

Beginning in the fall of 1994, Jerome Calhoun asked me to have a personal relationship with him on two different occasions and once made an inappropriate comment about my body. These statements made me feel uncomfortable. I had a fear of reprisal for refusal to accept his offer. I felt demeaned and demoralized.

The working relationship started to fall apart shortly after the first two comments were made. On one occasion he became so furious that I was afraid he was actually going to strike me. He started to scream and curse at me, and he left the office, came back and started to scream again.

He later apologized to me and stated that he really missed the days when if a woman got out of line, you could just slap her around.

On May 8, I was informed by my supervisor that I was being removed from my position at Calhoun's request. My position description had been rewritten from a GS-9 to an 11-12, but I was not to be promoted to the new grade. No reason was given to me for my removal, except that Calhoun was not happy with my performance.

I asked to meet with Calhoun for an explanation of my removal, and on May 9, a meeting was held including me, Calhoun, the Chief Fiscal Officer, the EEO manager, health systems specialist, Acting Chief of Human Resources, and the Associate Director.

I remarked that the only comment he had ever made to me regarding my performance was that you have a lot to learn, but you are doing a good job, and that did not equate to poor performance to me.

He responded that if he did not make himself clear, that that was something that he had to work on as a Director. He informed me that I could remain as MCCR Coordinator and be put on a performance improvement plan and he'd get rid of me in 90 days, or I could accept the position that was being offered by my supervisor as budget analyst.

From his remark it was clear to me that no matter what I did, in 90 days he would get rid of me. Even though I knew I was not qualified for the position of budget analyst, on May 24, 1995, as directed, I signed a memorandum requesting reassignment to the budget analyst position. Effective June 11, I was reassigned.

In June 1995, Calhoun had barred me from going into the main VA building at the Fayetteville facility. My supervisor was instructed to inform me of this decision. My duties were changed in order to accommodate this mandate. To the best of my knowledge and belief, this was never done to anyone else.

In July 1995, Calhoun and his wife encountered me at a roadside clean-up. My shoelace was untied, and Calhoun and got on bended knee to tie the shoe. He stated while doing this, "When you're going to murder someone, you tie their shoes backwards so that it looks like they tied them themselves."

I saw this as yet another threat not to my personal safety, but to my employment. Everywhere that I went for help I heard things like, "Don't try to fight him. He's the Director, an African American Director. He was appointed by Jesse Brown. You may win the battle, but you will lose the war." I honestly felt like I had nowhere to turn.

I tried to find other positions within MCCR at VA facilities because of the hostile work environment and the fact that I felt sure he had plans to get rid of me altogether. All the positions for which I applied were canceled.

I did secure a lateral position at another North Carolina VA and transferred there in October of 1995. This position was not in my career field and has no promotion potential. After 3 months of commuting several hours, I moved with my children and household goods at great expense, emotional, physical, and financial.

Since this time I have also been diagnosed as suffering from post-traumatic stress disorder, and I am currently on medication.

I was relieved that Calhoun had been removed from SES when I read the IG report. I just would like to feel more confident that he will not have the opportunity to return to any type of supervisory position.

I was a bit surprised when his punishment was announced. I never thought that he would be rewarded by being sent to the place he wanted to be with a raise in salary.

Additionally, all his moving expenses, as I understand, were paid, and if his house does not sell, the VA will purchase it. Unfortunately, I was not that fortunate.

It concerns me that at no time have the victims been contacted by anyone in headquarters. The only information I have received has been in the IG report and what I read in the newspapers. I read in the newspapers that headquarters had empathy for me, but I was not sure how that was possible since they had never had any contact with me.

Additionally, I read that the settlement with Calhoun was made in the best interest of all concerned. I guess I was of no concern.

There seems to have been much concern about how Calhoun could finish out his career, but no concern for what happens to mine. I never began this fight for what I could get out of it. However, when the accuser is so obviously rewarded, where is the justice for the victims?

A representative of this committee explained the reason for the settlement, which I much appreciated. Had this been explained to me earlier, I might not have felt so patronized, insulted and, frankly, victimized once again.

What has been of greatest concern to me has been the implication that I filed sexual harassment charges because of inappropriate comments of a sexual nature. These have been the statements that have been made by the headquarters offices. I would have never gone through the hell of the past 2 years for comments made to me. Calhoun is not the first man who ever made inappropriate comments of a sexual nature. He is, however, the first man who tried to destroy my life when I rebuffed those comments.

The findings of the IG were quid pro quo sexual harassment and sexual harassment for a hostile work environment. Those are the reasons that I filed the charges, and those are the allegations that were proven by the Inspector General. I resent the implications made to the contrary.

Thank you very much.

[The prepared statement of Ms. Force appears on p. 158.]

Mr. EVERETT. Thank you. You may proceed.

**STATEMENT OF SUSAN CARUANA, DEPARTMENT OF
VETERANS AFFAIRS EMPLOYEE**

Ms. CARUANA. My name is Susan Caruana. I am pleased and honored to have been invited to present my testimony before such a distinguished audience.

I have worked for the Federal Government for 31 years. All but 1½ years have been in the VA system.

I feel betrayed by the very system by which I am employed. I worked for Jerome Calhoun at the Buffalo VA Medical Center from June 9, 1985, until March 1994. He was appointed as Director of the Fayetteville, North Carolina, VA Medical Center in April 1994 by Secretary Jesse Brown.

Shortly after his transfer to Fayetteville, he informed me that the Secretary to the Director position would soon be vacant and asked if I would be interested in applying. After much thought and contemplation, I decided to apply as it was a GS-8, Target 9 in one year, and I was a GS-7 with no promotion potential.

I was selected, excited about this promotion and career opportunity, and looked forward to the impending challenge.

Calhoun repeatedly promised me that I would eventually retire as a GS-11 or 12. Since I had worked with him for several years, considered him a friend and respected his position, I felt comfortable, though nervous of the move to a new area of the country alone.

I was performing the job to the best of my ability. However, the hostile work environment, repeated threats, verbal abuse, intimidation, and stressful conditions he created resulted in an atmosphere not conducive to my best performance. For example, he told me if I did not request a reassignment, he would make my life miserable and I would be a GS-3 by the time he was finished with me.

On another occasion I was threatened to be placed on a performance improvement plan and have 90 days to prove myself, but there is no documentation in my personnel records to substantiate less than satisfactory performance.

In fact, at his initiation, I received a \$1,200 special award in 1995 for my superior performance.

After my coerced reassignment, I felt mortified, rather like a little girl made to stand in the corner. To add insult to injury, after this reassignment, he had the audacity to tell me he had a dream that he slept with me. I told him that I would never do that. He said it could be worth my while.

I transferred to Fayetteville as the Administrative Assistant to the Director, was illegally coerced by Calhoun into eventually requesting a reassignment in September 1995 after several months of hell, and then replaced by an individual who was hired without following established merit promotion procedures. I was under the impression that there were rules and regulations prohibiting such incidents from occurring.

Under the EEO system in July 1996, I filed a formal sexual harassment complaint against Calhoun. Filing any EEO complaint is futile. The system never finds in the complainant's favor.

Prior to the actual EEO investigation, I was presented with a formal written statement in which I would receive my promotion to a GS-9 if I dropped my EEO charges. I emphatically refused to

sign this agreement, noting I would not consent to this compromise under any circumstances and was insulted at the proposal.

As a victim, I lost my self-respect, felt worthless, powerless, frustrated, embarrassed, humiliated, and after experiencing total emotional distress, it was necessary to seek medical treatment over 1 year ago, which is still ongoing. I was diagnosed with severe depression and placed on medication, which I am still taking. To date the cost of this care is my responsibility.

I have been punished for acts beyond my control. I feel I have lost everything, and he has not suffered at all. The emotional ordeal and upheaval to the victims deserve appropriate corrective action, not a selective forgetfulness by the VA.

The IG investigation concluded that Calhoun's behavior was abusive, threatening, inappropriate, and that he had sexually harassed one woman employee and mistreated two others. I was sexually harassed. The fact the IG did not find in my favor does not mean it did not happen.

So what is his punishment? He is rewarded for his misconduct, transferred at taxpayers' expense to Florida, where he has repeatedly stated he wanted to live and retire, with no state tax, maintaining his hefty \$106,000-plus salary, to a non-management, non-supervisory position, tailor-made for him, with decreased responsibilities.

I find nothing fair about this. It is apparent to me that the Department of Veterans Affairs condones misbehavior and illegal actions for persons in high authority and solves personnel problems by merely transferring perpetrators to another facility at government expense.

I find VA's response to this matter totally unacceptable and firmly believe they should be held accountable for their actions. To my knowledge, no VA officials have contacted us, inquired about any of the victims' welfare except for one, or provided any assistance in coping with the damage we experienced.

A system should be established to assist victims of sexual harassment and/or mistreatment by VA managers. This entire scenario certainly does not exemplify zero tolerance for sexual harassment, Secretary Brown's mandated policy.

A settlement agreement was reached with VA officials and Calhoun. The fact that the VA reportedly has no authority to change this settlement is a travesty, and I vehemently question the legality of such a negotiated settlement.

In my estimation, removal from Director status is not punishment when he saves salary, which is what his retirement is based on, the high 3 years. Has the VA considered those other employees that Calhoun had removed or demoted from their position, or those who found it necessary to retire early because of the intolerable working conditions under his directorship? Where is the justice for those persons? What about those employees that were promoted or received special favors as reward for complicity?

SES officials should not be protected against appropriate disciplinary actions. As such, it is in their realm of responsibility to lead by example and not use their position or power to emotionally bully and sexually harass subordinates.

The VA must apply the same standards and treatment to Directors and top management as it does to lower grade employees. The VA could truly learn from the Department of Defense.

These past 2½ years have been a continuous nightmare with no apparent resolution for me, and I look forward to the day it is all behind me, though I seriously wonder if it will ever happen.

Thank you for your concern and for this opportunity to speak with you. If I am able to help just one person from going through an ordeal such as what I experienced, that will give me a great deal of pleasure.

[The prepared statement of Ms. Caruana appears on p. 164.]

Mr. EVERETT. Thank you very much. Ms. Judy Dawkins.

STATEMENT OF JUDY DAWKINS, DEPARTMENT OF VETERANS AFFAIRS EMPLOYEE

Ms. DAWKINS. Hi. From the time I began working for Mr. Jerome Calhoun—

Mr. EVERETT. Ms. Dawkins, will you please pull the mic up close?

Ms. DAWKINS. I thought I spoke rather loudly, but I am sorry.

From the time I began working for Mr. Jerome Calhoun in September 1995 through May 1996, I was subjected to verbal abuse, profanity, outbursts of temper, and his fury and his wrath. I never said anything to him about his profanity because I was afraid of him. There were almost daily incidents of his cursing, yelling, and screaming at me or other medical center employees.

Even when I was not the one to whom he was angry with, it was depressing and discouraging to hear these conversations. His actions and his words were so brutal and heartless with employees that a destructive and harmful atmosphere existed.

At first I tried to ignore the conversations. However, I was unable to do this when his abusive behavior began in the morning and continued throughout the day. Each time he used profanity toward me and threatened to fire me, it became increasingly demoralizing for me to work under those conditions.

My work performance was greatly affected by Mr. Calhoun's moves and actions. He set the tone for the office and for the entire medical center every day, which was unusually unsatisfactory, with harmful and injurious results to my health and well-being, to the health and well-being of other employees, and I believe that the atmosphere that existed in the Fayetteville VA Medical Center was harmful to our patients.

In all the years I have worked for the Federal Government at Fort Bragg and Fayetteville VA Medical Center, I have never been spoken to or treated in the manner in which Mr. Calhoun treated me. He created a very hostile work environment. He demoralized me to the point that he broke my spirit.

I went to work around 7:30 a.m. and continued until 5:30 p.m., and sometimes much later without even a break for lunch. I became exhausted, weary, and began experiencing physical problems, and then realized that I was becoming depressed. I had no energy at all, began to decline social invitations and other activities in which I had always participated. I experienced anxiety, sleeplessness and loss of appetite.

For the first time in my life I was scared. I was scared all of the time. It affected every area of my life. I never knew when Mr. Calhoun was going to erupt and if I was going to be the target of his explosion. It was and has been the most frightening experience of my life because I have led and lived a very good life.

On May 3, 1996, I told my husband because he kept asking me what was wrong with me. I finally realized that I could not handle the situation at work anymore, and that I did need help.

I did receive assistance from VISN 6 in Durham staff members when my husband contacted Dr. Gross personally regarding my condition and the circumstances leading to my physical and emotional problems. However, I have never received any support or backing from VHA headquarters.

I believe that Mr. Calhoun received a special deal, as our Fayetteville paper said, when he was reassigned to the Bay Pines VA Medical Center in January 1997. Only his requests were taken into consideration.

No one from headquarters has ever contacted me to inquire or determine to see if I needed anything, any support or any assistance.

I was a victim. I never did anything to deserve the treatment that I received. My emotional stress and physical problems and those of other employees have never been addressed by the top management within the VA. It appears that they did not care about what happened to me or any of the other employees. They were only concerned with assisting Mr. Calhoun.

During the period that I worked for Mr. Calhoun, I became tense and nervous because I was so afraid of his temper and threats. I had personally seen four letters of proposed removal, two for service chiefs and two for assistant service chiefs, come across my desk. I had witnessed numerous abusive conversations and mismanagement actions by Mr. Calhoun. Therefore, I was afraid he would fire me, embarrass me, and humiliate me, especially since all I was was a secretary.

His abusive treatment was very demeaning to me as a human being, very disrespectful to me as a lady, and very painful for me to endure.

Mr. Calhoun also made inappropriate remarks about part of my anatomy. I chose not to include them here. However, details can be provided.

I have attached to my statement an outline of events giving specific dates and times of the treatment I received from Mr. Calhoun. In addition to what I have given you that will be part of the permanent record, I have personal knowledge of numerous mismanagement practices by Mr. Jerome Calhoun. I chose not to include these handwritten notes to outline the specific dates of his misuse of his position as Director and his total disregard for VA regulations and guidelines. I will furnish this information to the Office of the Inspector General if I need to.

In closing I do want to say something positive about the VA. I have worked for this agency for over 21 years. The new VISN concept is going to be excellent for our veteran patients and our employees, too. Medical centers will now begin to work as teams and not individually. The benefits should be outstanding.

There should be more accountability of Directors since they will be working together as a team, and their authority will not be autonomous as in the past.

I want to say publicly that I appreciate the assistance which I received from Dr. Gross, Dr. Alexander, Ms. Ann Patterson, and Ms. Loretta Sauls. Their support was and continues to be outstanding for me, and this is not said to make them feel better. It is what I truly believe.

One of the best things to happen to the Fayetteville Medical Center—and Fayetteville is my home; I have lived there 40 years—is being under the leadership of the VISN 6 staff in Durham, NC. I believe that by each medical center working together, and especially at Fayetteville, we can care for our patients, which truly is what we are all about.

However, as employees, we must demonstrate our willingness to go beyond that which is necessary and support our patients. Without veterans, I do not even have a job, and a lot of the people in this room do not have a job either. We need them, and they need us, and I know that they are what the VA stands for.

I want that medical center on Ramsey Street to be there when I am dead and gone and buried across the street. I want my grandchildren and my great grandchildren to say, "Mima worked there." I want it to continue as a medical center to serve the veterans of Eastern North Carolina.

We do care. We are good people there. We are not stupid hicks, as we were referred to. We might not have had all of the top rated things that Durham has because of Duke University Medical Center, but we care about those people because that is what we are all about and the VA is all about.

Thank you.

[The prepared statement of Ms. Dawkins, with attachment, appears on p. 170.]

Mr. EVERETT. Thank you, Ms. Dawkins.

Ms. Barefoot.

**STATEMENT OF LOVIA B. BAREFOOT, DEPARTMENT OF
VETERANS AFFAIRS EMPLOYEE (RET.)**

Ms. BAREFOOT. To all committee members, I appreciate this opportunity. Can you hear me?

Mr. EVERETT. If you could move the mic a little closer or we will set up two mics.

Ms. BAREFOOT. I do not know if I need two, but I appreciate this opportunity to address the atrocities to which I was subjected while secretary to Jerome Calhoun from April of 1994—

Mr. EVERETT. Ms. Barefoot, excuse me. I believe you are going to have to move that mic just a little bit closer if you can.

Ms. BAREFOOT. Which one or does it matter?

Mr. EVERETT. The staff, give her some assistance there.

Ms. BAREFOOT. This one? This one. Is that better?

Mr. EVERETT. Thank you.

Ms. BAREFOOT. I appreciate the opportunity to address the atrocities to which I was subjected while secretary to Jerome Calhoun from April 1994 through June 1994.

Very soon after his arrival to the Fayetteville VA Medical Center it was quite apparent that he intended to make changes not only in the management of the medical center, but changes in personnel as well. Within the first week of his arrival, he advised me that I had 90 days to prove myself. I thought that a rather strange remark. I had 23 years of federal service in and had held similar positions at Pope Air Force Base, NC, for 6 years prior to going back to the VA.

During the transition briefing, I was assigned to take minutes. On the morning of the briefing, James Crocker, then Chief, Fiscal Service, offered to go and bring Mr. Billy Hightower, Transition Coordinator, from the motel to the hospital. Rather than accepting Mr. Crocker's offer, Mr. Calhoun accused Mr. Crocker of challenging his authority as the new Director.

After Mr. Hightower had presented the briefing, Jerome Calhoun stood before the group composed of service chiefs and some key staff personnel. He walked to the front of the semi-circle in which we were seated. He immediately held his arms away from his sides, slowly walked a 360 degree turn, fully exposing his wrists and hands.

When he had completed his turn, he rubbed the tops of his hands and referenced the color of his skin.

Mr. Calhoun's management style, if you could call it that, was one of threats, intimidation, and constant filthy language. I am not comfortable using these words, but the "F" word was frequently used in my presence, as well as other curse words.

In those 3 months, and which in some ways seemed like an eternity, he constantly inferred that my work was substandard, was not what he wanted, and I had better clean up my act or I would be out of a job. This was done in the form of yellow sticky notes, verbally, and written in the margin of finished products, such as, "How much longer do I have to endure this?"

I found these rejections of my work and threats for dismissal totally foreign to anything I had ever endured before in my federal career. I have always taken pride in my work, tried to do my best for my supervisors, and was recognized for this by receiving only highly satisfactory and outstanding appraisals and incentive and suggestion awards. Isn't it interesting to note that my performance appraisal in March 31, 1994, just prior to Jerome Calhoun's arrival, was highly satisfactory.

I soon began to live in such fear of being reprimanded and threatened, both actions never having been necessary by prior supervisors, that my fears did affect my performance. I felt I had no one to turn to. Who would believe my word against that of a medical center Director? I was a small fish in a very large pond.

I am the type of administrative employee who likes to organize her next day's work prior to leaving the office. On this particular afternoon, it was around five, and he called me into his office and gave me explicit instructions to call the regional office in Winston-Salem about some matter.

I went to the office, made a note on the calendar, said my "good nights" and went home. The next morning as soon as I walked in, he yelled at me to come in his office that very instant. He exhibited

so much anger that I was terrified and yet had absolutely no idea what I had done wrong.

He began to yell at me for my insubordination and not taking my job seriously enough. I lived with threats the entire 3 months I worked for him, but he used his authority inappropriately. He had no need to scream at me as I have no hearing deficit, but I asked him what he was talking about. He responded he expected me to take care of the regional office matter at that moment and not wait until the next day. When I explained the late hour of his assignment, after office hours, his only response was something like, "Oh, was it that late?" Never once did he apologize.

After he told me I appeared to not take my job seriously, I began to cry. He then asked me to step over beside his desk, and he opened one of the drawers on the left side. Inside that drawer was a large box of beige colored tissues. He told me they reminded him of me, soft and beige, and that whenever he upset me to the point of tears just to feel free to get a tissue from his desk, as they had been bought especially with me in mind.

In May of 1994, the medical center Director was visited by Mr. Hershel Gober, Deputy Secretary to Jesse Brown. Early in the day, prior to the reception for Mr. Gober and unknown to Jerome Calhoun, Tomi MacDonough, a vet center leader, had a moment to chat with Mr. Gober about some concerns he had for the vet center. Later in the reception Mr. Gober asked Mr. Calhoun about these issues and apparently took Mr. Calhoun totally by surprise.

After Mr. Gober had departed the station, while seated at my desk, Mr. Calhoun came bursting through the main office doorway past my desk, jerking his tie off, cursing and screaming, "That G.D. M.F. S.O.B. MacDonough" was going to hear from him.

Tom Arnold, then Associate Director, was right on his heels trying to calm him down. Mr. Calhoun slammed his office door. I just stared in disbelief.

In a short while, he came out of his office, stepped up to my desk, and announced that he was going jogging to de-stress. No, he did not record his absence or other like absences. Further, I never observed him using his office computer during my 3-month tenure there.

Soon after his arrival, Jerome Calhoun called me into his office to take dictation in response to a sexual harassment matter which had followed him from one of the New York medical centers. All of the criteria listed on the document, I think, were listed in an A, B, C type of format, and each was emphatically denied by Mr. Calhoun.

When I had taken the dictation, I was told to typewrite the response, make no record of the female's name, and keep no copy of that document. I was then told to give the document back to him for mailing.

As time went by, I could see a change in me from a woman who used to come to work thankful that she had reached the grade of GS-8, a grade at which she would one day retire; a woman who had excelled in facets of her personal life as wife and mother; a woman who had successfully worked with medical professionals, Air Force colonels, congressional liaisons, and foreign military officers for more than 20 years; to a woman who had become a timid,

nervous wreck as a result of the harassing, hostile and intimidating work environment created by Mr. Calhoun; a woman who began to dread reporting to work because that office had become a living hell; a woman who suffered loss of appetite, insomnia, sought medical treatment for stress related chest pain and shortness of breath, and would mentally replay the day's events.

After admitting to myself that all those years of devoted work for the Federal Government was not something I could just throw away, I requested an option to transfer to another job, which meant an obvious downgrade as I was the highest ranking secretary in the medical center.

The decision was not made on a whim. It was a matter of survival: mine. I had often discussed the work environment with my husband and daughters, and each supported me in my decision to transfer.

When I approached Mr. Calhoun requesting a transfer, he acted surprised. He agreed to my request for a transfer only if I signed an agreement to accept the position at a lower grade and pay level, and that I was not coerced in doing so. This resulted in a pay reduction of greater than \$3,000 per year.

I ask you members of this committee: do not the above statements qualify as coercion, intimidation, harassment, hostile working environment, and abuse of power?

Incidentally, I was still within my 90-day period as this had hung over my head like a dark cloud. I should never have had to endure the pressure of sitting on the fence with my career at stake.

Members of this committee, I implore you to thoroughly investigate such atrocities that these other witnesses and I endured at the Fayetteville VAMC. Investigate from the top level of the Department of Affairs down.

Investigate why the Jerome Calhouns in this administration are punished by merely transferring them from one facility to another. Mr. Calhoun was not punished. He was removed from SES status, but he is still drawing a \$106,000-plus annual salary and living in the State of Florida, where he had always intended to retire.

Did the Department of Veterans Affairs officials really punish him or merely slap the faces of his subordinates? I would like to see this problem rectified and you, members of this committee, are the ones to do it.

Thank you.

[The prepared statement of Ms. Barefoot appears on p. 178.]

Mr. EVERETT. Thank you, Ms. Barefoot.

Ms. Moore-Russell.

**STATEMENT OF DORIS A. MOORE-RUSSELL, M.S.W.,
DEPARTMENT OF VETERANS AFFAIRS EMPLOYEE**

Ms. MOORE-RUSSELL. I am a service connected veteran, and I receive all of my care at the VA Medical Center. I am also a psychiatric social worker that specializes in PTSD, combat and sexual assault PTSD, and other mental health issues.

I am alleging that I was subjected to undue stress in a hostile environment because I did not welcome any sexual advances from the previous Director, Mr. Jerome Calhoun. I was forced to leave my position for 1 year, taking leave without pay, from August 1,

1995, to July 31, 1996. I experienced malicious retaliation as a direct result of Mr. Calhoun's actions. He used insulting, abusive and intimidating language toward me in the presence of others. I was consistently harassed and subjected to racial and gender remarks.

I met Mr. Calhoun for the first time on May 9 at 10:15. I met with him to discuss the Women Veterans Program, which was my collateral duty. Mr. Calhoun, at that time, seemed very supportive. I thought I had developed a rapport with him. My next personnel contact with him was on June 8th of 1994. I was admitted to the VA Hospital because I was having a lot of medical difficulties.

Mr. Calhoun called me at home. He was at an EEOC conference in Orlando, FL. He wanted to see how I was doing. I felt that was odd because I had never had my supervisors call me at home, let alone the Director.

I had served on several committees that Mr. Calhoun chaired or visited and witnessed him making demeaning remarks to many employees. I began to feel uncomfortable with his abusive behavior.

I was requested on July 28 to come to his office. He wanted to see how things were going. During that meeting I told him I wanted to apply for the SWALT Program (Social Work Administration Leadership Training Program). He said, "Consider it done."

I am not going to read all of my testimony because you do have a copy. I'm going to skip around and try to finish this up within the allotted time.

There were several times when I met with Mr. Calhoun and we discussed a lot of things that concerned me, the Women Veterans Program, the overwhelming amount of responsibility that I was completing due to my other duties.

When an announcement came in for the Regional Veterans Women Coordinator position, I met with Mr. Calhoun that afternoon about 4 p.m. to tell him that I wanted to apply for that position. During our conversation, I informed him that I was given the Women Veterans Coordinator position as a reprisal from the previous administration. He told me he was aware of the situation, and he specifically added to me, "Doris, you were 'F'ed' by the previous administration. At least if I would have 'F'ed' you, you would have got something out of it."

I was very shocked to hear Mr. Calhoun say that. I was very shocked and agitated. I didn't know who I could turn to in order to discuss what Mr. Calhoun said. I felt no one would believe me.

During this period of Mr. Calhoun's tenure, there was a lot of people that were afraid of him. He had a lot of people that were his supporters. I began to question myself. The things that he had accommodated me with, for example, he had given me in one of our meetings a cabinet from his executive suite. He also gave me as the Women Veterans Coordinator and two of our other Women Veterans Advisory Team members a trip to San Diego, CA, to attend a Women Veterans Committee conference that was not sponsored by the VA.

Previously he had written me several appreciation memos and letters of recommendation. I have a copy of all the memos and letters of recommendation. I felt I had his support and backing. I began to feel hurt and confused.

During the second week of December 1994, the medical center gave a Christmas party at the Pope Air Force Base Officers Club. I arrived late. I was greeted by Mr. Calhoun. He gave me a hug. His hand slid down to my chest, and he squeezed my breast with ooth of his hands. I pulled back in shock.

He had a smirk on his face and said, "Merry Christmas, Doris." I wanted to slap his face, but instead I mumbled something. I rushed to the bathroom. I felt sick, and the rest of my night was ruined. I kept wondering who could I tell. Who would believe me?

The next morning I did tell the Assistant Chief of Social Work, Mr. Canteen. He asked me what I was going to do, I told him I did not know. Later that day Mr. Calhoun requested me to meet with him. I was hesitant. I was frightened because I was afraid that Mr. Canteen told Mr. Calhoun what I had said.

But instead he did not talk about the incident at the Christmas party. He spoke about my health issues, job stress, and my filing for workmen's compensation. You see, I filed for workmen's compensation because I was having too many medical difficulties. I could not afford to pay for my treatment on the outside.

He became very angry, and stated, "You shouldn't have said what I said about Mr. Arnold. That was between you and I." He was very belittling. He asked me to leave his office.

My worst fear happened. I received a memo from Mr. Calhoun on January 19 detailing me from my position as the Coordinator of the Aftercare/Outpatient Program, effective the 5th. I was confused and upset. I could not understand why he wanted to take my job. I tried to meet with him. He was demeaning, and what he was saying did not make sense.

He kept saying, "If you would have been nice, Doris, this wouldn't have happened to you," or something to that effect, "and now," he said, "I don't give a damn about you."

I was very baffled and angry. I filed a grievance against Mr. Calhoun on the 2nd of February 1995. I wanted to know specifically why he was detailing me.

Mr. Calhoun met with me a week later with my supervisor, Ms. King, and the Chief of Personnel. I asked the union president to attend with me, Mr. Paul Reid. That was a very heated meeting. During that meeting Mr. Calhoun gave me my job back.

However, I was continually harassed. I had to sign in every morning on the computer. I was being harassed also by my supervisor because she was a lieutenant of Mr. Calhoun.

I wanted to know why I was being treated that way. I asked Mr. Calhoun if I could meet with him again. He told me that if it was of a personal nature, he would have to have a witness, and if it was about work, I needed to see my supervisor.

Finally he did allow me to come in and talk with him. He jumped on me about being late. He called me personally at 8 a.m. to set up an appointment. I was not in my office. I called him back at 8:01.

I told him I wanted to make peace. He did not let me finish my statement. He asked me, "Well, what else?" I discussed having to pull weekend calls without compensation, also signing in on the E-mail every morning, and also my supervisor briefed and assigned duties to my supervisees without discussing the issues with me.

He acknowledged that all of the above concerns were valid. He said he would speak to my supervisor. He asked me did I understand why he had a witness in his office, the EEO manager, Eugene Paul. I answered no. He stated, "Because the last time we talked, you misrepresented what I said to you about Mr. Arnold to worker's compensation as if I supported you."

I told him I did not mind Mr. Paul being there.

When I met with my supervisor that afternoon at 1 o'clock, I told her, "I no longer had to sign in because I just spoke with Mr. Calhoun." I was assuming that my supervisor had met with Mr. Calhoun. They typically meet at least three and four times daily.

She became upset and ran out of the office. She left me with Mr. Canteen, another supervisor. When she returned a second later; she brought the EEO manager, Mr. Eugene Paul. Mr. Canteen asked if he should leave. She nodded.

Mr. Paul proceeded to demean me. He stated, he could understand why I had to sign in. I informed him that the regulation read that you call in if you did not plan to come to work. He stated, "That's your interpretation." I asked him what was his.

Mr. Paul became very upset and ran out of Ms. King's office. He returned a few seconds later with Mr. Calhoun. I thought this was strange because all of this happened within a matter of seconds. I felt as if the three of them were conniving to further cause me harm.

Mr. Calhoun came in. He stood in front of the door. Eugene Paul also stood in front of the door. My supervisor was sitting behind her desk. I was sitting opposite of her. Mr. Calhoun kept screaming and pointing his finger in my face. He used insensitive and demeaning terms. I lost track of what he was saying. I was trying to keep my emotions intact.

I tried to say something, and he told me, "Shut the fuck up." I became speechless. I just felt so hurt, trapped and I just could not understand why they were harassing me.

Mr. EVERETT. Ms. Moore-Russell, if you need a moment, please take one.

Ms. MOORE-RUSSELL. I could not understand why this was happening. I looked at my supervisor for support. She did not say anything. I felt trapped and threaten. Mr. Calhoun and Mr. Paul were blocking the doorway. So I could not leave. I felt intimidated and helpless. Finally Mr. Calhoun realized that he had lost control with me. He and Mr. Paul left.

I asked my supervisor Ms. King could I leave her office. She nodded. A staff social worker, Dick Droney, asked me, "What's wrong?" He added, "You seem upset," "Who was Mr. Calhoun screaming at?" He further stated, "I heard him say, 'Shut the fuck up.'" I told Mr. Droney Mr. Calhoun was yelling at me.

Later that afternoon I had three patients scheduled in my clinic. I was too upset, tearful and shaky to see my patients. Did Mr. Calhoun's, Mr. Paul's or Ms. King's behaviors exhibit concern for patient care at the VA?

I had to ask my staff to see my patients. I left and went to see my psychiatrist, Dr. Cusi.

Mr. Calhoun had made explicit and implicit sexual comments to me on several occasions. He created a hostile working environment

for me because I would not meet his conditions. By touching my breast, I feel that he has sexually assaulted me, and my rejection of his sexual advances was used to ridicule and belittle me. He has ruined my life. I had to leave my job for 1 year without pay. I was denied worker's compensation. I was also denied a medical retirement. I applied for medical retirement through OPM. I was denied the above options due to deceptive information provided by the Director and my supervisor, Ms. King.

I received no support from anyone at that particular time because I was the first one that was subject to his harassment. On behalf of my other African American co-workers and supervisors at the VA Medical Center, we want to let the committee know that we were informed that we could not file an EEO complaint against Mr. Calhoun because he is of the same race. We were told that there was nothing that we could do, and they all want you to know that they complained initially about his abusive behavior and nothing was done. No one would listen.

I also wrote Mr. Calhoun's supervisor, Dr. Moravec, as he asked me. I sent the letter to Mississippi. Their written response to me was neither supportive or encouraging.

I also called the Department of Veterans Affairs, Washington, during the time I was on leave without pay to inquire about assistance. However, I got the run-around. Every telephone number that I called referred me to another office. All the numbers called were recorded on my telephone bill. Exact dates can be produced. The VA furlough went into effect allowing me no other attempts.

So now I implore you to continue to look into this situation because it is definitely unfair, and no one should be treated the way myself treated and the other ladies of this panel were treated.

Thank you.

[The prepared statement of Ms. Moore-Russel appears on p. 183.]

Mr. EVERETT. Ms. Moore-Russell, thank you very much for your testimony.

I thank all of you ladies. We unfortunately have a vote on. Excuse me one moment.

Hopefully it will not be long, although it is a procedural type of vote that could take a little time. We hope that will not happen. I would ask the panel to remain because we will have questions when we get back, and at this time I will recess until we—

Mr. CLYBURN. Mr. Chairman.

Mr. EVERETT. Yes.

Mr. CLYBURN. Just before we adjourn, I neglected when I made my statement to ask unanimous consent for a statement from Eva Clayton, who represents this area here in this body. She has a statement she would like entered into the record, and I ask unanimous consent that this be entered into the record. As I speak, Eva Clayton is entering this room.

Mr. EVERETT. Without objection, our colleague Ms. Clayton's statement will be included in the record, and we welcome her to these hearings.

[The statement of Hon. Eva M. Clayton appears on p. 188.]

Mr. EVERETT. We will recess though for the vote, and we will be back here in just a few minutes.

[Recess.]

Mr. EVERETT. We will reconvene the hearing, and I apologize for the delay. I can tell you that the floor schedule at best today is unpredictable, but we will try to move as quickly as we can.

I am going to enter into a round of questioning now, and we are going to ask all members to adhere to the 5-minute rule. If there is need for a second round, we would be more than happy to do that.

I will begin the questioning, and I would like for each of you on the panel to respond to this. Would each member of the panel respond to this question?

Do you have trust and confidence in the EEO process at Fayetteville? Why or why not?

And if you could, we have your written testimony. Please keep your responses as brief as possible. We will start with Ms. Force.

Ms. FORCE. Thank you.

No, I cannot say that I have confidence in the EEO process at Fayetteville. I made my initial complaint to the EEO not manager, but the EEO counselor in July, the end of July.

In December we still had not received any kind of response. At that time I did not feel as though I could go to the Fayetteville VA. So I had given instructions that my attorney would be handling my case.

In December she sent another letter that I have a copy of here to the Secretary of the VA and the Associate Director of EEO, saying that we seem to be having problems with lost paper work, because as I understand, mine was not the only paper work that was lost, and to my knowledge, there has been no answer to that letter either.

So my confidence, I was not there during all of the meetings that they have had with the EEO investigators. I was already gone, but I had no confidence in the EEO manager because the day that I requested the meeting with Jerome Calhoun to ask why I was being removed from my position since I had never been given any kind of counseling or nothing had been said to me about poor performance, they were in the process of processing our award for achieving our maximum goal for the first time. We were one of 15 facilities recognized for consistently increasing collections by double digits.

Mr. EVERETT. Ms. Force, excuse me, but rather than go into detail, if you would just make your answer brief. I am sorry. I apologize for not having the time, but we simply do not have it.

Ms. FORCE. The EEO manager was in that meeting, and never at any time made any comments in my defense. He was very obviously there for Jerome Calhoun and not there for me.

Mr. EVERETT. Just briefly, did your program receive a national ranking from the MCCR Program in terms of his collection?

Ms. FORCE. Yes, sir.

Mr. EVERETT. And it was one of the top ten in the Nation?

Ms. FORCE. Well, no, it was not one of the top ten in the Nation. We had consistently increased our collections by double digits.

Mr. EVERETT. I remember your testimony. Thank you very much. Ms. Caruana.

Ms. CARUANA. I have no confidence with the EEO process at Fayetteville. I believe the manager to be biased. Mr. Calhoun was in

his office for hours at a time during proceedings. I believe that he knew what the witnesses said before he even got into the actual investigation, so that he was able to respond to any questions he may be asked.

During my investigation, the EEO investigator told me off the record that she had never heard stories like those of my witnesses. She said she was appalled, and I really thought I was going to win my case.

He made a statement. He called together all black supervisors and managers and said, "We all have to stick together," and more or less said, "If you think I'm kidding, you saw what I did to my secretary that I spent 10 years with. She got to be too white and I had to remove her, and if you don't think I'll do it to you, you're wrong."

I have three black witnesses that testified that to this fact, and the results of my EEO: she did not find in my favor. She found that he treated everybody the same way. Therefore, I did not have a case.

Mr. EVERETT. In other words, he was abusive of everybody. So you do not have a case.

Ms. CARUANA. That is right. So you can abuse anybody, and because you treat everybody this way, it is fine. So why have a system?

Mr. EVERETT. Thank you very much. Ms. Moore-Russell.

Ms. MOORE-RUSSELL. Mr. Chairman and committee, I do not have any faith in the EEO process. The EEO manager from Fayetteville VA Medical Center, Eugene Paul, was in the room when Mr. Calhoun proceeded to demean me and belittle me

Also it has been noted by many of my African American colleagues, that as soon as a person filed an EEO complaint, my supervisor who, Ms. King, is informed of it.

I filed an EEO complaint on September 6, 1996, after I returned to work. Since then that complaint has been said to be lost. They have no recollection of it.

Now in order to file a complaint, you have to have a counselor. In other words, where is the EEO counselor's copy of my complaint.

Mr. EVERETT. You were not advised you needed one?

Ms. MOORE-RUSSELL. No, sir.

Mr. EVERETT. Ms. Barefoot.

Thank you, Ms. Moore-Russell.

Ms. BAREFOOT. I am afraid I have to reflect the same statements in that I have no confidence in the EEO in Fayetteville. Mr. Calhoun, as I observed, to be on a power trip. So what was the point? Here I am one secretary against a medical center Director. There would be no need to do it. It would not go anywhere. Those were my feelings.

Mr. EVERETT. Thank you. Ms. Dawkins.

Ms. DAWKINS. I have never filed a grievance or a complaint.

Mr. EVERETT. I am sorry. Would you pull that mic up? I apologize, but if you would pull it closer.

Ms. DAWKINS. Thank you.

I have never filed a grievance or complaint in all the years of federal employment, and at the Fayetteville VA I definitely would not have. I honestly believe, well, I honestly know for a fact that after

working hours, because I had to work so late, that the investigators came to the office. They did not bother to close the door. They did not care that I heard them. They would laugh and discuss the cases with Mr. Calhoun. They would laugh about the complainants behind their back.

I really wanted to go and tell the people, "You poor saps. You're filing all these things. Nothing's going to happen," but I could not.

I never spoke about Mr. Jerome Calhoun until after I was placed on medical leave by my doctor. I was loyal to him and to his position until my doctor took me out and convinced me to speak up. It took a husband and a doctor to do it.

I wanted to leave. I honestly believe in the VA system that the EEO managers should not be at the local stations and the Director be their supervisor. I find that a big conflict of interest because how are you going to go against someone that is writing your appraisal at the end of the year, determines whether you get another promotion? I did not even go against him, and I am normally a very aggressive, normal woman.

But his intimidation and his grip was so fierce that I found myself scared to death and did nothing, and I am ashamed of what I became. I am literally ashamed of the woman that I became after working with him for 8 months.

My children are not proud of me. I would not stand up. Dr. Gross was the only one. I would not do anything because I said, "What's the use? They're going to laugh. They're going to say, "These stupid women here.""

He laughed at everybody there. I can assure you that if I knew where Mr. Calhoun was right now, somewhere in Florida I assume, that he is looking at this on CNN and laughing.

"You can say all you want, you hillbillies and you hicks." That is what he called us. "I've still got mine." He does not care, and I think until the VA realizes that EEO managers cannot come under the supervision of a Medical Center Director or an Associate Director or a Chief of Staff, who have the right to write their appraisals; until they move it out of the local hospital, then I do not think the EEO system is worth anything.

Mr. EVERETT. Thank you very much.

I will now turn to our ranking member, Mr. Clyburn for any questions he may have.

Mr. CLYBURN. Thank you, Mr. Chairman.

I suspect that most of my questions, of course, will probably be reserved for managers here. I am a bit disturbed though that all of you seem not to have any confidence in the EEO process.

It seems to me, unless something has changed, that there was a very simple procedure to move outside of the in-house EEO process to a process outside of the agency. None of you made the attempt to go outside of the internal process to the external process?

Yes, ma'am.

Ms. DAWKINS. When I was placed on medical leave, the only vehicle I could determine that I could document what had happened to me was to file OWCP. It was the only place that I could think of in the government that I could—

Mr. CLYBURN. Can you tell me what the OWCP is?

Ms. DAWKINS. OWCP, Occupational Workman's Compensation.

I filed it there and put all of the attachments, my chronological attachment of what he had done only to me, not other things I had seen him doing because to me a grievance in the EEO was worthless.

Mr. CLYBURN. Well, I understand that, but we only have 5 minutes here. Nobody else attempted to go outside the process?

Ms. MOORE-RUSSELL. Okay. Mr. Clyburn, I was informed that as being an African American and Mr. Calhoun an African American, I could not file an EEO complaint, but, yes, I did make an attempt to go outside for help. I wrote his supervisor a letter, Dr. Moravec. He was not helpful.

Mr. CLYBURN. For sexual harassment?

Ms. MOORE-RUSSELL. For sexual harassment or anything else.

Mr. CLYBURN. Who informed you of that?

Ms. MOORE-RUSSELL. We were informed by some of the counselors, and I do not know all of the names, but I was informed by some of the counselors and the EEO manager, Mr. Paul.

I did go outside of the system. I wrote a letter to Mr. Calhoun's supervisor, Dr. Moravec at the regional office.

Mr. CLYBURN. That is still within the system. Outside of the system, outside of the agency to the U.S. Equal Employment Opportunity Commission, and there is a process now by which federal employees can go to the U.S. Equal Employment Opportunity Commission, but none of you made an attempt to do that?

Ms. CARUANA. I do not think any of us knew about it.

Mr. CLYBURN. Well, I think that is why I want to talk to some management people because I do not understand why you would not know what the procedures are to file these kinds of complaints.

Ms. FORCE. I was instructed that you had to go through that process at the hospital, and if you did not get any results, then you could go to this outside process.

Mr. CLYBURN. Absolutely correct, and you all said you did not get any results. If you do not have faith in this process, you still have got to go through it.

You know, I can understand your feeling that someone who is being supervised by the perpetrator will not be forthcoming. I can understand that, but when you go through that process and you are not satisfied with it, there is a step that takes you outside of the system, but you are telling me that none of you made any attempt to go outside of the system, outside of your agency, I should say. I am sorry.

Ms. FORCE. I was instructed that you had to have 180 days, and it has not been 180 days since my attorney's letter went to Washington.

Mr. CLYBURN. The 180 days is from the infraction. You have to have 180 days from the time it happened to you, unless, as all of you testified, it is an ongoing process. If it is a continuing process, 180 days do not matter because your 180 days could be from the first time. It could be 180 hours from the last time it happened, and from what you all are telling me, this is a continuous thing.

Ms. CARUANA. I filed my EEO case, and I am waiting for a court date, which my attorney told me it will probably be around Christmas time. It seems like it takes forever and a day.

Mr. CLYBURN. I know of a case right now in the VA that is 11 years old. That is not unusual.

Ms. CARUANA. So I am just waiting for the next step.

Mr. CLYBURN. Right.

Ms. BAREFOOT. I would just like to say this. I have been retired now a little over 2 years, took an early out, but I think it is interesting that we spent all of those hours in sexual harassment training, but we have not had the proper EEO procedure training. I think that is something that should be looked into.

Mr. CLYBURN. You said you have not had that?

Ms. BAREFOOT. I do not recall attending it. I do not recall it being available to me, but we did spend a number of hours in sexual harassment training.

Ms. CARUANA. We have to attend 4-hour mandatory sexual harassment classes. It seems like we should not have to go to those. Every year we have to attend.

Mr. CLYBURN. Well, why shouldn't you have to go to them? I mean that is why they are there, so that you would know how to step outside of the process.

Ms. CARUANA. Well, we have been sexually harassed, and the perpetrator got away with it. So why do we have to continue to go to these classes?

Mr. CLYBURN. Well, Ms. Caruana, I do not think anyone has gotten away with anything yet. We are all still around. He is still around. Just because someone was transferred from one station to another does not mean they have gotten away with anything yet.

I mean, how long has the Texaco case been going on? They may have thought they had gotten away, but they have suddenly found out they did not get away, and we can still remedy this. So just because it did not happen at the time you wanted it to happen does not mean he got away.

Maybe we will have another round of questions, but let me say this. My interest in these is really to find the facts. For instance, we are here to discuss sexual harassment, and at least two of you have got some real good, emotional cases for bad management, but there is a big difference between bad management and sexual harassment, and what we want to do is really differentiate between those two things.

Now, I can understand when people tell you that you have a problem, but it may not be a sexual harassment problem or may not be a discrimination problem. I came face to face with that very early in my career when a lady came to me, and I asked her. I said, "Well, tell me. Are there any white employees in your section?"

She said, "Yes, he treats us all like dogs."

I said, "Well, where is the discrimination?"

And there is a difference, and so just because it is bad and it is bad management really does not mean it is illegal discrimination because it has got to be based on race or gender or age or religion, and that is where we have the difference here.

So what we want to do in this committee is really zero in on exactly what the illegal behavior is, based upon what our Constitution and what our laws are. So I am really interested in trying to find out why you all did not see fit to go outside of the agency, and

I really want to know the answer to that because that to me is what the real problem is here.

Ms. MOORE-RUSSELL. Well, Mr. Clyburn, when I returned to work in September, I was told at that time that, yes, you can file an EEO complaint, and that is when I filed, on September 6, but I also obtained an attorney and once you obtain an attorney, you no longer take the active process of seeing your EEO complaint through. You turn that over to your attorney.

Mr. CLYBURN. So you do have an attorney?

Ms. MOORE-RUSSELL. Yes, sir.

Mr. CLYBURN. Who has filed paper work for you?

Ms. MOORE-RUSSELL. Yes, sir.

Mr. CLYBURN. So your process is ongoing?

Ms. MOORE-RUSSELL. According to her, when I met with her on Saturday before coming here. The EEO manager, Mr. Paul, at the VA hospital told her that they cannot find my complaint. This is what my attorney said they told her. That is what she told us on Saturday when we met with her, and this is the EEO that I filed. It is my copy. This is the copy that was given to them.

Mr. CLYBURN. And so the VA people told your attorney that they have lost the complaint?

Ms. MOORE-RUSSELL. That is correct, sir.

Mr. CLYBURN. That your attorney filed on your behalf?

Ms. MOORE-RUSSELL. That is correct, sir.

Mr. CLYBURN. Did somebody else say something was lost, too?

Ms. FORCE. Yes.

Mr. CLYBURN. So you filed a complaint by an attorney?

Ms. FORCE. Yes, sir.

Mr. CLYBURN. And it was lost?

Ms. FORCE. Yes, sir.

Mr. CLYBURN. Mr. Chairman, I hope that person is on the witness list who lost all of these things.

Mr. EVERETT. Is the individual on the witness list or by name can you tell us who told your attorney?

Ms. MOORE-RUSSELL. Well, sir, the only thing I know is that Eugene Paul is our EEO manager. So any correspondence would come from his office with the endorsement of the Director. My attorney received a correspondence, and she probably could tell you exactly who she spoke with, but they do not discuss these issues with me anymore.

Ms. FORCE. Mine would have also gone through Mr. Paul.

Mr. CLYBURN. Yours went through Mr. Paul also?

Ms. FORCE. Yes, sir.

Mr. CLYBURN. And Mr. Paul is not on the witness list.

Mr. EVERETT. No, he is not. We can arrange that though.

Mr. CLYBURN. I think so. We need to.

Thank you.

Mr. EVERETT. Thank you, Mr. Clyburn.

Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman.

I was being a very good listener to the Ranking Member, and I think in his experience he also uses the word "illegal." I do not know if you are referring specifically to allegations in order to prove sexual harassment as a violation under the Civil Rights Act,

but what I definitely have heard from testimony was some evidence of abusive behavior that should never be tolerated by any of the employees in the VA or anywhere.

The one thing that I am curious about is from some of the newspaper articles and some of your testimony, we have a Director here who was boastful about his relationship with Jesse Brown. I would like the witnesses to share with the committee about the relationship between the Director and the Secretary of the VA based on your knowledge.

Go right down the row. Ms. Force.

Ms. FORCE. I did not have any direct knowledge of Mr. Calhoun's relationship with the Secretary of the VA. I have been told that he was a secretarial appointment, but I never had any direct knowledge of any kind of relationship.

Mr. BUYER. Ma'am?

Ms. CARUANA. I do not know of any relationship with Secretary Brown. I had heard stories that prior to his appointment at Fayetteville, Mr. Calhoun had gone to see Jesse Brown, and that is how he got that appointment, but it could just be a rumor. I do not know of any relationship that he had with him.

Mr. BUYER. All right. Ms. Moore.

Ms. MOORE-RUSSELL. I can say the same thing they are saying. I have no direct knowledge, just rumors.

Mr. BUYER. Ms. Barefoot.

Ms. BAREFOOT. I have been away from the VA now for a good while and from that front office since 1994. However, I think I recall seeing an autographed photo of Jesse Brown in Mr. Calhoun's office; is that correct?

Okay. I recall making the comment about Mr. Brown's photo in Mr. Calhoun's office, and to that Mr. Calhoun said, "Jesse Brown and I are just like this," and held his two fingers together.

Mr. BUYER. Ms. Dawkins.

Ms. DAWKINS. I, too, recall the photos, and he did not do this to me, but he said, "We're tight," and he also alluded to the fact that he was tight with Senator Helms, which shocked me because I thought, gosh, I voted for him every time. I might not ought to say that here, and I just could not believe that the Senator would support someone of Mr. Calhoun's character, and then I remembered that he had two sides to his character. He had the charm side, and he had the other side, and I just assumed that the Senator did not see it.

But he had two photos, one with Senator Helms and then another photo with the Secretary, and they were on view, and he did allude to them at different times. He would say, "They are my friends."

And, you know, it is intimidating when you are a GS-8 secretary. You just sit there and think, well, nobody would believe anything I ever said.

I would like to clarify one thing that one of you two said. Okay? I will not take but a minute.

Mr. BUYER. All right.

Ms. DAWKINS. I am not that long-winded.

Mr. BUYER. I only have 5 minutes to ask my questions.

Ms. DAWKINS. Okay.

Mr. BUYER. If at the end of my questions you time it just right—
Ms. DAWKINS. I can butt in.

Mr. BUYER. I think members of Congress would cringe if there was any implication with regard to relationships for photos that we have had taken with individuals in the past. (Laughter.)

I do not want that to be a new standard.

One thing I would like you to do, Ms. Dawkins, for the record, you were very hesitant to speak publicly about remarks that were made about your body. If you would please provide that to the committee in writing, I would appreciate that.

One other question I have. Someone brought up something about the New York Medical Center and a sexual harassment complaint, and they had to do some typing on that. Which one was it?

Will you tell the committee, this New York Medical Center, this was also part of the VA system?

Ms. BAREFOOT. Yes.

Mr. BUYER. And was there a pending sexual harassment complaint against—

Ms. BAREFOOT. That is what is so difficult for me to remember exactly. I do not recall the person's name, but I do recall, as I stated, that it appeared to be like three items perhaps that this person from one of the two hospitals, and I do not recall which hospital, had against Mr. Calhoun's behavior, and all that he dictated to me were the responses to those, I think, three allegations.

But as I said, my instructions were to typewrite those, make no record of it, make no photocopy of it, give it back to him for mailing. So I am sorry I am not more helpful, but it is 3 years.

Mr. BUYER. That is all right.

Ms. Dawkins, you can time this. Go ahead.

Ms. DAWKINS. Okay. The orange button is already on.

I did not ever in any statement to the Office of the Inspector General when I was interviewed in my home while I was on medical leave, I never said Mr. Jerome Calhoun sexually harassed me. He made an inappropriate remark about my body.

I do not mind stating it if somebody wants to hear it, but I did not want to put it in writing now, and I do not mind putting it in writing. Now I never, never inferred; I have never filed; I have not contacted a lawyer because I do not believe that I was sexually harassed. However, I was abused as a human being. It was a hostile environment for our employees and patients.

Mr. BUYER. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you.

Mr. Buyer, for the record, the incident you referred to about prior sexual harassment, we have asked the VA for any documentation they can find on that, and, again, they seem to have no record of it, but they are looking for it. Mr. Snyder.

Mr. SNYDER. Thank you, Mr. Chairman.

Ms. Force, if I understood your statement, you had said that one of the staff members had explained the settlement between Mr. Calhoun and the VA to you and that once you had that explanation you felt better about it.

Ms. FORCE. Yes.

Mr. SNYDER. Could you briefly state, please, how your attitude about the settlement changed after getting the explanation? What was it about the explanation that was new information for you?

Ms. FORCE. Well, I do not think that it was my attitude toward the settlement. Maybe I misrepresented what I was thinking. Just the fact that someone had taken the time to explain why they did the things that they did.

You know, the only thing I had read was the IG report and the statements that were in the Florida and Fayetteville newspapers, which from those accountings was presented as though he was rewarded with where he wanted to be in Florida.

Mr. SNYDER. And what is your understanding now that why what was done was done?

Ms. FORCE. It was explained to me that all of the attorneys that reviewed the sexual harassment case felt that it was a strong case, but when it went before Personnel, they were afraid; some of them were afraid that it was not strong enough because the Merit Promotion Standards Board had overturned another case from another agency that was even stronger than this case. They wanted Jerome Calhoun removed as Director, and they did not want to take a chance that he would just be given a suspension and go back as Director.

Mr. SNYDER. So the fear was——

Ms. FORCE. Made this deal.

Mr. SNYDER. I have got you. So if they had run with your complaint and lost, he would have still been Director of the VA. Okay.

Ms. FORCE. And everybody would have lost.

Mr. SNYDER. And, Ms. Caruana—am I saying your name right?

Ms. CARUANA. Caruana.

Mr. SNYDER. Caruana. Did I understand you in your testimony to say you had worked for Mr. Calhoun for several years, like 8 or 9 years? 9 years?

Ms. CARUANA. Nine years.

Mr. SNYDER. Was there a difference in his management style for those first 9 years versus the period of time that we are talking about now?

And I guess what I am getting to: should the VA have been on notice during that period of time that perhaps this is not a fellow that ought to be promoted up through the system?

Ms. CARUANA. I will explain this as best I can. When I worked for him in Buffalo, he was the Associate Director. He had a supervisor physically over him.

When he went to Fayetteville, he was the Director. He did not have anybody physically over him right there in the same building. His supervisor initially was in Jackson, MS.

So, therefore, he had all of this power. This was his kingdom now.

Mr. SNYDER. So were you surprised to see——

Ms. CARUANA. Yes.

Mr. SNYDER (continuing). Mr. Calhoun acting the way he did in his new kingdom?

Ms. CARUANA. I mean, you know, he got a little crazy in Buffalo at times.

Mr. SNYDER. But nothing that you apparently were fearful of because you made the move to come to work for him.

Ms. CARUANA. I did not see that side of him.

Mr. SNYDER. I understand.

Ms. CARUANA. And with the directorship, like I said, came this power and I think that that is what happened. It just went to his head.

Mr. SNYDER. Yes. Mr. Chairman, I think those are all of the questions that I have at this time.

Thank you.

Mr. EVERETT. Thank you, Mr. Snyder.

The chair recognizes our Ranking Member, Mr. Evans.

Mr. EVANS. Mr. Chairman, I apologize for my absence, but I really appreciate this panel's testimony. You have been on for quite some time, so I will try to keep it short.

Can each you describe to the members of the subcommittee what you knew about the complaint process, the EEO process, during the time that you were exposed to Mr. Calhoun's conduct?

And have you or any other employees that you know ever participated in sexual harassment sensitivity training within the VA?

Ms. FORCE. I do not know about sexual harassment sensitivity training. We have had 4 hours of mandatory sexual harassment training, and we were in the process of doing that when Jerome Calhoun was appointed to the Fayetteville VA.

I was so afraid of what would happen to me when I was actually at the Fayetteville VA that I never seriously considered going through the EEO process. I knew Eugene Paul was Mr. Calhoun's right-hand man. You could not do much with EEO unless you went through that office, even if you went to the counselors, as far as I knew. Everywhere I went people said, "Don't even attempt it. You know, it's ridiculous. Don't even think about doing it."

So until I got away and realized that I was still a victim and the victimization was not going to end until I took some steps and I obtained an attorney also, and the attorney made the initiative to contact the EEO because I was still too fearful to do anything at that point in time.

Mr. EVANS. All right.

Ms. CARUANA. I was petrified to file an EEO complaint. I knew that once I did it, it was going to be over for me.

I went to see an attorney. We all have the same attorney, and I told her about what I was experiencing, and she told me that I should file an EEO complaint, but I waited a few months to do so because I just knew that he was going to go off and become a lunatic, and I was petrified.

I came down here to work with this man, and I did not know what he was going to do. So I went ahead and filed the complaint, and I am waiting to go on to the next step. They did not find in my favor, and we all have to attend 4 hours of mandatory sexual harassment training each year.

Mr. EVANS. All right. Ms. Moore.

Ms. MOORE-RUSSELL. First of all, I am part of management. I am a supervisory social worker, and, yes, I have had some training or the EEO process, but, no, I did not file an EEO complaint earlier because I was told that I could not because of our ethnicity.

But once I returned to the VA, yes, I did file an EEO complaint.

One of the things I have to tell you is that I was very embarrassed and ashamed by the fact that I had to undergo such an ordeal with Mr. Calhoun because I am a clinician, and like I said, I counsel people who have to go through sexual assault and sexual trauma, but for me to have to go through the same thing myself and being a manager that supervised others and deal with patients on a regular basis, it was very embarrassing, and so, no, I did not pursue it through the proper channels.

Mr. EVANS. Can I ask you a direct question about what you do? You are a veteran, too; is that correct?

Ms. MOORE-RUSSELL. Yes, I am.

Mr. EVANS. So just what do you think is the likelihood if we have people such as Mr. Calhoun within the VA that women veterans returning from the Persian Gulf or from other duty assignments, coming back and making claims of sexual harassment while they were in the military; what kind of faith or credibility would they have within the VA if we have these kinds of problems among the people that are supposed to be treating veterans?

Ms. MOORE-RUSSELL. They will not have a lot of faith in the VA. At our Fayetteville VA in reference to sexual harassment, one of the things that happened since I have returned to work is that I am not allowed to assist with women veterans who are experiencing sexual trauma because I was told that my training as a sexual trauma therapist is outdated.

It does not make sense. I have a Master's degree in social work, but because of the hostile environment, I am not allowed to utilize my skills as a sexual trauma counselor. A lot of the women veterans that I had seen previously asked that I continue to counsel with them, but I am not allowed to do so.

Mr. EVANS. If your training is outdated, what year did you get your Master's in social work?

Ms. MOORE-RUSSELL. 1986.

Mr. EVANS. 1986. I am running out of time. I am sorry, but I would like to maybe explore that with you. It just seems to me that it would be very difficult for us to get women veterans to come into the VA if, in fact, the VA is having widespread problems with sexual harassment itself.

So I maybe could talk to you before you leave. I would like to.

I would just like to ask the last two if they could make their comments brief about the previous question.

Mr. EVERETT. Absolutely.

Ms. BAREFOOT. I do not recall the EEO training of the proper procedure to do things, but I will have to say that I was absolutely scared to death of this man and fully aware that he was the Director. He made that perfectly clear.

Because of my retirement, my early retirement, I did speak with the same lawyer that these ladies have talked about, and she said because I was retired I had to go through this in a different manner, and she referred to it as an Office of Special Counsel, and to day nothing has been done for me.

Mr. EVANS. Okay. Ms. Dawkins.

Ms. DAWKINS. I have attended the mandatory sexual harassment training. In the last year I have worked in the Director's office, and

there was not time to attend other training that is mandated, but I have never attended any EEO.

I am going to say something that you might not like to hear. I thought it was all for the counselors and supervisors, and I am a 26 year-plus federal employee, and I did not know that EEO training was offered to someone who was not a supervisor.

Mr. EVANS. Okay. Thank you.

I assume that none of you were contacted or consulted by the VA when they were deciding what action to take against Mr. Calhoun.

[Chorus of nays.]

Mr. EVANS. Okay. Thank you.

Thank you, Mr. Chairman, for your indulgence.

Mr. EVERETT. Thank you, Lane.

The chair now recognizes Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. Chairman, I want to truly commend you for giving the oath to these witnesses because, you know, some of these things that we have heard from them, they knew that they were under oath, and they are certainly all very responsible people with a great deal of experience and education, and I think it is even more impacting, their testimony, as a result of that.

And insofar as EEO is concerned, the process, Mr. Clyburn spent a lot of time on that. He obviously knows more about that process than any of us do, I think, and obviously more than any of the witnesses, and I just wonder. We are talking about what is it, the fox counseling the henhouse or whatever the proper term there is?

We make the laws, and maybe with Mr. Clyburn's help we can take a look at that area. Putting ourselves in the shoes of these witnesses, as well as others who are not here, they would be scared to death. I think even I would be scared to death to bring a complaint when I know darn well that my boss or bosses are part of the counseling system and that all of those counselors work conceivably for the person who they are complaining against.

So there is really something wrong there, and I think, Mr. Clyburn, you certainly would recognize that, and I think we ought to work on it.

Mr. EVERETT. Would the gentleman yield?

Mr. BILIRAKIS. By all means.

Mr. EVERETT. There is not only that situation of them counseling, as you put it, the fox counseling the henhouse. There is sworn testimony that they laughed and joked about this.

Mr. BILIRAKIS. Yes, that certainly is true, and again, under oath. That is sworn testimony.

Ms. Caruana, regarding the dream that the gentleman had and the question that it could be worth your while if you actually did sleep with him, did you tell the IG about that?

Ms. CARUANA. Yes, I did.

Mr. BILIRAKIS. You did, and the IG found against you, did he?

Ms. CARUANA. The IG found that I may have been a biased witness because he had told them that I was just making my complaint as retaliatory because I was reassigned.

Mr. BILIRAKIS. As retaliatory.

Ms. CARUANA. And I was upset that the IG did not find in my favor because there were no witnesses. I said to them afterwards

that I do not think too many people are sexually harassed in front of anybody.

What he said to everybody was there were no witnesses.

Mr. BILIRAKIS. Yes.

Ms. CARUANA. But I do not think too many people are going to say that somebody said or did this, knowing that they have got to go through all of this.

Mr. BILIRAKIS. Who is Susan Odom, Ms. Caruana, and what happened to her?

Ms. CARUANA. Susan Odom was the Associate Director's secretary in the Director's office when I was there. She has since resigned.

Mr. BILIRAKIS. And that is it?

Ms. CARUANA. I believe she is living in Florida.

Mr. BILIRAKIS. Where in Florida? Do you know?

Ms. CARUANA. I do not know. I originally heard she was in Jacksonville, and then I have heard she is in the West Palm Beach area.

Mr. BILIRAKIS. Okay. Do you have any personal knowledge of anything that might have happened to her or involved her that might be pertinent to this hearing?

Ms. CARUANA. Yes, sir.

Mr. BILIRAKIS. Share that with us.

Ms. CARUANA. After I was in the office for about a month, it became clear to me that there was something going on between Mr. Calhoun and Susan Odom. I was not allowed to take a lunch. I had to be at my desk all the time. I was not allowed to take leave when he was not there, yet Susan was allowed to leave the office every day, go and pick up his cleaning, go to his post office box and get his mail, and pick up lunch for him.

There were several incidents that happened, and I went into Mr. Calhoun's office, and I said, "Something has got to be done. What's going on with you and Susan has to stop. You've worked 25 years to get where you are, and you're going to lose it all, and I don't think she's worth it."

And said to me, "You've come to the brilliant deduction that I'm 'F-ing' her. So what?"

As a friend, I was concerned. I just said, "You've brought this into the office, and it is disrupting the office, and the entire medical center."

And after that he seemed to make my life more miserable. I guess that was none of my business, and I should have not said anything.

Mr. BILIRAKIS. So you were basically concerned about him?

Ms. CARUANA. Yes.

Mr. BILIRAKIS. When you made these comments?

Ms. CARUANA. Yes, I was. After that, she eventually got a promotion, and then she resigned, I believe, 2 days before the announcement was made that he was being reassigned to Florida.

Mr. BILIRAKIS. All right. Let me ask very quickly here. I know that Ms. Barefoot is no longer a VA employee. She took retirement a couple of years ago. Have any of you experienced any type of retaliatory action since you agreement to testify before this subcommittee?

Ms. Force? Very quickly, if you would all maybe respond.

Ms. FORCE. No, sir.

Mr. EVERETT. No. Ms. Caruana.

Ms. CARUANA. No, I am just looked at like I am from another planet, but I cannot consider that retaliatory.

Mr. BILIRAKIS. Ms. Moore-Russell.

Ms. MOORE-RUSSELL. Well, I was told I could not take advanced payment for this trip and everyone else was informed that they could.

Mr. BILIRAKIS. And in your opinion that is retaliatory?

Ms. MOORE-RUSSELL. Yes, because the employee travel clerk is one of Mr. Calhoun's lieutenants. I met my supervisor in the hall the morning that I was leaving, and she said, "Well, I would ask Ms. Moore a question, but perhaps she don't have time to give me a testimony."

Mr. BILIRAKIS. Ms. Dawkins.

Ms. DAWKINS. No, I have not.

Mr. BILIRAKIS. Ms. Barefoot, I know you have been gone a couple of years. Do you have anything you wanted to say in that regard?

Ms. BAREFOOT. In regard to what, Susan Odom or—

Mr. BILIRAKIS. Retaliatory action.

Ms. BAREFOOT. Oh, no, sir.

Mr. BILIRAKIS. Thank you.

All right. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you.

Ladies, we know from 4 years ago, to continue this line Mr. Bilirakis brought up, that witnesses such as yourself have had concerns about reprisals. If you believe that you are experiencing reprisals because of your testimony, this subcommittee wants to know.

I would consider included, but not limited to that, any isolation you experience, any comments made toward you, and as I said, I do not limit it to that. That would also, for instance, include any non-communication from VA to any correspondence that you have given to your supervisors.

I can assure you that this subcommittee takes this dead serious, and I want to put VA on notice now that I will use the subpoena powers of this subcommittee to subpoena anyone that VA has not taken appropriate action against if these complaints are filed.

I want to again thank you very much. I thank you for your courage. I thank you that you have taken the time to be up here, and hopefully this committee meeting, unlike the one 4 years ago, will lead to a different set of circumstances for the handling of these type cases, where hospital directors and senior supervisors are not simply either retired or given a plush assignment somewhere else.

Thank you very much.

The chair will now recognize Ms. Ronnie Blumenthal, Director, Office of Federal Operations, Equal Employment Opportunity Commission, and ask her to introduce her counsel.

STATEMENT OF RONNIE BLUMENTHAL, DIRECTOR, OFFICE OF FEDERAL OPERATIONS, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ACCOMPANIED BY NICHOLAS M. INZEO, DEPUTY LEGAL COUNSEL

STATEMENT OF RONNIE BLUMENTHAL

Ms. BLUMENTHAL. Thank you, Mr. Chairman.

With me today are my colleagues, Nicholas Inzeo, the Deputy Legal Counsel for the EEOC, and several staff members from the Commission: Elaine Hirschowitz of the Legal Counsel's Office, and two other senior officials with the Office of Federal Operations, Robert Walker and Ed Elkins.

Shall I?

Mr. EVERETT. Yes.

Ms. BLUMENTHAL. I will excerpt my statement.

Mr. EVERETT. I beg your pardon?

Ms. BLUMENTHAL. Do you wish me to excerpt my statement?

Mr. EVERETT. Yes. Thank you.

Ms. BLUMENTHAL. Thank you, Mr. Chairman.

Thank you for the opportunity to appear before you today.

While the statutes the EEOC enforces require Federal Government agencies to comply with our decision, EEOC has no coercive authority in the federal sector. Although we can issue orders at the appellate level and most are followed, unlike the private sector, we cannot take a federal employer to court to resolve a complaint of discrimination.

However, within the framework established by the statutes, regulations and directives governing the federal EEO process, each individual agency has great flexibility in the structure of its EEO program. Some agencies have independent offices reporting directly to the head of the agency. The EEO program at the Department of Veterans Affairs is under the direction of a Deputy Assistant Secretary for Equal Opportunity, who reports to the Assistant Secretary for Human Resources and Administration.

Agencies operate their field installations, again, in a very flexible manner. It varies very widely from department to department.

What I would like to do is give you a brief overview of the EEOC complaints process and the basic aspects of that process.

The process begins, as the previous witnesses have testified, when a federal employee or applicant contacts a counselor, and counseling is a requirement as the first step, and it permits informal resolution. Many government agencies are using alternative dispute resolution techniques at this stage.

The counselor is supposed to provide the complainant with information on the process, including the time limitations involved. The counselor also contacts management and attempts to assist the parties in achieving resolution.

The role of the counselor is to facilitate early resolution, not to advocate either party or recommend specific terms of a resolution agreement. Many agencies use full-time or collateral duty counselors. According to the reports filed with us by DVA, they use collateral duty counselors. They have regular jobs and then do counseling as a collateral duty.

At the end of counseling unless the matter is resolved, the aggrieved person must be given written notice of the right to file a formal EEO complaint and instructions on how to file it.

The aggrieved person can go formal and file a complaint with the federal agency against which the complaint is directed, and as Congressman Clyburn said, after 180 days of filing a formal complaint, any Federal Government employee in any government agency has the right to come to an EEOC office and ask for a hearing.

The parties may extend various time limits, but basically after 180 days of going forward, of filing a formal complaint, a federal employee can request a hearing at the EEOC.

If the complaint is not dismissed and they do not ask for a hearing, an agency must conduct an investigation and develop a complete record. Many agencies have full-time investigative staff, while other federal agencies contract with outside organization.

In fiscal year 1996, the Department of Veterans Affairs contracted for 59 percent of its investigations. The remainder were conducted by collateral duty investigators.

After the investigation or if it hasn't been completed and the complainant requests it, the agency must supply the complainant a copy of the notice and of the file information, informing them of the right to ask EEOC for a hearing.

If the complainant does not want to go the hearing route and asks for a final agency decision, the agency must issue it within 60 days.

I should also inform you that the complaint also has a completely independent right to file a civil action in U.S. district court within 90 days of receipt of the agency's final decision, if they have not filed an appeal. If they file an appeal with the EEOC, they still have the right to go to U.S. district court.

They can also file a civil action, again, 180 days from the filing of an EEO formal complaint. They can come to the EEOC for a hearing or they can go right to U.S. district court.

If the complainant requests a hearing and the case is assigned to one of EEOC's administrative judges who are located in 40 offices around the country, the judge has the option of assisting the parties in considering settlement, but the judge also has the authority to order discovery or the production of documents and employee witnesses and can issue findings of fact and conclusions of law either from the bench or can issue it in writing.

And after the AJ's final decision, the agency has to issue a final decision. An agency may reject or modify the Administrative Judge's ruling, but they have to issue a conclusion.

At that point the complainant can come to the EEOC in Washington and file an appeal. Both parties are allowed to file briefs on the appeal.

When it is issued, both parties are notified that they have a right to request full review by the entire membership of the EEOC, the five presidential appointees confirmed by the Senate. If an appellate decision orders compliance action or a finding of discrimination is made, the EEOC monitors that action.

I just wanted to give you a few statistics, some with regard to DVA and some with government-wide statistics. In 1995, 10,000

people, 10,000 federal employees requested hearings from the EEOC.

With regard to DVA, for 1995 you will note that I submitted a chart for the record. The department had 8.36 percent of total federal workers, 8.01 percent of total complaints, and 14.10 percent of the sexual harassment complaints, the formal complaints.

Thank you. I will be happy to answer any questions following Mr. Inzeo's testimony about sexual harassment.

[The prepared statement of Ms. Blumenthal, with attachment, appears on p. 189.]

Mr. EVERETT. All of that testimony will be entered into the record.

Ms. BLUMENTHAL. Thank you, sir.

Mr. EVERETT. Let me ask you what is the legal definition of sexual harassment, including what is—oh, I am sorry. Excuse me. Please go ahead.

STATEMENT OF NICHOLAS INZEO

Mr. INZEO. Thank you, Mr. Chairman and members of the committee.

My name is Nicholas Inzeo. I am the Deputy Legal Counsel for the Equal Employment Opportunity Commission, and I appreciate the opportunity to appear before you today to discuss the legal issue of sexual harassment in the work place.

Sexual harassment in employment is a form of unlawful sex discrimination that violates Title VII of the Civil Rights Act of 1964. In 1980, the EEOC issued its guidelines on sexual harassment at 29 CFR Section 1604.11, which made clear that unwelcome sexual conduct in the work place is unlawful when, one, submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; two, submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or, three, such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Conduct can be of a physical or verbal nature.

Sexual harassment is unlawful only if it is unwelcome to the person claiming harassment. Unlawful though means that the person complaining of harassment did not solicit or incite the conduct and regarded it as undesirable or offensive.

There are two primary categories of sexual harassment: quid pro quo and hostile environment. Although these claims are theoretically distinct, the lines between them are often not clear, and they may occur together.

Quid pro quo harassment occurs when a supervisor makes submission to sexual conduct a condition for job retention, promotion, or any tangible job benefits. Quid pro quo harassment can be explicit, as when a supervisor says to a subordinate that he will fire her if she does not engage in sexual conduct.

Alternatively, sexual harassment can be implicit, as when a supervisor makes sexual advances to a subordinate, is rejected, and shortly thereafter fires her or takes other adverse action. In the latter example the subordinate can establish a violation of Title VII

if she proves that her rejection of the supervisor's advances was a motive for her termination or other adverse action.

An employer is automatically liable for quid pro quo harassment by a supervisor. This is because the employer is responsible for the supervisor's use or abuse of the powers delegated to them.

In 1986, the Supreme Court issued its decision in *Meritor Savings Bank v. Vinson*, affirming the EEOC's definition of sexual harassment in its guidelines. The Court recognized that sexual harassment violates Title VII when it creates a hostile work environment even if no tangible harm is threatened.

This type of harassment can occur when anyone in the work place, the supervisor, the co-worker, or even a non-employee, subjects an individual to unwelcome sexual conduct that is sufficiently severe or pervasive to create a hostile or abusive work environment.

In 1993, the Supreme Court elaborated on the legal standard for establishing a hostile environment in *Harris v. Fork Lift Systems, Inc.* The Court there held that a complainant need not prove that she suffered psychological harm as a result of the harassment. Rather, she must establish that a reasonable person would have found the conduct sufficiently severe or pervasive to create a hostile environment.

Justice Ginsberg put it even more simply. "It is sufficient to prove that the harassment altered the working conditions so as to make it more difficult to do the job."

Courts are split as to when an employer is liable for hostile environment harassment by a supervisor. Most courts recognize that companies are always liable for misconduct by a high level official, such as a company president. This is because the actions of such individuals are considered to be tantamount to the actions of the employer.

The legal standard though is less clear with regard to sexual harassment by other managers and supervisors. In the *Meritor* case, the Supreme Court held that normal agency principles should apply.

Some courts have then held that under those principles, an employer is not responsible for hostile environment harassment by a supervisor if it had an explicit policy, it took action against offending employees, and the complainant did not notify higher management of the harassment.

Other courts and the EEOC have held that the employer is liable under agency principles wherever its supervisors used or were aided in its powers delegated to them by the employer. In such circumstances, preventive and corrective action by the employer would not eliminate liability, but could reduce the amount of damages awarded against it.

One issue that has arisen in some recent hostile environment cases is whether Title VII is violated when an individual in a work place is abusive and sexually harasses both men and women. Such an individual might be called an equal opportunity harasser.

Since sexual harassment is a form of sex discrimination, a female complainant must prove that she would not have been subjected to the harassment had she been a man. Many courts have found where an allegation has been raised that abuse is directed at both

men and women, that sexual harassment still occurs where it is more pervasive, more severe, or where it is sexual in nature towards the women, but not sexual in nature towards the men.

I hope that this testimony has provided the committee a fuller understanding, and I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Inzeo appears on p. 194.]

Mr. EVERETT. It has, and thank you very much. You have co-opted some of my questions already, but I do have a couple more that I would like to ask.

Setting sexual harassment aside for a moment, and you have heard sworn testimony this morning of the abusive cursing, threatening behavior of this particular Director, is that in itself, when as I said we have sworn testimony that there are witnesses to it; is that in itself reason for dismissal?

Mr. INZEO. Mr. Chairman, I would not want to comment on the particular instances here since there are matters that have been filed, since there have been EEO complaints filed that may come before EEOC.

Mr. EVERETT. Well, let me ask it another way. What constitutes a reason for dismissal when the Director threatens and verbally abuses an employee?

Mr. INZEO. And answering generally and hypothetically, Mr. Chairman, misconduct by a federal employee can occur where that federal employee or manager is abusive of employees. Such abusive behavior can also constitute sexual harassment if it is aimed at employees of one sex more than another or where it is sexual in nature towards women and not towards men.

If that sexual harassment were to occur, then that would be a violation of Title VII and would be actionable.

Mr. EVERETT. The 180 days that you have mentioned and that our colleague, Mr. Clyburn, had mentioned earlier, how do we assume that the employee knows that they have 180 days?

Ms. BLUMENTHAL. Throughout the process, from the moment they walk into counseling, employees are supposed to be given verbally and in writing, by their employing agencies, documents which in lay language explain what the time limits are and what their rights are.

EEOC has made documents available to federal agencies to distribute to their employees. We try and do as much outreach within our resources as possible, but by regulation, employees are to be notified of all of these time limits by their employing agency.

Mr. EVERETT. Okay. To make sure I understand your answer correctly, when these ladies and if these ladies filed an EEO complaint, they should have been given by the local EEO officer a written and oral statement of what their options were in reference to the 180 days?

Ms. BLUMENTHAL. Well, with regard to the process, asking EEOC for a hearing after 180 days after they go formal, is supposed to be explained to them in the counseling process. The counseling process is not the formal part. It is supposed to be an informal resolution technique, and after a certain number of days, usually 30, if the complainant is unhappy, they do what in the Federal Government is called "going formal," and at that point the 180 days kicks

in. They are to be notified that they can come to the EEOC after 180 days.

Mr. EVERETT. These folks responsible for giving that advice, is there a report on each individual incident that they are required to file with EEO or with VA?

Ms. BLUMENTHAL. Yes.

Mr. EVERETT. And is there a checklist for what they have done?

Ms. BLUMENTHAL. There is no checklist, but each agency is mandated to report to the EEOC annually the number of counseling contacts. It is not broken down, and it is frequently not broken down even between headquarters and field installations, but the number of contacts with the counselor, certainly the number of people who have gone formal and then once they come to the EEOC. We keep very precise records of how many people have asked for hearings——

Mr. EVERETT. In other words, if a person contacted an EEOC officer, you would have no way of knowing whether a report was made or not?

Ms. BLUMENTHAL. Whether they were informed, no, but we would have a knowledge that the counselor was contacted.

Mr. EVERETT. By name?

Ms. BLUMENTHAL. By name of the counselor, no. By agency. An agency would report on a report that they must file.

Mr. EVERETT. Help me understand this a minute.

Ms. BLUMENTHAL. Surely.

Mr. EVERETT. Are we talking about a total number here or are we talking about some sort of checklist so that we know the counselor performed the duties by regulation they were required to perform?

Ms. BLUMENTHAL. There is no checklist. It is the total number, your first statement.

Mr. EVERETT. Okay. Thank you very much.

Ms. BLUMENTHAL. Thank you.

Mr. EVERETT. I yield to our Ranking Member, Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Does the EEOC keep records of the number of sexual harassment complaints that are found to have merit compared to those that found that there is no cause?

And if you do, do you have a breakdown that compares substantiated allegations against VA employees compared to other federal agencies?

Ms. BLUMENTHAL. We keep some records, sir, but not in the exact format that you described. Because of the way federal employee cases drop out in the system, we would have no way of knowing settlement by issue. Sexual harassment is viewed as an issue, as opposed to the basis, which is race, color, creed, sex, religion, national origin, disability, and age. Sexual harassment is a subset of sex discrimination.

We do not have it by issue, and we do not have settlements by issue. So you cannot tell if it falls out of the system. It is frequently a meritorious case that has been settled.

We can, for the record later, send information up as to the data we do keep.

Mr. EVANS. Do you have any way of tracking when an individual makes a complaint whether the person they are complaining about has had previous settlements or penalties assessed against them?

Ms. BLUMENTHAL. The EEOC government-wide does not with regard to individuals. The whole scheme of Title VII in the private sector and in the Federal Government is not geared to an individual. It is not like tort suits. It is geared towards the agencies.

Mr. EVANS. I see. All right. Now, the statistics you provided seem to indicate that in 1995 VA employees constituted about eight percent of the federal work force. Yet 14 percent of the total sexual harassment allegations against federal agencies were directed at the DVA.

Does this seem like a particularly high percentage of sexual harassment claims against the VA?

And if so, how would you account for such a figure?

Ms. BLUMENTHAL. Again, I do not know. It is higher than their number of complaints in general. You are absolutely right, but I have no specific knowledge of exactly where they were filed or when.

We put this data together for this hearing. So I have no specific knowledge, but it clearly is just numerically out of proportion because they have 14 percent of the government-wide complaints.

Mr. EVANS. All right. Thank you very much.

Thank you, Mr. Chairman.

Mr. EVERETT. Thank you, Mr. Evans. Ms. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

And I particularly appreciate the information that both of you have imparted to us.

Ms. BLUMENTHAL. Thank you.

Mr. BILIRAKIS. You have answered, again, some questions on definitions, if you will, and that sort of thing.

Fourteen point one percent of sexual harassment complaints that have been filed, that is total sexual harassment complaints that have been filed, were attributable to the DVA, to the Department of Veterans Affairs, right?

Ms. BLUMENTHAL. That's correct.

Mr. BILIRAKIS. All right, and that is filed outside of the agency and outside of the department? Is that what we are referring to here?

Ms. BLUMENTHAL. The filing is the formal complaint process that kicks off the 180-day period that the Chairman is talking about.

Mr. BILIRAKIS. Yes.

Ms. BLUMENTHAL. It is not counseling. The women who testified before we testified were basically talking about the counseling process.

Mr. BILIRAKIS. Right.

Ms. BLUMENTHAL. The 14.10 percent were people who have filed formal complaints of discrimination.

Mr. BILIRAKIS. All right. Now, your job is a very important one, and I commend you. You have oversight of the equal employment opportunity complaint process in the federal sector, and it says including the hearings and appellate processes. Do you have some responsibility for the counseling portion?

Ms. BLUMENTHAL. The counseling portion is done exclusively in federal agencies themselves.

I should mention one other aspect. It is publicized, but we are not sure every government employee knows this. When there is a cross-cutting complaint against a high official, there are a small group of EEOC employees in my office, in the Office of Federal Operations, who can, on request, investigate and counsel people, but only on request. It is a very small group of people, and it has to be a crosscutting complaint.

Mr. BILIRAKIS. Requests on the part of whom?

Ms. BLUMENTHAL. Generally of the complainant and of the agency. They frequently feel that there is nobody in their own agency or they pull people from other parts of the agency, and sometimes it can start as early as the counseling process.

Mr. BILIRAKIS. All right.

Ms. BLUMENTHAL. But that happens perhaps 20 times a year. So the vast majority, sir, are counseled within their own agency.

Mr. BILIRAKIS. All right, but that is basically what I am trying to get to, and I appreciate your answer. In other words, you do not know how many EEOC cases have taken place in each individual agency or department?

Ms. BLUMENTHAL. How many?

Mr. BILIRAKIS. That have not been, so to speak, appealed to the upper level?

Ms. BLUMENTHAL. We know how many counseling contacts have been made, how many people walk into a counselor's office, but we do not know if somebody comes in or we cannot tell if it is more than one contact and we know how many people have gone formal. You can extrapolate some numbers and determine these cases.

Mr. BILIRAKIS. Well, but the young ladies who testified—I do not know—I guess it looks like three of them have an attorney, and so apparently they are bringing their cases higher, to the higher level. You would not know that their cases were heard by the VA EEO, at that particular level, and whether or not those cases were brought forward to the higher level? You would not know that?

Ms. BLUMENTHAL. If they went formal, we would know that, but specifically—

Mr. BILIRAKIS. So you cannot tell this committee, then, what percentage of total EEC complaints took place in the VA that ended at that point and that were not appealed? I am going to use the word "appealed." I am not sure if it is appropriate.

Ms. BLUMENTHAL. We can tell how many cases went to counseling and how many cases went formal, and from some math we can extrapolate.

Mr. BILIRAKIS. Oh, you can tell how many went to counseling?

Ms. BLUMENTHAL. Yes, yes, but we cannot tell if they went to counseling more than once. Sometimes we cannot tell if it was settled or if the person just decided it wasn't—many people come to counseling with work place disputes that have nothing to do with discrimination, and they are settled then and there on the spot. It is a work place dispute that may involve a compensation issue that has nothing to do with any kind of discrimination.

Mr. BILIRAKIS. All right.

Ms. BLUMENTHAL. And a lot of people go to counseling and find out that they really need to go to their personnel officer.

Mr. BILIRAKIS. Yes, all right. Of course, I am talking about counseling at the level that these women talked about.

How much leeway does Title VII give the departments and agencies in establishing the EEO process? And does each department and agency have exactly the same process?

Ms. BLUMENTHAL. The process of counseling, going formal, having an investigation or a hearing and going to appellate is exactly the same.

Mr. BILIRAKIS. All right.

Ms. BLUMENTHAL. But how they structure it, no. Because of the vast variety of government agencies, there is a great amount of flexibility built in for agencies as a result of their own structure. Some have many offices offshore. Some are all in the continental United States. It varies a lot. A lot of it has to do with geography, but there are many other variables that agencies—

Mr. BILIRAKIS. Well, Ms. Blumenthal, you were in the room, I guess, when they testified, were you not?

Ms. BLUMENTHAL. Yes, sir.

Mr. BILIRAKIS. And you heard their testimony. You also heard them say that they were not advised that they could appeal it to another level, and I am sure that their testimony was truthful because they were under oath.

Ms. BLUMENTHAL. Certainly.

Mr. BILIRAKIS. Don't you find because you care—you are in a job because you care; otherwise you cannot do your job.

Ms. BLUMENTHAL. For 27 years.

Mr. BILIRAKIS. Twenty-seven years. Well, don't you find something wrong with the process when you hear that kind of testimony, the fact that these people would, I think, reasonably be concerned and be frightened and not expect and they already told us they did not expect any good results from the EEO process; don't you find something wrong with all of that?

And if you do, are you in a position to make any recommendations to the Congress in terms of changes maybe that should take place?

Ms. BLUMENTHAL. I am not in a position to make any recommendations to the Congress as an operational staff person, but I do think that we will be in contact with a variety of people to make sure that people know, particularly at DVA, what their procedural rights are and are given to every employee at the Department of Veterans Affairs. Operationally we can do that without a great deal of difficulty.

Mr. BILIRAKIS. With all due respect, Mr. Chairman, if I may, how about this fox guarding the henhouse concept at that level?

Ms. BLUMENTHAL. There has been a lot of dispute in the federal community and up in Congress for the past 10 years about that issue, and as I said, I am an operational office director, and my job is to implement whatever the Congress and the executive branch does. There has been a long series of hearings and disputes on this issue as to whether agencies should investigate themselves with regard to EEO complaints, and Congress has received a variety of pieces of legislation that have been introduced on that issue.

Mr. BILIRAKIS. But you cannot make any recommendations?

Ms. BLUMENTHAL. Personally.

Mr. BILIRAKIS. You can personally, right?

Ms. BLUMENTHAL. No. Personally I am an operational office director, and I implement whatever the Congress decides.

Mr. BILIRAKIS. Come on now. I want a better answer than that. (Laughter.)

Ms. BLUMENTHAL. There has been a debate——

Mr. BILIRAKIS. And I am sure you can give me a better answer. What keeps you from doing so?

Ms. BLUMENTHAL. There has been a debate about this for many years with regard to whether or not agencies should do the preliminary investigation themselves, and the Commission recognized that in 1992 when they passed regulations giving that 180-day right. That only came to the fore in 1992 because they felt that agencies should not have their own timetables. They should operate on a government-wide timetable.

And so since 1992, there has been a seachange in the number of hearings requested, and that has given a lot of employees the ability to go outside their agency and come to us.

Mr. BILIRAKIS. Well, my time is long up. Thanks for your indulgence, Mr. Chairman.

Thank you. Thank you.

Mr. EVERETT. Before I go to the long suffering and patient Mr. Snyder, I would remark that I should have mentioned earlier that all panels will be expected to respond to written questions that members may have and may submit to them at a later date.

And, secondly, any reference to the fox guarding the henhouse should be considered as a reference to the fox guarding the hen and/or rooster house. (Laughter.)

Mr. Snyder.

Mr. SNYDER. Thank you, Mr. Chairman.

I want to pick up where Mr. Bilirakis left off there because, I mean, I think what we are about here is to do some air clearing, but also to look for lessons learned. I mean it does not do any good to sit here for what, I think, is going to turn out to be about 8 hours if we do not look to what we can do to make some changes so that these kinds of events do not happen again.

The issue of the directors and the manager, the henhouse issue here. Mr. Inzeo, do you have any comments about that?

I mean there are agencies, I think, where you can set up some controls. For example, should there not be perhaps some special rules with regard to when the alleged harasser is the director of the agency? I mean, Mr. Gober is a smart man. He is sitting there in the back. Are there some lessons learned from your experience from other agencies that the VA might adopt in order to keep this situation from happening again?

Mr. INZEO. I am not sure that I can tell you that there are other experiences that I am aware of. I can tell you though that we are concerned with the issue of what would appear to be——

Mr. SNYDER. Home cooking.

Mr. INZEO (continuing). Called sometimes conflict of interest.

Mr. SNYDER. Yes.

Mr. INZEO. Or conflict of position, where an individual who is alleged to have discriminated has some control over the process.

Mr. SNYDER. Right.

Mr. INZEO. The peculiar set-up at the VA center that the witnesses discussed would appear to make that situation worse, where the EEO manager on site reports to in this instance the individual who was alleged to have discriminated.

Mr. SNYDER. Right.

Mr. INZEO. We have within general guidelines in our regulations, and we have a management directive that is applicable to all agencies, attempted to warn agencies that they should not allow those types of conflicts to exist.

We do not have the ability to know when they do exist. However, we would certainly counsel agencies against that.

Mr. SNYDER. So, Mr. Brown and his staff, if they choose, by tomorrow they could change their policy in some way so as to make this problem go away. There does not need to be legislation. Is that what you are saying?

Mr. INZEO. I mean, they could, for instance, delegate differently the EEO responsibilities for the agency. There are some agencies that have a central EEO office in Washington, and that office is responsible for all of the EEO offices around the country.

Mr. SNYDER. I see.

Mr. INZEO. And that way the EEO manager would not be under the supervision of a local director.

Mr. SNYDER. All right. So there are some things that they can do without statutory change. Okay.

Mr. INZEO. Yes.

Mr. SNYDER. I have got the Inspector General's report here, and just the conclusions. Our review determined Mr. Calhoun sexually harassed one of the three females. We conclude his behavior towards the other two was abusive, threatening, and inappropriate, and also that Mr. Calhoun was less than truthful, which raises doubt about his credibility.

Now, does this not look like a guy, if those are the conclusions, and I do not know Mr. Calhoun, that ought to be kept as a Director?

Is it your experience that Mr. Gober's and Mr. Brown's hands are tied? I mean there is some information out there that the goal was to somehow work out a way to remove him as Director. Have our Civil Service laws got to the point where I have got evidence I have got a lying, harassing, abusive, threatening—well, I will not come up with my own conclusions—but somehow all we can do is to come up with a settlement? I mean is that where the employment laws, the protections for federal employees have got us, that we now are protecting lying abusers?

What I am leading up to: do we all need to do some work in that area?

Mr. INZEO. I would not want to make any comments about the particular allegations raised today.

Mr. SNYDER. Right. Let me put it this way. If you are in a top level management position working for the Federal Government, you know, even if you are a lying abuser, it is going to be pretty hard and you have got pretty good job security?

Mr. INZEO. I can tell you from my experience, and I believe that Ms. Blumenthal would say the same thing, that in our experience upper level managers should and are held to a higher standard. We would expect that, and I think we would expect it of others.

Mr. SNYDER. Okay. All right. Let me go on to another one, if I can.

The issue, and I asked Ms. Force, I believe it was, about when the settlement was explained to her, as a general matter when you have a complaint—and I do not want to talk about this case—but when you have a complaint that has been made and apparently the agency at some level has decided that there is some confirmation for the story, but they get into this problem of it is going to be a tough case and it is going to be overturned; as a general matter of course, should that agency—you know, basically it is a plea bargain—should they be sitting down as a matter of policy with the complainants and lay out the facts? You know, we could go for murder I, but we are going to take murder II because of a proof problem.

Or do you think that that is not something—do you understand what I am getting at here? I do not mean set in rules, but more as a matter of policy?

Ms. BLUMENTHAL. That is just what you said. It is very hard to set rules in this area.

Mr. SNYDER. Right.

Ms. BLUMENTHAL. Because personnel policy and human resources policy, private sector or federal sector, it tends to vary case by case. As Mr. Inzeo said, there are cases where senior level officials have been very harshly disciplined. There are others where settlements are reached with all parties.

It is like litigation. Each case, particularly if it involves a group of people as this one seems to, is handled differently. Unless there is a confidentiality agreement, usually the relief is explained to all parties if you are talking about government-wide. It usually is explained. People who have complained generally know what happened.

Mr. SNYDER. But it apparently was not in this issue.

I have some other questions. Mr. Chairman, if you decide there is a second round, I will be armed and ready.

Mr. EVERETT. Thank you, Mr. Snyder.

I would say to this panel, and if you would not mind, we could submit those questions for the record, and I am sure that they would respond.

Much of what we have heard so far today is kind of *deja vu*. Four years ago we went through a lot of this. The VA had an opportunity to correct some of the situations that exist today, and I think that is one reason that Mr. Evans and I are considering legislation, statute changes, if you will, that would address these problems.

I do thank this panel for appearing before us today and for your testimony.

Ms. BLUMENTHAL. Thank you, Mr. Chairman.

Mr. INZEO. Thank you, Mr. Chairman.

Mr. EVERETT. Yes. I think it is only fair that since I swore in the first panel, that I swear in your panel. Mr. Gober, would you all

please approach the table and raise your right hands and repeat after me?

[Witnesses sworn.]

Mr. EVERETT. Thank you. Please be seated.

Mr. Deputy Secretary, thank you. I welcome you, and I thank you very much for coming today, and I would ask you to introduce your panel.

Deputy Secretary GOBER. Thank you, Mr. Chairman. It is my pleasure to do so.

I have with me on my left here the Assistant Secretary for Human Resources and Administration, Eugene Brickhouse. Next to him is the Deputy Assistant Secretary for Equal Opportunity, Mr. Gerald Hinch. The Honorable Mary Lou Keener, the General Counsel of the Department. Dr. Jule Moravec, who is the Chief Network Officer for the Veterans Health Administration, and Dr. Leroy P. Gross, who is the Director of the Veterans Integrated Service Network No. 6, in which Fayetteville, NC, falls.

Mr. EVERETT. Thank you very much.

We will receive your testimony. If you could summarize it, we will make sure that your complete testimony is put in the record.

STATEMENT OF HON. HERSHEL GOBER, DEPUTY SECRETARY, DEPARTMENT OF VETERANS AFFAIRS ACCOMPANIED BY GERALD K. HINCH, DEPUTY ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY; HON. MARY LOU KEENER, GENERAL COUNSEL; JULE D. MORAVEC, Ph.D., CHIEF NETWORK OFFICER, VETERANS HEALTH ADMINISTRATOR; LEROY P. GROSS, M.D., DIRECTOR, VETERANS INTEGRATED SERVICE NETWORK NO. 6

STATEMENT OF HON. HERSHEL GOBER

Deputy Secretary GOBER. Thank you, sir.

I have submitted a written statement that I ask be included in the record, and I will summarize my statement as quickly as possible.

Mr. EVERETT. Without objection, so ordered.

Deputy Secretary GOBER. Mr. Chairman, and members of the committee, I appear before you today on behalf of Secretary Jesse Brown and the Department of Veterans Affairs to testify about VA's policies and practices regarding sexual harassment and other forms of discrimination in the work place.

This has been a matter of utmost importance to Secretary Brown and myself from the very beginning, as I know it has for this subcommittee.

I was sworn in as Deputy Secretary of the Department of Veterans Affairs on February 4, 1993. One week later I was in Atlanta, GA, at the VA Medical Center there dealing with a terrible sexual harassment case that we had inherited and which has been referenced here today.

While I was there, I promised our employees—or my associates, as I like to call them—that this administration would not tolerate anything that would keep them from devoting their full attention to what we are supposed to be doing: serving veterans.

Secretary Brown and I have worked very hard ever since to fulfill that promise, and I will assure you. I know this committee is upset, but no one is more upset than Secretary Brown and I and all of those employees of the Department of Veterans Affairs who are loyal workers and who do not like to see the department's name drug through the mud because it sticks to all of us.

These people are wonderful. They have done a good job, and we are very proud of them.

Very early on, Secretary Brown established the policy of zero tolerance for sexual harassment and other forms of discrimination within the department. I cannot overstate how strongly I support this policy. Secretary Brown made the policy, and it is my duty as the chief operating officer to enforce it.

No level of harassment will be tolerated or condoned. Any and every allegation of sexual harassment or discrimination will be thoroughly investigated, and when evidence supports the allegation, the VA will take actions to protect victims and discipline offenders within the range of options allowed by law.

In saying this, however, it is relevant to clarify that zero tolerance does not mean that all offenders will, in every instance, be removed from federal service. Sexual harassment and discrimination can encompass such a broad range of conduct that removal from federal service may not always be the most appropriate or legal remedy.

Secretary Brown and I have done everything that we know to support the zero tolerance policy regarding sexual harassment. He has issued letters to all VA employees expressing his strong commitment to diversity, equal employment opportunity, and the prevention of sexual harassment.

The Secretary has asked every one of our employees to join him in making the effort needed to uphold this commitment. In countless speeches to our VA associates, he and I both have both emphasized and reemphasized this policy. Every speech I have made where I speak with our VA employees, I talk to them about the fact we want them to be able to come to work in the morning, be treated with dignity and respect, and be free from any kind of fear that distracts them from doing their job.

Consistent with these efforts, the department has developed a program designed to prevent sexual harassment and discrimination by all employees, not just by senior executives. The program takes a three-pronged approach: communication, training, and policy development.

The Secretary issued his first all employee letter in 1993 and has issued numerous ones since then. Every employee has gone through 4 hours of training, and then we have 2 hours remedial training every 2 years. Secretary Brown and I have been through all of those trainings.

We have an ongoing training program for managers and supervisors concerning VA's equal employment programs and responsibilities. We have significantly improved the training for our EEO professionals to include counselors, investigators, and program managers.

In the area of policy development, we have established formal requirements that all allegations of sexual harassment be elevated

above the field level facility for a high level review to determine whether intervention is necessary to protect an employee from harm, pending a full investigation and resolution of the allegations.

In order to encourage the employees to bring forward their allegations and protect them when they do this, in May of 1993 we established a requirement for a high level review of all complaints of reprisal and retaliation. For those employees who wish to remain anonymous, we established a sexual harassment and discrimination hotline.

Other relevant policy developments include, but are not limited to, streamlining of the formal EEO complaint processing procedures; development of performance standards for senior executives to improve work force diversity and meet timeliness requirements; clarification of penalties for misconduct so there can be no question that sexual harassment and discrimination are actionable offenses, punishable by anything from reprimand to removal for a first offense.

Attached to my written testimony which I submitted to you, Mr. Chairman, is a comprehensive chronological list of the actions Secretary Brown has taken to deal with the issue of sexual harassment. The list is long and far-reaching because, as I have said before, the Secretary and I firmly believe in the institution and enforcement of a zero tolerance policy throughout VA.

Over the past 4 years we have had nine cases involving senior management officials in which we have taken action based on allegations of sexual harassment or related matters. In seven the executives resigned or retired. The other two instances the executives were taken out of the Senior Executive Service and placed in a lower grade position.

I would like to address briefly the case that precipitated this hearing, that of the former Director of the Fayetteville VA Medical Center, who was alleged to have engaged in sexual harassment.

Following an investigation, VA management seriously considered proposing his removal from federal service, but a review of the facts in the case created significant doubt that the evidence could sustain a removal action on appeal to the Merit System Protection Board or in the courts.

As a result, a negotiated settlement was reached with the Director. To date the former Director steadfastly denies the allegations.

The agreement insured the Director's removal from the medical center, from the directorship of any VA facility, from the Senior Executive Service, and from any supervisory position, but it permitted him to continue as a government employee without loss of pay.

I fully understand and appreciate that some view VA's decision to reach that agreement as indicative of a lack of management's concern about sexual harassment, or possibly as a VA practice of protecting senior managers from the consequences of improper actions. I want to assure you, Mr. Chairman, and the members in the strongest possible terms that it does not.

If the verifiable evidence had been such that management was reasonably confident that the Merit System Protection Board or the courts would have sustained removal from federal service, then that action would have been pursued to its conclusion.

It is important to reiterate that management felt it was extremely important from the standpoint of both the provisions of health care services to our veterans and the work environment for our associates at this facility that the former Director be removed from his management position and relieved of all supervisory responsibilities as rapidly as possible.

Accordingly, VA entered into a settlement with him under which he was transferred out of the Fayetteville VA Medical Center. He also resigned, as I said earlier, from the Senior Executive Service and was reduced in grade and rank to a nonsupervisory GS-14 position.

By these actions, management achieved what was considered to be the most critical objectives. I fully understand that this decision will be second-guessed by some. However, we believe that, given the facts and the circumstances of this case, it was the best option available to us.

One of the problems that emerged from the case in Atlanta, that I mentioned earlier at the beginning of my statement, was the fact that responsibility for investigating allegations of harassment rested with the facility Director. If the Director was the subject of the complaint, you can see that we had the classic situation of, as we say in Arkansas, "the fox guarding the chicken house."

That situation no longer exists. Now if there is a complaint about sexual harassment at any level, I dispatch an investigative team, completely independent of the Director or division or even the Under Secretary, to check out the allegations. As the chief operating officer of the department, I have the authority to do this, and I will make sure that when we send in these teams, and there is sexual harassment involved, there will always be high-ranking women on the team.

What concerns us most about the Fayetteville matter is that it has damaged VA's standing with some of our women employees and the women veterans that we serve, and this is most regrettable. As I have stated earlier, we have taken serious actions over the past 4 years to try to insure that all of our employees have a work place where they feel secure and safe from discrimination and harassment of any kind.

We believe it is very important not only for their well-being, but for our ability to provide veterans with the health care and other benefits and services they deserve.

To strengthen our employee protections further in light of this case, the Secretary has recently established the following new requirement. In any matter of allegations of sexual harassment or other misconduct against senior VA executives, the Secretary now requires that the allegations and recommendations for dealing with these situations be brought to the attention of a committee drawn from the senior staff in our VA headquarters here before action is taken to resolve this matter, and I will be heavily involved in the review of these cases, and then the recommendation will be made on the settlement.

Our position is that matters of sexual harassment and other forms of discrimination are considered most serious and will receive the highest level of scrutiny.

We have recently, Mr. Chairman, conducted a survey of all of our employees throughout the VA to find out their perception on how the VA handles sexual harassment. That report is due by June, and at that time we will be more than glad to share that with you.

To insure this survey was conducted in an objective manner, we went to an outside contractor, a professional contractor.

In addition, Secretary Brown is in the process of composing and writing another letter to all of our employees to make sure that they understand that they are free to come forward. The letter will remind our employee of the means available to them to deal with any problems they may encounter in these areas. We are optimistic that these new measures will help us in our efforts.

And, Mr. Chairman, I would like to say in closing here before we begin the questioning that when I sat her this morning and listened to these ladies talk about they felt they were abandoned, I was appalled. I was upset. They are a member of our family, and for them to be out on a limb and feel like they were by themselves is wrong. Without even arguing the merits of the case or talking about any subsequent litigation, the fact is we have worked very, very hard to make everyone feel like they are a member of the VA family, and today I spoke to each of these ladies and told them that we will make sure that they receive the assistance that we can give within the law at their locations.

Now, Mr. Chairman, we are ready to respond to your questions. [The prepared statement of Deputy Secretary Gober, with attachment, appears on p. 197.]

Mr. EVERETT. Thank you, Mr. Chairman.

Secretary Brown was invited to the hearing today, and I am really disappointed he was unable to make it, but I do appreciate you coming. I have great respect for Secretary Brown and I respect the candor and frankness of the discussions that you and I have been able to have on other matters, and I have great confidence that you will try to do exactly what you say you will do.

I have concern, though, that there is a "good ol' boy" network out there, and that there is a culture at VA which very much needs changing. I am not sure whether you share that same belief about the culture.

I would say that I am pleased that Secretary Brown initiated and has been highly visible in promoting the VA's zero tolerance policy on sexual harassment. It appears, however, that some of VA's most senior career officials did not get the message.

You are the department's chief operating officer, and your willingness to appear and give an official explanation of Fayetteville and sexual harassment issues in the VA is appreciated, and I appreciate your comments that you closed with.

You know that we are going to ask some hard questions, but I do want to keep it constructive with the good government objective of identifying, addressing, and solving problems.

Mr. Secretary, many VA employees and members of the public believe that the VA has a culture, as I mentioned, of tolerance for misconduct and mismanagement by senior officials. Just read the newspapers from Florida, North Carolina, and New York. The only way to overcome this is to meet it head on and do something about it.

In the case that we are hearing about today, Mr. Calhoun, a VA Medical Center Director, had a pattern of abusive behavior apparently even before becoming a Director. Yet VA seems to be much more concerned, and that is the testimony that we have heard here today and it is the feeling, I think, of the majority of this committee, that VA is much more concerned about Mr. Calhoun than the rank and file employees who are on the receiving end.

The VA's solution was to arrange a transfer to Florida and to create a new position for Mr. Calhoun where he would be paid more money than when he was a medical center Director, over \$106,000, and also to a location where he already owned a home. The "Club Med" treatment has literally been met with derision by VA employees, as well as by editorial writers who, as you are aware, have mighty sharp pens.

Mr. Secretary, I would like to ask you how much did you personally know about the Calhoun case as it was pending in VISN 6 and in VA Washington's headquarters.

Deputy Secretary GOBER. Yes, sir. I will be glad to answer that, Mr. Chairman.

We were concerned about the management there because there had been complaints coming out of there before these sexual—and everybody stop me if I misspeak here—before the sexual harassment came to the forefront.

Let me back up a little bit. We have no record of any, or we have been unable to find any record about any, misconduct in Batavia. When Mr. Calhoun left Batavia, he was promoted to an SES and moved to Fayetteville. We have from the IG file a form that says they had no complaints pending against him.

So if there is something out there, we did not know about it. We have searched back through our files. That is not to say there is not something there in Buffalo. I am sorry, but we did not have any information.

When the investigation started in Fayetteville, Dr. Moravec came in to brief me on the situation down there and told me what they were doing and wanted the delegation of authority to deal with the disciplinary situation there. That is not unusual. As you know, in government also not only have we been trying to push for the elimination of sexual harassment and discrimination. We have also been trying to let people make decisions at the lowest level possible.

We are now moving back in the other direction in this area, but anyway, I signed over the delegation of authority to Dr. Moravec, and I was aware that the case was going on and that it was getting to be pretty serious.

When it came to me, they told me what the settlement was. My reaction to it was: is that the best deal you can get? Could we have gone to court? And it was explained to me that the people who looked at the case thought that the chances of prevailing might not be as good as they should be, and the last thing I wanted was to go before the MSPB, have it reversed, have to pay all kinds of attorney fees, maybe have to pay some other kind of monetary award, and put a person anywhere they wanted to go.

So, based on the merits, the decision was made to do this.

Mr. EVERETT. At this time I would like to ask unanimous consent that all members have 10 minutes to question this panel and that we possibly have a second round.

In checking his previous employment record, did you check both locations or just Buffalo?

Deputy Secretary GOBER. I am informed both locations.

Mr. EVERETT. Both?

Deputy Secretary GOBER. I would say this though. Really I do not think there was really a requirement to check both. Only when you promote someone to an SES is it required to check this, but we are going to close that gap also. We are going to shut the barn after the mule got out, but another mule will not get out.

Mr. EVERETT. I surely hope you are right.

Deputy Secretary GOBER. Well, we are going to do the best we can, sir. You know, we are a huge agency, 240,000 people, a huge agency, and I saw the figures here about how many more complaints we are having. Well, I take a different spin on that. I hope that indicates that our people are starting to feel like that they can come forward without fear of retaliation.

I think we are making some progress. We will never be perfect, but we will try our best.

Mr. EVERETT. Mr. Secretary, you are welcome to look at it that way, but I would observe that other people would look at it in another fashion and would have perhaps the same right to do so.

The problem seems to be if I told you, "Mr. Secretary, look out the window there. It is snowing," and you looked out the window and you did not see any snow, and I suggested that you would not see any snow, then you would not believe it was snowing, and I do not know that VA has demonstrated in any way that they have the concern they are telling me about today for the employees, and it is pretty apparent to me that the concern is more in alignment with these senior officials and department heads.

Now, you said that you felt like the settlement that you got was the best deal you could make. Who made that decision, and did they have benefit of counsel? And did counsel agree with that decision?

Deputy Secretary GOBER. I am going to ask Dr. Moravec and Dr. Gross, who were intimate in the details of this, to comment on that, if it is okay with you, sir.

Mr. EVERETT. Yes, sir.

Dr. MORAVEC. I would like to respond to that and then ask Dr. Gross to deal with more specific details.

In this kind of a situation and in this situation, Dr. Gross, who is our highest level field executive, has responsibility for making decisions about what it was we were dealing with, and he was very thorough, in my view, in trying to track the information coming ultimately out of the IG report and what he could glean from discussions with some on the EEO activities and processes, and would frequently call me to share with me what he was experiencing, what he was feeling and seeing.

He was, of course, the contact to the various principals, the medical center Director at that time, Mr. Calhoun, and the regional counsel, the personnel experts, and so forth, as is the way it generally works in the field where we use that counsel very closely.

And as it evolved, it became apparent that we were ultimately not certain and felt that we would very easily or very possibly, perhaps not easily, be overturned, and the objective that we—

Mr. EVERETT. Excuse me. When you say “we,” do you mean counsel advised you might be overturned?

Dr. MORAVEC. No, I mean the VA. When I say “we,” I mean VHA, the Veterans Health Administration as—

Mr. EVERETT. Why would you not seek counsel’s opinion on that?

Dr. MORAVEC. We did.

Mr. EVERETT. And counsel confirmed that the case might be overturned?

Dr. MORAVEC. No. Let me see if I can be more clear.

Mr. EVERETT. I appreciate that. What I am interested in is knowing did you seek counsel and did counsel say that this case would be overturned. Be as specific and short as you can, please.

Dr. MORAVEC. Yes. I will defer to Dr. Gross since he was the one that was on the scene making those contacts.

Mr. EVERETT. Thank you, sir.

Dr. GROSS. Thank you, Mr. Chairman.

I would like to say, first of all, that I am a newcomer to the VA. I joined the VA in 1995, in November from the private sector and look forward to the opportunity of serving the VA and the veterans, many of whom are my colleagues in the military.

But to answer your question, when the IG report was consummated and I reviewed the IG report with my regional counsel, they reviewed the testimony. We consulted about what the next step is, and this is obviously a learning process for me. I have never been through this process in the VA before.

Mr. EVERETT. Dr. Gross, excuse me. We will come back to this a little bit later, but what I really would like is a yes or no answer. Did you seek counsel on this and did counsel advise you that this case could not be made?

Dr. GROSS. I sought counsel on it. Counsel presented to me a wide range of choices based on the table of penalties, and the decision was ultimately left up to me in consultation with other VA specialists.

Mr. EVERETT. Did they make any recommendation at all?

Dr. GROSS. They did not make a recommendation one way or the other.

Mr. EVERETT. Okay. Thank you. I will have additional questions.

If the committee will allow me, Secretary Gober, from a previous statement by Secretary Brown we understand there have been cases with 12 senior VA officials. I think you referred to nine. I assume the difference is the Atlanta situation.

Deputy Secretary GOBER. Yes, sir. Since we came in 1993, there has been nine.

Mr. EVERETT. Nine who have been demoted or have retired to avoid disciplinary action in the past 5 years for sexual harassment offenses.

Please inform the subcommittee of the general circumstances of each case, including whether it involved VHA or DVA officials, the type of offense, when it occurred, and the disposition.

Deputy Secretary GOBER. Would you like that in writing, sir, or would you want—

Mr. EVERETT. If you have got it now, I would like it now.

Deputy Secretary GOBER. I think we have that.

Mr. EVERETT. Let me ask you some questions. How many of these people were allowed just to retire?

Deputy Secretary GOBER. Seven out of nine, sir.

Mr. EVERETT. Okay. What was the nature of the complaints against these seven?

Deputy Secretary GOBER. I would point out, Mr. Chairman, some of these people were told to retire because if they did not retire, charges were going to be filed against them, and they chose to retire.

Mr. EVERETT. Did anybody receive a \$25,000 buyout?

Deputy Secretary GOBER. Yes.

Mr. EVERETT. Let me get this straight. You told somebody to retire or they were going to have disciplinary action taken against them, and then you gave them a \$25,000 buyout?

Deputy Secretary GOBER. I am not sure that this individual was one of the ones we told to retire.

Mr. Hinch will answer this question while I am——

Mr. EVERETT. Yes, sir.

Mr. HINCH. Mr. Chairman, what happened was this particular individual you are talking about was aware that an allegation had been made against him and that we were beginning to investigate the actions and everything. At that time we had the window open for buyouts. So he decided it was in his best interest to jump out and take hold of a buyout before the matter was concluded.

Mr. EVERETT. And there was nothing that we could do to preclude or keep a person who had a disciplinary action of this nature pending against him from getting a buyout?

Mr. HINCH. We had not gotten that far with it.

Mr. EVERETT. I beg your pardon?

Mr. HINCH. We had not gotten that far with it.

Mr. EVERETT. All right.

Mr. HINCH. It means he was aware that there was an allegation against him that has begun to be investigated. It means that he was aware of what he had done and what he felt the outcome would probably be.

Mr. EVERETT. I will yield to the gentleman.

Mr. HINCH. Excuse me?

Deputy Secretary GOBER. The investigations.

Mr. HINCH. Investigations.

Mr. EVERETT. But you do not have to give it. That is a discretionary thing. You do not have to give somebody a buyout.

Mr. HINCH. I did not give him a buyout, sir.

Mr. EVERETT. Somebody did.

Mr. HINCH. I am saying the buyout offer window was open at the time that he decided to leave. I have nothing to do with buyouts or personnel matters in that regard.

Mr. EVERETT. Mr. Secretary.

Deputy Secretary GOBER. He was not under formal investigation at the time. He just knew what he had done, and the buyout window was open. So he jumped in the life boat.

Mr. EVERETT. Mr. Secretary, my time has run out for this round, and I do appreciate the patience of the members of the panel, but

let me just say that we have got a situation here where somebody had an obvious charge made against him and somebody gave him, and, by the way, this is discretionary. They did not have to do it—gave him a \$25,000 buyout.

Deputy Secretary GOBER. But if the person did not know that the investigation was going on, if it had not—

Mr. EVERETT. Well, why didn't the person?

Deputy Secretary GOBER. If it had not reached that point sir. I mean, if it had not reached that point and he was one of those hundreds or whatever people that wanted a buyout and his position was targeted for a buyout, he got in there, and he got lost in the crowd.

Mr. EVERETT. It would not have been flagged?

Ms. KEENER. If I might make a comment, Mr. Chairman. If an individual seeks a buyout and because there is an investigation going on that has not been concluded at the time, everyone is fortunately considered to be innocent until proven guilty.

If the individual asks for a buyout and that buyout was then denied, that person could come back and sue us for retaliation because of the ongoing investigation. So there are a lot of—

Mr. EVERETT. Even though a buyout is discretionary and it does not have to be given?

Ms. KEENER. If we chose not to give him the buyout, he could and, most likely, would allege that the reason we used to exercise our discretion not to give him the buyout was because of incidents that were alleged in the ongoing investigation.

Mr. EVERETT. I appreciate your answer. As I said, my time is out, but I would suggest to you that there are those who could use the same law to their advantage, and in this case obviously did.

I recognize the Ranking Member of the committee, Mr. Clyburn.

Mr. CLYBURN. Thank you, Mr. Chairman.

I tend to agree. I was a little bit hesitant to break in, but I think we have to be very, very careful with these. The allegations are just that. They are allegations, and you have to be very, very careful going to conclusions.

I think it was said earlier that, a lot of times you can take a case to its conclusion and still lose it, and in the instances such as this if you deny someone the opportunity to buy out, I suspect they have got some pretty serious legal claims to be made against the VA. So you have to be very, very careful about it.

I would like to know, and let me preface my question by saying this. I was in Fayetteville a few weeks ago to do a banquet, and the morning afterwards some friends were having something for me. It did not occur to me until today, Mr. Chairman, that this gentleman, if I might call him that, Mr. Calhoun, was discussed pretty extensively. He is held in very low regard among the people that I heard talking about him. I did not know who he was and did not have any idea that I would be sitting here today in some assessment of him.

So this gentleman's actions were known throughout that community. People in that community abhor his actions. They are very disturbed by what they feel has been an unjust resolution of this matter.

If we do, in fact, have a zero tolerance for these kinds of issues in the VA, it would seem to me that those who are responsible for redressing these kinds of grievances have taken the real easy way out here, and I am wondering whether or not this is the final resolution of this particular case.

What would happen at this point if one of these ladies who we heard from earlier today were to bring legal action outside of the complaint process, were to file a lawsuit? They could very well file a tort action, especially the lady who said her breasts were massaged or something. That is a tort action.

What would the VA's position be if a tort action were filed?

Ms. KEENER. At this point, Mr. Clyburn, the VA settlement agreement is final. The VA can take no more action against Mr. Calhoun.

The individual complainants always have the right to sue him for a variety of legal actions in a federal court. They can sue him for, from what I heard this morning, a variety of actions if they choose to do that.

The VA, because at the time that the alleged actions were committed Mr. Calhoun was a VA employee, we would be in the position of having to defend him against the complainant unless the allegations occurred outside the scope of his professional duties.

So if an allegation occurred when he was not in the position of the VA Medical Center facility Director, then we would not have to defend, but any actions alleged in a federal suit that occurred during the scope of his responsibilities as a Director, we, the VA and the Department of Justice, would have to defend.

Mr. CLYBURN. That is my problem here. If you have got to defend—I cannot remember which young lady who indicated that she was really verbally abused in the presence of the EEO officer and some other person by Mr. Calhoun—are you telling me now that if her attorney, and I understand that she has an attorney, were to file appropriate legal action, that the VA would, in fact, defend him because he made his decisions? This whole discussion was within the scope of his employment.

Ms. KEENER. We have a responsibility to defend actions of employees that are committed within the scope of their——

Mr. CLYBURN. No, ma'am.

Ms. KEENER (continuing). Position.

Mr. CLYBURN. I do not believe that is the law. You are telling me that you have to defend and condone? I mean you are really defending that. You would be condoning those actions.

Ms. KEENER. Well, Mr. Clyburn, there are a lot of attorneys that defend people that are accused of very serious crimes, too. Everyone is entitled to a lawyer, and fortunately or unfortunately the way the law is the VA is charged with defending VA employees when they are accused of violations of the law.

We would not actually provide the litigation. The Department of Justice would, but we would work with the Department of Justice, and we would have to defend this case.

As in any case that is litigated, a determination is always made on the merits of the case as, you know, how far you want to proceed with the litigation, but those are decisions that are made on each case based on the merits. I certainly cannot make any com-

ments as to what might happen if any of these particular cases that we heard this morning were to be litigated, but the VA would, in fact, except for the exceptions that I noted, have to defend Mr. Calhoun.

Mr. CLYBURN. So these ladies are accurate in their emotions expressed here this morning that this guy, as far as the VA is concerned, has gotten away with all of this.

Ms. KEENER. I am not sure if he really got away that Scot free. He was transferred out of the facility. Those individuals at that facility no longer have to deal with Mr. Calhoun.

Mr. CLYBURN. I understand.

Ms. KEENER. He was stripped of his SES status. He is no longer in a supervisory position. He is not in a position that allows him to have any authority to supervise women in his current job in Florida.

So I do not think that he got away Scot free in this situation.

Mr. CLYBURN. Well, let me ask. I have a question. How many EEO officers within the VA are women?

Mr. HINCH. Each medical center Director is also designated as an EEO officer. I do not know how many women medical center directors we have or regional directors in Veterans' Benefits, but the head of each office or medical center is the EEO officer.

The reason for that originally was that they wanted to designate the EEO officer as someone with authority to take whatever necessary corrective action was needed in settlement of a discrimination complaint or sexual harassment complaint and so forth.

In the military, frequently it is the base commander.

Mr. CLYBURN. Well, let me ask you this. Am I to understand that Mr. Calhoun was the EEO officer in Fayetteville?

Mr. HINCH. Right.

Mr. CLYBURN. If he were the EEO officer in Fayetteville, then the very first complaint should have immediately gone outside the agency. So they would not have to complain to him about him.

Mr. HINCH. Let me say from what I heard this morning the system did not work. When you were listening to Ms. Blumenthal, she described how the system should work. That is the way that we train and require that the system works in VA also.

Something did not happen. Many things obviously did not happen there that should have happened. They should have, when they first contacted a counselor, been given a written notice as to how long counseling would last, what the next step was, and how to secure that step in writing.

Mr. CLYBURN. So nothing happened, and so then you were saying that these people from this morning really should have gone directly to EEOC?

Mr. HINCH. No, what I am saying is at Fayetteville if the system had worked properly, they would have gotten all of the administrative remedies available to them without going to EEOC, but EEOC was built into it.

Mr. CLYBURN. Well, from whom?

Mr. HINCH. Well, let me explain how the system works. You go to a counselor. The counselor really serves as the mediator to see if it can be resolved informally. The counselor has 30 days to do that in. At the end of 30 days unless the counselor has written per-

mission from the complainant to extend the counseling process, the counselor must give the complainant a notice of the right to file. It says you have the right now to file a formal complaint, and it tells them how to file it and who to file it with.

They can file it at my office in Washington. They can file it with the National Director of Women's Programs.

Mr. CLYBURN. Well, that is my point. The complaint could have been filed to you after the EEO counselor, and they would not have to go to Mr. Calhoun.

Mr. HINCH. Right.

Mr. CLYBURN. Let me ask. I believe it was in 1993 when I first became aware of the situation in Atlanta.

Mr. HINCH. Yes.

Mr. CLYBURN. We talked about that in this very room, and we talked about some things, Mr. Bilirakis, that we needed to do in order to insure that people had these direct lines outside the agency.

If my memory serves me well, there was some resistance within the VA to doing that. I think Sanford Bishop joined me in that, and you all told us at that time that no Atlantas would happen again.

Now we are hearing that no Fayettevilles will happen again.

Mr. HINCH. Let me respond if I may. At that particular time I was one of the people testifying at that time, and Mr. Evans was, I think, chairing that committee.

Mr. CLYBURN. Right.

Mr. HINCH. What the Secretary said at the time was he supported the intent of the legislation, H.R. 1032, but he really did not feel it was necessary for legislation; that he could accomplish all of those things administratively, and he was going to do so.

Mr. CLYBURN. Right.

Mr. HINCH. Shortly thereafter, Senate bill 404 also was being considered in the Senate, and the Secretary was advised at that time that it was only a matter of months before EEOC takes on the whole government-wide EEO program.

So the Secretary wrote to Chairman Montgomery at the time and said, "In lieu of that, I do not want to go through a major reorganization in the Department of Veterans Affairs only in a few weeks later to have to hand the program over to EEOC."

That is why we did not do it administratively at that particular time, but we were fully supportive of the intent of H.R. 1032, Senate bill 404, and we had developed a very specific administrative proposal that would have accomplished everything that was intended in H.R. 1032.

Mr. CLYBURN. So you are telling me then that all of this has been accomplished?

Mr. HINCH. I am tell you that it was——

Mr. CLYBURN. No, your position, not your procedure. I am saying S. 404 and H.R. 1032, everything that was in S. 404 and H.R. 1032——

Mr. HINCH. Never got off the drawing board.

Mr. CLYBURN. Because you all anticipated that a law was going to pass the Congress?

Mr. HINCH. Yes. The EEOC was going to take over the whole program. I did not anticipate it, sir. Let me tell you because I have been in this business a long time.

Mr. CLYBURN. That is what I would think.

Mr. HINCH. And I have seen similar efforts go nowhere.

Mr. CLYBURN. Absolutely.

Mr. HINCH. But there were others who thought it would happen.

Mr. CLYBURN. And so the Secretary decided not to move because he was advised that this was going to become law.

Mr. HINCH. That this was imminent.

Mr. CLYBURN. And then in 1996, 3 years later, it still had not been done.

Mr. HINCH. That is the case.

Deputy Secretary GOBER. Mr. Clyburn, if I may, sir.

Mr. CLYBURN. Yes, sir.

Deputy Secretary GOBER. One of the reasons for the—

Mr. CLYBURN. It is Clyburn. Let me get my name right here. There is no A in this name, sir. C-l-y.

Deputy Secretary GOBER. Well, I saw that.

Mr. CLYBURN. Y gets the sound of I.

Deputy Secretary GOBER. When I saw that earlier, I saw that, but someone called you—

Mr. EVERETT. Did I do that?

Mr. CLYBURN. Well, Everett is my good friend. So I let him call me anything he wants to. (Laughter.)

Deputy Secretary GOBER. And like you said, I understand what you are saying. I just saw some of that snow out of the window here, too.

Mr. EVERETT. My sincere apologizes.

Mr. CLYBURN. That is all right.

Deputy Secretary GOBER. But one of the reasons there, was a price tag attached to what the Secretary was going to do administratively, and it was about \$3.5 million a year. I think the Secretary very wisely, at that point in time, thought if this law does pass that we would just be throwing \$3.5 million out the window basically, and so he held off on it, and of course, the law did not pass.

Mr. CLYBURN. Well, if I remember H.R. 1032 correctly, if I may, Mr. Chairman, and Mr. Lerner is he and he really can correct me if I am wrong, I thought that what the Secretary was saying to us was that we did not need to do H.R. 1032 because he was going to do it administratively. He was going to accomplish administratively what H.R. 1032 would ask him to do.

We did not have a budget on H.R. 1032.

Mr. EVERETT. Would the gentleman yield?

Mr. CLYBURN. Yes, sir.

Mr. EVERETT. I have it underlined here in the record there where the Secretary says the department does not support H.R. 1032.

Mr. CLYBURN. Right. Yes, that is what I am saying. He did not support it.

Deputy Secretary GOBER. But that was only because he felt we would be doing it administratively.

Mr. CLYBURN. Well, I am going to close with this, Mr. Chairman.

You know, out of deference to what I said in my opening statement, I have a great deal of experience with the VA, experiences I have slept with for 35 years, but I will tell you. I think that we are here today because no one followed up on what we talked about in 1993, and I do not see any indication that anything is being done at this point to keep us from being here next year with the same kind of allegation.

Now, I say this because I think Ms. Blumenthal indicated a figure, and I hesitate to bring this up because I was out of the room, and I apologize for that, but if you have got 8.-something percent of employees in federal agencies sitting at the VA, but you have got 14 percent of the sexual harassment complaints at the VA, something is wrong.

Mr. HINCH. I do not want to defend that, but I would like to offer a comment, please.

Mr. CLYBURN. Please.

Mr. HINCH. The VA is a distinctly different department than some of the others that we are talking about. We have over 57 percent of our work force is female. They are located throughout the whole Nation, large towns, small towns, medium size towns, isolated locations, medical centers where men and women work together very closely in very unsupervised atmospheres. So I think there are some factors that may contribute to that.

Now, I do not want to present to you that that is why those numbers are there, but I would also say to you that, overall, our figures for sexual harassment as compared to the total complaint work load we have has been going down.

Mr. CLYBURN. Well, I would suggest, and this is my final statement on this, someone testified earlier that X number of the VA complaints had been contracted out.

Mr. HINCH. About 59 percent.

Mr. CLYBURN. About 59 percent. I would suggest that one of the quickest ways to get to this is to contract out 100 percent of the complaints involving sexual harassment.

If you took these sexual harassment complaints right out of the system as soon as you got them, that would go a long way towards keeping us from being here with these kinds of things in the future.

Would you agree that that would be a good way to deal with sexual harassment complaints? Contract them out, every single one of them. That is zero tolerance.

Mr. HINCH. I would like to resolve them before you get to the investigative stage.

Mr. CLYBURN. Well, we all would like to do that, sir, but you and I both know, and you just gave a real good reason why you cannot do that. If you have got people in isolated situations, and you are talking to the father of three daughters, and so I would like to see that happen also.

But the fact of the matter is when the complaints are brought—you see, you are not going to bring the complaints while they are being counseled—but when the complaints are brought, I am saying at that point every sexual harassment complaint ought to be contracted out, especially since the Secretary did not support H.R. 1932.

Mr. HINCH. We do not have a problem with that, and as you describe it, it is quite possible to do that. We can do that without a great deal of difficulty. It just means assigning a contractor to it rather than a collateral duty investigator.

I guess I did not understand you at first.

Mr. CLYBURN. Yes.

I am through, Mr. Chairman.

Mr. EVERETT. Thank you, Mr. Clyburn.

Mr. CLYBURN. Thank you. (Laughter.)

Mr. EVERETT. The chair now recognizes Mr. Buyer.

Mr. BUYER. Actually, you know, a few weeks ago I extended great compliment to my colleague from South Carolina for being the new Ranking Member, and on this line of questioning, I compliment it, and it reinforces my compliment to you.

Mr. CLYBURN. Thank you.

Mr. BUYER. Part of what he is sharing with you is no different. I am going to have to go back because I am doing what Mr. Everett is doing on the sexual misconduct in the U.S. Military. This one is huge, and there are many of whom are saying, you know, there is such a problem that you need an ombudsman. You need independent commissions, and everybody is trying to do all kinds of outreach.

That is no different than Mr. Clyburn here asking for the same thing. One thing though that concerns me about that request for going outside is that we are not changing behavior. We are leaving the same bad players in the same positions taking six figure salaries, and that concerns me.

When we are talking about those employers are setting the tone of the environment for the work place, I am not so apt to leave them in the work place, and I have said publicly and I will stress it also to the VA. It is entirely acceptable for the American people to demand of the VA, the military or the federal agencies' authorities a higher standard.

You say, "Steve, a higher standard than what you would find in Monticello, Indiana?" Absolutely, absolutely.

So I think the gentleman's line of questioning was entirely appropriate. One thing that does concern me, and he was getting into this agreement, let me share a perspective here. I'm a country guy from the corn fields of Indiana, a country lawyer, and I try not to get lost in the high weeds, you know, that kind of thing. So I just read a document only by the four corners of the document.

So as I read the document, I look at this and say, you know, there is something here that had to have occurred, and I learn that there were three allegations, I guess, Dr. Gross, at the time that this was drafted, and if the agreement is based upon the three allegations at the time and this is then signed, if there are other allegations that occur that are outside your knowledge that were made, that being now that the testimony of Ms. Barefoot or—who else do we have?—well, there were other individuals. You can take action.

The VA can go after this gentleman, if I can call him a gentleman. He is innocent until proven guilty, but the document, if it only refers to specific cases—as a matter of fact, this is not a very well drafted document.

Who drafted this thing? Dr. Gross, who drafted this?

Dr. GROSS. Well, the draft was a joint effort, but the personnel specialist was the primary author.

Mr. BUYER. Did the lawyers for Mr. Calhoun draft this document?

Dr. GROSS. The lawyers for Mr. Calhoun?

Mr. BUYER. Yes.

Dr. GROSS. No, they did not. They advised him in the process of negotiation, but the document itself was drafted by the human resources specialists in the VA.

Mr. BUYER. The Whatley report, what is that? Whatley?

Dr. GROSS. The Whatley report.

Mr. BUYER. Did you draft that?

Dr. GROSS. No, Mr. Whatley drafted it.

Mr. BUYER. Do you agree with that report? Are you comfortable with it?

Dr. GROSS. I do not really understand what you mean. Am I comfortable with it?

Mr. BUYER. Well, I listen to testimony. I read some statements. I think that the report itself is awfully understated and almost benign. What is your opinion of the report?

Dr. GROSS. I think the report was benign. I agree with that.

Mr. BUYER. Well, that is my opinion. What is your opinion? It is benign?

Dr. GROSS. It is benign.

Mr. BUYER. What does it mean when you say a report is benign? My interpretation from Indiana may be different from yours.

Dr. GROSS. When I say it is benign, the report itself does not, in fact, address the issue specifically enough. It is too general. It is broad.

Mr. BUYER. All right. What then did you have to do to go beyond the report to satisfy you at a level of accountability to take action? What did you find?

Dr. GROSS. I think the report met my purposes, especially my oral outreach from Mr. Whatley, and that was he confirmed as an independent assessment that, indeed, there were hostile conditions at Fayetteville, and after the report and verbal outreach, I elected to notify Mr. Calhoun that I wanted him removed as soon as possible and started to negotiate with my superiors and headquarters to remove him as the medical center director on the basis of the hostile work environment—his management by threats and intimidations.

Mr. BUYER. You made a decision based upon what you feel was a benign report in generalities, unwilling to go into the detail, but you were satisfied that based on the report that he should be removed. All right?

Dr. GROSS. That is a combination of that report plus my own visit to the facility and talking to individuals.

Mr. BUYER. How did you feel when lawyers then told you—you are in a position of authority now, had the taxpayers' interests also at heart—and somebody tells you you cannot remove a bad actor? How did you feel about that?

Dr. GROSS. Well, no one told me I could not remove a bad actor. I could not remove a bad actor without going through the legal process and due process, et cetera.

Mr. BUYER. Right, and for some reason you were unwilling to take the case through the chain of legal events. Even though you did not know about the details, you were unwilling to take it through a chain of events, and you relied upon someone else telling you that, well, perhaps this is a case that we cannot win.

I just share this with you. This is Hoosier perspective again. You see when I come out here to Washington, DC, I get upset because when I look out two blocks from here, I look at homes and I look at businesses that have bars on the windows, and my perspective says, you know what? The wrong people are behind bars.

Now I look at the bureaucracy, and I share the same perspective and say, you know what? There must be a real problem with the bureaucratic culture in this country if we have people of authority that are afraid to go after bad actors.

Dr. GROSS. Well, quite to the contrary, I am not afraid to go after bad actors. In fact, I was very aggressive—

Mr. BUYER. Then please explain to us why you did not aggressively go through the legal process because now the taxpayer, because this Congress passed a Civil Rights Act that permits women to file claims under the tort law, whereby if the government, the VA, loses a case, the taxpayer has to pay. So please share with me.

Dr. GROSS. I am not sure if you—perhaps let me clarify the chronology here. At the time Mr. Whatley conducted his investigation at my request, I had already visited the Fayetteville facility and come to the conclusion that it was a very hostile work environment, but I needed an independent assessment of the management climate there.

The sexual harassment issue was not an issue at that time. This was in the summer of 1996. It was after the Whatley report, and my conversation with him and my conversation with my superiors that I elected to seek action to remove Mr. Calhoun. I was very aggressive in that regard.

He reluctantly agreed to step down as Director, and it was at that time that the OIG, who was working in collaboration with me, providing me some additional information related to the hostile work environment, that the OIG decided that they would then go in to investigate two cases of sexual harassment which they did not identify what they were to me.

So rather than let Mr. Calhoun remain in the Director position, I sought permission from my superiors, to detail Mr. Calhoun out of the facility. My main objective was to aggressively pursue removing Mr. Calhoun at all costs, to make whole the people in that facility so that we could start to go about the business of taking care of our patients.

So there were two efforts there.

Mr. BUYER. You know, we heard some testimony here from five ladies that are very uncomfortable about the VA and their handling of these cases. Can you imagine that with all the scrutiny upon the U.S. military at the moment, that if you had a Navy captain who did something on a destroyer and they said, "Well, let's get him off that destroyer and we'll give him a job and he's now

going to command an aircraft carrier“? Do you think that would happen in the Navy?

No, it would not. So now let's shift over and say what? Are we going to treat—now they are out of the military, but now they are in the VA—we are going to treat them by different standards?

No, no, no. I think that—let me compliment the Ranking Member and Chairman for bringing this hearing, and Mr. Bilirakis. There is a real problem here with the VA. If we have got 12 senior level positions that have all now been discharged from their duties because of these allegations, that is like—is it 12? You are shaking your head.

Deputy Secretary GOBER. Nine.

Mr. BUYER. Nine? Oh, all right. Nine.

Deputy Secretary GOBER. Only two of them——

Mr. BUYER. That's like saying nine generals. Don't go West. Pardon?

Deputy Secretary GOBER. Only two are still on active duty. The rest are retired.

Mr. BUYER. What about the others?

Deputy Secretary GOBER. We drove them out. Some of them were driven out and retired early. Some of them took buyout. One of them took a buyout earlier. They are no longer in the service. We have two senior executives that are no longer senior executives.

They were, to use your military analogy, they received a captain's mass and not a court martial. They are still serving in the VA, but they are no longer in leadership positions.

Mr. BUYER. And you have created a position for them to protect that individual is my assessment.

Deputy Secretary GOBER. Not to protect the individual. The fact is that there was a legal process we have to go through. Our people made a judgment.

Mr. BUYER. A legal process which you chose not to go through. You gave this guy a good salary——

Deputy Secretary GOBER. We made——

Mr. BUYER (continuing). And a wonderful climate that I do not have in Indiana.

Deputy Secretary GOBER. Well, you know, I want to address a couple of things. There is no way that I am going to sit here, Mr. Clyburn, and promise anything like this will not happen, the reason being is that I am not a fool. Things like this happen. This is a huge organization. Things happen, and you and I both know it, that should not happen. We understand that. It should not happen, and our policy is we do not want it to happen, and we are doing everything possible.

Now, let me tell you what I think we should do from now on. When we have a situation like this happen, let's just say we have a Director in Indiana or anyplace you want to take. When we get allegations that this is happening. What we will do is we will transfer; we will detail that Director totally away, maybe into Washington, DC, and we will send a team in that will investigate, and we will get to the bottom of it so that we do not have a few allegations come forward and we find out about them and then later on you find more.

We will do a complete investigation, do like you are talking about so that when we go forward we have got a complete package. If that individual is innocent, you know, the Constitution is a heck of an impediment, but it is a nice thing that individual has rights. If he or she is innocent we will protect them. If they are not, then we will throw the full weight of the VA against it.

But I do not want anybody to think that the VA has not made progress because that is patently untrue.

Mr. BUYER. And, Mr. Chairman, I guess my understanding is that the Secretary will be dispatching one of these teams to investigate the new allegations against Mr. Calhoun.

Deputy Secretary GOBER. What I will have to do is—again, I am not an attorney—but I will consult with my attorneys. If there is a way that we can do that, we will but I do not know if there is a double jeopardy problem. My folks are very capable of advising me, and we will do whatever the law says we can do. We will also respect the rights of individuals.

Mr. EVERETT. Thank you.

The chair now recognizes Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

You know, Hershel, I know you have worked hard on this, and as we said in our introductory statements, we have no personal problem with the attempts of you and Jesse Brown to move ahead with zero tolerance, but 5 years ago our former colleague, Jill Long, Congresswoman from Indiana, concluded after the hearing was done that the VA sexual harassment policy essentially boiled down to this:

“If you are sexually harassed, you get demoted, but if you are the harasser, you get transferred, and the taxpayers support your defense as well as your salary.”

Now, one of these women came forward today saying that it was very uncomfortable for her to sit in this committee room and talk about these issues. Obviously it was tough for all of these women, but if they could help one woman deal with the problems that she is facing in the VA, it would have been worthwhile.

Our duty, and I know you will never get 100 percent, is to do 99 to 100 percent if at all possible, and I guess the message we are sending out listening to Ms. Keener for a second, is that he did not get off Scot free in the case of Mr. Calhoun because he was demoted from the senior management status, and it was good to know that women in Buffalo and Fayetteville are now off the hook, but I guess women in Bay Pines had better be on guard.

And my question is you have failed to mention that the provision that allows Mr. Calhoun in this settlement to be considered for reentry in the SES in 3 years. How could you explain that, given his past record?

Deputy Secretary GOBER. He is barred for 3 years for reentry.

Mr. EVANS. Okay. But so do we—

Deputy Secretary GOBER. Why would we consider letting him reenter?

Mr. EVANS. Right.

Deputy Secretary GOBER. Well, you know, and again, I am not an attorney, but I would say in layman terms, he has not been convicted of anything. You would hope that a person—you know, part

of the VA is rehab. I would say this. This gentleman, Mr. Calhoun, lives in a fish bowl. His SES status, leaving the SES status, he has not gotten off Scot free, and contrary to what we have heard about him receiving an increase, a pay raise, he did not do that. He got a cost-of-living adjustment like every other employee in the government gets. We did not give him an increase of pay.

But the point is I guess your question, Congressman Evans, is how could you ever reconsider this person. Well, you know, hopefully—should I say anything more?

Mr. HINCH. Hershel, could I say something to that?

Deputy Secretary GOBER. Very little.

Mr. HINCH. Okay. Mr. Evans, actually if we had not put that provision in there, he could have reapplied to readmission to SES at any time.

Mr. EVANS. You cannot bar that?

Mr. HINCH. That is what this does. This means that he cannot really apply for readmission for 3 years. Without that he would have been able to.

Now, understand we do not determine his readmission to SES. That is controlled by the Office of Personnel Management. That is who he would apply to. That provision in the agreement really bars him from applying before 3 years.

Deputy Secretary GOBER. So really this is a plus for us. It is something that we got.

Mr. EVANS. But you know, I do not see it as a permanent punishment. I do not understand all of the parts of the SES. Basically if he can reapply, he can regain that status after 3 years is the way I read it.

Deputy Secretary GOBER. He can reapply. He has no automatic reinstatement, and he has to go through the whole procedure again. As Mr. Hinch said, if we had not had that in there, he could have reapplied the next day.

Mr. EVANS. Is the standard now in these kinds of agreements, something to that effect at least? And why couldn't we have barred him for 10 years or for the rest of his career?

Mr. HINCH. It may have been possible. I do not know if that would have been a break point on the settlement negotiations. I was not there.

You know, again, I understand your concern, Mr. Evans. I would just make the observation that with all that has transpired unless his rehabilitation is really stellar and so apparent, his reapplying is going to be a very difficult task.

Dr. MORAVEC. May I make an effort to add to that, please?

Mr. EVANS. Yes.

Dr. MORAVEC. It seems that we have a common understanding here that it was important to get Mr. Calhoun out of that environment so that these ladies and others would not have to deal with that on a day-to-day basis. What we were concerned about as we talked about this is to get the greatest amount of assurance that we would be successful in getting him out of that environment, and as we went through it and as information evolved and discussions occurred, there was some question about whether we could prevail in sustaining removal.

That precipitated the need for some dialogue with him and his attorneys in trying to move towards a settlement. The settlement maybe could have been better. It seemed to us that he was very adamant, as I understand it, about the dollars apparently due to his circumstance, whatever it was. We were looking for a way to free the environment of what we have heard about as a person who had behavior that was certainly destructive or counterproductive, and we succeeded in that.

Maybe if we could do it all over, maybe we could do it better, but we did succeed in that one single mission, if you will, that everyone seems to agree was the right thing to do: get him out of that environment.

Mr. EVANS. Well, I do not think we are going to stop this conduct until it is punished and viewed as a punishment by women who have been abused, and somehow they have got to have some input into this process because I understand not a single one of them has been consulted by the VA when this agreement was drafted for any kind of consultation or any kind of input; is that correct?

Dr. MORAVEC. Yes, I am certain it is correct. It would be a very unusual process to involve people who were in process, in some kind of a legal or a procedure such as EEO, and I do not believe that happens in any case that I am aware of, whether it is a grievance or an EEO, or sexual harassment complaint. I do not believe it does.

Mr. EVANS. All right, Mr. Chairman. Thank you. I yield back my time.

Mr. EVERETT. Thank you, Mr. Evans. Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Well, no one has to convince me of the concern for veterans or veterans' rights that Secretary Guber holds and certainly Secretary Brown. He was what, Executive Director, I guess it was, of the DAV for many years. That is how we knew him, and Hershel goes way back as far as veterans' rights are concerned.

And I will tell you I really misjudge you if you are not sitting there damned uncomfortable, Hershel. You have got to be uncomfortable.

You know, we have got to look at this overall picture. We are concerned about the rights of these ladies, the rights of others who have been taken advantage of, but we also have to take a look at this from the eyes of the veteran, the grassroots veteran out there.

I mean the people that I have heard from. You have an awful lot of friends out there in the veterans community. You are bound to have heard from them, and I doubt very much that any explanation that we have heard here today from you or any of the others in this panel is something that would be anywhere near acceptable to those veterans.

Golly, you said things happen. You are right. It is an agency with 240,000 people. It is just like, you know, some may ask us, "Hey, you guys are the Veterans' Affairs Committee. Why didn't you know this was going on?"

Well, one might unfairly ask you the same thing, I suppose, because how in the world can you possibly know everything that is going on. So, yes, things happen, and you refused to, rightly so, refused to commit to the fact it will not happen again.

But I will tell you something. If I were a bad actor or a potential bad actor and I wanted for whatever reason to get out of my job with the Department of Veterans Affairs, a high position with the Department of Veterans Affairs, and I had something else in line or wanted to retire and go fishing or whatever the case may be, depending, of course, on my character, I might decide I am going to do something like this because I know damned well that I am going to be able to sit down and negotiate something out. I am going to probably get a buyout. I am going to be moved to a place that I want to go to all along anyhow, Florida or whatever the case may be.

And the trouble is that we are not just talking about one instance here. One of our local newspapers, the *St. Petersburg Times*, which has done a fantastic job on this issue, reported, and I would ask unanimous consent to admit this into the record.

Mr. EVERETT. Without objection.

Mr. BILIRAKIS. It is an April 14 article by David Dahl.

Mr. EVERETT. Without objection, so ordered.

[The attachment appears on p. 153.]

Mr. BILIRAKIS. And I might just paraphrase that. He reported that a VA doctor in a VA medical center in Maine made advances towards a VA nurse while on a business trip. A federal jury said the doctor's behavior had created a hostile work place and recommended a \$375,000 award.

I am assuming that \$375,000, Mr. Clyburn and Dr. Snyder, is probably going to come out of the VA out of the taxpayers because it is a \$375,000 award.

Despite the department's zero tolerance policy, and again, I do not fault that; I said that in my opening statements. I gave credit to Secretary Brown because I really believe he intends zero tolerance.

But in any case, despite it, the doctor received a 1-week suspension, a 1-week suspension, and was allowed to keep his \$123,161 a year salary. The doctor appears to have received a very lenient punishment.

Is there any veteran out there, Mr. Secretary, who would not consider that a much too lenient punishment? The nurse has been transferred to another VA job and awaits a judge's ruling and the jury recommendation, and the comments from the nurse was, "The way they handled it was to punish the victim," and I am just leaving her name out for the moment. "I was a dialysis nurse for 20 years, and because of something he did, I was forced to leave a profession."

So you have the Clyburn situation. You have this situation.

Another report in the same newspaper, another highly paid former VA medical center Director was transferred to Bay Pines previously. It seems as though Florida is the dumping ground for all of the VA's management problems. I would like to think without any reflection on Minnesota or North Dakota that if we are going to be dumping somebody, for crying out loud, it ought to be in those areas in the winter rather than St. Petersburg, FL. (Laughter.)

And so you can see now. I cannot believe that this does not really bug you all, and it is not just what happened. It is not just that you did not put into place the administrative procedures that you

had indicated to us you were going to put into place in 1993, but it is these punishments.

Where are our guts? Whatever happened? I mean a lot of you guys are veterans. Maybe all of you are, and where are our guts that we are going to allow ourselves to create this type of a precedent which would encourage this kind of conduct. It certainly does not discourage it. It encourages it.

GS-14, you indicated for Mr. Clyburn. I understand the top level of a GS-14 salary is \$81,000 a year, and he is making \$106,000 a year. So I mean he certainly has not been hurt as far as that is concerned.

So, comments: First of all, I think it is important that maybe you might provide us with more information regarding the case that I just mentioned to you. Are you familiar with the case that I am referring to with the Maine doctor? I can give you the name if you want.

Ms. KEENER. I am very familiar with that case, Mr. Bilirakis. That case is currently on appeal, and there is extensive information on that case that I think you would be interested in looking at in some detail. I would be happy to share that with you.

Mr. BILIRAKIS. So it is being appealed by the doctor; is that correct?

Ms. KEENER. Yes, sir, and we would be happy to share the details on that case with you.

Mr. EVERETT. If you would make that available to the committee, I would appreciate it.

Ms. KEENER. Yes, sir.

Mr. BILIRAKIS. Is there any reason why Florida is the recipient of so many of these personnel transfers?

Deputy Secretary GOBER. No, sir, that is not planned, even though Florida is a beautiful state. That is not planned at all.

And let me say this, and you are right, Congressman. I sit here. I am glad to be here, sitting here because I am as outraged as you are. Secretary Brown is as outraged as you are. So believe it or not, I am very comfortable sitting here because I know I am talking to people that really care. We all care about the same thing. We are not playing who shot John. We are wanting to get to the bottom and try to find a way to improve it.

I hate to hear people say that we punish the victim, and I know in all too many cases it has appeared to be that. It has looked like that. It looks like that we have just transferred the "good ol' boys" from here to there.

One of the things, we have had a discussion here this week, and we have talked many, many hours about transferring problems. When we first got here, I said I do not like transferring problems. If a person is a bad actor in one place, he or she will be a bad actor in another place. Let's take care of our problems. Let's bite the bullet.

And of course, I was new to the Federal Government. I did not realize you had all of these laws that keep you from doing certain things, but that is not an excuse. There has got to be a way we can do it.

We will work with the committee on any way we can, and I will assure you that if I had one thing that I could do today, it would

be to reassure all of the women, the women that work for the VA out there and all of the women veterans, everybody, this policy is still in effect, and when we go out and do our investigation with the teams we will send out from now on, you know, we will go right to the very bottom of the barrel and find out what is going on, and then a decision will be made on discipline.

We have got to stop it. Secretary Brown is committed to it. I am committed to it, and we will continue to work to make this zero tolerance work.

Will we ever solve it? Negative, but we will make a positive step.

Mr. BILIRAKIS. Well, I appreciate that. I think you know that I do, but as long as we do not try to not reward, and I am going to use that term because it is a "dad-blasted" reward. I do not care.

Dr. Moravec, and I appreciate your response to my inquiry, and I introduced that letter dated April 9, 1997, as part of the record, but Dr. Moravec responded to me in a very nice manner, but you know, he basically refers and accents as you did the key facts remain, and Mr. Calhoun has been removed from a leadership position, et cetera, et cetera, et cetera, trying to make it seem like the punishments fit the crime, if you will, and when I say the crime, I mean in this sense.

And as long as we continue to do that and do not take one of these particular cases, with all due respect to your General Counsel, and take them up all the way through the process to see whether the Civil Service law actually prevents this sort of thing taking place. I mean, I realize what it says and you came aboard and you were not aware of all these laws that we in our stupidity maybe passed and made that tough where you cannot really transfer a person. I cannot believe you cannot transfer a person from one VA medical center to another.

Deputy Secretary GOBER. Oh, yes sir, we can.

Mr. BILIRAKIS. Well, you can. I know you can.

Deputy Secretary GOBER. Yes sir, we can.

Mr. BILIRAKIS. I was not sure why you could not transfer him, but you would have had to transfer him as a Medical Director; is that right?

Deputy Secretary GOBER. Without an agreement, without an agreement or going to court.

Mr. BILIRAKIS. In other words, if he does a bad job, let's say it was not sexual harassment.

Deputy Secretary GOBER. We have to prove a case. He has his rights, but absolutely you could do it.

Mr. BILIRAKIS. Yes, sure, he has his rights.

Deputy Secretary GOBER. My fear was, and the fear of VHA was, that if they—as with any case—you have to look at it because if you lose that case at MSPB, then they come back on you. He could have gotten almost any job he wanted, certainly reinstated, maybe all attorney fees paid and maybe even a cash settlement.

Mr. BILIRAKIS. Yes, but in a case like this, it seems to be not at all a marginal situation.

Mr. EVERETT. Would the gentleman yield?

Mr. BILIRAKIS. It seems to me that you could have used this as a pretty darn good test case.

Yes, sir.

Mr. EVERETT. Will you yield, please?

Mr. BILIRAKIS. My time is up anyway, sir.

Mr. EVERETT. Well, then since we are on this subject, before I got to Vic let me just ask you directly. Is it not the situation that under the terms of the settlement Mr. Calhoun can reenter at a senior level, at a management level, in 3 years?

Deputy Secretary GOBER. No, sir, not automatically. He can apply to reenter.

Mr. EVERETT. He can apply.

Deputy Secretary GOBER. But, sir, I would like to point out, as was pointed out here earlier, that without that stipulation in the agreement—and that is something he gave up—the very next day he could have applied for reentry.

Mr. EVERETT. Thank you for that clarification.

Vic, again.

Mr. SNYDER. Thank you, Mr. Chairman. I appreciate it.

Several questions here. I guess, again, I think our intent is to look for things that we need to be doing. You all are looking for things you need to be doing, and we are looking for things that we need to be doing through statute.

In terms of some of the administrative things, if I could ask Dr. Gross a question, I have got your letter here of December 6th of 1996, and it is to Mr. Calhoun, in which you say, "The letter of proposed adverse action issued to you, dated October 24, 1996, is hereby rescinded. The letter was issued prior to the completion of the evidence file," and then you send out this letter December 6 encouraging an informal settlement.

What happened between October 24 and December 6? Did you get different legal advice?

Dr. GROSS. I was collaborating with legal counsel throughout the process, but the advice that I had erred procedural-wise was in issuing the original letter of removal which prompted me to write the letter of rescission.

Mr. SNYDER. So the first letter was a procedural problem?

Dr. GROSS. A procedural problem that I was——

Mr. SNYDER. But it seems that early on you made the decision to terminate apparently and informed him of that.

Dr. GROSS. I made two decisions. There were three phases. The first phase was in the summer before the investigation. I wanted to remove Mr. Calhoun, abated until the IG report was finished. When it was finished, I then proceeded to undertake removal action because, quite frankly, from the report I was livid.

Mr. SNYDER. Right.

Dr. GROSS. The sexual harassment component was new.

After I issued the letter of removal, the attorney for Mr. Calhoun requested an evidence file, which was not available and which, subsequently, I understand should have been attached as a part of that removal letter. That was one procedural error.

The second procedural error brought to my attention was that I did not have the delegation of authority to——

Mr. SNYDER. Let me interrupt you if you do not mind. I think you have answered that part of the question.

The other part of the letter that concerned me, and I just bring it up because in terms of what things that we all ought to have in mind when we are going through these kinds of messy situations.

In your letter in there, I guess you are encouraging Mr. Calhoun to cut a deal, and you say, "Formal action will bring further embarrassment to you, the Fayetteville Medical Center, and to the Department of Veterans Affairs," and I hope that embarrassment is not going to be a criteria within the Department of Veterans Affairs.

I mean Hershel knows where I live. I live a few blocks from the VA over there in Little Rock, and you know, it does not have blood vessels. It does not flush red when something goes wrong.

I mean these women have certainly been embarrassed. I do not think they would have been embarrassed to have him terminated. I suspect all of the people who have worked with him, if I believe everything I have seen here today, would not have been embarrassed in Fayetteville to have him fired.

The people that Mr. Clyburn met with at the social event would not have been embarrassed. They probably would have been relieved to have him terminated, figuring he would move on down the road.

So I hope embarrassment is not a criteria that we have there, and maybe it was just something you put in the letter to encourage him to make the move.

I want to ask in terms, Mr. Gober, of the fox in the henhouse. Now, as I understand it, you have made two changes; is that correct? One of them is if there is sexual harassment charges or bad conduct charges regarding a senior level, that there will be a panel that comes out from Washington. Is that accurate?

Deputy Secretary GOBER. That is correct. When we have allegations from a medical center against a Director, Associate Director, Chief of Staff—high level people—we will send out a team to investigate. Then when the report comes in recommending disciplinary action, after this report is done, it goes to the VHA, and they will make a recommendation which comes to the Secretary's office and will be reviewed by senior officials to make sure it is appropriate.

Mr. SNYDER. What was the date of that new policy? Are we talking a month ago or 6 months ago?

Deputy Secretary GOBER. Well, actually we—

Mr. SNYDER. Or this is going to be next month?

Deputy Secretary GOBER. No, we have already implemented the policy back in March.

Mr. SNYDER. Okay. A month ago.

Deputy Secretary GOBER. And another thing, if I could very quickly. I think that procedurally, you know, we could sit here and argue there were a few things procedurally done wrong on this investigation.

Mr. SNYDER. If we could move on, I understand.

Ms. KEENER. Mr. Snyder, we have already sent a team out in one situation.

Mr. SNYDER. It is underway.

Ms. KEENER. So not only has the policy been implemented, but we already have had a team out on a recent situation.

Mr. SNYDER. I have got you.

And again, the issue that you have already alluded to, the constraints that you have, maybe that is something that we all need to look at. You had, by your Inspector General, you had a lying, abusing sexual harasser that you thought created a very hostile work environment, so much so that Dr. Gross was livid about it, and yet you are telling us that the laws are such that he cannot be reassigned.

I mean I do not want any response today, but that to me is a problem.

Deputy Secretary GOBER. Oh, no.

Mr. SNYDER. If the President does not like you, Mr. Gober, you are back to Arkansas, and we all know it. They will not send you back to Florida. They will send you to Arkansas with me. So we may need to work on this.

Deputy Secretary GOBER. Maybe there is one more slot down there, but the point is we can move. We can move directors. You know, we can transfer all the time. However, you get into a real situation if you start doing it for a disciplinary reason.

If we have a situation where we may have a director that we want to move somewhere else, we can do that.

Mr. SNYDER. But that is the problem, isn't it? At some level of management, at some level of senior management, I would think that you would just say, "Hey, we want to move Joe, and, Joe, I am not going to tell you why. You are moved."

Deputy Secretary GOBER. Oh, we can do that, but we did not want to move this individual to a management position. If he is a hospital director and we do not have disciplinary action against that person and we move him, you assume you are going to move him into a hospital director position or a higher level position.

Mr. SNYDER. I have got you.

Deputy Secretary GOBER. Otherwise you are disciplining him.

Mr. SNYDER. And the issue of the fact that nobody sat down with the complainants and discussed the plea bargain arrangement, for want of a better term, I guess, Ms. Keener, maybe there would have been a lot less uproar over this if each of the people that had complained would have heard the outline of the settlement.

Ms. Force seemed to think that she understood where you were coming from on that. I am not sure I see the problem. Is that one of the lessons learned from this, that maybe that would be helpful or not?

Ms. KEENER. It is not that I do not agree with you, Mr. Snyder, but I am really not the appropriate person to discuss this question because of the role that the General Counsel's office plays in these kinds of complaints is really minimal. We only provide counsel. We have no real authority or responsibility in these cases.

Mr. SNYDER. I thought I heard somebody—

Ms. KEENER. That would probably come under the auspices of the personnel folks, not General Counsel.

Mr. SNYDER. All right.

Ms. KEENER. So I will refer that to—

Mr. SNYDER. I heard some expression of some legal concerns about that. Maybe Dr. Moravec said that would be some legal concerns to sit down, but at some point I would think that you would be giving the complainant a little bit of say over what would your

recommendation be, Ms. Complainant. Would you want us to go ahead and push this case knowing it may be overturned and we could terminate him, or if you could substantiate it?

I do not mean an unsubstantiated, but you are shaking your head, Hershel.

Deputy Secretary GOBER. I think that is something that would have to be dealt with very carefully because, you know, 240,000 people cannot manage this organization.

Mr. SNYDER. I am not saying get a sign-off.

Deputy Secretary GOBER. Your concern is a good one. When we get to the point, and this is something we can look at. We can discuss if it is appropriate, if we should involve them more, and on what situations. When we have a clear-cut case, obviously it would be, you know, something that we would consider.

Of course, we have a clear-cut case, and I assure you we will not back off.

Mr. SNYDER. Yes. Ms. Keener, or whoever, the issue, again, looking for lessons learned, you are talking about the VA's responsibility to defend any future legal action which I guess would be a peculiar situation since you all may be defending Mr. Calhoun against our first bank of witnesses next month.

Is that something that is affected by the failure to seek termination? If you had gone through the process and fired Mr. Calhoun, do you still have to defend him or do you lose your obligation to defend him in the future if you fired him because he was a lying, abusing sexual harasser?

Ms. KEENER. It is my understanding, and I will stand corrected by my staff, but if he is found guilty of sexual harassment, we do not have to defend him.

Mr. SNYDER. If he had been terminated for those charges.

Ms. KEENER. That is correct.

Mr. SNYDER. So that is something that needs to be balanced in the equation, doesn't it, because you are now obligated to defend by your own count nine people, retirees and reassignments?

Mr. Gober, and this is my last question, are there other things that you have learned from this, I mean, other things that have not come up here today that we need to be thinking about?

Deputy Secretary GOBER. Well, I think I have learned I am going to stay a heck of a lot more involved in it at the high level, and I think it is important because we have to send a message.

Secretary Brown and I have been very, very involved.

Mr. SNYDER. But in terms of how Congress may need to respond in terms of statutory change or things that we need to do to help you all, either help or obligate you all to do things differently.

Deputy Secretary GOBER. We are going to do some of the new things that I mentioned earlier, and we are totally open to advice and will be pleased to work with anybody that has an idea and we'll explore if we have to do something. We have got to make sure that our people know that the zero tolerance is not just a buzz word. It is not something we are just sitting here mouthing about. It is something we really believe.

And, again, I am going to go back. I am going to disagree with the figures. I think that the fact that we have 14.1 percent people

coming forward shows, I hope, that our people understand they do not have to be afraid anymore.

We have these cases. I know there still are not many of them, but I want them to come forward. I want them to come forward and bring these cases.

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you, Vic.

I understand, again, that we may have a vote in about 20 minutes. I am going to close out this panel with the remark that I know the committee members have additional questions for the panel, and we will submit those to you.

And let me say, Mr. Secretary, that I do not really believe that this matter has been adequately investigated and addressed by VA to this date. Ms. Barefoot was not interviewed by the IG. Ms. Moore-Russell has not been interviewed by anybody in VA management or IG. We have to ask how many other Ms. Moores are out there. Nobody knows.

I have been told though there are a number of EEO complaints in Fayetteville still pending against Mr. Calhoun, and reading over the terms of the agreement and on advice from staff counsel, I am advised that nothing would preclude the VA from pressing additional or bringing additional charges against Mr. Calhoun if the results of those EEO investigations determine that those charges ought to be brought.

And I would ask you to report back to this committee on all charges, and I understand that there may be well more than 20 pending against Mr. Calhoun and what action has been taken.

I think that we need to get to the bottom of what happened at Fayetteville quickly. I think it is to the benefit of the Congress and the VA, the people at Fayetteville, and the taxpayers. I do not believe and I know you do not believe that those five ladies up here were lying or have an overactive imagination. We cannot make the final determinations at this hearing, but the VA has a process to do that and should use them.

I also believe that VA should begin to voluntarily take steps to identify and help anyone, including these five ladies here today, who has been injured or hurt by the situation at Fayetteville. You heard them say that they had not been contacted by VA at all, and I appreciate your remarks and the fact that you said that pained you.

These ladies need to be contacted and made as whole as possible, these and any other that have been injured by this former Director at VA.

As I say, what I am talking about goes far beyond just advising them to get a good lawyer, and I see you nodding in agreement, and I hope you understand what I am talking about.

Finally, Mr. Secretary, please give the subcommittee a comprehensive report 45 days from now on what the VA has done to further investigate and address those matters at Fayetteville raised by this hearing. I hope you will do that.

The subcommittee will hold a follow-up hearing after it has your report and the results of the VA sexual harassment survey.

I want to again thank you for coming. I appreciate your candor. As I said, we have had other discussions, and I have always en-

joyed meeting with you. I know that sometimes we have to discuss very hard and frank issues, but I do appreciate you always being there when I call for you to come.

We will dismiss this panel at this time.

Deputy Secretary GOBER. Thank you, sir. On behalf of the VA staff here, I appreciate the candor that we shared, and I want to just reemphasize that we want everyone to know, particularly our employees out there that we are still on their side.

Mr. EVERETT. Thank you, Mr. Secretary.

Mr. MERRIMAN. Mr. Chairman, with your permission, I would ask some of my staff to join me today.

Mr. EVERETT. Absolutely, and, Mr. Merriman, you are Deputy Inspector General. If you would introduce your staff, I would appreciate it.

Mr. MERRIMAN. Yes, sir.

On my left I have Mr. Jack Kroll, Assistant Inspector General. On my right I have Ms. Maureen Regan, my counsel. Mr. Bennett is part of her staff, and Ms. Shelly, Judy Shelly, is staff to Mr. Jack Kroll.

Mr. EVERETT. Thank you.

And if you will at this time, please, I would like to swear the panel in.

[Witnesses sworn.]

Mr. EVERETT. Thank you.

I would ask that we confine the statements to yours, Mr. Merriman.

Mr. MERRIMAN. Yes, sir.

Mr. EVERETT. And that you be as brief as possible, and we will submit the entire statement or other statements for the record.

STATEMENT OF WILLIAM T. MERRIMAN, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF VETERANS AFFAIRS ACCOMPANIED BY JACK KROLL, ASSISTANT INSPECTOR GENERAL; MAUREEN REGAN, COUNSEL; MICHAEL BENNETT, OFFICE OF COUNSEL; AND JUDY SHELLY, OFFICE OF THE ASSISTANT INSPECTOR GENERAL

STATEMENT OF WILLIAM T. MERRIMAN

Mr. MERRIMAN. Yes, sir. Mr. Chairman and members of the committee, I am pleased to be here today.

With your permission, I would like to enter my prepared statement for the record and use this opportunity to summarize some of the work my office has done with respect to sexual harassment in the Department of Veterans Affairs.

Mr. EVERETT. So ordered.

Mr. MERRIMAN. I would like to start by saying that the Office of the Inspector General takes the issue of sexual harassment very seriously, and allegations involving sexual harassment brought to our attention are pursued vigorously.

Our first major investigation of sexual harassment complaints against senior VA managers was in 1992 at the VA Medical Center in Atlanta. We found sexual harassment by top managers and systemic problems that deterred female employees from reporting allegations of sexual harassment.

VA took swift corrective action on the systemic problems and replaced the medical center's top three managers.

In March of 1993, we completed a comprehensive audit of VA's EEO Program, with emphasis on sexual harassment and made several recommendations for improving the overall program. While there have been delays in implementing some of the recommendations, full implementation is anticipated in the near future.

It is important to point out that because there are other channels for reviewing allegations of sexual harassment, such as VA's formal EEO process, the number of cases reviewed by the IG is low. For example, of the 3,029 hotline cases opened by my office during the past 5 years, only 29 were related to sexual harassment.

An analysis of the 29 cases indicates that senior managers were involved in five of the cases. The most publicized of the five cases involved the former Director of the VA Medical Center, Fayetteville. Our review determined that the former Director sexually harassed one of the three women who made allegations against him.

While we determined there was insufficient evidence to support a finding that he sexually harassed the other two female employees, we did conclude that the former Director's behavior towards them was abusive, threatening, and inappropriate.

A November 1996 report recommended that appropriate administrative action be taken against the Director for sexual harassment and for his pattern of inappropriate behavior. We were informed that the former Fayetteville Director was downgraded and transferred to a GS-14 nonsupervisory position at the VA Medical Center in Bay Pines, FL, and that he was allowed to retain his SES pay.

Questions have been raised as to whether the punishment was appropriate. The IG was not involved in the decision relating to the penalty imposed on the former Director. In accordance with standard practice in the Inspector General community, we do not recommend specific punishments.

The decision whether to take administrative action and the action to be taken is vested in the deciding management official. Disciplinary action is a management responsibility. Because the IG is independent of VA management, it is important that the line between management and oversight be respected.

Another important reason why the IG does not recommend specific disciplinary actions is that management officials making such decisions must consider the Douglas factors, which are beyond the scope of our review.

These factors include such things as the employee's length of service, past disciplinary record, severity of misconduct, grade level, penalties imposed for similar behavior, and other potential mitigating circumstances.

The IG function is to determine whether the allegations are true or not. Consideration of the Douglas factors is part of the analysis that management officials are required to undertake when presented with proof of misconduct. The recommendation of specific penalty of misconduct needs to be the result of this two-part process.

Recently Secretary Brown testified that he will review all administrative actions involving senior VA officials. This will help insure

consistency and fairness in deciding appropriate administrative actions.

Secretary Brown has also made it clear that the department's policy on sexual harassment is zero tolerance and that it is the responsibility of every employee to establish a work environment that is free from sexual harassment and other forms of discrimination.

To heighten employee awareness, VA has taken a number of important steps in recent years, including requiring every VA employee to complete EEO training.

Thank you, Mr. Chairman, for this opportunity to comment on the work of the IG in this important area. I would be pleased to respond to your questions and those of the committee.

[The prepared statement of Mr. Merriman appears on p. 208.]

Mr. EVERETT. Thank you very much, and we appreciate you being here today.

In regards to Fayetteville, what were you asked to investigate and by whom?

Mr. MERRIMAN. We received allegations from Senator Faircloth, I believe it was, from a complainant that talked in terms of an abusive atmosphere at Fayetteville. We called the VISN Director and found that they were aware of some of these complaints and had planned a visit to Fayetteville.

In talking to some of the staff provided by the complainant, we came across a sexual harassment complaint by one of the individuals.

Subsequently problems of a sexual nature were provided to the VISN Director that he gave us. We agreed to go and look at the sexual harassment allegations at Fayetteville. The VISN would take a look at the other areas of alleged misconduct.

Mr. EVERETT. Did you make any recommendations regarding any need for additional investigations at Fayetteville?

Mr. MERRIMAN. No, we did not. Mr. Whatley, of course, was going to look into that.

Mr. EVERETT. Were you asked to investigate whether additional instances of sexual harassment or misconduct had occurred, other than the three cases you discussed in your report?

Mr. MERRIMAN. No. No, sir.

Mr. EVERETT. Does the IG have information about any other instances of sexual harassment or other conduct by Mr. Calhoun?

Mr. MERRIMAN. No. No, sir, not today.

Mr. EVERETT. If you are made aware of that, you can investigate further?

Mr. MERRIMAN. Sure, we could look at it further.

Mr. EVERETT. Did you interview Susan Odom, who also worked in the Director's executive suite?

Mr. MERRIMAN. Pardon me, sir?

Mr. EVERETT. Did you interview Susan Odom who also worked—

Mr. KROLL. No, we did not.

Mr. EVERETT. Any particular reason you did not interview her?

Mr. MERRIMAN. She was not directly involved in the sexual harassment allegations that we were reviewing. She was not brought up as a witness in any of the statements.

Mr. EVERETT. In Case No. 3, you indicated that it was her word against his. Isn't that commonplace in sexual harassment cases be-

cause harassers do not typically do it in front of witnesses? And does that mean you cannot substantiate a sexual harassment case based on the word of a woman?

Mr. MERRIMAN. Go ahead.

Ms. REGAN. That is often true that it is one person's word against the other, and what we had looked at in the evidence was whether or not there was any corroborating testimony, not necessarily from somebody who observed it, but from somebody who they complained to at or about the same time.

I believe in the case where we did find sexual harassment, one of the things we looked at was who this person had complained to, and those people corroborated that this person had complained to them, but otherwise you are left with something happened, and it is just one person's word against another, and there is nothing to substantiate it or corroborate it.

What we did find, which we thought was just as egregious, was the abusive conduct.

Mr. EVERETT. Thank you.

Did you interview Clint Norton, Rosanna Morris, Wilson Canteen, or Corine Cook?

Mr. MERRIMAN. No, sir.

Mr. EVERETT. And the reason would be?

Ms. SHELLY. I did talk to Rosanna Morris by telephone briefly, and it was just after I had gone through her documentation of her EEO complaint. I had a question on one small section of it.

Mr. EVERETT. I am sorry. Who?

Ms. SHELLY. Rosanna Morris.

Mr. EVERETT. Rosanna Morris. Okay, and the others, I assume no one asked you to interview them or you did not determine that they had anything directly to do with the case?

Ms. SHELLY. That is correct.

Mr. EVERETT. Okay, and you did not pursue anything with Ms. Morris?

Ms. SHELLY. No, I did not.

Mr. KROLL. No, sir, but she had an EEO complaint, and normally we would defer to the EEO process. The IG would not jump in the middle of that process.

Mr. EVERETT. Those are all of my questions. I am going to turn it over to our Ranking Member, Mr. Clyburn.

Mr. CLYBURN. Thank you, Mr. Chairman.

Susan Odom, didn't that name come up earlier? You said you did not have any allegations about her directly. Her name did not come to you from one of the complainants?

Mr. KROLL. There was no allegation of sexual harassment. She was involved in some of the other allegations that were being reviewed. These allegations were really more in the area that Mr. Whatley was reviewing, the misconduct, mismanagement.

Mr. CLYBURN. Well, maybe this has changed. My understanding of the sexual harassment guidelines that were handed down some years ago, that if a party is benefitting in the work place from giving or providing sexual favors, another party who feels that he or she is not being allowed to participate similarly can, in fact, bring a sexual harassment complaint. Am I correct?

Mr. KROLL. Yes.

Ms. REGAN. Yes.

Mr. CLYBURN. I am correct?

Mr. KROLL. Yes, sir.

Ms. REGAN. Yes, sir.

Mr. CLYBURN. Okay. So if I am correct then, and one of the parties who brought this complaint, I think, testified earlier that she spoke with Mr. Calhoun about his involvement with Ms. Odom, you do not think that would have given you some basis to go talk to her?

Mr. MERRIMAN. From what I have heard today, I wish we would have talked to Ms. Odom.

Mr. CLYBURN. I wish you had, too, sir.

Mr. MERRIMAN. Undoubtedly we were focused on the three individuals and what happened to them and what could be corroborated with respect to their circumstances. Given it to do all over again, I would have filled in that gap. I regret that we did not.

Mr. CLYBURN. Well, I am sorry you did not also, but I think, if my memory serves me well, that is a part of sexual harassment that has been around for ten or 15 years, and it would seem to me that that is something you should look at pretty quickly, especially in circumstances such as what we have heard here today.

I am interested in what is going to happen with these other complaints. Now, I am hearing that there are some complaints still pending in Fayetteville regarding Mr. Calhoun. Now, that is what I have heard. Is that correct?

Mr. MERRIMAN. EEO.

Mr. CLYBURN. There are some EEO complaints in Fayetteville?

Ms. SHELLY. Yes.

Mr. CLYBURN. Okay. This settlement agreement, which I am having some real problems with, I do not understand how you entered into a settlement agreement without involving the people on whose behalf the settlements are being reached, and I am told that this was done without their input at all, but that has been done.

But that is a settlement regarding those people who have gone on before these people who are still sitting in Fayetteville.

Mr. MERRIMAN. That is correct.

Mr. CLYBURN. So then if the complaints still in Fayetteville were to move to some official investigation, then irrespective of what this agreement is, the instrument that we have all seen here today that is in the record, irrespective of that, we are talking about a new ball game, are we not?

Ms. REGAN. You may or may not be talking about a new ball game. One of the problems is that action was taken, and the individual was taken out of the Senior Executive Service. Now, whether or not you would go back and have new conduct charges based on conduct a while ago, you might be facing the same problem before the Merit System Protection Board on whether or not they would sustain a removal.

Mr. CLYBURN. Oh, you might be, and you might not be.

Ms. REGAN. And you may or may not be depending on what happens with it.

Mr. CLYBURN. Absolutely.

Ms. REGAN. But I do think that you do have a problem with the time element if this person is not misperforming after being taken

cut of the SES, whether or not, having read a lot of MSPB cases on this issue, they would actually remove him from service because of that.

I mean it is a risk, and until all of the cases are in and the evidence is looked at, I do not think anybody can make a decision whether or not there is enough there to go forward with a removal action.

Mr. CLYBURN. Well, I did not say remove him.

Ms. REGAN. Well, one of the problems you have with the Senior Executive Service position, which is what he was in when these events occurred, I think one of the things Mr. Snyder said a couple of times is whether or not there are legal impediments. You only really have two choices for a disciplinary action against a member of the Senior Executive Service. One is a suspension greater than 14 days, and the other is removal. You do not have a lot in between.

The only way you can get a person out of the Senior Executive Service is for a performance based action, and even then there are some save pay provisions included in that. There is nothing in between to get this person out of a management position.

Having read a lot of the cases on sexual harassment and misconduct, you have to go back to the Douglas factors, and part of the testimony today, I think, from Ms. Caruana was that some of this behavior did not occur when Mr. Calhoun had a supervisor. That testimony would be considered by MSPB under the Douglas factors.

There are a lot of things that have to play into this, but I honestly think that if MSPB was faced with removal in this circumstance, they may not sustain it. You could end up with a 90-day suspension, which seems to be what they give out most of the time.

Mr. CLYBURN. Well, I understand. I think I understand all of that, but let me go to the policy. Do all of you believe that the people throughout the VA hospital system are aware of the zero tolerance policy and understand it?

Mr. MERRIMAN. I suspect that they are aware that there is a zero tolerance policy. At least there must be a high percentage of them who would be. The Secretary has made it a major issue.

And quite early on, just having everybody go through the training, they should be aware that that is his policy.

Mr. CLYBURN. Now, we heard testimony here today from one lady who said she had no understanding that the so-called training was available to anybody other than supervisors. So it was obvious she did not go through the training.

Mr. MERRIMAN. That is true, but I would think the majority of the individuals have been through the training.

Mr. CLYBURN. It seems to me it would be up to the VA's management to make sure that everybody is exposed to the training, right?

Mr. MERRIMAN. That is correct.

Mr. CLYBURN. And do you think that is being done? That is being done?

Mr. MERRIMAN. I think they take it very seriously. In our organization, we have gone through great pains to make sure our people are participating in the training, and from what I have observed,

I would be surprised if there were facilities out there that did not comply with the Secretary's directive on that.

Mr. CLYBURN. How many witnesses did you all talk to?

Mr. KROLL. At least 20.

Mr. CLYBURN. At least 20. Now, these witnesses, tell me a little bit about how you came to these witnesses. Just one thing led to another? How did you get to these witnesses?

Mr. KROLL. That was part of it, sir. Part of it came from the original complainant. The original allegations that came in from Senator Faircloth from this complainant were very general. There was allegations of misconduct and abuse with no specifics.

We were able to go back through the Senator's office to the original complainant, and that person was able to provide us some names of individuals that we could talk to, and then one thing just led to another from there.

Mr. CLYBURN. So the complaints that you were acting on had nothing to do with the EEO complaints that were being acted on separate and apart which were filed and may have been going through the administrative process?

Mr. KROLL. Right, and in fact, if there is an active, ongoing EEO investigation, we would generally shy away from that case because we would let the EEO process handle the complaint.

Mr. CLYBURN. So then you focus on what we would call bad management kinds of procedures rather than the sexual harassment?

Mr. MERRIMAN. No. The VISN was supposed to focus on the bad management. The reason we really got involved was we saw three individuals who had not filed EEO cases, may have missed their time frames, and we might be the only ones who could bring some reconciliation to it. So we went after it because it was sexual harassment and complaints had not been filed through the formal process.

Mr. CLYBURN. May I ask you before my time is up are there any other sexual harassment complaints being looked into right now by the IG's Office separate and apart from this Fayetteville?

Mr. MERRIMAN. Yes.

Mr. CLYBURN. You do have others?

Mr. KROLL. Outside Fayetteville.

Mr. CLYBURN. Yes, sir.

Mr. KROLL. Yes, sir. We have reported in our testimony that we had two ongoing cases.

Mr. CLYBURN. Two ongoing cases. Now, have these cases been subjected to that so-called team—what was it we heard earlier? Has a team been sent in?

Mr. KROLL. The process that Deputy Secretary Gober described was an agency process, one that he would establish for the complaints that came through the management chain. On complaints that come through the IG chain, we would send our own team in to investigate.

Mr. CLYBURN. Well, why would a sexual harassment come to the IG?

Mr. KROLL. We have an IG hotline, and we get thousands of calls on that hotline.

Mr. CLYBURN. So if you get a sexual harassment complaint on the hotline, you would not go to the agency and see that they go through the regular procedure?

Mr. MERRIMAN. The first place we would check is if it is in the EEO chain, and if it is already being investigated by the EEO process, we would shy away from that.

Mr. CLYBURN. Well, suppose it is not.

Mr. MERRIMAN. Well, there is a second process. It could be one of the administrative review teams that Deputy Secretary Gober described. If it is being reviewed, we also would shy away from it. We would open an oversight case just to oversee the results of it, but we would not investigate it.

But if there was no other ongoing investigation, then we would do it, particularly where it involves a senior official. Here, in this case, the Director is the EEO officer also for that facility.

Mr. CLYBURN. I guess what I am trying to get to here, Mr. Chairman, it would seem to me that especially in this Fayetteville case where the perpetrator was, in fact, the EEO officer who was, in fact, the head of the agency, it would seem to me that the IG Office, if I understand, and maybe I do not know what the IG Office's duties and responsibilities are, would be there to preserve the integrity of the VA irrespective of who is in charge of what.

Mr. MERRIMAN. Yes, sir.

Mr. CLYBURN. Well, then if that is true, it would seem to me that you would be looking at whether or not a proper response was made by management to the allegation in the first place.

Mr. MERRIMAN. To Fayetteville?

Mr. CLYBURN. No, no, no. Whether or not management makes the proper response to the allegations of sexual harassment in the first place.

Mr. MERRIMAN. For all sexual harassment?

Mr. CLYBURN. For all sexual harassment no matter where it comes from. The Inspector General, it seems to me, ought to be seeing whether or not all of this stuff happens the way it should happen and will not be guided by whether or not the person has to be the manager or not.

Mr. MERRIMAN. That is, in fact, what we did in terms of Atlanta.

Now, when we went down to Atlanta and we found a major problem there, we felt the whole process was broken. That is why we did a VA-wide audit of the EEO process, which led to the zero tolerance policy.

Mr. CLYBURN. Right.

Mr. MERRIMAN. Okay. Now, I have seen that the Secretary seems to be serious about it. He has got a lot of pronouncements out. They are going through this training. We are not getting a lot of spillover sexual harassment complaints on our hotline. I have not seen the need to go out and look at the whole process again.

I do not think that we can put ourselves into the management chain and review each EEO complaint that is looked at by management to look at it ourselves.

Mr. CLYBURN. No, sir, I am not asking you to review all of them. I am asking you whether or not you will review those. You were in here this morning earlier when the five ladies talked?

Mr. MERRIMAN. Yes, sir.

Mr. CLYBURN. All five of them said that they have no faith in the process.

Mr. MERRIMAN. Correct.

Mr. CLYBURN. Now, some kind of way we have got to put some faith in this process on behalf of our employees. So I guess I am asking you what steps then do you take from the IG's Office to let people know that there is, in fact, a hotline and that you can, in fact, dial up this hotline and what kind of a response you can expect to get from it.

It would seem to me that some of these people here today would have used the hotline knowing full well that the guy that is causing this problem is the EEO officer.

Mr. MERRIMAN. He is the Director, right.

Mr. CLYBURN. He is Director of the agency and the EEO officer. Did any of them use the hotline?

Mr. EVERETT. Let me conclude. Mr. Clyburn's time is out.

Mr. CLYBURN. Oh, yes.

Mr. EVERETT. And I ask unanimous consent that he be given additional time. (Laughter.)

Mr. CLYBURN. Okay. Thank you.

Mr. MERRIMAN. The hotline is well publicized, for starters. Now, certainly where you have the problem is where the head of the facility is the EEO officer and he has corrupted the system.

Mr. CLYBURN. Absolutely.

Mr. MERRIMAN. Okay. Now, I am aware of two instances of that. One was Atlanta; the other was Fayetteville, and one way or another we have gotten into them.

I cannot disprove a negative. I cannot say there is not some other one out there that is like that. I guess perhaps a protection would be when the Secretary goes out with additional information on this, he can say that if your problem is with the head of the facility, you can, in fact, go to the OIG hotline. More publicity along those lines could help with that.

Mr. CLYBURN. Well, in pursuing these kinds of investigations, would it not be a proper act of the IG's Office to make recommendations to the Secretary as to what ought to be done to prevent anymore Atlantas and anymore Fayettevilles?

Mr. MERRIMAN. Certainly, yes, and Deputy Secretary Gober has asked us to provide him with input based upon the problems with Fayetteville as to how we think the process can work.

Mr. CLYBURN. Let me ask you what you think about this practice that the VA has, a practice, I might add, that I have a real problem with, that we spoke of back in 1993 when we were trying to get H.R. 1032 passed, a practice of making the head of the agency the EEO officer.

What do you think about that?

Mr. MERRIMAN. Well, it has the advantage of having a person in the position to take some action. That is a plus, I suppose.

Mr. CLYBURN. Well, tell us about the disadvantages and the minuses.

Mr. MERRIMAN. The disadvantage is if that person goes sour. Then your whole process at the facility is damaged.

Mr. CLYBURN. Well, would it not also be the same case if that person is standing there with a sword over everybody's neck?

Ms. REGAN. That is the problem, is when the individual who is the discriminator or the alleged discriminating official is, in fact, the head of the group that you are in, the Director of a Regional Office.

But one of the things that maybe they need to look at is the process because the informal process within the hospital is mandatory under the EEO laws. Maybe there needs to be a way that the VA, and probably other agencies, have a route to go if that person is the problem. In other words, somebody at headquarters that will take those complaints, something to that effect. We can probably look into that.

Mr. CLYBURN. Would you be willing to say to the Secretary that he ought to take another look at H.R. 1032? It is not too late for us. It may not have the same number, but we certainly can have the same law.

Mr. MERRIMAN. He certainly could take another look at it. I do not have a position on it one way or another myself. I am not that familiar with it, sir.

Mr. CLYBURN. Would you say that something needs to be done to set up a process, a formal process, that people will have some faith and confidence in?

It doesn't bother you that all of these people say they have got no faith in the process?

Mr. MERRIMAN. Well, certainly it bothers me. I would hope that when you see the results of their survey that they have put out, based upon a GAO report where they went out to 30,000 people, you will have a better idea of across the board in the department what the faith in the system is.

If that is giving you indications like you have heard today, then obviously there is a major problem. If it is giving you a high level of confidence in the EEO process, maybe it would give you—

Mr. CLYBURN. Well, let me ask you about that process. When those come in, you get the results by center?

Mr. MERRIMAN. The department contracted with a private contractor to get that information. Is it by center?

Mr. KROLL. We do not really know. The agency has not released the final report.

Mr. CLYBURN. I am going to end here, Mr. Chairman, but I think we ought to ask the Secretary to make sure that we get those results by center. I do not want them to come up and give us—you said 20,000?

Mr. MERRIMAN. They went out 30,000 individuals.

Mr. CLYBURN. Thirty. You have 30,000 individuals in one lump sum. You could still have two very rotten centers out there that may get smothered by all the good centers in that report.

I will want to see that report center by center if it is going to do us any good.

Thank you, Mr. Chairman.

Mr. EVERETT. Thank you.

One of the things that my colleague is pointing here to is the fact that even with a new situation that is described by the Secretary to us, we see a disconnect, and we do not know how you overcome that disconnect. We see ways around or ways for the department

heads or Directors to halt the situation, stop the situation from going any further.

So I appreciate the line of questions there, and I will go to our ever patient Mr. Snyder. Thank you.

Mr. CLYBURN. I am sorry.

Mr. SNYDER. Thank you, Mr. Chairman.

We have been here since 9:30. We all get rewards for patience, correct? (Laughter.)

I just have a few questions. Now, I assume that this is your report, the Office of the Inspector General, and your language, this paragraph that you heard me read earlier in which you concluded that he was abusive, threatening, inappropriate, and less than truthful, a specific question I had. I mean basically what you are saying is he lied to you.

Mr. MERRIMAN. That is correct.

Mr. SNYDER. Does that not put him in a new category somewhere? I mean it is one thing for me to come to you and you investigate me and I say, "Yeah, I really did grab her breast at the Christmas party. I am sorry. It was stupid. I had been drinking." It is another when a lies, looks you directly in the eye, and you know it is factually correct that he lied to you.

Mr. MERRIMAN. Well, it never comes out quite like that. He does not remember something that has happened. You talk to somebody else. You go back to him, and that triggers his memory, and now he recalls the results of it.

It enters into the credibility determination that we go through as to whether we are going to believe his testimony or not, and that was a major part in the report.

Mr. SNYDER. You had a fairly strong statement here, I thought. I mean less than truthful.

Mr. MERRIMAN. Yes.

Mr. SNYDER. I mean, I suspect you think he lied to you.

Ms. BENNETT. I think the key example of that was when Ms. Force testified that she had been banned from the building. The Director denied making that statement, and other people corroborated her version that she was, in fact, denied from the building, and that is a pretty strange order to come from the Director.

Mr. SNYDER. Yes, yes.

Ms. REGAN. Sir, are you suggesting that there should be additional charges?

Mr. SNYDER. In answer to your question, if someone lies to you, does that put it in a different category?

Ms. REGAN. Are you suggesting there would be additional charges for lying?

Mr. SNYDER. Potentially. I mean we talked about a rehab. program. I mean Mr. Gober. Part of the rehab. is, I think, fessing up, and so we now have reassigned a person that you all in your hearts believe lied to you.

Ms. REGAN. One of the problems, I think, and there are some recent federal court cases, is that you cannot take disciplinary action for lying if you are lying about the charges against you. There are a couple of federal court cases on that, and they are somewhat recent. One is a VA case.

There used to be a policy in the VA that you could be charged for lying during an investigation, but if you are the one being charged, you are allowed to lie basically, and you cannot be charged with it.

Mr. SNYDER. Well, maybe that is something we need to look at.

Mr. EVERETT. Would the gentleman yield?

Mr. SNYDER. Mr. Clyburn, help me out. Oh, help me, help me.

Mr. EVERETT. Would the gentleman yield a moment?

Mr. SNYDER. Oh, yes, sir.

Mr. EVERETT. I am interested in this line of questioning.

Mr. SNYDER. I am, too.

Mr. EVERETT. I mean, it is a federal offense to make false statements; is that correct?

Ms. REGAN. That is what we think.

Mr. EVERETT. False official statements.

Mr. MERRIMAN. That is right.

Mr. EVERETT. And are you saying that you can make a civil agreement that would not allow those statements to be prosecuted?

Ms. REGAN. I am saying that in those cases where they have charged an employee who lied during an official investigation about charges against that employee, they are not allowed to bring those charges. The court has said it is unconstitutional.

Basically, just to summarize, you are allowed to lie about charges against yourself. That is what they have said.

Mr. EVERETT. Let me ask you to respond directly to what I am asking. Can you make a civil agreement, such as this document that was made with Mr. Calhoun, that precludes charging him with the crime of making false official statements?

Ms. REGAN. I do not know the answer to that. I am not sure it would be an agreement.

Mr. EVERETT. Thank you.

Mr. SNYDER. He means in the agreement that we have here that allows him to be transferred to Florida and wait for 3 years before coming back into the system. He is saying can you put that into this kind of a document.

Mr. EVERETT. This is a civil document.

Ms. REGAN. You mean a settlement agreement? You could put it in a settlement agreement, yes.

Mr. EVERETT. Would that preclude him from being prosecuted from making false official statements? You said he lied.

Ms. REGAN. Well, I guess I have a problem because I do not think you can prosecute him for making those statements. You could put it in the agreement or not put it in the agreement. I just do not think the agency can charge him with it or anybody could prosecute him.

Mr. EVERETT. Mr. Snyder, I appreciate you allowing me to interrupt.

Mr. SNYDER. No, that is fine.

On that line, Mr. Merriman, I think it would be helpful to us if you all would have your legal folks do an analysis for us as to why because that impacts on the work you do.

Mr. MERRIMAN. Yes, sir, certainly.

Mr. SNYDER. I mean wouldn't you much rather go in and say, "Mr. Snyder, you have been accused of outrageous behavior at the

Christmas party, and I need to inform you that if you do not tell me the truth you can be prosecuted as a felony under federal law for giving false statements to a federal employee or federal investigative office?" I mean I think that would be helpful to you. It would certainly be helpful, I would think, with these things.

With regard to the Douglas factors, which I thought that was an old actor, but I guess that is Douglas Fairbanks, and I guess this is not your bailiwick since you are the inspection angle of it, but you did the only discussion of it today.

But I notice that one of the factors is previous penalties for similar offenses.

Mr. MERRIMAN. Yes.

Mr. SNYDER. So we now have by the statement of the vets folks, we have nine, I think, that have retired or resigned. So I guess number ten comes along, and we actually try to terminate him. Part of that argument is going to be: wait. The previous nine, they got the buyout and retire. They were reassigned to Florida. They only tried to terminate one.

I mean am I understanding?

Mr. MERRIMAN. I think they said they retired or resigned.

Mr. SNYDER. Yes.

Mr. MERRIMAN. As opposed to reassigned.

Mr. SNYDER. Yes.

Mr. MERRIMAN. I do not see why that would affect it.

Mr. SNYDER. Since they did not actually——

Mr. MERRIMAN. They were not penalized per se. So I do not think that would set a precedent.

Mr. SNYDER. Okay. That may be something to look at.

The incident with the woman at the Christmas party where she was actually grabbed, I think, Mr. Clyburn, you might help me out. That is pretty close to a misdemeanor crime. How do you all respond when you run across incidents, and I do not think that was a woman that you talked to.

Mr. MERRIMAN. No, sir.

Mr. SNYDER. But when you hit things that are, let's say, clearly criminal, even maybe at the misdemeanor level, how do you respond to that? Do you call attention? Do you flag that this may well have been a violation of federal law?

Help me with that.

Mr. MERRIMAN. Yes. We have criminal investigators ourselves, but even on the administrative side if we come across the criminal issue, we can take it to the U.S. Attorney's Office ourselves, and we probably have examples where we have done that.

Ms. REGAN. Yes. We would get the criminal matter resolved, whether or not it was going to be prosecuted or whether there was enough evidence to prosecute it before we issue a report. We have done that in other reports.

Mr. SNYDER. So if you run across and you say, "Wait. This is not sexual harassment. This was sexual battery or a rape," you would feel comfortable taking it on yourself to give one report to the VA and a separate, different report?

Mr. MERRIMAN. To the U.S. Attorney.

Mr. SNYDER. To the U.S. Attorney. You would not pass that on to the VA and say, "You all need to make a decision about whether you pass to the U.S. Attorney"?

Mr. MERRIMAN. No.

Mr. SNYDER. You do that totally separate.

Mr. MERRIMAN. That would be us, yes, sir.

Ms. REGAN. The IG Act gives us that responsibility.

Mr. SNYDER. You are kind of the ombudsman for that.

Mr. BENNETT. The Inspector General Act requires that if we have reasonable belief that a crime has been committed, we have to inform the Attorney General or the local U.S. Attorney's Office.

Mr. SNYDER. Okay, and then I guess my last question, Mr. Merriman, to you or to everyone is more just kind of we are real big on morale in the military and morale at the VA. I mean just reading your Paragraph 2 there where you have concluded that he was abusive, threatening, inappropriate, and lied to you, I mean, how is your morale to find out that somebody like that is now making 100-and some thousand dollars in Florida? Is that what you all thought was going to happen?

Mr. MERRIMAN. Well—

Mr. SNYDER. I mean, do you feel good about that with all the work you did?

Mr. MERRIMAN. No, I do not feel good about it.

Mr. SNYDER. You thought you had a pretty strong case, I think.

Mr. MERRIMAN. I know we had a strong case. What we would have liked to have seen done was our work, along with the work of Whatley or if that was too shallow they could have gone out with another administrative group, put together the strongest charge they had and make a decision as to whether or not they could get removal.

Now, there is a risk involved. If they tried for it and they failed, then perhaps it would be mitigated to a 90-day suspension, and you heard what their concerns were.

Mr. SNYDER. That is why I come back to talking to the women about making a run at it because I think that like Ms. Force seemed like she was comfortable with, okay, that was good; get him out of administration. I would think there would be occasions when you get the women together and say, "We are willing to take that chance."

Mr. MERRIMAN. Sometimes.

Mr. SNYDER. "We have got to terminate this son-of-a-gun." But you do not ask them. I mean, I think that gives you as the administrator a sense of kind of the outrage, which will kind of help you weigh.

I mean I am just rambling on now.

Mr. MERRIMAN. Well, sometimes it is better to take the shot even if you do not succeed. Having taken the shot might be more conducive to the department than the loss.

Mr. SNYDER. At least you know that your administrator or whoever it is came to you, sought your opinion, and when you said, "Yeah, let's go for it," they stood with you and said, "You know, we may not make this one," but they stood with you.

Thank you, Mr. Chairman.

Mr. EVERETT. I appreciate that line of questioning, and I would like to associate myself with it. Any time you go to court there is a chance, and I think at Fayetteville, we missed a great opportunity to rid the system of somebody who should not be in the system.

Mr. MERRIMAN. Yes, sir.

Mr. EVERETT. I thank this panel for its appearance here today, and I will now at this time dismiss you.

We are going to take a 2 or 3-minute break, and we will come back to this panel in just a second.

[Recess.]

Mr. EVERETT. Thank you for appearing here today. I would like to recognize Dr. Miller, President of the Nurses Organization of Veterans Affairs; Mr. Berry Jordan, National President of the Federal Managers Association; Ms. Kitty Peddicord, Women's Director of AFGE; and Ms. Nelms, President of the Federally Employed Women, Inc.

Thank you, and if you would proceed with your statements, and I would urge you to please be brief, and that we will submit your entire statements into the record.

Thank you, ladies and gentleman, and Ms. Nelms, if you would please start.

STATEMENT OF DOROTHY NELMS, PRESIDENT, FEDERALLY EMPLOYED WOMEN, INC.

Ms. NELMS. Good afternoon, Chairman Everett and distinguished members of the subcommittee.

First, we thank you for the opportunity to appear before you today. We have our written statement submitted, and having listened to all of the previous panels, I will probably just give you an overview and not go into all that is in our written statement today in the interest of time.

Mr. EVERETT. Thank you so much.

Ms. NELMS. Federally Employed Women is a national organization of workers of the Federal Government and designed specifically to eliminate sex discrimination. Of all the areas of sex discrimination, we think sexual harassment is probably the most pervasive and the one that does most to set back the careers and aspirations of women in the Federal Government.

As an organization, we have done a lot to fight against sex discrimination. When Chairman Everett mentioned a while ago *deja vu*, I had an even deeper sense of *deja vu* because I testified as President of FEW back in 1979, when Congressman Hanley of New York had the first subcommittee hearing on sexual harassment, and so I find it astounding that I am here almost 20 years later, and some of the same issues are surfacing around an issue like sexual harassment. So it is really amazing how things happen like that.

When you think about all of the things that have happened in terms of sexual harassment; that we finally have a law in place, (it has been determined that it is illegal under Title VII of the civil rights law); we have got policies written by most agencies; and almost all agencies have engaged in training about sexual harassment. It is really unbelievable that sexual harassment continues.

Even according to the latest survey by the Merit Systems Protection Board, the amount of sexual harassment of women is about 45 percent, and it is about 20-some percent of men in the Federal Government.

You look at an organization like the Department of Veterans Affairs that has done all of these things. They know the law. They have a zero tolerance policy. They had mandatory training of 4 hours for everybody in the VA, and yet you continue to hear from GAO, the IG, and from others about the level of sexual harassment in the VA. What is it going to take to change this situation?

There are a couple of things that I would like to talk about: first, the impact on women. When you look at the women that spoke this morning, I do not think anybody in here could not help feeling a pang in their hearts about what they had been through in terms of the agonies of sexual harassment and abusive treatment on the job. The detrimental effect on their careers, on their personal lives, probably on their spouses or significant others, if they even had them, is unimaginable in terms of looking at the effects of sexual harassment.

The Department of Veterans Affairs has an additional responsibility because they administer to the needs of veterans. There are almost 400,000 women veterans, and with the amount of sexual harassment and assault in the military, there are a number of those women veterans who are women who will be seeking help from the VA. With stories like this about the sexual harassment in the VA, could they possibly have a level of satisfaction that their needs would be ministered to satisfactorily?

I heard one of the officials from the VA say that they knew how this would appear to people; that is, the handling of Mr. Calhoun's case. It would give the appearance that perhaps they, the VA did not really care about sexual harassment, and that perhaps the policy was not significant. The officials said it almost like an afterthought. But that is one of the most important things about a policy in an organization: that people have faith that the policy is meant; that people have faith that the organization will carry out what they say in the policy.

And when employees in an organization see what looks like a distinct action that is so contradictory to the policy, they lose all faith in the system, and when you talk about the number of complaints in an organization, it is directly related to how free people feel to file a complaint and whether or not they feel their complaint will be handled in a responsive manner.

When you also hear comments by GAO about some of the reasons the VA disallowed complaints, included many that were disallowed on technical grounds. That means they have lost all thought of what the intent of the law was on equal opportunity, and the courts went to great effort to make sure that there were very few technical disallowances of discrimination cases. The intent was to get to the substance of the cases, and so when you have these technical disallowances, people never have a chance on the substance of the cases.

There are specific guidelines on how long it should take you to process a case, and it looks like they were overlooked. Again, another message is sent out to employees.

So our concern is for the employees of the Department of Veterans Affairs who probably feel as lost and lonely as the women that testified here this morning that they are in an organization that just does not seem to honor its own policy, does not seem to care about the impact on their own employees about sexual harassment.

We are sincerely hoping that this subcommittee hearing will bring some of these things more closely to the forefront and that some definitive action will be taken about those employees and those women veterans who look to the Department of Veterans Affairs for their services.

[The prepared statement of Ms. Nelms appears on p. 218.]

Mr. EVERETT. Thank you very much for those words. Dr. Miller.

**STATEMENT OF MAURA FARRELL MILLER, Ph.D., ARNP, CS,
PRESIDENT, NURSES ORGANIZATION OF VETERANS AFFAIRS**

Dr. MILLER. Thank you for inviting me, Mr. Chairman and members of the subcommittee.

I am proud to say I am from Florida, and I am an advanced practice nurse from that state, a state that holds in high esteem the profession of nursing and the veteran patients that we care for.

As President of the Nurses Organization of Veterans Affairs, I am pleased to present this testimony on behalf of all professional nurses involved with the veteran patient. I speak for our membership and for the more than 40,000 VA nurses. I also speak as a woman representing thousands of other professional women employed by the DVA.

My sympathies to the women who have testified here.

To date NOVA has not received any official reports of cases of alleged sexual harassment of subordinates by senior managements within DVA, including the one discussed today, Mr. Calhoun. NOVA is a professional organization, not a labor union or a collective bargaining group, and we do not handle day-to-day cases of alleged sexual harassment or any other issues that need to be referred to the local level.

In the event that a registered nurse reported such an incident, NOVA would refer that nurse back to her medical center to report the incident at the local level.

NOVA applauds Secretary Jesse Brown for his zero tolerance policy on sexual harassment in the work place, and we support the DVA policy that prevention and reporting of sexual harassment is every employee's responsibility.

In my preparation for this testimony I called Dr. Nancy Valentine, the chief consultant of the Nursing Strategic Health Group at DVA headquarters. Dr. Valentine has also informed me that to date there have been no reported incidents of sexual harassment regarding DVA professional nurses.

Now, this might be explained in several ways. The lack of reported incidents of sexual harassment at VA headquarters could be due to the fact that EEO counselors have informed me that they try to make every attempt to resolve such issues at the local level, and therefore, such reports do not make it to the headquarters level.

Another explanation could be that incidents of sexual harassment involving registered professional nurses are not being re-

ported at all and also not being reported to VA headquarters due to the sensitive nature and fear of the personal or professional consequences resulting from nurses reporting such incidents.

Experts acknowledge that only a fraction of those who are sexually abused ever report it. However, the total absence of reported instances of sexual harassment involving VA professional nurses is contrary to data that has been cited in the literature. I will not go into it at length. It is included in my testimony.

Preventing and reporting sexual harassment is every DVA nurse's responsibility. The total absence of reported incidences involving DVA nurses could be a symptom of other problems and maybe reflective of what is going on in the agency as a result of health care reorganization. For its very survival, the downsizing and subsequent health care reorganization has forced professional men and women to compete for a shrinking pool of health care resources and positions of power and authority at an intensity never before seen in the history of DVA.

As a female professional nurse working in a historically male, physician dominated, paternalistic health care system, NOVA suggests that incidences such as these be used as catalysts for positive change. Further dialogue is needed on this and other perceived problems to make the DVA a healthier work place and the employer of choice for registered professional nurses.

As the DVA health care system evolves and reorganizes, NOVA encourages the DVA to use opportunities, such as these, to bring attention to women's issues in the work place, to use more women in solving problems within the agency, and open up executive health care management positions to all genders and disciplines.

I would like to thank my legislative co-chairs Barbara Zicafoose and Dr. Sara Myers for their assistance in writing this testimony, and I would like all of my oral statements included as part of the official record, if you would please.

Mr. EVERETT. Without objection.

Dr. MILLER. And I am open for questions.

[The prepared statement of Dr. Miller appears on p. 227.]

Mr. EVERETT. We are going to continue down the panel at this time.

Ms. Peddicord, if you will give your statement, please.

**STATEMENT OF KITTY PEDDICORD, WOMEN'S DIRECTOR,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Ms. PEDDICORD. Good afternoon, Mr. Chairman and members of the committee. I also would like to thank you for this opportunity to testify before you today on this very important subject.

As has been discussed today, the VA has announced a zero tolerance regarding sexual harassment. Secretary Brown has repeatedly acted to turn around the previously accepted view that allegations of sexual harassment will merely meet the "good ol' boy" system of cover-up, denial and frustration.

For instance, the VA now requires all employees to be trained regarding sexual harassment, although what we have missed today is that in sexual harassment training is merely training identifying what is and is not sexual harassment. It does not include training on the EEO process or what avenues are available to employees

who are victims of sexual harassment. I think that is a very important point. We are talking about everybody being trained. That is true to an extent.

And this kind of training of all employees is not routine within the Federal Government or in the private sector, and we do believe that this is a good way to start.

However, incidents of sexual harassment have continued, and it may even be true that the nature of the VA itself, the culture contributes to the problem of sexual harassment.

What I am referring to is the fact that VA facilities operate independently. It is a very important point. Each Director has control of that facility and the EEO process, and it provides a work place where the ready mixture of a male dominated management over a female dominated work force primarily in the nursing section and around-the-clock staffing may, in fact, contribute to the problem.

However, when we called a number of our locals in the VA to find out about how sexual harassment has been dealt with, what we are finding is when it comes to bargaining unit employees, employees covered by a union, that are non-managers and non-confidential employees, that reports of sexual harassment are being dealt with immediately. There are reassignments by the harasser, and we are not finding the same problem with bargaining unit employees that we have seen described today.

There seems to be a difference the way lower management officials are being dealt with compared to higher level management. This is of particular concern to us, that high level managers seem to benefit from some sort of favorable treatment in the agency's response to sexual harassment.

We know for a fact that with a typical worker, there would not be all of this discussion about whether or not you should or should not do something. They would be fired immediately. Fire them now; we will litigate later. And what would happen is if the agency lost, if that case went to arbitration or to the EEOC, the remedy would be back pay. The person is going to get paid either way if they lose.

You know, send the message that it is not tolerated. Then find out whether or not the case will hold up in court. At least that is how it is treated at the lower level, obviously not at the higher level.

So there really does not seem to be any valid reason why Directors or high level officials are treated any differently than those at the lower level. It is for this reason that we will remain vigilant on the issue of sexual harassment and other forms of unlawful discrimination in the VA, even under the present more concerned VA administration.

Two other observations from today's witnesses should be noted. First, it is often the fact that the most abused cases of ongoing, festering, unresolved sexual harassment occur between managers and other managers or non-bargaining unit employees. Why? Simply because union members have a process available to them for a quick remedy, namely, the grievance-arbitration process.

Under the AFGE contract, union employees, members of the union, can go through the grievance process and get a remedy within months rather than years under the current EEO process.

This is a sharp contradiction, a sharp contrast between the two processes.

In the agency EEO process, they investigate themselves. This is not just a problem within the VA. It is federal sector-wide. I want to be very clear on that. It is not just a problem that we see within the VA. We see this everywhere.

And having someone investigate themselves is not actually the best way to get the most accurate assessment, and while they are investigating themselves, the employee is the victim or can be the victim of additional harassment and reprisal, which continues to deplete their ability to work, be productive, and continue.

The second observation, and before I end there, while these abuses occur, it is important for us to emphasize the value of union representation in this adversarial process is equal to the union's value in our partnership process, which are two different processes.

The second observation is our firm belief that the series of sexual harassment practices attributed to senior level management is merely reflective of other serious failings in management capabilities. The Director's total arrogance of power that affects many other employment related decisions, the VA's total lack of checks and balances are serious, serious problems.

I will conclude by saying we intend to remain vigilant. It is our intent, and attached to our testimony we plan on studying the VA internal EEO process, sexual harassment, and discrimination charges based upon race and gender within the VA. AFGE will be more than happy once this study is concluded to share our results with the committee.

I would just suggest that when the VA is surveying itself, employees may be a little reluctant to be quite as honest.

Thank you very much for your time.

[The prepared statement of Ms. Peddicord, with attachments, appears on p. 231.]

Mr. EVERETT. Thank you, Ms. Peddicord. Mr. Jordan.

**STATEMENT OF BERRY D. JORDAN, NATIONAL PRESIDENT,
FEDERAL MANAGERS ASSOCIATION**

Mr. JORDAN. Good afternoon, Mr. Chairman and members of the subcommittee.

I am President of the Federal Managers Association, FMA, Zone 4, Southeastern United States, and also chair of the Professional Development Committee and the Federal Management Institute, which is the educational arm of the association.

On behalf of the 200,000 managers and supervisors in the Federal Government whose interests are represented by FMA, I would like to thank you for holding this important hearing and for allowing us to present our views on this very important subject.

Today we heard extensive testimony about sexual harassment. We believe sexual harassment to be costly in time, effort, morale, disruptive to the work force, the family, and the American public cannot afford the negative consequences of it.

FMA believes our existing anti-discrimination laws provide a good framework, but enforcement efforts are not what they should be. We believe in order to stamp out or eliminate discrimination of any kind, the efforts must start at the top of the organization.

FMA believes that when discrimination is taken seriously at the top, every level of the organization follows suit. FMA believes that each manager must be held accountable. The commitment must be demonstrated by the head of the organization.

FMA believes that sexual harassment is wrong, that if the employer finds that sexual harassment did occur, that corrective action should be taken with the aim or purpose to deter any future acts of harassment.

We believe that zero tolerance should not just be an empty phrase. Failure to act by an agency after evidence shows harassment did occur subordinates the spirit and intent of the law. FMA supports making sure that every employee from file clerk to political appointee knows the law on sexual harassment in very clear terms and the disciplinary measures that may be used for those who violate the agency's anti-discrimination or harassment laws.

In FMA's view, the experiences, we believe, that are hallmarks in promises and practices of successful EEO operations can be summed up thusly. A sound EEO Program's mission should be to resolve EEO complaints at the lowest possible level and in a timely manner. Program ownership should rest under the agency's head. A properly trained chief EEO counselor should be given authority to manage the program and then be accountable.

EEO counselors should be selected and trained to advise employees and managers on EEO matters, to conduct limited fact finding, and be neutral in attempts to resolve employee concerns.

EEO programs should be structured to identify problem areas in the agency and report to senior leadership for review and action the results of those problems identified.

Implementation of an aggressive EEO education program should include some type of alternative dispute resolution method. An automated tracking system of EEO complaints should be established. Key managers should be briefed on EEO complaints quarterly. We believe pamphlets and a brochure should be developed and distributed to the work force outlining the steps in the EEO process, including the pre-complaint and complaint stages.

We believe that specific information, such as how to file a complaint and who to file that complaint with, should be on official bulletin boards throughout the agency.

Periodic complainant surveys should be developed and distributed to the work force to let the agency know how the complainants' needs are being met. Monthly reports to directors highlight departmental EEO activities should be provided for review and action. Quarterly EEO meetings chaired by senior management officials and attended by agency heads should be implemented for an agency-wide perspective of the EEO activity.

Chief EEO counselors should analyze report data and provide results to senior level management for review and action. As is currently the practice in DOD, agencies should establish partnerships between themselves and an independent investigative body to prevent even the perception of a conflict of interest.

FMA believes agencies implementing these practices enjoy, number one, a higher resolution rate of EEO complaints, lowered numbers of formal complaints, stability of their EEO counseling pro-

gram, and a proactive approach to complaint resolution which instills employee faith in the process.

FMA makes a number of conclusions, recommendations. That is the concept of a hostile environment and sexual harassment should be institutionalized through education and training to both supervisors and to employees, and when sexual harassment has occurred, immediate corrective action should be taken.

Agencies should be encouraged to expand the use of alternative dispute resolutions to supplement the current EEO process. Supervisors and managers should be made aware of their rights when identified as principal agency witnesses in sexual harassment complaints, and agencies should incorporate clear criteria into their personnel performance evaluations requiring adherence to EEO principles.

In conclusion, I want to thank you again for inviting FMA to give our views. We look forward to working with you, and we hope that we can continue to take corrective action to stop discrimination and insure that there is no reprisal against those who exercise their rights.

We thank you.

[The prepared statement of Mr. Jordan appears on p. 238.]

Mr. EVERETT. Thank you for your testimony.

Thank you all for your testimony. It has been a long day, and you have been very patient, and this committee very much appreciates that.

I appreciate and associate myself with almost all of your remarks. They were right on target.

Ms. Peddicord, the committee would be most appreciative if you could make the results of your survey available to the committee.

Ms. PEDDICORD. It will be our pleasure.

Mr. EVERETT. Thank you very much.

I am not going to prolong this hearing by subjecting you to a lot of questions, many of which have already been asked, but I would ask that my colleague, Mr. Clyburn, if he has questions to please to ahead.

Mr. CLYBURN. Well, I gather, Mr. Chairman, that all of the members of this panel were present throughout all of the testimony here today, and I would just ask that anything that you know, especially you, Dr. Miller, about the VA system.

There seems to be as I think the Chairman called it a disconnect here, and we have been wrestling with this now for 4 years, tried to codify some procedure, met with resistance, and now we are back here with Fayetteville seeming to be more egregious than even Atlanta was.

What would you recommend? Do you have any ideas about what we ought to do here, that this subcommittee ought to be recommending to the full committee and hopefully to the House as to how we would address some of these matters?

Dr. MILLER. Well, I do believe that the VA has a culture of its own and historically that has been proven by the last several years of testimony. However, Mr. Spence, I do believe, is the one who testified that he is involved with the military sexual harassment process, and the VA and the DOD are now intimately involved with sharing agreements where professional nurses, physicians, other

types of federal employees are now going to be working more closely with the military on a regular basis via sharing agreements that the federal agencies are exploring as ways to cut the federal budget and to reduce costs and improve quality of care.

Now, I would think that with this merging of facilities and staff, that we should be held to the same standards and process of reporting that is going to be held with the military, and I know from the media the military is now on the hot seat, and it is going to be probably for quite a while.

But I think that we should all be held to the high standard of excellences when reporting such instances because we are all human beings and having to work in similar situations and with similar types of patients and responsibilities, and wherever there are instances where women and men have to work together, professional women and men anyway, I think we must be held to a high standard, and I think it should be the same. That my personal view.

Mr. CLYBURN. Well, let me ask you specifically about the EEO designation or the practice that the VA has of designating the center Director as the EEO officer. Do you have any feelings about that?

Dr. MILLER. Well, I do say I like your suggestion earlier today about having an independent reporting process, and that would kind of eliminate the conflict of interest or rooster and henhouse situation, as you referred to earlier. I think that was a very good suggestion, and I support that.

Ms. PEDDICORD. There are several things that can be done. I agree with her suggestion. Having the Director of the medical facility also be the chief EEO officer does have benefits and it does have drawbacks. So that can be addressed, and a number of these things can be addressed.

The entire handling of EEO process within the VA can be changed today without a law because the way it is set up in the Federal Government is each agency has the authority to set up their own procedures. So Secretary Brown tomorrow can come out and say, "Okay. None of the Directors are the chief EEO officers anymore."

What would probably be the most beneficial is to use the suggestions from the IG. Where there are problems go to the Secretary and ask that they devise a new system that takes in the problems that have been identified over the past couple of years and come up with a different system.

The EEO counselors, I was involved in a joint training of manager and union representatives down in Nashville, Tennessee, a couple of years ago. The counselors themselves, you have to realize, this is not a full-time job for them. They do this part time. They receive some training. They are called on occasionally.

So the advice that they give to potential victims could change. They may not be up to date. Maybe we need to have full-time EEO personnel. That does not require legislation.

Mr. CLYBURN. Right.

Ms. PEDDICORD. So there is a quicker fix than legislation.

Ms. NELMS. There is one other glitch I would like to comment on sort of in this same area. In my other life outside of FEW, I am

also an attorney on civil rights, and I do a lot of training for the managers on EEO, civil rights, prevention of sexual harassment, and a lot of my training has taken me to the scientific communities where people have scientific degrees, and I think this same glitch I have seen in the VA exists in a lot of scientific communities, and I hate to generalize. However, I will because I think there is a way that a lot of people in the scientific profession, from my experience, do not really look at laws as applying to them, do not really look upon themselves as managers who have to listen to the rules and regulations that normal managers have to listen to, and it makes a kind of culture that says we are either above that or outside of that or not really involved in that.

And I think when you get that kind of perspective, you get problems like NIH has had with discrimination issues, like the VA is having on this, like the Indian Health Service has had on other things, and I think there is a certain mentality in those scientific communities which I have observed too often in training situations that says they need to be convinced that these laws apply to them, that they are real managers, and as real managers, they have real responsibilities, and they need to understand their job is to enforce those policies and laws and regulations.

Mr. CLYBURN. Well, Ms. Nelms, this may be a surprise to you, but I agree with you. (Laughter.)

Ms. NELMS. Thank you.

Mr. CLYBURN. Thank you, Mr. Chairman.

Mr. EVERETT. Mr. Snyder.

Mr. SNYDER. Thank you, Mr. Chairman.

Just one or two questions for Dr. Miller and Ms. Peddicord. I am a family practice doctor and went to medical school, signed with VA, and then did part of my residency in a VA, a different VA over a 20-year period, and the issue I think you mentioned, Ms. Peddicord, as did Mr. Hinch earlier on today, about the 24-hour nature of veterans' facilities, and I guess I would add on a few other possible components there.

Maybe it is just the line of work, I guess, doctors and nurses. It is kind of an earthy business when you start ripping people's clothes off and doing all of the kinds of things we do. You kind of start talking about tattoo locations or something on patients.

But I think we also have the factor, too, do we not, the issue that a lot of VAs are teaching hospitals? So you end up with a fair number of people between the age of 22 and 26, and unfortunately for a lot of us that was our social life. I mean that is how you met your circle of friends, and it would be 3 a.m., and you know what I am talking about with on-call schedules and that.

My question is having said all that, and I think those may be factors in this 14 percent business, but of course, the cases we are talking about do not have anything to do with that. They were eight-to-five employees, totally removed from medicine. They were, I think, clerical people and did not have anything to do with doctors and nurses.

Would you just comment on that if you would, please?

Ms. PEDDICORD. Well, I agree with you. The difference is that all of the women that spoke earlier today, all of the victims, were not members of a bargaining unit. They were personal secretaries, con-

fidential secretaries and supervisory positions. So it is very limited what resources they have available to them.

Another problem that can occur is as teaching hospitals have, is a number of people from different cultural backgrounds where behavior in one culture may be acceptable whereas in this culture it is not acceptable. So that may contribute to the problems with the 24 hours, and if you are a resident you are working 48 hours straight, and maybe people are not quite thinking the way they normally would if they had 8 hours' sleep.

But as I stated earlier, those incidences that we are getting that involve bargaining unit employees are being dealt with immediately. There is action being taken right away, and so although incidents still occur from our perspective they are being addressed appropriate, and not that they're not a problem, but we do see a change in the culture in the people that we deal with from ignoring the situation and, oh, you know, "Your dress was a little too short. What do you expect?" to one that respects each other as workers irregardless of our gender.

Mr. CLYBURN. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you, and again, I want to thank the members of this panel, and, Ms. Nelms, I really hope this is not *deja vu* all over again, as Yogi might say.

This committee, I can assure you, is dead serious, and we will have follow-up hearings.

I would point out to the panel and others that this committee consists of the full VA Chairman, Mr. Stump, also the full National Security Chairman, Mr. Spence, and the Personnel Subcommittee Chairman on National Security, Mr. Buyer, who will have this similar situation in the military.

In addition to that, on my right here, I am very pleased to have as my ranking member Mr. Clyburn, who has extensive knowledge in this particular field and is one of the brightest members of the class of 1992.

In addition to that, we have——

Mr. CLYBURN. With one exception, right?

Mr. EVERETT. With one exception. (Laughter.)

In addition to that, we have the full Ranking Member of the VA Committee, Lane Evans, and Lane has already had to leave, and a medical doctor, Dr. Vic Snyder.

So this is, frankly, a hard working committee. These people are dedicated to get the information out and, frankly, to accomplish something so that in 20 more years you will not have to be back here again. As a matter of fact, we hope in a year you will not have to be back here again, and this committee will have follow-up hearings. We intend to stay on top of this.

I believe if a solution is possible, we will get it, and I think, frankly, a solution is possible. I think we can all work together and take a lot of the recommendations you have made. I know Secretary Brown is fully behind this. He wants to see it accomplished. I think that we can get there and that we should get there.

Again, it has been a long day. I appreciate your patience in remaining to testify. We have heard some compelling testimony today. As I have stated earlier, the subcommittee will closely monitor the VA's follow-up to this hearing.

All members have 5 legislative days to submit questions for the record to each of the witnesses.

Again, thank you very much. This hearing is adjourned.

[Whereupon, at 4:05 p.m., the subcommittee was adjourned, subject to the call of the chair.]

A P P E N D I X

STATEMENT OF THE HON. LANE EVANS
RANKING DEMOCRATIC MEMBER
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
HEARING ON SEXUAL HARASSMENT IN THE VA
APRIL 17, 1997

MR. CHAIRMAN AND RANKING DEMOCRAT
CLYBURN, I WOULD LIKE TO THANK YOU FOR YOUR
INTEREST IN HOLDING TODAY'S HEARING. AS SOME
OF YOU MAY REMEMBER, WHEN I SERVED AS
CHAIRMAN OF THIS SUBCOMMITTEE IN 1992 I HELD
A SIMILAR HEARING ON THE ISSUE OF SEXUAL
HARASSMENT AT THE VA. UNFORTUNATELY,
TODAY'S TESTIMONY WILL SHOW THAT MANY OF
THE PROBLEMS THAT WERE INITIALLY BROUGHT TO
THIS SUBCOMMITTEE'S ATTENTION BACK IN 1992
CONTINUE TO PERSIST AT THE VA TODAY.

SOME OF YOU MAY RECALL THE COMPELLING
TESTIMONY WE HEARD DURING THE 1992 HEARING
FROM DONNA GRABARCZYK (GRA-BAR-SIK).

MS. GRABARCZYK (GRA-BAR-SIK) TESTIFIED THAT SHE HAD BEEN SEXUALLY ASSAULTED BY THE CHIEF OF FISCAL SERVICE AT THE LYONS, NEW JERSEY VA HOSPITAL WHERE SHE WORKED. IT TOOK THE VA SEVEN MONTHS TO INVESTIGATE HER ALLEGATIONS, AND IN THE MEANTIME SHE WAS FORCED TO LIVE IN CONSTANT FEAR OF ANOTHER CONFRONTATION WITH HER ASSAILANT. ONCE THE VA COMPLETED ITS INVESTIGATION, THE PROPOSED RESOLUTION WAS TO ENCOURAGE MS. GRABARCZYK (GRA-BAR-SIK) TO TRANSFER FROM THE FACILITY.

MS. GRABARCZYK'S (GRA-BAR-SIK'S) HARRASER WAS ALLOWED TO TAKE DISABILITY RETIRMENT FROM THE VA. IN THE MEANTIME, MS. GRABARCZYK (GRA-BAR-SIK) WAS DIAGNOSED WITH POST-TRAUMATIC STRESS DISORDER (PTSD) BECAUSE OF THE HARASSMENT. TWO MONTHS AFTER HER 1992 TESTIMONY, SHE WAS PLACED ON

LEAVE WITHOUT PAY FROM THE VA BECAUSE OF HER HARASSMENT-RELATED ILLNESS.

MS. GRABARCZYK (GRA-BAR-SIK) HAS BEEN RECEIVING REGULAR MEDICAL CARE AND THERAPY SINCE DECEMBER 1992. HER DOCTOR HAS DIAGNOSED HER WITH A TEMPORARY TOTAL DISABILITY, AND SHE IS CURRENTLY RECEIVING WORKER'S COMPENSATION BECAUSE OF HER ILLNESS. SHE TELLS US SHE PRESENTLY TAKES THREE DIFFERENT MEDICATIONS EACH DAY TO TREAT HER PTSD.

MR. CHAIRMAN, DONNA GRABARCZYK'S (GRA-BAR-SIK'S) STORY IS NOT A HAPPY ONE. WHEN WE HEARD HER TESTIFY IN 1992, MOST OF US MAY HAVE REASONABLY CONCLUDED THAT THE WORST WAS BEHIND HER AND THAT THERE WOULD BE ONLY MINIMAL LONG TERM EFFECTS FROM HER HARASSMENT. OBVIOUSLY MS. GRABARCZYK'S (GRA-BAR-SIK'S) TROUBLES HAVE NOT GONE AWAY

SINCE 1992. IT IS A TRIBUTE TO THE LEADERSHIP OF THIS SUBCOMMITTEE THAT THE INTEREST IN THIS ISSUE HAS NOT SUBSIDED EITHER SINCE THAT TIME.

UNTIL THE VA TRULY ADDRESSES THE SEXUAL HARASSMENT PROBLEM AT THE REGIONAL AND FACILITY LEVELS, STORIES LIKE THE ONE WE HEARD FROM DONNA GRABARCZYK (GRA-BAR-SIK) – AND STORIES LIKE THE ONES WE WILL BE HEARING TODAY – WILL CONTINUE TO BE PLAYED OUT THROUGHOUT THE HALLS OF THE VA. I BELIEVE IT IS OUR RESPONSIBILITY TO DO ALL WE CAN AS MEMBERS OF THIS COMMITTEE TO SEE TO IT THAT THERE IS NO NEED FOR THIS TYPE OF HEARING FIVE YEARS FROM NOW.

IN CLOSING, I WANT TO MAKE IT CLEAR THAT I DO NOT QUESTION SECRETARY BROWN'S PERSONAL COMMITMENT TO ERADICATING THE

FESTERING PROBLEM OF SEXUAL HARASSMENT IN THE VA. THE SECRETARY'S "ZERO TOLERANCE" POLICY INSTITUTED IN 1993 WAS A STRONG STEP IN THE RIGHT DIRECTION. BUT UNTIL THE VA CAN SHOW THAT ITS POLICY HAS TEETH, WE WILL CONTINUE TO KEEP THE HEAT ON THE VA ON THIS ISSUE IN THE MONTHS AND YEARS TO COME. OUR VETERANS AND THE EMPLOYEES WHO SERVE THEM SHOULD EXPECT, AND DESERVE, NO LESS.

THANK YOU, MR. CHAIRMAN.

Statement of Donna Grabarczyk

Thank you for your inquiry about my status since the September 17, 1992 hearing. I regret that serious personal family health problems preclude my attendance.

I have been on Leave Without Pay status from the Department of Veterans Affairs (DVA) since December 1992 for my work-related condition resulting from experiences while at the DVA. My treating physicians determined that I have a temporary total disability.

I have received regular medical care including medication requiring blood test monitoring and therapy since October 1990. I presently see a psychiatrist and therapist and take three different medications daily for a diagnosis of post traumatic stress disorder.

In March 1994, I was notified by a newspaper reporter of the six month jail sentence received by my harasser who violated his probationary terms in March and April, 1994. I was referred and treated for functional gastro-intestinal tract complaints related to post traumatic stress disorder.

I filed and won a civil suite against my harasser, but the judgment awarded has not been obtained due to his retirement status.

I recently read quotes from Secretary Brown referring to demotion/dismissal of hospital officials as "devastating" and in speaking of training programs, there would always be "10 percent unable to make that adjustment" following training.

I ask the Committee members and Secretary Brown to consider the devastating, incapacitating impact of sexual harassment on the health, family, career and financial security of the dedicated, productive and loyal DVA employees no longer able to proudly serve veterans because they were subject to this behavior.

The costs of each case for legal expenses, decreased morale and productivity, loss of highly motivated employees and hiring/retraining replacements must be exorbitant.

How is it possible for DVA officials exhibiting sexually harassing behavior to attain, maintain and progress in their positions?

I don't know what side effects and long term damages I may suffer from medications taken the past six and a half years to help control symptoms. I don't know if, despite the help of caring professionals, I'll ever be able to stop treatment.

I am grateful for the opportunity to provide this statement. My thanks to all the Committee members for their concerned efforts to achieve the "zero tolerance" advocated by the DVA.

I remain respectfully yours.

THE HONORABLE MICHAEL BILIRAKIS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
APRIL 17, 1997

HEARING ON SEXUAL HARASSMENT ISSUES
AT THE DEPARTMENT OF VETERANS' AFFAIRS

THANK YOU, MR. CHAIRMAN.

FIRST, I WANT TO THANK YOU FOR RESPONDING TO MY REQUEST BY SCHEDULING TODAY'S HEARING ON SEXUAL HARASSMENT ISSUES AT THE DEPARTMENT OF VETERANS' AFFAIRS. I ALSO APPRECIATE THE OPPORTUNITY TO PARTICIPATE IN THIS HEARING EVEN THOUGH I AM NOT A MEMBER OF YOUR SUBCOMMITTEE.

DURING THE 102ND CONGRESS, I SERVED AS THE RANKING MINORITY MEMBER OF THE OVERSIGHT AND INVESTIGATION SUBCOMMITTEE. AS YOU MENTIONED EARLIER MR. CHAIRMAN, WE CONDUCTED A HEARING ON SEXUAL HARASSMENT IN THE VA WORKPLACE IN 1992.

AT THAT TIME, WE HEARD FROM SEVERAL VA EMPLOYEES WHO HAD BEEN THE VICTIMS OF SEXUAL HARASSMENT. IT TOOK A GREAT DEAL OF COURAGE FOR THESE WOMEN TO COME FORWARD AND SHARE THEIR EXPERIENCES WITH OUR COMMITTEE. MANY OF THESE WOMEN WERE ALSO SUBJECTED TO ACTS OF RETALIATION BY THEIR ABUSERS AND OTHER VA EMPLOYEES.

THEIR PERCEPTION, WHICH WAS SHARED BY MANY OTHER EMPLOYEES, WAS THAT THE VA DID NOT TAKE SEXUAL HARASSMENT COMPLAINTS SERIOUSLY. THERE WAS A GREAT DEAL OF SUSPICION AND DISTRUST CAUSED BY TOO MANY YEARS OF APPARENT TOLERATION OF UNACCEPTABLE BEHAVIOR.

WITHOUT QUESTION, OUR 1992 HEARING REVEALED THAT THE PROCESS IN PLACE AT THE VA FOR INVESTIGATING SEXUAL HARASSMENT COMPLAINTS WAS SERIOUSLY FLAWED. CONSEQUENTLY, THIS COMMITTEE UNANIMOUSLY APPROVED LEGISLATION, WHICH WAS LATER PASSED BY THE HOUSE, TO ADDRESS THE PROBLEMS AT THE VA. H.R. 1032 WOULD HAVE PROVIDED FOR IMPROVED AND EXPEDITED PROCEDURES FOR RESOLVING COMPLAINTS OF EMPLOYMENT DISCRIMINATION, INCLUDING SEXUAL HARASSMENT COMPLAINTS.

WHEN WE CONSIDERED H.R. 1032, SECRETARY BROWN OPPOSED THE PASSAGE OF THIS LEGISLATION BECAUSE HE PREFERRED TO TAKE ADMINISTRATIVE ACTION INSTEAD. THE SENATE DID NOT ACT ON H.R. 1032, AND THE BILL WAS NEVER ENACTED INTO LAW.

TO HIS CREDIT, SECRETARY BROWN ESTABLISHED A POLICY OF "ZERO TOLERANCE" OF SEXUAL HARASSMENT AND OTHER FORMS OF DISCRIMINATION WITHIN THE DEPARTMENT OF VETERANS'

AFFAIRS EARLY IN HIS TENURE AS SECRETARY. I GUESS THE QUESTION FACING US TODAY IS WHETHER OR NOT THIS POLICY IS SUFFICIENT.

ALMOST FIVE YEARS AFTER OUR FIRST HEARING, WE ARE FACED WITH A SIMILAR SITUATION AT THE VA. THIS MATTER WAS BROUGHT TO MY ATTENTION AGAIN WHEN THE DIRECTOR OF THE FAYETTEVILLE VA MEDICAL CENTER WAS FOUND TO HAVE SEXUALLY HARASSED ONE FEMALE EMPLOYEE. HE ALSO ENGAGED IN "ABUSIVE, THREATENING AND INAPPROPRIATE" BEHAVIOR TOWARDS OTHER FEMALE EMPLOYEES. THIS DIRECTOR WAS TRANSFERRED TO THE BAY PINES VA MEDICAL CENTER WHICH SERVES MANY OF THE VETERANS IN MY CONGRESSIONAL DISTRICT. HE WAS ALLOWED TO RETAIN A SALARY OF MORE THAN \$100,000 IN A POSITION CREATED SPECIFICALLY FOR HIM.

I HAVE HEARD FROM MANY OF MY CONSTITUENTS, PARTICULARLY FEMALE VETERANS AND VA EMPLOYEES, WHO ARE OUTRAGED BY THE DEPARTMENT'S ACTIONS ON THIS MATTER. THEY DO NOT BELIEVE THAT THE VA TOOK ANY PUNITIVE ACTION AGAINST THIS SENIOR VA EMPLOYEE.

I HAVE REVIEWED THE TESTIMONY OF TODAY'S WITNESSES WHO WERE SUBJECTED TO ABUSIVE TREATMENT WHILE WORKING IN THE FAYETTEVILLE MEDICAL CENTER. SADLY, THEIR STORIES

MIRROR THOSE THAT WE FIRST HEARD IN 1992. DESPITE THE SECRETARY'S ZERO TOLERANCE POLICY, IT APPEARS THAT THE VA HAS FAILED TO ADEQUATELY IMPLEMENT SUFFICIENT ADMINISTRATIVE PROCEDURES TO DEAL WITH SEXUAL HARASSMENT COMPLAINTS.

I KNOW FROM THEIR TESTIMONY THAT OUR WITNESSES BELIEVE THAT THEIR HARASSER WAS NOT PROPERLY OR ADEQUATELY PUNISHED. IN FACT, THEY FEEL HE WAS REWARDED FOR HIS ACTIONS "BY BEING SENT TO THE PLACE HE WANTED TO BE WITH A RAISE IN SALARY."

THIS CERTAINLY APPEARS TO BE THE CASE. CONSEQUENTLY, I AM GREATLY CONCERNED THAT THE VA'S POLICY OF "ZERO TOLERANCE" HAS, AT BEST, NOT BEEN IMPLEMENTED UNIFORMLY, AND AT WORST, HAS BEEN IGNORED. THIS IS WHY I REQUESTED TODAY'S HEARING.

IN 1992, I SAID THAT "EVERYONE HAS THE RIGHT TO LIVE AND TO GO TO WORK WITHOUT FEAR OF HARASSMENT OF ANY SORT... WE OWE ALL FEMALE VETERANS AND ALL FEMALE VA EMPLOYEES THE ASSURANCE THAT WE WILL NOT TOLERATE SEXUAL HARASSMENT AT ANY LEVEL." THIS STATEMENT IS JUST AS RELEVANT TODAY AS IT WAS FIVE YEARS AGO.

I HOPE THIS HEARING WILL GIVE US SOME GUIDANCE ON HOW TO REFORM THE COMPLAINT PROCESS AND HOPEFULLY WILL BE A STEP TOWARDS ASSURING THAT SEXUAL HARASSMENT ANYWHERE IN OUR SOCIETY, BUT MORE SPECIFICALLY IN OUR VETERANS' HOSPITALS, WILL BE A THING OF THE PAST.

ONCE AGAIN, MR. CHAIRMAN, THANK YOU FOR SCHEDULING THIS HEARING. I LOOK FORWARD TO WORKING WITH YOU, REPRESENTATIVE CLYBURN, AND THE OTHER MEMBERS OF THE OVERSIGHT SUBCOMMITTEE ON THIS IMPORTANT ISSUE.



Office of Inspector General

SPECIAL INQUIRY

ALLEGED IMPROPER CONDUCT BY A SENIOR OFFICIAL VA MEDICAL CENTER FAYETTEVILLE, NC

Date: November 8, 1996
Report No. 7PR-G02-007

WARNING PRIVACY ACT STATEMENT

This report contains information subject to the provisions of the Privacy Act of 1974 (5 U.S.C. Section 552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this report thereof should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this report must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.

Office of Inspector General
Washington DC 20420

NOV 8 1996

TO: Veterans Health Administration, Network Director (10N6)

SUBJECT: Special Inquiry, Alleged Improper Conduct by a Senior Official, VA Medical Center, Fayetteville, NC, Report No. 7PR-G02-007

1. The Department of Veterans Affairs (VA), Office of Inspector General (OIG) reviewed allegations that Mr. Jerome Calhoun, Director, VA Medical Center, Fayetteville, North Carolina, sexually harassed three women. Two of these allegations surfaced during a review of a Hotline complaint sent to our office. The third sexual harassment complaint was referred to us by your office. We also received allegations from Senator Lauch Faircloth concerning misconduct and unprofessional behavior by Mr. Calhoun. These allegations were referred to your office for appropriate action. Based on your review, you concluded Mr. Calhoun was not effective as a Medical Center Director.

2. Our review determined that Mr. Calhoun sexually harassed one of the three female employees. While we could not conclusively determine whether he sexually harassed the other two employees, we did conclude that Mr. Calhoun's behavior toward them was abusive, threatening, and inappropriate. We also concluded that Mr. Calhoun was less than truthful about certain matters in responding to the allegations, which raised some doubt concerning his credibility.

3. Regarding the first complainant, Mr. Calhoun made inappropriate comments of a sexual nature. Some of the comments Mr. Calhoun made to her were witnessed by others, and Mr. Calhoun himself, at least partially, acknowledged having made the comments. However, given the speech and behavior of the first complainant, we are concerned that a sexual harassment charge would be difficult to uphold because it could be found that such comments were neither uninvited nor offensive. We did conclude that Mr. Calhoun's treatment of the first complainant was inappropriate and abusive. Mr. Calhoun admitted to being loud, emotional, and profane. Due to stress that resulted from the overall abuse by Mr. Calhoun the complainant removed herself from the workplace. Eventually, she filed a claim with the Office of Workers' Compensation due to her stress, and that claim was approved.

4. The second complainant testified that Mr. Calhoun made unwelcome sexual advances toward her and retaliated against her when she rejected his suggestions

that they have a personal relationship. Our review substantiated quid pro quo sexual harassment and sexual harassment for creating a hostile work environment. The quid pro quo sexual harassment was a result of Mr. Calhoun's retaliation against the complainant by reassigning her to a position that she was not qualified for, because she rejected his proposals. The creation of a hostile and offensive work environment resulted because Mr. Calhoun continued to make unwelcome and inappropriate comments of a sexual nature to the complainant after she had clearly indicated her discomfort with such comments. We found the testimony of the complainant to be credible in that it was corroborated over and over again by the views of other medical center employees and the complainant's psychologist. Due to the sexual harassment, this complainant transferred to another medical center.

5. The third complainant testified that Mr. Calhoun made unsolicited verbal comments of a sexual nature to her on more than one occasion. The complainant told us there were no witnesses to the remarks on either occasion. Mr. Calhoun denied making comments of a sexual nature to the complainant. He suggested that the complainant was angry at him because he transferred her out of her previous position, and that she had falsely made the accusation of sexual harassment out of revenge. While we could not determine if the allegations of sexual harassment were substantiated because it was essentially her word against his, we did conclude that Mr. Calhoun's treatment of the third complainant continued to demonstrate a pattern of inappropriate and abusive behavior.

6. We recommended that you take appropriate administrative action against Mr. Calhoun for sexually harassing at least one female employee and for his pattern of abusive and inappropriate behavior toward all three complainants. You concurred with our findings and recommendation, and informed us you were finalizing a plan of action to implement the recommendation. We will review that plan to ensure it is responsive to our recommendation, and will follow up on its implementation until the issue is resolved.

Jon A. Wooditch
for JACK H. KROLL
Assistant Inspector General for
Departmental Reviews and Management Support

Enclosure

CONTENTS

	Page
Memorandum to the Network Director, VISN 6	i
Introduction	1
Purpose	1
Background	1
Scope	3
Results and Recommendation	4
ISSUE: Did Mr. Jerome Calhoun, Director of the Fayetteville, NC Medical Center, sexually harass three Medical Center employees?	4
Complainant No. 1	4
Complainant No. 2	9
Complainant No. 3	17
Credibility Determination	18
Conclusion	21
Recommendation	22
Appendix	
VISN 6, Network Director Comments	23

**ALLEGED IMPROPER CONDUCT
BY A SENIOR OFFICIAL
VA MEDICAL CENTER FAYETTEVILLE, NC**

Report No. 7PR-G02-007

INTRODUCTION

Purpose

The Department of Veterans Affairs (VA), Office of Inspector General (OIG) reviewed allegations that Mr. Jerome Calhoun, Director, VA Medical Center, Fayetteville, North Carolina, sexually harassed three women. At the time of the alleged harassment, the three women were employed at the Fayetteville VA Medical Center. Two of the allegations surfaced during a review of a Hotline complaint sent to the OIG's Hotline and Special Inquiries Division. The OIG initiated a review of the third allegation in response to a request for assistance from the Director, Veterans Integrated Service Network in Durham, North Carolina (VISN 6). We also agreed to conduct this review because the allegations were serious in nature and involved possible misconduct by a high ranking VA official, and the statute of limitations for filing Equal Employment Opportunity (EEO) complaints, based on charges of sexual harassment, had expired.

We also received allegations from Senator Lauch Faircloth regarding misconduct and unprofessional behavior by Mr. Calhoun. These allegations were referred to VISN 6 for appropriate action. The Director, VISN 6, initiated a review to determine the validity of the allegations. Based on that review, he concluded that Mr. Calhoun was not effective as a medical center director. We have respond to Senator Faircloth regarding the results of that review.

Background

Mr. Calhoun became the Director of the Fayetteville Medical Center in April 1994. His previous assignment was as Associate Director at the VA Medical Center in Buffalo, New York.

Sexual harassment is recognized in the law as a type of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964. According to 29 C.F.R. Section 1604.11, sexual harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment that occurs when a supervisor bases an employment decision about an individual on that individual's submission to or rejection of the supervisor's unwelcome sexual conduct is known as "quid pro quo" sexual harassment. The other major type of sexual harassment involves inappropriate behavior or speech which creates a hostile work environment.

While a single isolated incident, such as a threat to take a negative personnel action, may be sufficient to establish quid pro quo harassment, hostile environment claims can be more complicated. Generally, there must be a series or pattern of events which are sufficiently offensive that the work environment has been altered to the extent that a reasonable person would be uncomfortable or that person's productivity would be negatively affected. However, even one instance of egregious misconduct, e.g., indecent touching, may be sufficient to create a hostile environment.

Equal Employment Opportunity Commission guidelines hold supervisory personnel to a higher standard than co-workers. The employer can be held liable for the improper acts of a management official even if the official's superiors were not aware of the misconduct. A Director of a VA medical center, given that person's overall supervisory and leadership responsibilities, and that person's position in the EEO process, would be expected to establish a standard of proper behavior and intolerance of sexual harassment.

VA policy (MP-7, Part I, Change 1) also prohibits sexual harassment. According to that policy, "sexual harassment is unacceptable conduct in the workplace and will not be condoned." The policy defines sexual harassment as "deliberate or repeated unsolicited

verbal comments, gestures, or physical contacts of a sexual nature which are unwelcomed. It is a form of employee misconduct which may create an unproductive or an offensive working atmosphere and which undermines the integrity of the employment relationship.”

Scope

To evaluate whether Mr. Calhoun sexually harassed three Medical Center employees, we interviewed the three women, witnesses who heard or were told of the alleged harassment, and Mr. Calhoun. All interviews conducted in person, including those with the three complainants and Mr. Calhoun, were tape recorded and the interviewees were placed under oath. We also reviewed the personnel records of the three women and obtained available documentation of the alleged harassment.

RESULTS AND RECOMMENDATION

Issue: Did Mr. Jerome Calhoun, Director of the Fayetteville, NC Medical Center, sexually harass three Medical Center employees?

We substantiated the allegations of sexual harassment with respect to one of the three employees. We found that Mr. Calhoun sexually harassed Complainant No. 2.

Regarding Complainant No. 1, we determined that Mr. Calhoun did make inappropriate comments of a sexual nature to her, but we are concerned that a sexual harassment charge might be difficult to uphold. Given the speech and behavior of Complainant No. 1, it could be found that such comments were not uninvited or offensive to her. With regard to Complainant No. 3, it was her word against Mr. Calhoun's with regard to the sexual harassment allegation. Therefore, we could not substantiate that allegation, given that management would have the burden of proof on the issue.

While we could not conclusively determine that he sexually harassed Complainants No. 1 and No. 3, we did conclude that Mr. Calhoun's behavior toward them was abusive, threatening, and inappropriate. We also concluded that Mr. Calhoun was less than truthful about certain matters in responding to the allegations, which raised some doubt concerning his credibility.

Complainant No. 1

The complainant, a secretary to Mr. Calhoun, alleged that on three occasions Mr. Calhoun made an unsolicited, offensive verbal comment of a sexual nature to her, or threatened to repeat the comment in the presence of others. The complainant (hereafter referred to as Complainant No. 1, or Ms. A) testified that in February or March 1996, she came into Mr. Calhoun's office to place some papers on his desk and, as she was leaving, he told her he had just talked on the telephone to a friend of his and told the friend that his secretary does "the strangest thing." He then asked her, "Did you know that every time you get upset your nipples get hard?" Ms. A told us that her first thought was to slap Mr. Calhoun on the face, but that she just stared at him and then responded, "No." She said Mr. Calhoun then told her, "Well, they really do. It's not bad to see you get upset." She testified that she then left Mr. Calhoun's office without further comment. She said there were no witnesses to this remark.

Ms. A testified that, on a second occasion when she was in Mr. Calhoun's office, he remarked to another person present in the room, "Do you know what happens when [the complainant] gets excited?" The complainant told us she did not recall if Mr. Calhoun followed up that remark with a comment about her nipples. However, the third person in the room (Complainant No. 3, Ms. C) testified that, while Ms. C was talking to Mr. Calhoun, Ms. A walked in and, after a brief conversation, Mr. Calhoun remarked that there was something very interesting about Ms. A. According to Ms. C, Mr. Calhoun then remarked that Ms. A's nipples got hard when she was anxious. [Ms. C could not recall if Mr. Calhoun used the word anxious, nervous, or excited.] Ms. C told us this occurred around March 1996. According to Ms. C, Ms. A reacted to the remark with a shocked look on her face, and crossed her arms in front of her.

Ms. A's actions indicate that she was offended and embarrassed by the Director's statements. Her facial expression, in response to the offensive statements, was described by Ms. C as "shocked." The crossing of her arms in front of her was clearly an attempt to cover the part of the body the Director was inappropriately bringing attention to through his remarks.

Ms. A testified that, several weeks after the first incident, Mr. Calhoun threatened to repeat the comment about her nipples in the presence of the Associate Director and the Chief of Staff. Ms. A told us that after her official duty hours on a Friday afternoon, she delivered a document to Mr. Calhoun, who was in his conference room with the Associate Director and Chief of Staff. Upon entering the conference room, Ms. A testified that she told the Director, Associate Director, and Chief of Staff that she was working late again, was "drowning" in work and urgently needed additional clerical help to accomplish what needed to be done. According to Ms. A, Mr. Calhoun responded to her, "You know what happens to you when you get upset. Do you want me to tell [the Chief of Staff and the Associate Director] what happens to you when you get upset?" Ms. A testified that she crossed her arms in front of her, trying to hide her breasts, and responded, "No sir, I don't." She said she then walked out of the conference room, turned off her computer, and went home. Ms. A's actions and words again indicate that she found the Director's statements embarrassing and uncomfortable.

Ms. A testified that she told no one about the above remarks for several months. She said she did not file a sexual harassment charge against Mr. Calhoun because she was afraid of him and afraid of what her husband would do when he found out. She also testified that she did not think anyone would believe her allegations.

In some respects, the Associate Director corroborated Ms. A's testimony with regard to the third incident. She told us that, while she did not think that Ms. A was shocked, Ms. A did have "some kind of reaction" to Mr. Calhoun's remark. She testified that after the complainant left the conference room, Mr. Calhoun told her [the Associate Director], "You'd have to be a man to appreciate this, so we're not going to even talk about it." The Associate Director told us that, although Mr. Calhoun did not explain his comment, she believed she knew what he meant by it. She said that Mr. Calhoun had told her, some time prior to the above incident, that Ms. A previously had breast surgery and that Ms. A voluntarily told him that, as a result of the surgery, her nipples got hard when she was upset.

When we asked Mr. Calhoun if he had ever made a remark to Ms. A about her breasts, he knew what we were referring to without us having to tell him the specific comment. He repeatedly denied that he ever made a remark to or about the complainant in which he used the word "nipples" or "breasts." He testified that, to the contrary, Ms. A had told him she had breast surgery and that, as a result of the surgery, her nipples got hard when she was upset. Mr. Calhoun admitted that, on more than one occasion, he reminded Ms. A, without specifically saying the word "nipples," about what happens to her when she is upset or excited. He testified that, on the occasion he was meeting with the Chief of Staff and Associate Director, he made the comment as a way of telling the complainant to "get out of here."

Mr. Calhoun initially testified that he did not recall threatening to tell the Associate Director and Chief of Staff about what happened to the complainant when she got "upset," nor did he recall telling the Associate Director, "You'd have to be a man to appreciate this" However, when we confronted him with the Associate Director's testimony that she recalled that he did in fact make those remarks, he stated that he would not argue otherwise. In short, he did not challenge or in any way rebut the Associate Director's testimony.

The Director's statements to the Associate Director essentially admit that he was well aware that his statements were offensive and unwelcome to the average woman. The fact that he would not discuss the subject with the Associate Director, a woman, demonstrates that he knew the subject was inappropriate and, perhaps inherently, offensive. His statement that the comment was the equivalent of telling Ms. A to "get out of here" is conclusive evidence that he was aware that the comments were sufficiently embarrassing to Ms. A that they would result in her being so uncomfortable that she would leave the room.

Mr. Calhoun, however, also testified that Ms. A made frequent comments about her own body to the effect that she had a good body for a woman her age and that she was still

attractive and desirable. He testified that Ms. A discussed, in fairly explicit terms, her sexual activities with her husband. According to Mr. Calhoun, Ms. A frequently wore "inappropriate" clothing of a sexy, provocative nature and would turn every conversation around to a sexual connotation.

Two other witnesses, including the female Associate Director, each of whom had direct knowledge about Ms. A, corroborated the Director's testimony with regard to Ms. A's clothing and speech. The Associate Director testified that Mr. Calhoun told her that Ms. A said, with regard to the effects of her breast surgery, my husband "likes them better this way." The Associate Director, in discussing Ms. A's inappropriate clothing, stated that she believed Ms. A wanted attention. She told us that prior to Ms. A being hired as the Director's secretary, a staff person who worked with her previously discussed her inappropriate clothing and behavior. However, the Associate Director stated that Ms. A had never made an inappropriate remark in her presence.

Ms. A told us that she did tell Mr. Calhoun about her breast surgery because he had asked her what prompted her active participation in the American Cancer Society. She stated that, although she did not have breast cancer, she did have breast tissue removed as a preventive measure and replaced with implants. She indicated that she has spoken to many groups about breast cancer and her surgery and she is not embarrassed by it or ashamed to discuss it. However, she denied that she ever told Mr. Calhoun that her nipples got hard when she was upset or excited.

In analyzing the allegations of sexual harassment, we note that there was no corroborating witness for the first alleged instance. The corroborating witness for the second alleged instance is Ms. C, who is the third complainant alleging sexual harassment against Mr. Calhoun. As we will discuss in more detail in the Complainant No. 3 section of this report, Ms. C, like Ms. A, is a victim of abusive behavior by Mr. Calhoun. Ms. C is not an unbiased witness. In addition to her allegations, which would be enhanced if sexual harassment by Mr. Calhoun against Ms. A was substantiated, she is bitter toward Mr. Calhoun. Given her bitterness toward Mr. Calhoun, she may not be a particularly independent and objective witness.

Finally, as to the third alleged instance, while the basic facts were confirmed and corroborated by the Associate Director, Ms. A's testimony was not corroborated with respect to the offense Ms. A took to the remark. The Associate Director's testimony was that Ms. A was upset and flustered before the Director made the remark and that the remark itself did not have a major noticeable negative effect on Ms. A. Although, it could be

argued that it did have the effect intended by Mr. Calhoun, which was to get Ms. A to leave the room.

We determined that Mr. Calhoun did make inappropriate statements of a sexual nature to Ms. A about her body. While we consider his statements to and about Ms. A's body improper and evidence of misconduct, especially for the Director of a VA Medical Center, we cannot conclude that these remarks constitute a provable case of sexual harassment. While we do not in any way wish to minimize or condone Mr. Calhoun's remarks, we believe that his remarks may not have created a hostile and offensive work environment in terms of sexual harassment.

Given the reportedly sexually oriented speech of Ms. A, i.e., her comments about her husband's reaction to her breast implants, her comments about her own attractiveness, and her open comments about her sexual activity with her husband, it is possible that Ms. A would not prevail in a claim that the Director's comments were offensive or that they created a hostile work environment, in the context of a sexual harassment case. In fact, it could be argued that Ms. A, through her own clothing and conversation, inadvertently created an environment where sexually oriented speech was openly discussed and tolerated. Irrespective of whether the remarks constitute sexual harassment in a legal sense, such remarks are nonetheless indecent and totally inappropriate.

In her testimony regarding the allegations of sexual harassment, Ms. A also alleged that Mr. Calhoun's behavior toward her was inappropriate in a variety of other ways. For example, she alleged that Mr. Calhoun shouted at her, used profane language toward her, refused to speak to her on certain business-related matters, falsely accused her of stealing from him, and constantly and frequently threatened to fire her (while at the same time refusing to reassign her). Ms. A testified that the Director's constant and prolonged abusive behavior, which persisted for the better part of a year, had been degrading and diminished her self esteem. She stated that the stress caused by Mr. Calhoun had such a significant negative effect on her physical and mental health she began routine visits to her family physician.

Ms. A testified that she initially spent 3 hours talking to her physician about the effects of Mr. Calhoun's inappropriate behavior towards her. Her physician diagnosed her as suffering from situational depression, gave her medication and recommended that she stay away from the workplace. Ms. A eventually filed a claim with the Office of Workers' Compensation due to her stress and that claim was approved.

We believe that the evidence clearly demonstrates that the Director's overall behavior toward Ms. A created a work environment that was stressful, threatening, and uncomfortable for Ms. A. She was subjected to terrible stress due the Director's repeated threats that she would be fired and lose her job. The fact that the Director threatened to embarrass Ms. A in front of two other people by commenting on her body is indicative of his abusive treatment toward her. The Director's assertion that he never used the words "breast" or "nipples" completely misses the point. The point is that he essentially admitted that his threatened comment, of a sexual nature, was intended to result in Ms. A leaving the room. If he wanted Ms. A to leave the room, he should have just asked her to do so. Intentionally abusive comments made by a supervisor to a subordinate are inappropriate, offensive, indefensible, and an abuse of power. Mr. Calhoun's behavior toward Ms. A created an atmosphere that was uncomfortable, stressful, tense, abusive, and non-productive.

The pattern of behavior exhibited does not seem out of character for Mr. Calhoun. Other medical center employees interviewed also testified that they found the Director to be abusive, profane, and threatening. Additional examples of this behavior are discussed in the following sections.

Complainant No. 2

The complainant (hereafter referred to as Complainant No. 2 or Ms. B), the Chief of the Medical Care Cost Recovery (MCCR) Section at the time the alleged harassment occurred, alleged that Mr. Calhoun transferred her from her position because she refused his suggestion that the two of them have a personal relationship.

Ms. B alleged that quid pro quo sexual harassment occurred because Mr. Calhoun retaliated against her by implementing an employment decision negatively affecting the complainant without sufficient justification for the personnel action. Specifically, she alleged that the Director's actions concerning her reassignment from her position as the Chief, MCCR Section to a position she was not qualified for, was caused by her rejection of the Director's unwelcome sexual advances toward her.

In addition to the unjustified personnel action taken against her, Ms. B also alleged that the Director's behavior toward her involved threatening behavior and additional unwelcome and inappropriate comments of a sexual nature, which created a hostile and offensive work environment.

The evolution of the Director's treatment of Ms. B changed dramatically over time. To fully appreciate the change, it is necessary to present the full context of their interactions. Both Mr. Calhoun and Ms. B testified that during the first few months after Mr. Calhoun arrived at the Fayetteville Medical Center, the two of them met frequently to discuss MCCR matters. They testified that Mr. Calhoun had a high interest in the MCCR program and communicated directly with Ms. B to keep abreast of the program's status. Ms. B testified that during their many meetings, they often had conversations on non-MCCR topics and joked with one another. She testified that she felt comfortable enough with Mr. Calhoun that on one occasion shortly after he arrived in Fayetteville she invited him to have dinner with her and a co-worker, and he accepted the invitation.

Ms. B testified that around September 1994, while she was in Mr. Calhoun's office discussing MCCR issues, he told her that now that she was divorced [Ms. B's divorce was final in August 1994], he had something to say to her. Ms. B testified that Mr. Calhoun asked her who her best friend was and told her that she could not tell her best friend what he was about to say. Ms. B testified that Mr. Calhoun then told her that he was "interested" in her. She said she took that comment to mean he had an interest in her that was personal, not work related. Ms. B said she was surprised by the comment and told Mr. Calhoun that she was already in a relationship with someone and did not want to jeopardize it. According to Ms. B, Mr. Calhoun persisted by asking her to "think about it."

A friend of Complainant No. 2 corroborated her testimony about this incident when she testified that Ms. B told her that Mr. Calhoun had expressed an interest in having a personal relationship with Complainant No. 2 and that she rejected his proposal. The friend could not remember exactly when the incident occurred, but said Ms. B told her about it immediately after it occurred. Ms. B also discussed the incident with her psychologist, whom she was initially seeing on a non-work related matter, shortly after the incident occurred. The psychologist also corroborated Ms. B's testimony.

In the weeks that followed the incident, Mr. Calhoun and Ms. B continued to have meetings to discuss the MCCR program. Ms. B testified that at one of these meetings Mr. Calhoun told her that he "got sick when he was rejected." Ms. B said that this remark upset her. At this point, she said that she decided that if Mr. Calhoun made any further unwelcome remarks to her, she would tell him that she did not appreciate them. She said that she knew, based on her sexual harassment training, that this was what she was supposed to do. The psychologist again corroborated Ms. B's statement concerning how the Director reacted to rejection, based on Ms. B's contemporaneous reporting of this event to the psychologist.

According to Ms. B, during a meeting with Mr. Calhoun in his office in mid-October 1994, Mr. Calhoun brought up his interest in having a relationship with her once again. Ms. B testified that Mr. Calhoun said, "You haven't given me an answer yet." She stated that she asked Mr. Calhoun what he was talking about, and he said, "About my being interested in you." Ms. B testified she told Mr. Calhoun that she thought she had given him an answer, and again told him she was not interested because she was already in a relationship that she did not want to jeopardize. She also said that she told Mr. Calhoun, "Please don't do this to me." After Ms. B left Mr. Calhoun's office, she remembers feeling intimidated. She testified that she thought about charging Mr. Calhoun with sexual harassment, but did not have the nerve to do it.

At this point in time, i.e., after the second incident, Ms. B clearly let the Director know that she was not interested in a personal relationship with him. By saying, "Please don't do this to me," she communicated that his advances were unwelcome and made her uncomfortable. Ms. B's testimony about this incident was once again corroborated by her psychologist, to whom she made a contemporaneous report of these events. Ms. B's contemporaneous reporting of these events were detailed in a written statement that was prepared by the psychologist. After Ms. B provided the written statement to us, we confirmed with the psychologist that he had, in fact, written it.

The relationship between Mr. Calhoun and Ms. B began to deteriorate during the next several weeks. According to Ms. B, by December 1994, Mr. Calhoun's interactions with her changed. She said their meetings to discuss the MCCR program became less frequent, and he would often not talk to her when he saw her. Ms. B's psychologist stated that she told him in January 1995 that "she sensed that rapport had broken down between herself and Mr. Calhoun." The psychologist stated that, according to Ms. B, Mr. Calhoun seemed to be withdrawing from her, and that on passing in halls and on other occasions he appeared to be glaring at her and unresponsive to her greetings. Ms. B said she believes that the change in their working relationship occurred because she rejected his offer to have a personal relationship.

We talked to four current and former Medical Center employees who had knowledge of the relationship between Mr. Calhoun and Ms. B. All four told us that they were aware of a change in that relationship. For example, one employee noted that "all of a sudden . . . nothing [Ms. B] did was right." Another employee told us that Mr. Calhoun seemed to "turn" on Ms. B. These witnesses corroborated Ms. B's testimony that her working relationship with Mr. Calhoun noticeably changed for the worse.

Mr. Calhoun denied that he ever had anything except a strictly professional relationship with the complainant. He testified that they discussed only MCCR business during their frequent meetings. He did acknowledge that he once went out for drinks with Ms. B. He testified that the reason he began to meet less frequently with Ms. B to discuss the MCCR program was that he was not pleased with her performance and "just backed off."

By January 1995, Ms. B sensed that the rapport between herself and Mr. Calhoun had broken down completely. She described an incident in which Mr. Calhoun became furious with her and shouted and cursed at her in front of other employees. Mr. Calhoun admitted to us that he does have a problem in that he does curse too much at work in front of staff. He testified that in recent months he tried to improve in this area by being less emotional and cursing less.

Ms. B said that she felt threatened by Mr. Calhoun's belligerence toward her and feared that he might actually strike her. She stated that Mr. Calhoun later apologized to her for his outburst, and then said to her, "I really miss the days when if a woman was out of line you could just slap her around."

In his written statement, the psychologist corroborated that Ms. B related to him a pattern of inappropriate behavior towards her on the part of Mr. Calhoun, to include verbal abuse, physical intimidation, and sexual harassment. The psychologist stated that Ms. B told him the Director's behavior created a work environment that made her feel frustrated and intimidated.

Ms. B said the situation became more than she could tolerate when, in February 1995, while discussing her work with Mr. Calhoun in his office, Mr. Calhoun made a sexual remark, "You have beautiful tits." She stated that she responded, "That's not what we are here to talk about." She said they completed their discussion and she left. Ms. B reported this sexual abuse to her psychologist immediately after it occurred. The psychologist's written statement to us confirmed that Ms. B contemporaneously reported the unwelcome, offensive sexual comment. Mr. Calhoun denied making the statement.

Ms. B testified that at about the time the above incident occurred, she heard from others that Mr. Calhoun was spreading rumors that she had made advances toward him. Ms. B stated, "This is clearly untrue and is nothing more than an unlawful power move on his part to humiliate and embarrass me."

Ms. B stated to her psychologist that these accumulated events were increasingly distressing to her and were placing her in a quandary. She stated that she was disillusioned by Mr. Calhoun's behavior in that he was the Director who, rather than harassing her, should have been protecting her from harassment. She stated that her concentration, attention and feelings of being imposed on, and feelings of helplessness in this situation, were impacting on her mood. She noted sleep problems, bad dreams, and flashbacks to the occasions discussed above.

Ms. B stated that sometime in early 1995, Mr. Calhoun referred to a report of a recent inspection of the MCCR Section as a "piece of shit," even though the inspection report found no problems with the Section. She said that he described the team that inspected the MCCR Section as "useless."

In early May 1995, Mr. Calhoun directed that Ms. B be removed as Chief of the MCCR Section and be reassigned to another position. The reassignment was effective June 11, 1995. The complainant said that she was assigned to a budget analyst position even though she had no experience or training for that position. Ms. B testified that she believed Mr. Calhoun directed that she be put in this position because he was "setting her up" to fail. The former Acting Chief of Human Resources corroborated the complainant's testimony by advising us that, in his opinion, she probably lacked the necessary skills to be a budget analyst. In fairness, however, according to Ms. B, the former Fiscal Chief told her that he thought she could handle the budget analyst position.

Mr. Calhoun's explanation for reassigning the complainant to a new position was her poor performance.

Mr. Calhoun testified that he wanted to reassign Ms. B from her MCCR position because, under her direction, the program was not generating as much income as it could, because Ms. B was not being effective as a supervisor, and because she was not trying to improve her performance.

We found no evidence that Ms. B's performance, or the performance of the MCCR Section, was unsatisfactory. In fact, the evidence is to the contrary. For example, on her performance appraisals covering the periods April 1993 to March 1994 and April 1994 to March 1995, Ms. B received an "exceptional" rating in the critical element of "MCCR operations." This critical element includes the standard, "insures that all phases of the MCCR Unit capture all billable cases to attain maximum reimbursement." In addition, on performance appraisals for the two rating periods, Ms. B was rated "fully successful" in the

critical element of "personnel management/supervision." Overall, for both rating periods, the complainant received a "fully successful" evaluation.

Furthermore, for fiscal years 1994 and 1995, the MCCR Section exceeded its maximum collection goal established by VA Central Office. In fact, in her April 1995 management briefing on the MCCR program, Ms. B noted that the Fayetteville VA Medical Center was one of 15 Medical Centers nationwide that was recognized at the national MCCR conference for obtaining 10-percent or more growth in collections for three consecutive years. Having met or exceeded the financial collection goals for the MCCR program, the Director's complaints about her performance appear without merit and pretextual.

With regard to the Director's allegations about Ms. B's problems as a supervisor, we talked to the employee who was executive vice president of the union at the Fayetteville VA Medical Center when Ms. B was reassigned. He told us two employees supervised by Ms. B discussed with him that they were dissatisfied with Ms. B's management style. The union official told us the two employees did not file a formal grievance against Ms. B. Despite our three requests to the union official to provide us documentation he testified he had regarding the employees' complaints, we never received it. According to the current Chief, Human Resources Management Service, no grievances were ever filed by any employee against Ms. B. While Mr. Calhoun personally met with Ms. B's two disgruntled subordinate employees, his testimony that there were "near riots down there" in Ms. B's section seems an exaggeration given that no formal grievance was ever filed. In addition, it appears that Ms. B was pressing her employees to produce more, just as Mr. Calhoun was pressing her.

Mr. Calhoun did not carefully consider a new position for the complainant.

According to the former Chief of Fiscal Service, who was in that position and was Ms. B's immediate supervisor at the time of her reassignment, Mr. Calhoun directed him to transfer Ms. B from her MCCR position. The former Chief of Fiscal Service told us that Mr. Calhoun was adamant that Ms. B be transferred and told him she could be reassigned to any other position either in Fiscal Service or elsewhere in the Medical Center. The former Chief of Fiscal Service said he was in need of a Budget Analyst so he offered her that position.

Ms. B testified that she did not believe she was qualified for the Budget Analyst position. As stated, she said she believed Mr. Calhoun was "setting her up" to fail in that position. The former Acting Chief of Human Resources Management Service, who was in that

position at the time Ms. B was reassigned to the Budget Analyst position, told us he believed Ms. B probably did not have the skills necessary for that position. He also said, however, that, as a "company man," he offered no objection to the reassignment.

Our assessment of Ms. B's work experience indicates that she was not qualified for the Budget Analyst position. Her work experience beginning in 1972 was primarily in the secretarial and clerical field. Prior to being selected as the Chief, MCCR in 1993, she participated in the Medical Center's "upward mobility" program and supervised the release of information under the Freedom of Information Act and supervised the billing clerks. We do not believe this experience provided her the knowledge required for the Budget Analyst position. As described in the position description, the Budget Analyst incumbent requires a comprehensive and detailed knowledge of budgetary policy, pertinent legislation and regulations, principles and concepts of budgeting for appropriated and revolving fund accounts, knowledge of salary forecasting and budgeting programs, and knowledge of the Medical Center's multiple and complex programs to plan, analyze, and forecast aspects of the budget. Ms. B had no experience whatsoever related to these budgetary matters.

Mr. Calhoun testified that he had directed many reassignments in the medical center when those occupying the positions were not performing satisfactorily. Here, however, it appears that his actions revealed no consideration for Ms. B as an employee or for the medical center's need to have qualified employees in all positions. At best, assuming the reassignment of Ms. B out of the MCCR was valid (and we are not persuaded it was), solving one personnel problem while simultaneously creating a new personnel problem demonstrates a lack of managerial judgment and insight.

Mr. Calhoun continued to display behavior indicating he wanted to retaliate against the complainant.

Ms. B testified that her reassignment involved a move from the main Medical Center building, where Mr. Calhoun's office was located, to another building on the grounds of the facility. She testified that one morning, several weeks after her reassignment, she encountered Mr. Calhoun as she was coming up the front steps to the main building. Ms. B said she was on her way to the canteen, which is located in that building. She testified that when she returned to her office, the former Chief of Fiscal Service told her that Mr. Calhoun had called him to ask why she was in the building and instructed him to tell her she was no longer allowed to be there. As a result, Ms. B said her work duties were changed because she was required to go to the main building on a daily basis to the agent cashier's office. About 2 weeks later, according to Ms. B, Mr. Calhoun retracted his

directive. The former Chief of Fiscal Service corroborated this incident. Mr. Calhoun, however, in yet another instance where his credibility is called into question, denied that he ever restricted Ms. B from the main building.

Mr. Calhoun's asserted problems with Ms. B's MCCR performance do not explain or justify the order to keep Ms. B out of the building. On the other hand, Ms. B's rejection of the Director's advances could serve as an explanation, although not a justification, of his order barring Ms. B from the building.

In October 1995, Ms. B accepted a position as a Medical Administrative Specialist at another VA facility. Her psychologist said she moved her family and household "at much time, expense, emotional and physical stress. Following this move she reported increased feelings of frustration, disillusionment, and victimization at the events which precipitated her move." The psychologist noted that Ms. B meets the criteria for Post Traumatic Stress Disorder "directly related to reported sexual and other harassment received on her job." At the time we interviewed Ms. B, she planned to file a lawsuit against Mr. Calhoun for sexual harassment.

We believe Ms. B's allegations of sexual harassment are substantiated, both for the quid pro quo sexual harassment and for creating a hostile work environment. The quid pro quo sexual harassment was as a result of Mr. Calhoun's retaliation against Ms. B by reassigning her to a position that she was not qualified for because she rejected his suggestions for a personal relationship. Creating a hostile and offensive work environment resulted because, in addition to his unwelcomed advances to have a personal relationship, Mr. Calhoun continued to make unwelcome and inappropriate comments of a sexual nature to Ms. B after she had clearly indicated her discomfort with such comments. We found the testimony of Ms. B to be credible in that her testimony was corroborated over and over again by the testimony of other medical center employees and her psychologist.

The actions of the Director are also troubling in that they continue to reveal a pattern of a profane, intimidating, and threatening manager. The incident with Ms. B, for which Ms. B said that Mr. Calhoun apologized, involved both profanity and anger to the point that Ms. B was concerned for her physical well being. This incident provides further support that Mr. Calhoun was inexcusably abusive toward medical center employees.

Complainant No. 3

The complainant (hereafter referred to as Complainant No. 3 or Ms. C), a staff assistant, alleged that Mr. Calhoun made unsolicited verbal comments of a sexual nature to her. Ms. C testified that, in March or April 1996, she was in Mr. Calhoun's office discussing a business related matter, when he told her he had a dream about her the previous night. According to Ms. C, Mr. Calhoun told her, "I dreamt that I went to bed with you." Ms. C told us she tried to take the remark as a joke, but that after she laughed, Mr. Calhoun told her, "It could be worth your while." Ms. C testified that she told Mr. Calhoun she was not at all interested and would never do that. However, according to the complainant, Mr. Calhoun brought up the subject of his "dream" again on a subsequent occasion. She said there were no witnesses to the remarks on either occasion.

Ms. C also testified that around the end of April 1996, just prior to a visit she made to see her boyfriend, Mr. Calhoun made a derogatory remark to her about the boyfriend and then told her that he [Mr. Calhoun] "could take care" of her. Ms. C said Mr. Calhoun again told her, "It could be worth your while." She said that, again, there were no witnesses to this remark. Ms. C did not file sexual harassment charges against Mr. Calhoun at the time he made the remarks to her, but told us she was planning to file a sexual harassment lawsuit against him.

Mr. Calhoun denied that he made any of the above comments to Ms. C. He said he knew Ms. C for over 10 years (she was his secretary when he was Associate Director at the Buffalo Medical Center), and he would not have waited that long to make a sexual advance towards her. He suggested that Ms. C was angry at him because he transferred her out of her previous position, and that she had falsely made the accusations in revenge.

We were not able to substantiate the allegations of sexual harassment against Complainant No. 3 because, in this case, it was her word against his. Unlike Complainant No. 2, there was no independent corroboration. On the other hand, the allegations fit a pattern of behavior alleged against the Director by both of the other complainants. In addition, as discussed in the next section, Mr. Calhoun's credibility is lacking. Finally, it is worth noting that Mr. Calhoun's own statement indicates he does not consider sexual advances toward subordinate females inappropriate. He never said that such a sexual advance was in any way inappropriate; rather, he indicated that he would not have waited so long to make such an advance.

Like Ms. A and Ms. B, Ms. C alleged that Mr. Calhoun behaved inappropriately towards her in addition to allegedly making sexual remarks. Ms. C related to us instances in which Mr. Calhoun shouted and cursed at her, threatened her position and pay, and made unreasonable demands of her. For example, Ms. C stated that when Mr. Calhoun wanted to reassign her from her position as his GS-8 secretary to a GS-7 position, he told her that if she did not sign the statement voluntarily requesting the reassignment, she would be a GS-3 by the time he was finished with her. On another occasion, after her reassignment, Ms. C stated that Mr. Calhoun called her into his office and angrily accused her of being a bigot, lying to him, and stabbing him in the back. She said he told her he never wanted her to speak to him again and then demanded that she leave his office. Ms. C told us that she feared he was going to hit her.

Ms. C said she believed that the root of most of her problems with Mr. Calhoun was that he was having an affair with another secretary who worked in the Director's office, and that secretary would use her relationship with Mr. Calhoun to undermine Ms. C. As a result, Ms. C and the other secretary openly argued on a frequent basis, to the point of disrupting the office. The Associate Director said that the arguing, would at times, get loud and out of control. On one occasion, she said she closed her door and just let them fight it out.

Ms. C told us that Mr. Calhoun acknowledged to her that he was having the affair. When we interviewed Mr. Calhoun, he denied having such an affair.

Credibility Determination

As in virtually all cases involving sexual harassment, the testimony of the complainants and the alleged harasser are conflicting on most of the significant events. In this case, Mr. Calhoun denied making certain statements. Therefore, in order to make a determination about the truth or falsity of the statements made, we are sometimes required to make determinations about the credibility of the parties involved. For the reasons that follow, we gave credence to the testimony of Complainant No. 2 regarding events described, rather than to the Director's denials.

For example, several factors were critical in our determination that Ms. B's testimony was credible and the Director's was not. First, Ms. B's testimony and her allegations were consistently buttressed and supported by independent corroboration from numerous sources. On the other hand, the Director's credibility was severely damaged because his version of several events was contradicted by a variety of sources. Finally, our inquiry

reveals that there is a pattern to the allegations of sexual harassment by the Director (as well as a pattern of abusive, hostile behavior toward employees at the VA Medical Center). The behavior patterns demonstrated by the Director provide considerable support for the complainant's assertions.

With regard to the corroborating testimony of other witnesses, we recognize that in some cases, such as the friend in whom Ms. B confided and the psychologist to whom Ms. B relayed the events as they occurred, the corroborating witnesses do not have first hand knowledge of the events in question, but instead are repeating what Ms. B told them about the events. Nonetheless, the corroborating evidence is persuasive. Both the friend and the psychologist advised us that Ms. B's statements to them about the Director's remarks and behavior were immediate, or contemporaneous, with the actual events. It strains credulity to believe that Ms. B falsified all of the information that she provided to other individuals with an eye toward eventually bringing wholly fabricated accusations against the Director.

Ms. B's credibility is especially enhanced by the testimony of the other witnesses with direct knowledge of events. For example, four witnesses testified that, after the Director's expressions of interest in Ms. B, the professional relationship between the two deteriorated, just as Ms. B said it did. Three of the four witnesses indicated that they personally observed a change in the behavior of the Director as compared to his prior behavior toward her. In addition, the former Acting Chief of Human Resources independently confirmed Ms. B's assertion that she did not have certain skills that were necessary for a budget analyst.

The Director's credibility, on the other hand, is damaged by evidence supplied by witnesses with direct knowledge of events that completely contradicts his statements. For example, the former Fiscal Chief testified that the Director banned Ms. B from the building in which the Director worked. While the Director denied this, the resulting actions taken by the Fiscal Chief, i.e., immediately telling Ms. B about the order and having her restructure her duties to comply with the Director's order shortly after it was made, all support the credibility of Ms. B at the expense of the credibility of the Director. As discussed previously in the section dealing with Complainant No. 1, the Director denied a particular statement when an independent witness testified that she heard the remark.

In addition, the Director's testimony about his reasons for reassigning the complainant, i.e., for her poor performance, are directly contradicted by substantial documentary evidence, including her performance appraisals, the external review of the MCCR program and, most notably, the recognition of the accomplishments of the MCCR program under her leadership.

With regard to Complainant No. 1, the Director initially told us he could not recall that he threatened to tell the Associate Director and Chief of Staff about what happened to the complainant when she got "upset." When told that the Associate Director corroborated Ms. A's statements, the Director did not challenge the Associate Director's recollection. While Mr. Calhoun acknowledged to making some sort of statement along the lines of the allegation, he denied ever using the words "breasts" or "nipple." He did, however, admit to making the threat with the intent of getting Ms. A to leave the room.

In short, the pattern of denials by the Director, in the face of credible, contrary testimony, makes the Director's credibility suspect. Just as important, Ms. B's credibility was enhanced and supported by both independent witnesses with direct knowledge of events as well as by her own contemporaneous statements to several witnesses over many months, all of which support her independent testimony. To believe the Director, one would have to conclude that there was widespread conspiracy of many individuals, all of whom were lying, under oath, in their testimony to us. There is evidence that tends to disprove the Director's denials with respect to the first and second complainants.

With respect to Complainant No. 3 and Mr. Calhoun, a credibility determination was more difficult. For example, Mr. Calhoun said that, when Ms. C worked for him at the Buffalo Medical Center, he did not want to keep her as his secretary because he considered her incompetent, but the Director would not agree to a change. Yet, Mr. Calhoun then hired Ms. C to be his secretary at the Fayetteville Medical Center and paid permanent change of station money to move her to North Carolina. Mr. Calhoun's actions and statements concerning Ms. C appear inconsistent.

Ms. C, on the other hand, was extremely bitter about the way her life worked out after she left Buffalo to go to Fayetteville. She said she felt betrayed and she was very upset toward Mr. Calhoun for the favoritism that he had shown the Associate Director's secretary over her. The depth of her emotions toward Mr. Calhoun suggests that it may have been a personal, and not just a professional relationship, that did not work out. This was partially supported by the fact that Mr. Calhoun admitted that he did household repairs for Ms. C at her home and gave her a key to his house. Ms. C said that Mr. Calhoun was like a brother to her when they worked together in Buffalo.

Conclusion

Mr. Calhoun's statements to Ms. A constitute inappropriate, abusive language on his part. Mr. Calhoun made deliberate, offensive comments of a sexual nature to Ms. A. However, because Ms. A may have opened the door to such language, we were unable to conclude that the remarks contributed to an intimidating, hostile, and offensive working environment. He was aware that Ms. A found the comments unwelcome. Due to the stress that resulted from the overall abuse by Mr. Calhoun, Ms. A removed herself from the workplace. Some of the comments Mr. Calhoun made to her were witnessed by others, and Mr. Calhoun acknowledged that he said some of the offensive remarks. He also admitted to being loud, emotional, and profane.

Regarding Complainant No. 2, Mr. Calhoun made an unwelcome sexual advance towards her, even after she refused his initial advance. After Ms. B refused his advances, Mr. Calhoun changed the conditions of their working relationship and reassigned her from her position. We found no persuasive work-related reason for Mr. Calhoun to have reassigned Ms. B. His explanation, that she was not performing well, is not supported by her annual appraisals or by statistical evidence of her program's performance. Mr. Calhoun's directive that Ms. B not enter the main Medical Center building, where his office was located, further suggests that his motive in reassigning her was personal, not professional. We concluded that Mr. Calhoun's actions constituted "quid pro quo" sexual harassment. We also concluded that Mr. Calhoun created a hostile work environment for Ms. B through continued intimidating, inappropriate and unwelcome comments of a sexual nature. We believe that Mr. Calhoun's harassment of Ms. B effectively ended her career at the Fayetteville Medical Center and resulted in her having to move at her own expense to another VA facility.

In addition to the sexual harassment, the Director's actions with respect to Ms. B evidence poor judgment, deficient management actions, and abuse of authority. It seems that Mr. Calhoun created an intimidating atmosphere and made decisions contrary to the best interests of Ms. B and the medical center.

While we were unable to substantiate the allegations of sexual harassment with regard to Mr. Calhoun and Ms. C, we cannot dismiss Ms. C's allegations as false. Given the Director's lack of credibility with regard to the other allegations of sexual harassment, we believe that there is a possibility that this complainant may have been sexually harassed, but we could not make a definitive determination based on the lack of independent, corroborative evidence. We did find that Mr. Calhoun was abusive in his treatment of

Ms. C, and he often displayed loud, emotional, and intimidating behavior. Further, he allowed a tense and disruptive office environment involving Ms. C and another secretary that he allegedly favored, to continue unabated.

Recommendation:

The VISN 6 Network Director should take appropriate administrative action against Mr. Calhoun for the misconduct and abuse of authority, as detailed in this report.

VISN 6 Network Director's Comments

The Network Director concurred with our findings and recommendation. He told us he met with his Regional Counsel and with the Chief Network Officer, and was in the process of finalizing a plan of action to implement the recommendation. The Network Director's comments are in the appendix to this report.

Office of Inspector General Comments

We will review the Network Director's plan of action to ensure it is responsive to our recommendation and follow up on that plan until the issue is resolved.

VISN 6, NETWORK DIRECTOR COMMENTS

Department of
Veterans Affairs

Memorandum

Date: October 18, 1996

To: Network Director, VISN 6

From: Special Inquiry, Alleged Sexual Harassment by the Director, VA Medical Center, Fayetteville, North Carolina, Draft Report (68V-22a)

Director, Hotline and Special Inquiries Division

1. I have reviewed the above-entitled draft report and concur with the findings and recommendations. I have recently met with the Chief Network Officer and my Regional Counsel to review the document and formulate a plan of action. I have another meeting scheduled with Regional Counsel next week to finalize our plan and prepare documents for Headquarters. I will be better able, following that meeting, to provide you with my plan to implement the recommendations contained in this report.
2. I trust that my previous correspondence to you will allow you to adequately address the issues raised by Senator Lauch Faircloth. Please contact me or Ann Patterson, should you need additional information.
3. I hope to provide you with a plan of action by October 25, 1996. Thank you and your staff for your review of this matter.



Leroy P. Gross, M.D., M.P.H.

VAHQ-V 2105
FORM 1000

**Department of
Veterans Affairs****Memorandum****September 28, 1996**

TO: Medical Center Director (609/00)
DATE: Network-6 Special Inquiry Report
BY: Leroy P. Gross, M.D.
Director, VISN 6
Department of Veterans Affairs
300 Morgan Street, Suite 1402
Durham, N.C. 27701

1. The attached Network 6 Special Inquiry Report regarding management effectiveness at VA Medical Center, Fayetteville, N.C., is submitted per your request.
2. If I may be of any further assistance, please contact me at (706) 823-2201.


David Whalley
Medical Center Director
VA Medical Center
1 Freedom Way
Augusta, Georgia 30904-6285

Attachment

**NETWORK 6 SPECIAL INQUIRY
MANAGEMENT EFFECTIVENESS, VAMC FAYETTEVILLE, N.C.
JUNE 17-20, 1996**

WARNING - Privacy Act Statement: This final report contains information subject to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of information contained in this report of the investigation or any part thereof should be coordinated with the Department of Veterans Affairs, Veterans Health Administration, Network 6. The contents of this report must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.

I. INTRODUCTION

A. The Director

Jerome Calhoun was assigned as Director of the Fayetteville, N.C. VA Medical Center in April 1994. His appointment followed assignments as Associate Director, VAMC, Buffalo, N.Y., Health Systems Specialist, VA Headquarters and Associate Director, VAMC, Lake City, FL.

B. The Medical Center

The VA Medical Center, Fayetteville, N.C., operates 171 hospital beds and a 39 bed Nursing Home Care Unit. Operating beds include a 25 bed substance abuse treatment unit (temporarily closed) and a satellite hemodialysis unit. Services include ambulatory surgery, a mental health unit, and a medical/surgical intensive care unit. A community nursing home program facilitates the outplacement of long-term care patients. Extended care programs include residential care, respite care, a geriatric evaluation and management (GEM) unit, hospice care and a preventive health program. There are approximately 163,905 veterans in Fayetteville's primary service area. Approximately 55% of the veterans who receive care from this facility have service-connected disabilities. Outpatient visits totaled 111,555 in FY 1995. The ambulatory care programs were enhanced by the activation of an 87,000 SF clinical addition in late 1987.

The VA Medical Center has a sharing agreement with Womack Army Medical Center which provides Fayetteville VAMC with ambulance services, backup CT scanning, backup mammography examinations, major surgical gynecology procedures, backup blood supply, aural rehabilitation therapy, ambulatory rehabilitation medical services, backup vascular radiology services and vascular surgery consultation and procedures. This medical center provides nuclear medicine studies, blood support, lab testing, speech-language testing, EKG, EEG, medical and surgical consultation, psychiatric services, alcohol rehabilitation and

2. Network 6 Special Inquiry, VAMC, Fayetteville, N.C.

cardiology services. An orthopedic and surgery sharing agreement exists with Womack Army Medical Center that allows the military to use VAMC operating rooms and support staff. Also, Womack Army Medical Center shares the jointly owned MRI study equipment located at Ft. Bragg.

Fayetteville VA Medical Center also has sharing agreements with Pope AFB Medical Clinic, under which VA provides physical therapy, endoscopy examinations, treadmill testing, holter monitoring, and surgical consultants.

The dental school affiliation is well-developed, providing rotation for dental students and resident training in general dentistry and oral surgery. The school of pharmacy rotates students for clinical clerkships.

In addition, there is a Type B affiliation agreement with Duke University Department of Ophthalmology. There is also an affiliation with Fayetteville Area Health Education Center for the rotation of family practice residents for surgery and cardiology training. Additional affiliations exist in various allied health areas including nursing and speech pathology.

II. BACKGROUND

A recent series of allegations and complaints by several present and former employees to the Network Director, Network Clinical Manager and Network Staff resulted in this visit to the Fayetteville VA Medical Center on June 17-20, 1996.

These allegations centered around leadership effectiveness of the Director, inappropriate remarks to various staff, use of abusive and vulgar language in various forums and its resultant impact upon managerial and supervisory relationships.

III. METHODOLOGY

The reviewer conducted interviews with selected current and former senior management officials and other employees and former employees at all levels within the Medical Center. An interview was also held with the Superintendent, Board of Education, Fayetteville. The reviewer contacted the offices of the Mayor of Fayetteville and the Chancellor, Fayetteville State University, in an effort to solicit their input. However, these efforts were unsuccessful. Interviews were also held with Veteran Service Officers (VSO), volunteers, as well as, Network 6 staff. The Director was provided an opportunity during the review to provide names of individuals whom he wished to have interviewed. No discussions/conversations were tape recorded.

3. Network 6 Special Inquiry, VAMC, Fayetteville, N.C.

IV. FINDINGS

Based upon a tour of the Medical Center with Mr. Calhoun, my interactions and conversations with senior management staff/staff in general, VSOs, volunteers and community stakeholders, it was clear that many improvements have been made at the Fayetteville VA Medical Center since Mr. Calhoun's appointment as Director. For example, the implementation of primary care, renovation/updating patient care areas, enhancing relationships with Womack Army Hospital and establishing an effective relationship with the local middle and senior High Schools whereby Partnerships have been established with students. Another example, of positive changes that have occurred during Mr. Calhoun's tenure, is an internal reorganizational effort that is consistent with changes that are occurring nationally in VHA.

It was clear during the visit that there are three "Camps" within the Medical Center; those that are staunch supporters of Mr. Calhoun, those that are adamantly against him and those that try to be neutral and objective.

The allegations and concerns that had previously been brought to the attention of the Network Director about Mr. Calhoun resurfaced during this visit. These included: consistently using profanity in forums which included key staff, openly embarrassing key staff in the presence of peers, using racial epithets, threatening staff ("to fire" or "shoot them"), harassing various female employees, including his present and previous secretaries, and showing favoritism toward certain staff by promoting them. Over 62% of the individuals interviewed expressed a lack of respect, trust or confidence in Mr. Calhoun as Director and do not feel comfortable in his presence. This group felt his management style has adversely impacted morale and divided staff.

Mr. Calhoun admitted that he, in the past, had used profane language, but, had improved his behavior in this respect. He also indicated that he had made comments to staff that he would "shoot" them but it was not meant as a threat; it was just a "metaphor".

V. CONCLUSIONS

As discussed in the findings section of this report, Mr. Calhoun initiated several programs and changes that will add value to the Medical Center as a whole thus adding value to patient care. Also discussed were the concerns/allegations raised by the staff, some admitted by Mr. Calhoun.

ENCLOSURE 3



DEPARTMENT OF VETERANS AFFAIRS
 VETERANS INTEGRATED SERVICE NETWORK SIX
 Durham Centre
 300 West Morgan Street, Suite 1402
 Durham, N.C. 27701

October 25, 1996

In Reply Refer To:

10N6

Jerome Calhoun
 Durham Education Center
 311 W. Main St.
 Durham, NC 27701

SUBJ: Proposed Removal

1. This is to notify you that it is proposed to remove you from the Senior Executive Service and the Federal Service. This action is based on misconduct. The charges for which this action is proposed are as follows:

I. While talking to Judy Dawkins, your secretary, and Susan Caruana, Medical Service Staff Assistant (and your former secretary), around March 1996, you remarked that "there was something very interesting about Ms. Dawkins - Her nipples got hard when she was anxious," or words to that effect. Ms. Dawkins was offended by the disrespectful comment. You knew or should have known that this act could be interpreted as harassment, disrespectful and/or unprofessional conduct. Your actions in this matter constitute a violation of 5 CFR Section 735.203, which prohibits an employee from engaging in "criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government."

II. Around April 1996, Judy Dawkins, your secretary, entered a conference room where you were meeting with the Associate Director and Chief of Staff. Ms. Dawkins commented that she was drowning in work and urgently needed additional clerical help. You responded to Ms. Dawkins, "you know what happens to you when you get upset. Do you want me to tell [the Chief of staff and the Associate Director] what happens when you get upset," or words to that effect. Ms. Dawkins felt that you were referring to her breasts (see Charge I herein), and she was offended by the disrespectful remark. In the testimony that you gave to the Inspector General's Office, you admitted making the comment as a way of telling Ms. Dawkins to "get out of here" (I.G. Trans. 8.0 p.103). You knew or should have known that this comment could have been interpreted as harassment, disrespectful and/or unprofessional conduct. Your actions in this matter constitute a violation of 5 CFR Section 735.203, which prohibits an employee from engaging in "criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government."

INTRODUCTION: Around September 1994, you expressed interest in having a personal relationship with Cynthia Force, your former Medical Cost Care Recovery ("MCCR") Coordinator. Ms. Force responded that she was already in a relationship with someone and did not want to jeopardize it. A few weeks later you commented to Ms. Force that you "got sick when [you were] rejected," or words to that effect. In mid-October 1994, you stated to Ms. Force that "you haven't given me an answer yet: ... about my being interested in you," or words to that effect. Ms. Force again explained that she was not interested, and she added, "please don't do this to me," or words to that effect. By December 1994, your working relationship with Ms. Force began to deteriorate. Charges III-VI are incorporated herein by reference.

III. In January 1995, you shouted and cursed at Cynthia Force in front of other employees. Later, you stated to Ms. Force, "I really miss the days when if a woman was out of line you could just slap her around," or words to that effect. You knew or should have known that your conduct had the effect of creating an intimidating, hostile, or offensive working environment, which is a form of sexual harassment identified at 29 CFR Section 1604.11(a)(3).

IV. In February 1995, while discussing Cynthia Force's work in your office you remarked, "you have beautiful tits," or words to that effect. Ms. Force, again, rejected your advance. You knew or should have known that your conduct had the effect of creating an intimidating, hostile, or offensive working environment, which is a form of sexual harassment, identified at 29 CFR Section 1604.11(a)(3).

V. In May 1995, you directed that Cynthia Force be reassigned out of the MCCR Coordinator position. Ms. Force was assigned into a Budget Analyst position, even though she lacked the necessary training and experience for that job. Ms. Force's prior rejections of your sexual remarks/advances were used by you as a basis for your decision to remove Ms. Force from her MCCR position; your conduct constituted sexual harassment identified at 29 CFR Section 1604.11(a)(2).

VI. The reassignment of Cynthia Force into the Budget Analyst position involved a move from the main Medical Center building where your office is located to another building. Several weeks after the reassignment, you encountered Ms. Force coming up the front stairs to the main building. Upon returning to her office, Ms. Force was told by the Chief Fiscal Service, that you had called him and stated that Ms. Force was not longer allowed in the main building. Ms. Force's prior rejections of your sexual remarks/advances were used by you as a basis for your decision to ban Ms. Force from the main Medical Center Building; your conduct constitutes sexual harassment identified at 29 CFR Section 1604.11(a)(2).

VII. In September 1995, Susan Caruana, your former secretary, accepted a change to a lower graded position out of fear of being fired. In October 1995, you and Ms. Caruana discussed

the possibility of her returning as your secretary, and you specifically discussed a list of requests made by Ms. Caruana. In explaining to the Inspector General's Office your handwritten notes on the list of requests, you admitted to "hollering" at Ms. Caruana for performance-related matters (IG. Tran. 8.0 p. 38). You knew or should have known that hollering at subordinates constitutes disrespectful conduct, which is particularly unbecoming of a VA Medical Center Director.

2. You have the right to reply to this notice orally, or in writing, or both orally and in writing, and to submit affidavits in support of your reply, showing why this notice is inaccurate and any other reasons why your removal should not be effected. You will be allowed eight (8) hours of official duty time for reviewing the evidence relied on to support the reasons in this notice, preparing a written reply, securing affidavits, and making a personal reply. Arrangements for the use of official time or requests for additional time should be made with me. You have the right to be represented by an attorney or other representative.

3. You will be given until close of business on November 8, 1996, to reply to these reasons orally, in writing, or both orally and in writing. The evidence on which this notice of proposed action is based is attached. Your written reply should be submitted through me to the Chief Network Officer. The Chief Network Officer will receive your oral reply or will designate an official or officials to receive it. If you wish to make an oral response, you may contact Caren Eirkson, Executive Personnel, at (202) 273-4937, to make arrangements for an appointment with the Chief Network Officer or his designated official. If you do not understand the above reasons why your removal is proposed, you may contact Caren Eirkson or me for a further explanation.

4. The final decision to effect the action proposed has not been made. The Chief Network Officer, who will make the final decision, will give full and impartial consideration to your reply, if a reply is submitted.

5. Senior Executive Service (SES) members, because of their greater responsibilities, have a significant impact on agency programs and public image. Consequently, offenses by them are considered more serious and would normally warrant the imposition of a more severe penalty. Regulations for adverse actions in the SES provide for only two actions, removal and suspension for more than fourteen (14) days. Removal means removal from the federal service. A SES appointee removed for disciplinary reasons has no entitlement to placement in a position outside the SES, and an agency has no authority to move the appointee directly to a non-SES position. Following the action removing the appointed from the federal service, however a separate action to reappoint the individual to a position outside the SES may be taken. I consider the gravity of your misconduct as very serious, warranting adverse action. It is important to me that you understand the limitations regarding adverse actions under SES so that you can make a fully informed response.

6. If it is the decision of the Chief Network Officer that you be removed, your removal will be effective not less than thirty (30) calendar days from the day after the date of receipt of this notice.
7. You will be given a written decision as soon as possible after your reply has had full consideration, or after the close of business November 8, if you do not reply.
8. You will be retained in an active duty status during the advance notice period.



LEROY P. GROSS, MD, MPH
Network Director, VISON 6

I ACKNOWLEDGE RECEIPT OF THE ORIGINAL
AND ONE COPY OF THIS LETTER

 28 OCTOBER 1996
SIGNATURE DATE

ENCLOSURE 4



DEPARTMENT OF VETERANS AFFAIRS
 VETERANS INTEGRATED SERVICE NETWORK SIX
 Durham Centre
 300 West Morgan Street, Suite 1402
 Durham, N.C. 27701

December 6, 1996

In Reply Refer To: 10N6

Mr. Jerome Calhoun
 VA Medical Center
 2300 Ramsey Street
 Fayetteville, NC 28301

Subj: Rescission of Proposed Adverse Action

The letter of proposed adverse action issued to you, dated October 24, 1996, is hereby rescinded. The letter was issued to you prior to the completion of the evidence file. I apologize for any inconvenience.

A new letter of proposed adverse action and charges is being prepared, and will be issued to you in the near future. You will have 15 calendar days from receipt of the proposed action to provide an oral and/or written reply to the charges against you.

I have no desire to pursue a more lengthy formal action. If possible, I would rather resolve this matter informally. Thus, in the interim, while the letter of proposed adverse action and evidence file are being finalized, you may present me with any offer you may have to resolve this matter informally. Formal action will bring further embarrassment to you, the Fayetteville Medical Center, and to the Department of Veterans Affairs.

I will delay the issuance of the new letter of proposed adverse action for a period not to exceed 14 calendar days from the day you receive this letter to allow you an opportunity to submit a proposed informal resolution of this matter. If no reasonable offer is submitted by you within the specified time period, I will have no alternative but to initiate formal action against you.

Leroy P. Gross, MD, MPH

I ACKNOWLEDGE RECEIPT OF THE ORIGINAL AND ONE COPY OF THIS LETTER.

Signature

6-DEC 1996
Date

Today's News *From the pages of the St. Petersburg Times*

The Front Page VA's "zero tolerance" questioned

Metro & State By DAVID DAHL

Business ©St. Petersburg Times, published April 14, 1997

Sports WASHINGTON - The doctor from the Department of Veterans Affairs hospital in Maine had more than medicine on his mind.

Editorials & Letters

Local Editions When he went on a business trip with a VA nurse to Chicago, he insisted he get a hotel room next to hers. That night, he asked her to visit the Sears Tower and then asked her to visit his room. He later said her husband should be flattered he had some competition.

Floridian Sections

Classified Jobs "I really love you and have felt awful but haven't been able to stop myself from acting this way," he told the nurse.

To Serve

Vote She rebuffed him. He responded by denigrating her publicly and complaining about her to higher-ups.

Weather

Area Guide Sexual harassment? A federal jury in January said the doctor's behavior had created a hostile workplace and recommended a \$375,000 award.

Email Connections

Guest Books

The punishment? Despite the VA's "zero tolerance" policy against sexual harassment, the doctor, Nikhil Pathak, received a one-week suspension and was allowed to keep his job and \$123,161-a-year salary, according to records and a VA spokesman. The nurse has been transferred to another VA job and awaits a judge's ruling on the jury recommendation.

"The way they handled it was to punish the victim," said Kathy Lyons, the nurse who filed suit. "I was a dialysis nurse for 20 years and because of something he did . . . I was forced to leave a profession."

The Pathak jury decision is one of three sexual harassment cases to surface in the VA in recent weeks as members of Congress, women inside the department and their attorneys begin to critique Veterans

Secretary Jesse Brown's assurances that he will not tolerate harassment.

On Thursday, a House Veterans Affairs Subcommittee is to hold the first of two congressional hearings into Brown's "zero tolerance" policy. A Senate hearing set for April 9 has been postponed because of scheduling conflicts.

To prove his tough stance, Brown has stated that 12 VA managers have been fired or demoted for harassment since 1992. In practice, though, the policy is not nearly as clear-cut.

One of those 12 punished managers cited by Brown was Jerome Calhoun, who harassed a woman at a North Carolina VA hospital and spoke offensively to two others. Calhoun lost his job as the Fayetteville, N.C., hospital director but he was allowed to keep a \$106,000-a-year salary and landed a specially created job at Bay Pines VA Medical Center.

The Calhoun case generated considerable controversy in the VA, and the department is searching for ways to strengthen its harassment and personnel policies. VA officials would like to strengthen their hand in dealing with problem employees so they can fire them more promptly. The department also wants to keep better track of harassment cases that otherwise are handled quietly in the VA's sprawling bureaucracy.

"We are reviewing ways to improve it," said VA spokeswoman Linda Stalvey. "Obviously, we're aware of the fact that it needs strengthening."

As the hearings approach, the Times has uncovered new details about the Calhoun case, and learned that investigations are ongoing into still other harassment accusations among the 200,000 or so VA employees:

The director and associate director at the VA Medical Center in Salem, Va., have been reassigned temporarily after trading accusations. An internal memo says a review was under way into "allegations of sexual harassment and other improper behavior."

The VA report and its conclusions have not been made public.

The dispute began this year after the Salem hospital's

associate director, William Delamater, began fielding employees' complaints about the hospital's director, John Presley, according to VA memos.

Presley got wind of Delamater's inquiries and put him on leave in February, according to a VA account. Within a few weeks, Presley's boss - the head of the VA's regional network office - put both the director and the associate director on leave and later transferred them to other postings for a month.

Presley, a 27-year federal employee, has been director of Salem's hospital for five years and earns \$117,282 a year. Delamater, also a 27-year employee, is paid \$89,164.

In Togus, Maine, Dr. Pathak remains in charge of the VA hospital's dialysis program after receiving a one-week suspension for harassing Lyons.

A federal jury found in her favor in January, ruling the VA was responsible for "creation of a hostile or abusive work environment" and recommended a \$375,000 award to Lyons. The award is still tied up in legal wrangling.

Pathak's lawyer, Alton Stevens of Waterville, Maine, said he's not convinced that sexual harassment even occurred in the first place. The VA hospital's spokesman, Jim Simpson, said the punishment fit the offense.

"We took what we believe to be appropriate and reasonable action in the case," Simpson said, action that was "supported by the circumstances of the case."

Lyons' lawyers complain that the VA is now using a legal strategy to protect Dr. Pathak from a pending lawsuit she has filed against him.

At Bay Pines VA Medical Center, new details have emerged in two sexual harassment cases that have drawn negative publicity to the hospital on Boca Ciega Bay.

Calhoun, the former Fayetteville, N.C., hospital director, was re-assigned in September and transferred to Bay Pines in January. The VA has released an inspector general investigative report that found he had harassed one woman and verbally abused two others at

Fayetteville.

Now, another investigative report, released to the Times under the Freedom of Information Act, shows that Calhoun's use of profanity and other offensive behavior was more widespread than previously thought. More than 60 percent of the VA employees interviewed in June "expressed a lack of respect, trust or confidence" in Calhoun and "do not feel comfortable in his presence."

"The allegations and concerns that had previously been brought to the attention of the network director about Mr. Calhoun resurfaced during this visit," reviewer David Whatley wrote after visiting the Fayetteville hospital in June. "These included: consistently using profanity in forums which included key staff, openly embarrassing key staff in the presence of peers, using racial epithets threatening present and previous secretaries, and showing favoritism toward certain staff by promoting them."

Calhoun now works as a health systems specialist at Bay Pines.

In a second incident involving Bay Pines, a lawsuit was filed last month by Pinellas County resident Carla Croft in U.S. District Court in Tampa, alleging that Dr. Farid Karam kissed her and pinched her breast while she was a patient at Bay Pines in 1994.

Karam has denied the charges. The VA investigated the claim twice, in both cases finding insufficient evidence to support it.

From documents obtained recently under the Freedom of Information Act, the Times learned that Karam was investigated again later that year, this time for allegations brought by two Bay Pines nurses.

One claimed Karam approached her from behind, kissed her neck and touched her breast. Although told to stop, the doctor did the same thing the next day, she charged.

The second nurse reported a similar episode, and also said Karam repeated his actions despite her objections.

In his sworn testimony, Karam denied the allegations.

About one of the cases, he testified: "... if I did this I really don't remember it, but I question really that I have done anything like this as far as kissing her or grabbing her, maybe putting my hand on her back or something, on her shoulder or something, could be. I mean, I tell you I don't remember kissing ... I mean I never really tried to grab her or kiss her or do something like this. I don't remember, I honestly do not remember."

Carla Croft's lawsuit does not target Dr. Karam personally, but accuses the VA of negligently hiring, supervising and retaining him.

On March 30, 1994, the suit alleges, Croft went to Bay Pines to be examined by Karam. When the examination was complete, the suit says, "he (Karam) bent forward, kissed her on the mouth, and told her she was doing well."

Croft did not respond, the suit states, but as she began to leave the room "Dr. Karam walked next to her, turned to her, pinched the left nipple of her breast, and then said he wanted to see her."

Karam, an ear, nose and throat surgeon at the medical center, called the allegations lies. - Times staff writer David Ballingrud contributed to this report.

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STATEMENT OF CYNTHIA A. FORCE

I, Cynthia A. Force, do hereby under the penalty of perjury state as follows:

1. I am currently employed at the VA Medical Center, Durham, North Carolina. Prior to being forced to relocate/transfer to my current position, I had been assigned to work at the VA Medical Center, Fayetteville, North Carolina (FVAMC). I worked as a Budget Analyst after being forced to ask for reassignment from my position as Chief of the Medical Care Cost Recovery Program (MCCR). For the relevant time period which I was employed at the VA Medical Center, Fayetteville, Mr. Jerome Calhoun served as Director of this Medical Center. I, however, worked under the direct supervision of the Chief, Fiscal Service, Mr. James Crocker. It was Jerome Calhoun's unlawful behavior that forced me to leave the Fayetteville VA Medical Center where I had worked for 23 years.

2. My position as Chief, MCCR was very important to the financial viability of the Fayetteville facility. The MCCR program was also of great interest to the Director. I took my job very seriously, gave 100% of my efforts towards that job and would not put up with any kind of behavior that would jeopardize the smooth workings of the program.

3. Shortly after his arrival at the FVAMC, Mr. Calhoun began meeting with me to discuss the MCCR Program. He made it clear that he held me entirely responsible for the program and planned to meet with me often. Almost immediately he began interrogating me about the behavior of other employees at the facility, most notably Mr. Crocker. During meetings in his office he would make statements that were very uncomfortable, i.e., "Jim Crocker has to go....I don't like him.....He is fighting me.....He knew how important MCCR is to me and he has done nothing to improve the program." This demonstrated to me that he singled out an employee and was trying to secure information on that employee solely for the purpose of terminating him. I had confidence in Mr. Crocker's abilities as the Fiscal Officer and admired the professional way he treated Mr. Calhoun in the face of Mr. Calhoun's irrational and tyrannical behavior towards Mr. Crocker.

4. Shortly after my divorce in August, 1994, Mr. Calhoun stated to me that "was interested in me". I took this to mean a personal interest and not just an interest in my work. Mr. Calhoun and I had an easy going relationship; we would laugh and joke, as he often did with those that he liked. I can't say that his behavior with staff was ever professional; either you were his buddy or his enemy, few fell in the middle. He had a reputation for being a womanizer and would often drape his arm around a woman's shoulder as they talked. For these reasons, I took this to mean a personal interest. I responded that I was in a relationship and did not want to jeopardize the relationship. I would have assumed that had he not meant a personal relationship, he would have immediately corrected this misassumption. He did not and replied, "well think about it". I left his office.

5. During our conversations he would often talk with me about the problems he was having at that facility. He felt as though everyone was fighting him because he was Black. At one such meeting he stated that he becomes sick when he gets rejected. This made me very nervous but I tried hard to deny that this applied to me and my rejection of his advances. I just did not want to believe that my trust in this person was inappropriate. At that time, I did trust him. He had great insight and vision for the Medical Center and I was one of his "few" staunch supporters.

6. A few weeks later, we were again meeting about the program. As I was leaving the office, he stated, "you haven't answered my question". I asked, "what question" and he stated, "about my interest in you". I answered, "I thought I did answer you. I told you that I was in a relationship and I did not want to jeopardize it....please don't do this to me". I left the office and prayed that would be the end of it.

7. The professional, working relationship started to fall apart shortly thereafter. He began his rampage against me, designed to break me down and put me out on the street. He was successful in that I had to transfer to another facility in order to get away from him. On one occasion he became so furious that I was afraid that he might strike me. He screamed and cursed at me, left the office, came back and started again. This incident was witnessed by my supervisor, Mr. Crocker, and his secretary, Mrs. Caruana. The Associate Director, Mr. Thomas Arnold, was also in his office at the time, I believe. He later apologized to me and stated that he really missed the days when if a woman got out of line, you could just slap her around. I believe that he could have struck me without any notice whatsoever.

8. On or about the 23rd of February, 1995, Mr. Calhoun and I were meeting to discuss a project that he had assigned to me. In the midst of my presentation he interrupted me by saying "you have beautiful tits". I was dumbfounded. It had been a few months since the last remarks and our relationship was no longer friendly so this just came out of the blue. I responded, "that's not what we are here to discuss", finished my presentation and left the office. After this incident and because of the deterioration of our working relationship, I was really uneasy. In addition, I heard from others that Mr. Calhoun was indicating that I had made advances toward him. This was clearly untrue and I felt as though he were just trying to humiliate me.

9. The MCCR Program had been reviewed by the MCCR Fiscal Integrity Team. They had found no significant problems with the program. Mr. Calhoun was angry with the results and referred to the report as "a piece of shit". He also stated that the report had given him nothing to use. He wrote letters to the Director of the Review Team and the Director of the MCCR Program requesting another review. I will add that prior to beginning the review, the team had asked me exactly what it was that he was looking for as they felt uneasy after their initial meeting. I stated, "as much as you can give me to hang those he wants to hang" or something to that effect. The team members responded, "that's what we thought".

10. At the end of March, 1995 I returned from a site visit to the VAMC, Hampton, Virginia. I had wondered why, when I was obviously not in his good graces, he had decided I should go with the Quality Assurance Coordinator to Hampton. When I returned I learned that two of my employees were meeting with the AFGE Vice President, planning a meeting with Mr. Calhoun at his home after hours to discuss problems they had with me. At no time was I notified of a problem, no grievances were filed. Prior to this planned meeting there had apparently been numerous meetings between the AFGE VP and the two MCCR employees. These employees had been asked to provide documentation against me to Mr. Calhoun to affect my removal as Chief, MCCR. This caused me great anxiety. I will add that I had been documenting poor performance by these two employees. I had made Mr. Crocker and Mr. Calhoun aware of the poor performance. Additionally, I stated to Mr. Calhoun at one such meeting that I understood that he had been meeting with these two employees or had plans to do so. He stated, "what have I told you about listening to gossip".

11. On May 8, 1995, I was informed by Mr. Crocker that I was being removed from my position at Mr. Calhoun's request. My position description had been rewritten from a GS 9 to a GS 11/12, but I was not to be promoted to the new grade. He wanted a new Chief, MCCR. No reason was given to me for my removal, except that Mr. Calhoun was not happy with my performance. I asked to meet with Mr. Calhoun for an explanation of my removal. On May 9, a meeting was held including me, Mr. Calhoun, Mr. Crocker, the EEO Manager, Health Systems Specialist, Acting Chief, Human Resources, and the Associate Director (her first day). Mr. Calhoun started the meeting by saying that he and I had met often regarding the program and I knew that he was not pleased with my performance. He wanted me removed and Mr. Crocker needed a budget analyst and was willing to place me in that position. I remarked that the only comment that he had ever made regarding my performance had been "you have a lot to learn, but you are doing a good job" and that did not equate to poor performance to me. He responded that if he did not make himself clear that was something that as a Director he would have to work on. I again asked this question and received the same response. He informed me that I could remain as MCCR Coordinator and he would put me on performance improvement plan and get rid of me in 90 days or I could take the Budget Analyst position being offered by Mr. Crocker. From his remark it was clear to me that no matter what I did, in 90 days he would get rid of me. I also knew that he had enlisted the assistance of the two MCCR employees and, additionally, the AFGE VP was the computer specialist assigned to assist MCCR. Mr. Crocker and I had already found that Mr. Calhoun had copies of information that was only available to Mr. Crocker and I, therefore, we assumed this was provided by the AFGE VP. On May 24, 1995, as directed, I signed a memorandum requesting reassignment to the Budget Analyst position. Effective June 11, 1995, I was reassigned.

12. I was aware of my limited management background. Mr. Calhoun had come from Buffalo, New York, whose MCCR Program was number one in the nation. On more than one occasion, I had stated to Mr. Calhoun that I was not sure that I had the knowledge and expertise to make the Fayetteville program into what he expected. His response was always the same, "you have a lot to learn but you are doing a good job". For this reason,

I felt as though this removal was personal retaliation on his part. He wanted to humiliate me. If not, he and I would have had a discussion and I would have been moved to a mutually agreed position, certainly not one for which I was not qualified.

13. On June 28, 1995, Mr. Calhoun had barred me from going to the main VA building at the Fayetteville facility. Mr. Crocker was instructed to inform me of this decision. My duties were changed in order to accommodate this mandate. To the best of my knowledge and belief this was never done to anyone else. I did nothing to provoke this action and it is a clear demonstration of a power move against me.

14. On July 8, 1995, Mr. Calhoun and his wife encountered me at the roadside clean-up. Mrs. Calhoun noticed that my shoe lace was untied and Mr. Calhoun got on bended knee to tie my shoe. He stated while he was doing this, "when you are going to murder someone, you tie their shoes backward so that it looks like they tied them themselves." This incident my witnessed by another VA employee. I was struck dumbfounded and saw it as yet another threat, not to my personal safety, but to my employment.

15. I tried to find other positions within MCCR at other VA facilities because of the hostile work environment and the fact that I felt sure he would find a way to get rid of me altogether. After all, I was in a position for which I was not qualified. Part of the duties were to advise the Service Chiefs on management of their budgets. I was not allowed in the hospital, how was I to meet with the Chiefs on a regular basis. All of the positions for which I applied were canceled; two reannounced with change in grade and one, to my knowledge, not reannounced until last week. I did secure a lateral position at the VA Medical Center in Durham and transferred there on October 16, 1995. This position was not in my career field and has no promotion potential. After three months of commuting 2 hours each way, I moved with my children and household goods at great expense; emotional, physical and financial.

16. I had hoped that the move from the Fayetteville VAMC would lessen the fear and anxiety that I had. However, I still felt an uneasiness in the pit of my stomach each morning as I entered the Durham VAMC. Occasionally, Mr. Calhoun would be present at the Durham VAMC for meetings. When I would become aware of his presence, I would have to leave for the day or for as long as he would be in the vicinity. I found that all that had changed was my geographic location; the fear, paranoia and anxiety were still with me. Because of these reasons, when I was notified that the IG had been contacted, I knew that in order to ever hope to end the victimization I would have to tell my story.

17. I was amazed when I read the IG report. I had hoped to prove my case, but I had never thought that a government agency would have been so negative against a government official. I was relieved that Mr. Calhoun had been removed from SES. I just would like to feel more confident that he will never have the opportunity to return to any type of supervisory position. I was a bit surprised when the "punishment" was announced. I, of course, had never thought that he would be fired, even though I had wished for that. However, I also never thought that he would be rewarded by being sent

to the place he wanted to be with a raise in salary. Additionally, all his moving expenses were paid and, if his house doesn't sell, the VA will purchase it. Unfortunately, I was not that fortunate.

18. It concerns me that at no time have the victims been contacted by anyone in Headquarters. The only information I have received has been in the IG report and what I have read in the Florida and Fayetteville newspapers. I read in the newspaper and, I believe it was a Florida paper, that Headquarters had empathy for me but I was not sure how that was possible since they had never had any contact with me. Additionally, I read that the settlement with Mr. Calhoun was made in the best interest of all concerned; I guess I was of no concern. Since that time, Mr. Kingston Smith has explained the reason for the settlement, which I much appreciated. Had this been explained to me earlier, I might not have felt so patronized, insulted and, frankly, victimized once again, this time by VA Headquarters.

19. As a result of these incidents, I have been diagnosed as suffering from Post Traumatic Stress Disorder and am still under treatment for this condition. It has been a struggle to get some emotional stability back into my life. I have tried hard to put this all behind me and was surprised when this weekend I finally pulled out all of my documentation and found that many of these things that happened to me had been pushed back into my memory. I am thankful for that. There was a long period of time when the thoughts of what were happening to me and what did happen to me consumed my life. I am glad that I have found the courage to move past all of that.

20. I have spent the past year and one half trying to get my life back together. I have spent lots of time, energy and money trying to get some emotional stability back into my life and put this whole incident behind me. I have done fairly well. The only time that I have a problem is at work. I am a bit paranoid because I do not know if I am seen as a political enemy. I am still a bit anxious at times and am very distrustful. I worry that my career is over and I will remain in this dead-end job unless I can manage to move on to another facility. Unfortunately, I still have a black mark in my OPF because I left the MCCR position and went to Budget Analyst for four months, then went to Administrative Assistant in Durham. Without explaining my sexual harassment case, how do I explain these changes honestly? There seems to have been much concern about how Mr. Calhoun could finish out his career, but no concern for what happens to mine. Have I received the upgrade of an 11/12 for which I was denied while in my MCCR position? I have heard no concern for the expenses that I incurred in moving my family, selling my house, etc. I never began this fight for what I could get out of it, however, when the accuser is so obviously rewarded, where is the justice for the victims?

21. What has been of greatest concern to me has been the implication that I filed sexual harassment charges because of inappropriate comments of a sexual nature. I would never have gone through the hell of the past two years for comments made to me. Mr. Calhoun is not the first man who has ever made inappropriate comments of a sexual nature to me; he is, however, the first man who ever tried to destroy my life when I

rebuffed his comments. The findings of the IG were quid pro quo sexual harassment and sexual harassment for a hostile work environment. Those are the reasons that I filed these charges and those are the allegations that were proven by the Inspector General. I resent the implications made to the contrary.

22. I understand that sexual harassment is the headline complaint. However, what about all the other complaints voiced by employees of the Fayetteville VA Medical Center. There were many victims of this man's tyrannical behavior. There has never been an announcement as to the findings of Dr. Gross' review that was conducted by Mr. David Whatley. There were many more problems identified that just the three that you are hearing about today. If you want a true picture of the "harassment" that went on at the FVAMC, maybe you should convene a hearing at the facility. I certainly feel that the voices of those other people should also be heard.


CYNTHIA A. FORCE

4/7/97

STATEMENT OF SUSAN M. CARUANA

VA MEDICAL CENTER, FAYETTEVILLE, NORTH CAROLINA

I AM PLEASED TO HAVE BEEN INVITED TO PRESENT MY TESTIMONY BEFORE SUCH A DISTINGUISHED AUDIENCE. I AM UNCOMFORTABLE DISCUSSING THE CIRCUMSTANCES, HOWEVER, HONORED TO BE GIVEN THE OPPORTUNITY TO RELATE MY SIDE OF THE STORY.

I HAVE WORKED FOR THE FEDERAL GOVERNMENT FOR 31 YEARS, ALL BUT 1-1/2 YEARS HAVE BEEN IN THE VA SYSTEM. I FEEL BETRAYED BY THE VERY SYSTEM BY WHICH I AM EMPLOYED. I WORKED FOR JEROME CALHOUN AT THE BUFFALO VA MEDICAL CENTER FROM 6/9/85 UNTIL MARCH, 1994. HE WAS APPOINTED AS DIRECTOR OF THE FAYETTEVILLE, NC VAMC IN APRIL, 1994 BY SECRETARY JESSE BROWN. SHORTLY AFTER HIS TRANSFER TO FAYETTEVILLE, HE INFORMED ME THAT THE SECRETARY TO THE DIRECTOR POSITION WOULD SOON BE VACANT AND ASKED ME IF I WOULD BE INTERESTED IN APPLYING FOR THIS POSITION. AFTER MUCH THOUGHT AND CONTEMPLATION, I DECIDED TO APPLY FOR THE POSITION, AS IT WAS CLASSIFIED AS A GS-8 WITH A (TARGET GS-9) IN ONE YEAR, AND I WAS A GS-7 WITH NO PROMOTION POTENTIAL. I WAS SELECTED, EXCITED ABOUT THIS POSITIVE CAREER PROMOTION AND OPPORTUNITY, AND LOOKED FORWARD TO THE IMPENDING CHALLENGE. THERE WERE REPEATED PROMISES BY CALHOUN THAT I WOULD EVENTUALLY RETIRE AT A GS-11 OR GS-12. SINCE I HAD WORKED WITH HIM FOR SEVERAL YEARS, CONSIDERED HIM A FRIEND, AND RESPECTED HIS POSITION, I FELT COMFORTABLE, THOUGH NERVOUS, OF THE MOVE TO A NEW AREA OF THE COUNTRY BY MYSELF AND WITHOUT MY FAMILY. I WAS WELL AWARE THAT CALHOUN WAS DIFFICULT TO WORK WITH AT TIMES IN BUFFALO, AND OCCASIONALLY HIS BEHAVIOR

BORDERED ON ABUSE, BUT I ALWAYS GAVE HIM THE BENEFIT OF THE DOUBT, THINKING THAT A DIRECTORSHIP WOULD BE A POSITIVE STEP FOR HIM.

I WAS PERFORMING MY JOB TO THE BEST OF MY ABILITY, HOWEVER, THE HOSTILE WORK ENVIRONMENT, REPEATED THREATS, INTIMIDATION AND STRESSFUL CONDITIONS HE CREATED RESULTED IN AN ATMOSPHERE NOT CONDUCIVE TO MY BEST PERFORMANCE. FOR EXAMPLE, HE TOLD ME IF I DID NOT REQUEST A REASSIGNMENT, OR DO WHAT HE WANTED, I WOULD BE A GS-3 BY THE TIME HE WAS FINISHED WITH ME. ON ANOTHER OCCASION, I WAS THREATENED I WOULD BE PLACED ON A PERFORMANCE IMPROVEMENT PLAN, HOWEVER, THERE IS NO DOCUMENTATION IN MY PERSONNEL RECORDS TO SUBSTANTIATE LESS THAN SATISFACTORY PERFORMANCE. IN FACT, AT HIS INITIATION, I RECEIVED A \$1,200 AWARD IN 1995 FOR A SPECIAL ACT OR SERVICE AWARD FOR MY SUPERIOR PERFORMANCE. AFTER MY COERCED REASSIGNMENT, I FELT MORTIFIED--RATHER LIKE A LITTLE GIRL MADE TO STAND IN THE CORNER. TO ADD INSULT TO INJURY, HE HAD THE AUDACITY TO TELL ME HE HAD A DREAM THAT HE SLEPT WITH ME AND IT COULD BE WORTH MY WHILE IF I SLEPT WITH HIM.

IN JULY, 1996, I FILED FORMAL E.E.O CHARGES, HOWEVER, ON SEPTEMBER 9, 1996, PRIOR TO THE ACTUAL INVESTIGATION, THE ACTING DIRECTOR PRESENTED ME WITH A FORMAL WRITTEN SETTLEMENT IN WHICH I WOULD RECEIVE MY PROMOTION TO A GS-9 IF I DROPPED THE E.E.O. CHARGES. I EMPHATICALLY REFUSED TO SIGN THIS AGREEMENT NOTING THAT I WOULD NOT CONSENT TO THIS COMPROMISE UNDER ANY CIRCUMSTANCES, AND WAS INSULTED AT THE OFFER.

AS A VICTIM, I LOST MY SELF-RESPECT, FELT WORTHLESS, POWERLESS, FRUSTRATED, EMBARRASSED, HUMILIATED AND AFTER EXPERIENCING TOTAL EMOTIONAL DISTRESS, IT WAS NECESSARY TO SEEK MEDICAL TREATMENT OVER ONE YEAR AGO, WHICH IS STILL ONGOING. I WAS DIAGNOSED AS SUFFERING FROM SEVERE DEPRESSION AND PLACED ON MEDICATION, WHICH I AM STILL TAKING. TO DATE, THE COST OF THIS CARE IS MY RESPONSIBILITY. AS A VICTIM, I HAVE BEEN PUNISHED FOR ACTS BEYOND MY CONTROL--I FEEL I HAVE LOST EVERYTHING AND HE HAS NOT SUFFERED AT ALL. THE EMOTIONAL ORDEAL AND UPHEAVAL TO THE VICTIMS DESERVE APPROPRIATE CORRECTIVE ACTION, NOT A SELECTIVE FORGETFULNESS BY THE V.A.

SECRETARY BROWN HAS STATED THAT REP. TIM HUTCHINSON DOES NOT HAVE ALL THE FACTS ABOUT CALHOUN'S TRANSER, WHEN IN FACT, IT APPEARS THAT SECRETARY BROWN IS UNAWARE OF ALL THE FACTS. THE INSPECTOR GENERAL INVESTIGATION (HOTLINE CASE #6HL-225) CONCLUDED THAT CALHOUN'S BEHAVIOR WAS "ABUSIVE, THREATENING AND INAPPROPRIATE" AND THAT HE HAD SEXUALLY HARASSED ONE WOMAN EMPLOYEE AND MISTREATED TWO OTHERS. I WAS SEXUALLY HARASSED AND BECAUSE THEY DID NOT FIND IN MY FAVOR DOES NOT MEAN IT DID NOT HAPPEN. SO, WHAT IS THE PUNISHMENT?? HE IS REWARDED FOR HIS MISCONDUCT AND TRANSFERRED AT TAXPAYERS' EXPENSE TO THE VERY STATE WHERE HE HAS REPEATEDLY STATED HE WANTED TO LIVE AND RETIRE--**FLORIDA**, WHERE THERE IS NO STATE TAX, MAINTAINING HIS \$106,487 SALARY, TO A NON-MANAGEMENT, NON-SUPERVISORY POSITION TAILOR-MADE FOR HIM WITH DECREASED RESPONSIBILITIES. I FIND NOTHING FAIR ABOUT THIS SO CALLED PUNISHMENT. IT IS APPARENT TO ME THAT THE DEPARTMENT OF

VETERANS AFFAIRS CONDONES MISBEHAVIOR AND ILLEGAL ACTIONS FOR THOSE PERSONS IN HIGH AUTHORITY AND MERELY TRANSFERS THEM TO ANOTHER FACILITY AT GOVERNMENT EXPENSE. THE AGENCY CANNOT SOLVE PERSONNEL PROBLEMS BY TRANSFERRING A PERPETRATOR TO ANOTHER LOCATION. I FIND THE VA'S RESPONSE TO THIS ENTIRE MATTER TOTALLY UNACCEPTABLE AND FIRMLY BELIEVE THE AGENCY SHOULD BE HELD ACCOUNTABLE FOR ITS ACTIONS. THE FACT THAT THESE ACTIONS WERE TOTALLY IGNORED BY THE V.A. AND THAT THEY REPORTEDLY HAVE NO AUTHORITY TO CHANGE THE NEGOTIATED SETTLEMENT IS A TRAVESTY. THE I.G. INVESTIGATION CLEARLY CONFIRMED OUR COMPLAINTS, YET, TO MY KNOWLEDGE, NO V.A. OFFICIALS HAVE INQUIRED ABOUT THE WELFARE OF ANY OF THE VICTIMS, CONTACTED US, OR PROVIDED ANY ASSISTANCE IN COPING WITH THE DAMAGE WE EXPERIENCED. I FURTHER CONTEND THAT A SYSTEM SHOULD BE IN PLACE TO ASSIST VICTIMS OF SEXUAL HARASSMENT/MISTREATMENT BY VA MANAGERS.

THIS ENTIRE SCENARIO CERTAINLY DOES NOT EXEMPLIFY "ZERO TOLERANCE" FOR SEXUAL HARASSMENT--SECRETARY BROWN'S MANDATED POLICY. A SETTLEMENT AGREEMENT WAS REACHED WITH V.A. OFFICIALS AND CALHOUN; HOWEVER, I VEHEMENTLY QUESTION THE LEGALITY OF SUCH A NEGOTIATED SETTLEMENT. IN MY ESTIMATION, REMOVAL FROM DIRECTOR STATUS IS NOT PUNISHMENT, WHEN YOU CONSIDER THAT HE SAVED SALARY--WHICH IS WHAT HIS RETIREMENT IS BASED ON--THE HIGH 3 YEARS. HAS THE V.A. CONSIDERED THOSE OTHER EMPLOYEES THAT CALHOUN HAD REMOVED OR DEMOTED FROM THEIR POSITION, OR THOSE WHO FOUND IT NECESSARY TO RETIRE EARLY BECAUSE OF THE DIFFICULT WORKING CONDITIONS UNDER HIS DIRECTORSHIP? WHERE IS THE JUSTICE FOR

THOSE PERSONS?? WHAT ABOUT THOSE EMPLOYEES THAT WERE PROMOTED OR RECEIVED SPECIAL FAVORS AS A REWARD FOR COMPLICITY.

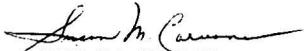
SENIOR EXECUTIVE SERVICE (SES) OFFICIALS SHOULD NOT BE PROTECTED AGAINST APPROPRIATE DISCIPLINARY ACTIONS. AS SENIOR EXECUTIVES, IT IS IN THEIR REALM OF RESPONSIBILITY TO LEAD BY EXAMPLE AND NOT TO USE THEIR POSITION OF POWER TO EMOTIONALLY BULLY AND SEXUALLY HARASS SUBORDINATES. THE V.A. NEEDS TO APPLY THE SAME STANDARDS AND TREATMENT TO THE DIRECTORS AND TOP MANAGEMENT AS IT DOES TO THE LOWER-GRADE EMPLOYEES. THE V.A. COULD TRULY LEARN FROM THE DEPARTMENT OF DEFENSE. ANY WAY YOU LOOK AT IT, A WRONG IS A WRONG.

AS A VICTIM, I HAVE GAINED NOTHING BUT STARES, BEING SINGLED OUT AS A TROUBLEMAKER OR WHISTLEBLOWER, ETC. PRESENTLY, I AM NOT IN A WELL DEFINED POSITION AND AM UTILIZED WHEREVER NEEDED. I TRANSFERRED TO FAYETTEVILLE VAMC TO BE THE ADMINISTRATIVE ASSISTANT TO THE DIRECTOR, WAS ILLEGALLY COERCED BY CALHOUN INTO EVENTUALLY REQUESTING A REASSIGNMENT IN SEPTEMBER, 1995, AFTER SEVERAL MONTHS OF THREATS, INTIMIDATIONS, HARASSMENT AND STRESS BY HIM, AND THEN REPLACED BY AN INDIVIDUAL WHO WAS HIRED WITHOUT FOLLOWING ESTABLISHED MERIT PROMOTION PROCEDURES. I WAS UNDER THE IMPRESSION THAT THE FEDERAL GOVERNMENT HAD RULES AND REGULATIONS PROHIBITING SUCH INCIDENTS FROM OCCURRING.

THESE PAST 2-1/2 YEARS HAVE BEEN A CONTINUOUS NIGHTMARE WITH NO APPARENT RESOLUTION FOR ME AND I LOOK FORWARD TO THE DAY IT IS ALL BEHIND ME--THOUGH I SERIOUSLY WONDER IF THAT WILL EVER HAPPEN.

THANK YOU FOR YOUR CONCERN AND FOR THE INVITATION TO SPEAK WITH YOU TODAY. IF I AM ABLE TO HELP JUST ONE PERSON FROM GOING THROUGH AN ORDEAL SUCH AS WHAT I EXPERIENCED, THAT WILL GIVE ME A GREAT DEAL OF SATISFACTION.

THANK YOU.



SUSAN M. CARUANA

STATEMENT

From the time I began working for Mr. Jerome Calhoun in September 1995 through May 1996, I was subjected to verbal abuse (profanity), outbursts of temper, and Mr. Calhoun's fury and wrath.

There were almost daily incidents of his cursing, yelling and screaming at me or other medical center employees. Even when I was not the one whom he was angry with, it was discouraging to hear these conversations. His actions and words were so brutal and heartless with employees, that a destructive and harmful atmosphere existed. At first I tried to ignore the conversations; however, I was unable to do this when his abusive behavior began in the morning and continued throughout the day. Each time he used profanity toward me and threatened to fire me, it became increasingly demoralizing for me to work under those conditions.

My work performance was greatly affected by Mr. Calhoun's mood and actions. He set the tone for the office and medical center each day, which was usually unsatisfactory, with harmful and injurious results to my health and well-being, to the health and well-being of other employees, and I believe the atmosphere which existed in the medical center was harmful to our patients.

In all the years that I have worked for the federal government at Fort Bragg and the Fayetteville VA Medical Center, I have never been spoken to or treated in the manner in which Mr. Calhoun treated me. He created a very hostile work environment. He demoralized me to the point that my spirit was

*Juanita N. Daniels
(Judy)*

broken. I went to work @ 7:30 a.m. and continued until 5:30 p.m. (and sometimes later), without even a break for lunch.

I became exhausted and weary and began experiencing physical problems, and then realized that I was also becoming depressed. I had no energy at all and began to decline social invitations and other activities which I had always participated. I experienced anxiety, sleeplessness and loss of appetite. For the first time in my life I was scared - scared all of the time! I never knew when Mr. Calhoun was going to erupt and if I was going to be the target of his explosion. It was and has been the most frightening experience of my life. On May 3, 1996, I told my husband because he kept asking me what was wrong. I finally realized that I was unable to handle this situation and that I needed help.

I did receive assistance from VISN 6 staff members when my husband contacted Dr. Gross regarding my condition and the circumstances leading to my physical and emotional problems. However, I have not received any support or backing from VHA HQs. I believe that Mr. Calhoun received a "special deal" when he was reassigned to the Bay Pines VA Medical Center in January 1997. Only his requests were taken into consideration. No one from VHA HQs has ever contacted me to inquire or determine if I needed any type of support or assistance.

Juanita W. (Judge) Dankin's

I was the victim. I never did anything to deserve the treatment I received. My emotional stress and physical problems and those of other employees have never been addressed by the top management within the VA system. It appears that they did not care about what happened to me or any of the other employees, they were only concerned with assisting Mr. Calhoun.

During the period I worked for Mr. Calhoun, I became tense and nervous because I was so afraid of his temper and threats. I had personally seen four letters of proposed removal (two for chiefs and two for assistant chiefs) come across my desk. I had witnessed numerous abusive conversations and mismanagement actions by Mr. Calhoun; therefore, I was afraid he would fire me and embarrass me, especially since I was just a secretary. His abusive treatment was very demeaning to me as a human being, very disrespectful to me as a lady, and also very painful to endure.

I have attached a chronological outline of events to my written statement, giving the specific dates and times of the treatment I received from Mr. Calhoun.

In addition, I have personal knowledge of numerous mismanagement practices by Mr. Calhoun. I have chosen not to include these hand-written notes outlining specific dates of his misuse of his position and disregarding VA regulations and guidelines. I will furnish this information to the Office of the Inspector General if needed.

Juanita W. (Judy) Dawkins

CLOSING

I want to close on a positive note about the agency I have worked for over the past 21 years. The new VISN-concept is excellent for our patients and our employees too. With medical centers working as "teams" and not individually, the benefits should be outstanding. There should be more accountability of Directors since they will be working together and their authority will not be autonomous as in the past.

I greatly appreciate the assistance which I received from Dr. Gross, Dr. Alexander, Ms. Patterson and Ms. Sauls. Their support was and continues to be outstanding.

One of the best things to happen to the Fayetteville VA Medical Center in a long time is being under the leadership of the VISN 6 staff.

I believe that by working together we can care for our patients, which is really what we are all about. We must demonstrate our willingness to go "beyond that which is necessary" and support our patients.

Without veterans - I would not have a job and neither would many of the people in this room. Thank you for doing your job and looking into this matter. I am grateful for the opportunity to speak to you.

Janita W. (Judy) Denton

CHRONOLOGICAL OUTLINE OF EVENTS

Juanita W. (Judy) Dawkins
VAMC, Fayetteville, NC

1. September 5, 1995: I entered on duty at FVAMC - Director's Office.
2. I worked for Mr. Calhoun for two days before he left for a trip to Atlanta and onto reserve duty in Hawaii for three weeks.
3. Last Week in September 1995: Mr. Calhoun returned from reserve duty and was very upset with me as to why I had not informed him about nursing personnel receiving cash awards. I knew nothing about these awards and told him that I did not. This was the first time he used profanity toward me.
4. October 19, 1995: Received a 3-page improper letter from Mr. Calhoun attacking and insulting me about his Bosses' Day gift.
5. Last week in October 1995: I contacted HRMS to see if I was eligible for early retirement (over 20 years service/over age 50). I was told that I was, but since I had a "break in service", I was not eligible to keep the insurance, which required five consecutive years of federal service to retain.
6. October 1995: Associate Director's Secretary used profanity toward me and threatened me physically. Chief of Staff spoke with me briefly concerning this incident. I asked him to speak to Mr. Calhoun about

Juanita W. (Judy) Dawkins

transferring me to another service in the medical center. This incident was never discussed with by the Director or Associate Director and no action was taken to assist me with transferring to another service.

7. November 1995: Mr. Calhoun was yelling and screaming at the Associate Director's secretary, and called the Associate Director and me into his office. He used profanity and threatened to fire me.

8. December 4, 1995: Mr. Calhoun threatened to fire me saying that some money and IG documents were missing from his desk. He accused me of stealing the money and the documents. I told him I had not been in his desk nor had I taken his money or documents. He said that he did not believe me, stating that the documents were in a "treated" envelope and if my fingerprints were found on the envelope, he would personally see that I was fired. He also said that he would see that everyone in Fayetteville would know that I was fired because of the theft. He ordered me not to discuss this with anyone or I would be in more trouble. That same week, Mr. Calhoun asked Ms. Tanya Burton, Regional Counsel, VARO, Winston-Salem, and Mr. Sam Evans, Chief, HRMS, to question me about the missing money and documents. I was never advised that I could have had legal counsel present, and they also told me not to discuss this with anyone. I have never found out really happened to the alledge missing money and documents.

9. December 11, 1995: When I entered the Director's Office in September 1995, there were two other clerical employees assigned to this office. On 12/11/95, Mr. Calhoun detailed both of these employees to other services within the medical center. He put a piece of paper in front of me requesting

Juanita N. Judy Denton

that I sign it stating that I would perform all of the duties for a period of 90 days. I signed it because I was afraid not to.

10. January 1996: I again asked Mr. Calhoun to reassign me to another position. He used profanity and said the only way I could leave my position as his secretary was to resign or he would fire me.

11. February 5, 1996: Mandatory 7:00 a.m. meeting, Mr. Calhoun used profanity and threatened to fire me. Mr. Calhoun said that no matter what the Associate Director's secretary said or did to me, I was not to say or do anything to her.

12. Saturday, February 10, 1996, 1:30 p.m.: I met with Mr. Calhoun, Ms. Brown and Dr. Pruet asking again to be reassigned. Mr. Calhoun said yes and did not use profanity. At that time he told me to forget about his previous threats to fire me. No action was ever taken toward my reassignment.

13. March 1996: Mr. Calhoun made an inappropriate remark about my anatomy. (Details can be provided.)

14. March 1996: Mr. Calhoun threatened to repeat the remark in the presence of the Chief of Staff and Associate Director. I left the room.

15. May 1, 1996, 8:55 a.m.: Mr. Calhoun threatened to fire me and verbally abused me again by using profanity.

Juanita W. (Judy) Danker

16. May 3, 1996, 6:00 p.m.: I broke down and told my husband what I had been enduring for the last few months.

17. May 6, 1996, 4:35 p.m.: My husband came to the office to speak with Mr. Calhoun asking him not to use profanity when speaking to me and asking Mr. Calhoun to reassign me to another service. Mr. Calhoun said no.

18. May 9, 1996, 2:00 p.m.: Appointment with my physician at which time I told him everything! I was placed on medical leave from 5/9/96 - 8/26/96.

19. May 17, 1996: My husband contacted Dr. Gross, Network Director, VISN 6, and provided him with information of events and incidences involving the above stated hostile work environment, along with documentation of mismanagement practices by Mr. Calhoun (nearly 30 faxed pages). I never filed an EEO grievance or contacted the OIG because I believed that these processes are biased toward management. During the period that I worked for Mr. Calhoun, there were numerous EEO's and OIG complaints filed against him. I do not recall of any instance in which Mr. Calhoun was found to be at fault. In fact, there were several occasions when investigators came to his office after working hours, discussing and laughing about the complainants.

20. June 1996: I filed OWCP paperwork stating that Mr. Calhoun's constant threats, hostile and abusive treatment toward me were the direct cause of my medical condition and my placement on medical leave, which are documented by my physician. As of this date, I have not heard from OWCP. I returned to work on 8/26/96, one week after Mr. Calhoun was detailed to Durham.

Quanta N. (Judge) Rankin

**STATEMENT TO THE VETERANS' AFFAIRS SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS**

Lovia B. Barefoot
April 17, 1997

To Committee Members:

I appreciate this opportunity to address the atrocities to which I was subjected while Secretary to Jerome Calhoun from April 1994 through June 1994.

Very soon after his arrival to the Fayetteville VA Medical Center, it was quite apparent that he intended to make changes not only in the management of the medical center but changes in personnel as well.

Within the first week of his arrival, he advised me that I had 90 days to prove myself. I thought that to be a strange statement in that I had held the position as Secretary to the Director since November 1992 and had held a similar position as Secretary to the Commander of the USAF Airlift Center, Pope Air Force Base as well as Secretary to the Director of the Medical Clinic, also at Pope Air Force Base for six years prior to returning to the Fayetteville VAMC in November 1990.

During the transition briefing, I was assigned to take minutes. On the morning of the briefing, James Crocker, then Chief, Fiscal Service, offered to go and bring Mr. Billy Hightower, Transition Coordinator, from the motel to the hospital. Rather than accepting Mr. Crocker's offer, Mr. Calhoun accused Mr. Crocker of challenging his authority as the new Director. After Mr. Hightower had presented the briefing, Jerome Calhoun stood before the group composed of service chiefs and some key staff personnel. He walked to the front of the semicircle in which we seated. He immediately held his arms away from his sides, slowly walked in a 360° turn, fully exposing his hands and wrists. When he had completed his turn, he rubbed the tops of his hands and referenced the color of his skin.

Mr. Calhoun's managerial style, if you could call it that, was one of threats, intimidation and constant filthy language. The 'fuck' word was frequently used in my presence, as well as a few other curse words. In those three months, which in some ways seemed like an eternity, he constantly inferred that my work was substandard, was not what he wanted, and I had better clean up my act or I'd be out of a job. This was done in the form of yellow sticky notes, verbally, or written in margins of a finished product. I found these rejections of my work and threats for dismissal totally foreign to anything I had ever endured before in my Federal Career. I have always taken pride in my work, tried to do my best for my supervisors and was recognized for this by receiving only highly satisfactory and outstanding performance appraisals as well as incentive and suggestion awards. Isn't it interesting to note my performance appraisal ending March 31, 1994, just prior to Jerome Calhoun's arrival, was Highly Satisfactory!

I soon began to live in such fear of being reprimanded and threatened, both actions never having been necessary by prior supervisors, that my fears affected my performance. I was exposed to other employees being reprimanded, sometimes overheard yelling and screaming through a closed door, and would see an employee come out of Mr. Calhoun's office with their face "beet red". Always cognizant that I was now in a "90-day trial period" initiated by Jerome Calhoun, I began to fear for my emotional survival as well as my job survival. I felt I had no one to turn to -- who would believe my word against that of the Medical Center Director. I was a small fish in a very large pond.

I am the type of administrative employee who likes to have her next day's work organized before leaving the office. One afternoon around 5:00 p.m. Mr. Calhoun called me into his office and told me to call the regional office at Winston Salem

about some matter. I made a note of his request on my calendar, said goodnight and walked out of the office. As soon as I reported to work the next morning, he yelled at me to come into his office that instant. He exhibited so much anger that I was terrified and, yet, had absolutely no idea what I had done wrong. He began to berate me for my insubordination and not taking my job seriously. I lived with threats the entire 3 months I worked for him as Jerome Calhoun used his authority inappropriately. He had no need to scream at me as I have no hearing deficit. When I asked him what he was talking about, he responded he expected me to take care of the regional office matter at that moment and not wait until the next day. When I explained the late hour of his assignment, after office hours, his only response was something like Oh, was it that late? Never once did he apologize. After he told me I appeared to not take my job seriously, I began to cry. He then asked me to step over beside his desk and he opened one of the drawers on the left side. Inside that drawer was a large box of beige-colored tissues. He told me they reminded him of me, soft and beige, and that whenever he upset me to the point of tears, to feel free to get a tissue from his desk as they had been bought especially with me in mind. I recall asking him if his former secretary in Buffalo was ever upset to the point of tears and he said Yeah, frequently, especially during her marital problem days.

In May 1994, the medical center was visited by Mr. Herschel Gober, Deputy Secretary to Jesse Brown. Earlier in the day, prior to the reception for Mr. Gober and unknown to Jerome Calhoun, Tomi MacDonough, Vet Center Leader, had a moment to chat with Mr. Gober about some concerns he had for the Vet Center. Later, at the reception, Mr. Gober asked Mr. Calhoun about those issues and apparently took Mr. Calhoun totally by surprise. After Mr. Gober had departed the station, while seated at my desk, Mr. Calhoun came bursting through the main office doorway, past my desk, jerking his tie off, cursing and screaming "that God damn mother fuckin' son of a bitch MacDonough was going to hear from him. Tom Arnold, then Associate Director, was right on his heels trying to calm him down. Mr. Calhoun slammed his office door. Mr. Arnold's secretary and I stared at each other in disbelief at what had just taken place. (Please keep in mind that Mr. Calhoun was still fairly new on the scene and every day presented a new horrendous adventure.) In a short while, he came out of his office, stepped up to my desk, and announced he was going jogging to de-stress. No, he did not record this absence or other like absences. Further, I never observed him using his office computer during my tenure there.

Soon after his arrival, Jerome Calhoun called me into his office to take dictation in a response to a sexual harassment matter which had followed him from one of the New York medical centers. All the criteria listed on the document, I think, were listed in an a. b. c. type of format and each was emphatically denied by Mr. Calhoun. When I had taken the dictation, I was told to typewrite the response, make no record of the female's name, and keep no copy of the document. I was then told to give the document back to him for mailing.

Jerome Calhoun was a member of the Buffalo Bills Club. During my tenure, I spent the better part of one day making reservations for Mr. Calhoun to attend the next season's games. I personally thought that to be a waste of government time, but I did as I was told while existing in a vacuum of fear and reprisal from this man. As part of my duties, I frequently made lodging reservations which he made explicitly clear were to be only the Hilton, Marriott, and, I believe, the Sheraton, in that order. It should be obvious that this caused per diem conflicts with Fiscal Service's travel allowances. Here again, Mr. Calhoun used his position to get what he wanted.

Mr. Calhoun would refer to staff members in a derogatory manner. Appointments were seldom kept on time by Mr. Calhoun. I was instructed to make those

appointments in 15 minute increments as he told me no one at the medical center was important enough or had anything important enough to say, that would require more than 15 minutes of his time. One day, in particular, as many appointees waited in the hallway adjacent to my office well past their appointed times, I expressed my concern about the delay. There was no doubt I had angered him as his response to me was something like "those bastards in the hallway are drawing the same pay while waiting to see me as they would be at their desks and to let them wait." He kept his office door closed, the staff members were dismissed. This was a repeated problem.

From the moment he arrived, I never received instructions on his preference regarding telephone messages. He had a private line installed in his office and I had no way of determining if he was using his private line. Initially, I delivered written messages when his door was opened. However, on this particular day, he became irate by the numerous messages and with sarcasm and anger, he informed me, at that time, it was not my place to decide who he spoke with.

As time went by, I could see a change in me

from:

- a woman who used to come to work, thankful that she had reached the grade of GS 8, a grade at which she would one day retire,
- a woman who had excelled in facets of her personal life,
- a woman who had successfully worked with medical professionals, Air Force Colonels, Congressional liaisons, and foreign military officers for more than twenty years

to:

- a woman who had become a timid, nervous wreck as the result of the harassing, hostile and intimidating work environment created by Mr. Calhoun.
- a woman who began to dread reporting to work because that office had become a living hell
- a woman who suffered loss of appetite, insomnia, sought medical attention for stress-related chest pain and shortness of breath and would mentally replay the day's events.

Mr. Calhoun had, on numerous occasions, told me how inferior my work was, how I would have to do better or look for another job. Any perceived transcription errors were my word against his. I could not prove he had or had not dictated as I had transcribed but he would yell at me about something being all wrong in the finished document. In fact, I even offered to use a micro cassette recorder to ensure there would be no errors in a finished product. This suggestion was not received well by him as he told me, emphatically, there would never be a recorder used in his office.

I recall one day in which he was scheduled to leave, later in the morning, to speak to an organization out of town. That particular morning had been extremely hectic and I didn't seem to be doing anything that pleased him. At lunch period, I requested a friend to take me for a drive as a reprieve from the morning's hostility. Because of my emotional state, I felt it was unsafe for me to drive. I was distraught, crying uncontrollably, and vomiting. My friend insisted that I go to her apartment, rest a while, call her at the office and she would bring me back to work. Two hours later, I reported to work and signed 2 hours sick leave. She and I both agreed that for my own physical and emotional well being a change was due. Obviously Mr. Calhoun wasn't going anywhere (or so I thought) and I must try to bring some sanity back into my life.

After admitting to myself that all those years of devoted work for the Federal Government was not something I could just throw away, I opted to request a transfer to another job even if that meant an obvious downgrade as I was the highest ranking secretary in that medical center. This decision was not made on a whim. It was a matter of survival - MINE. I had often discussed the work environment with my husband and daughters and each supported me in my decision to transfer. When I approached Mr. Calhoun requesting a transfer, he "acted" surprised. He agreed to my request for transfer only if I signed an agreement to accept the position at a lower grade, pay level, and that I was not coerced into doing so. This resulted in a pay reduction of greater than \$3,000 per year.

I ask you, Members of this Committee, do not the above stated facts qualify as coercion, intimidation, harassment, hostile working environment and abuse of power by Mr. Calhoun? Incidentally, I was still within my "90-day trial period" and this had hung over my head like a dark cloud. I thought all my years of highly satisfactory and outstanding ratings would have sufficed as proof of my abilities and I should never have had to endure the pressure of sitting on the fence with my career at stake.

On my last day in the director's office, after signing that coerced statement, I learned that Sue Caruana, Mr. Calhoun's former secretary from the Buffalo VAMC would be reporting (at Government expense) to replace me. I found this out from Susan Odom who later was to become known as Mr. Calhoun's "girlfriend". The afternoon of my last day, Mr. Calhoun called Susan, who had been interim Associate Director secretary, into his office. She went into Mr. Calhoun's office and the door was then closed. About an hour later, Susan came out of the office and had a flushed look and smile on her face. She whispered that she could not talk to me then but wanted to share her secret with me on the phone that evening. It was during this phone conversation that Susan stated Mr. Calhoun had promised her if she played her cards right, that he would make it worth her while. Susan would serve as interim Director's Secretary (GS 8) until Ms. Caruana's arrival, and would then hold the position of Secretary to the Associate Director (GS 7). At the time of this arrangement, Susan Odom held the position of Education Department Secretary (GS 5). Well, it's obvious that Susan Odom did play her cards right as she eventually became Secretary to the Associate Director in the fall of 1994. This exemplifies pre selection in its boldest form. Susan Odom was later promoted to a newly established GS 8 position as the second staff member in the Public Affairs office.

End of June 1994, I was reassigned to the Fiscal Service as an Office Automation Assistant, GS 5, step 10. My new job required frequent visits to the Director's office always with the possibility of seeing Jerome Calhoun. I was hurt and felt a terrible loss of self esteem. To add insult to injury, I also had to face Sue Caruana, my replacement from Buffalo. I tried to approach her with professionalism, dignity and poise . . . inside, however, I was dying.

Had the circumstances been different, had someone with a professional management style become the Director, then in all probability, I would have remained at least until January 6, 2000 at which time I would have completed 30 years of service and been 55 years of age. On September 19, 1994 I completed 25 years of service. The following January, I became 50. Early out was an option which I chose; I had had enough. I felt betrayed by the System. I could not understand why a man of this vicious, filthy-mouthed, morally corrupt persona could have ever risen to the rank of Medical Center Director.

The Fayetteville VA Medical Center is a good hospital with some long time, hard working, and devoted employees who never, never deserved the likes of Jerome Calhoun. It should be apparent that the Veteran patient (the main reason for the hospital's existence) eventually suffers when the employees are under such stress. Medical Center employees should be able to feel respect and admiration for their

- 5 -

superiors, not fear, anxiety, and utter disgust. Mr. Calhoun quickly built the reputation of a director with absolutely no respect for others by his frequent verbal abuse of staff members using gross profanity in professional meetings. Many respected the position Mr. Calhoun held but not the person Mr. Calhoun is.

I am sure the Members of this Committee question why I did not file an EEO complaint. I have seen the workings of the EEO at the Fayetteville VA Medical Center and have yet to see a grievance resolved to the satisfaction of the complainant.

Members of this Committee, I implore you to thoroughly investigate such atrocities that these other witnesses and I endured at Fayetteville VAMC. Investigate from the top level of the Department of Veterans' Affairs down. Investigate why the 'Jerome Calhouns' in this administration are punished by merely transferring them from one facility to another. Mr. Calhoun was not punished. Yes, he was removed from SES status, but he is still drawing a \$106,000+ annual salary and living in the State of Florida where he had always intended to retire. Did the Department of Veterans' Affairs officials really punish him or merely slap the faces of his subordinates. I am so thankful that, hopefully, the truth is to be made known.

I would like to see this problem rectified and those of us who suffered such great losses compensated. You, Members of this Committee, are the ones to do it. In a computer programming class that I attended in college, as we were writing our programs, my instructor would always say "now, remember class - 'garbage in, garbage out' ". To you, I say it's time to take out the garbage!

Thank you for your time and attention.



LOVIA B. BAREFOOT
Former Secretary to the Director and
Premature Retiree

STATEMENT OF FACTS

DORIS MOORE-RUSSELL, MSW

FAYETTEVILLE, NORTH CAROLINA VA MEDICAL CENTER

I arrived at the Fayetteville VA Medical Center on 3/23/93 to assume the position of Coordinator Aftercare/Outpatient Substance Abuse Program. I was responsible for the planning, developing, implementing, directing and evaluation the activity of the new substance abuse program. I am alleging that I was subject to undue stress and a hostile environment because I did not welcome any sexual advances from the previous director, Mr. Jerome Calhoun. I was forced to leave my position for one year, taking leave without pay, 8/1/95 to 7/31/96. I experienced malicious retaliation as the direct result of Mr. Jerome Calhoun's actions. He used insolent, abusive and intimidating language to me in the presence of others. I was consistently harassed. He has made disparaging racial and gender remarks toward me and in my presence when referring to others.

I met with Mr. Calhoun for the first time on 5/9/94 at 10:15 a.m. to discuss the women veteran's program per his request. He wanted to be briefed on the women veteran's program. After briefing Mr. Calhoun, I discussed my other duties and responsibilities. Initially, I thought that we had developed rapport. My next contact with Mr. Calhoun occurred on 6/8/94. Mr. Calhoun called me at home. He stated that he had heard that I had been in the hospital and that he was just checking on me. I thought that was odd and definitely unexpected. When I returned to work, 6/13/94, I informed my supervisor, Mr. Wilson Canteen, that the director had called me at home. He said that he knew because they were at the same EEOC Conference in Orlando, Florida. I asked him what did he think that was all about. My supervisor just laughed and said maybe he likes you. Later that day Mr. Calhoun requested to meet with me at 4:00 p.m. We discussed my health, the women veteran's program and problems within the substance abuse program. He appeared supportive and said that he would assist me in anyway that he could.

I served on several committees that Mr. Calhoun visited and witnessed him making demeaning remarks to many employees. I began to feel uncomfortable with his abusive behavior. On 7/28/94, he requested that I come to his office, he just wanted to see how things were going. I told him that I was applying to the SWALT (Social Work Administration Leadership Training) and asked him for a letter of recommendation. He said consider it done. I received my letter of recommendation from him on 8/16/94 (copy available). When I asked the Acting Chief of Social Work, Mr. Canteen, for a letter of recommendation, he told me,

"Yes I had better write you a recommendation because Mr. Calhoun told me not to mess with you." I asked him, "What did he mean?" Mr. Canteen answered, "He told me to leave you alone." I became uncomfortable with what was implied. Later on that day I received a memorandum of appreciation from Mr. Calhoun (8/17/94, copy available).

On the next day, (8/18/94), Mr. Calhoun's secretary called me to meet with him at 4:00 p.m. He was late for our appointment, but we met at 4:25 p.m. He gave me an executive cabinet that was located in the Director's Suite hallway for the Women Veteran's Program. He also reported that he was considering a budget for the Women Veteran's Program. I felt an uncomfortable feeling in the bottom of my stomach. I said thanks and left.

We met again on 8/23/94 at 3:00 p.m. to confirm the budget for the Women Veteran's Program. The meeting was brief. He could tell that I was uncomfortable. I had experienced several meetings where he has stated that if we didn't do things his way, he would get even.

A last minute request from Central Office for participants to attend a conference on women veteran's issues in San Diego, California prompted Mr. Calhoun to exercise his power. He funded travel for me and two other women veteran's advisory members attendance to the conference. He pointed out to me that the money was being made available from his budget. That morning on 9/27/94, Mr. Calhoun told us to leave immediately for the airport. It was a last minute decision, we almost missed our flight.

I received an announcement for the regional women veteran's coordinator position from Mr. Calhoun on 10/24/94 (copy available). I met with him at 4:00 p.m. and told him that I would like to apply. I discussed with him how I had been appointed as the Women Veteran's Coordinator. I told him that it was an act of reprisal. He told me that he was aware of my situation with the previous administration. He specifically added, "Doris, you were fucked by the previous administration. At least if I had fucked you, you would have gotten something out of it." I didn't respond. I couldn't respond. We just sat there in silence for what seemed like forever. He finally said, "You need to seek medical attention. Go and see the EAP Counselor." I left his office very much shocked and agitated due to his remarks. Perhaps, I should have said something to him. I began to question myself. Did I lead him on? The things that he had accommodated me with, Were they suppose to be favors? The cabinet, the trip to San Diego, the memo's and letters of recommendation/appreciation or the implied protection were they favors. I was hurt and confused.

On 10/26/94 at 3:30, I met with Dr Toye, EAP counselor to discuss my distress. He was supportive but told me

because of our professional relationship he would have to refer me to an outside therapist. He initially suggest that I see one of the therapist here at the VA since I'll am a service connected veteran. We both agreed that suggestion was not feasible because I worked under the department of psychiatry. I left his office feeling angry. I thought, I am a professional psychiatric social worker, actively working in the field why do I need to see a shrink. I was already taking psychotropic medication prescribed when I was admitted to the hospital in June of this year. I begin to feel sorry for myself. I just couldn't make an appointment to see a therapist. My anxiety, stress and depression became worst as did my situation at work.

My current supervisor Ms Yvonne King started to work on 11/1/94. She became one of Mr. Calhoun's lieutenant. She immediately began to treat me differently after I filed for workers' compensation for stress.

During the second week of 12/94, the Medical Center gave a Christmas party at Pope Air Force Officers' Club. I arrived late and was greeted by Mr. Calhoun. He apparently saw me coming in. He gave me a hug, his hand slid down to my chest. He squeezed my breasts with both of his hands. I pulled back in shock. he had a smirk on his face and said merry Christmas, Doris. I wanted to slap his face instead, I mumble something. I rushed to find the bathroom. I felt sick. The rest of my night was ruin. I kept wondering who could I tell. Who would believe me?

When I arrived at work the next morning, I told the Assistant Chief, SWS, Mr. Canteen. He asked me what was I going to do? I told him I did not know. Later that day Mr Calhoun requested that I meet with him. I was hesitant and frighten. I was afraid that Mr. Canteen had told him about squeezing my breasts. Instead he talked about my health issues, job stress and my filing for workers' compensation. He was angry. He stated, " you shouldn't have said what I said about Mr. Arnold. That was between you and I." He was belittling. Then he told me to leave.

My worst fear happened. I received a memo from Mr. Calhoun on 1/19/95 detailing from my position from the coordination of aftercare/outpatient effective 2/5/95 (copy available). I was confused and upset, I was able to regain my composure and requested a meeting with Mr. Calhoun on 1/30/95. I saw him at 1:15 pm. He was demeaning. He didn't make any sense. He stated all you had to do was to be nice. Now, I don't give a damn about you, Doris. I left baffled and angry. I filed a grievance against Mr. Calhoun on 2/2/95. I wanted to know the specifics of why he detailed me. I was becoming depressed. I couldn't sleep at night and couldn't stop from being tearful. I felt helpless and trapped. I met with my psychiatrist, Dr. Cusi and he placed me on sick leave for 7 days. I returned to work on 2/15/95, I received a call from Mr. Calhoun's office. This time I asked Paul Reid, AFGE president

to go with me. I was afraid to go alone. Mr. Calhoun, Ms. King and the Chief of Personnel were there. After heated discussion between Mr. Calhoun and Mr. Reid, Mr. Calhoun, stated to me, "You're the only one that has something to loose here Doris, not Mr. Reid." He gave me an informal resolution memo that returned me to my position (copy available). I specifically requested that I not experience any reprisal as the result of these proceedings.

However, I was continually harassed. I had to start signing-in in the morning. My staff reported that they felt they were being harassed because of my relationship with Mr. Calhoun and Ms. King. I wanted this madness to stop. I requested an appointment with Mr. Calhoun. His new secretary, Susan called me back and told me that Mr. Calhoun said if it was work related for me to talk with my supervisor and if it was personal he would have to have a witness present. I said fine (3/29/95). My secretary told me that Mr. Calhoun called me at 8:00 a.m. (3/30/95). I called him back at 8:01, his secretary gave me an appointment for 9:30 a.m. I went to his office alone (my mistake). He harped on the fact that I was not in my office when he called. I told him I wanted peace. he didn't let me finish and asked what else. So, I discussed having to pull weekend calls without compensation, signing-in on the e-mail every morning and Ms. King briefing and assigning duties to my supervisee without discussing the issues with me. He acknowledged that all the above concerns were incorrect. He said he would speak with Ms. King. He then asked me did I know why Eugene Paul, EEO manager was in us. I said no. He said because the last time we talk you misrepresented what I said to workers' compensation, as if I supported you. I said fine, I don't mind him being here.

(1:00 p.m.) Regular scheduled SWS meeting with Ms. King and Mr. Canteen. I told her and Alma, as I walked in not to look for my e-mail in the A.M., because Mr. Calhoun said I didn't have to sign in. This was a harmless statement, I thought, because she normally speaks with him frequently and I didn't want any trouble for not signing in.

She jumped up and ran out of the office, leaving me and Mr. Canteen in there. A few seconds later, Mr. Eugene Paul came back with her, and Mr. Canteen asked if he should leave. She nodded. Mr. Paul proceeded to demean me, telling me he could understand why I had to sign in. I told him the regulation stated that you call in if you don't plan to be here. He stated, that's your interpreting. I asked him what was his interpretation? I also asked him what role was he playing in this? He became upset, ran out and returned in seconds with the director, Mr. Calhoun. Mr. Canteen had come back in the office with a puzzled look on his face. Mr. Calhoun asked him to leave, leaving me alone with him, Ms. King, and Eugene Paul. Mr. Calhoun and Mr. Paul were standing in front of the closed door as if they were "keepers of the gate". Ms. King was

watching with a smirk on her face. Mr. Calhoun was pointing his finger in my face and was screaming. He was using insensitive and demeaning terms. I lost track of what he was saying. I was trying to keep my emotions intact. I tried to say something, but he told me to, "shut the fuck up and to never to say anything to him again." He added that if I needed to talk with someone, talk with my chief, my assistant chief or his boss. I looked helplessly at Ms. King for support. She didn't say anything. I just wanted to leave, but couldn't because they had me trapped in her office. Finally, Mr. Calhoun realized that he had lost control with me. He and Mr. Paul left. I looked at Ms. King, I said to her, see, you still couldn't support me. I became tearful and asked to leave. She nodded her head in acknowledgement. As I left her office, Dick Droney, a staff social worker, asked me what was wrong. He could see that I was upset. He asked me, who was Mr. Calhoun screaming at? I said me and he said, "I heard him say shut the fuck up." I felt torn apart and was clearly demoralized and devastated.

Summary: Mr. Calhoun made explicit and implicit sexual comments to me on several occasions. He created a hostile working environment for me because I would not meet his conditions. By touching my breasts, I feel that he has sexually assaulted me. My rejection of his sexual advances was used to ridicule and belittle me. He has ruined my life. I had to leave my job for one year without pay, from 8/1/95 to 7/31/96. I will never be the same again. I am now psychologically fragile and filled with insecurities. This injustice, malicious, and belittling behavior of Mr. Calhoun is characteristic of his nature. Mr. Eugene Paul, EEO Program Manager, and my Chief, Mrs. Yvonne King aided and abetted Mr. Calhoun's irrational and abusive behavior displayed in their presence. I was so distraught and filled with distress, that I had to be admitted to a psychiatric unit at Cumberland County Mental Health for one week. With all the media surrounding the VA sexual harassment and mismanagement sanctions have caused me to relive this agonizing experience once again. Mr. Calhoun has inappropriately abused his power as medical center director at the Fayetteville, North Carolina VAMC.

**Statement of
Representative Eva M. Clayton
Veterans Affairs Subcommittee
Oversight & Investigations Hearing
Allegations of Sexual Harassment in the VA**

April 17, 1997

I'd like to thank Chairman Everette and Ranking Minority Member James Clyburn for allowing me to make a statement this morning.

Like you, I have been greatly disturbed and very concerned about the recent allegations of sexual harassment at Veterans facilities. I am especially concerned about the findings disclosed by the Inspector General's report on the Fayetteville VA Medical Center which is in my congressional district. Let me assure you that the majority of the Fayetteville staff, like the majority of all VA employees, are highly capable dedicated professionals who deserve the highest degree of respect and admiration for the job they do day in and day out to serve our nations veterans.

Sexual misconduct and abuses of power, on any scale, are unacceptable!

The employees who work for the Department of Veterans Affairs are entitled to be treated with respect and dignity in a work environment that is free from misconduct, sexual harassment and abusive behavior.

As Members of Congress, we have an obligation to gain a complete understanding of the problems by seeing and hearing what people have to tell us. We must follow up with appropriate steps to deal with the complex and serious matters.

I am pleased that the subcommittee is conducting hearings to ensure that these allegations are fully investigated and all appropriate actions to prevent future abuse are taken.

**STATEMENT OF
RONNIE BLUMENTHAL, DIRECTOR
OFFICE OF FEDERAL OPERATIONS
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

APRIL 17, 1997

Good morning Mr. Chairman and Members of the Committee. Thank you for the opportunity to appear before you today. I am Ronnie Blumenthal, Director of the Office of Federal Operations (OFO) at the Equal Employment Opportunity Commission (EEOC). You have asked that I discuss the federal sector complaints process and, in particular, sexual harassment complaints filed against the Department of Veterans' Affairs (DVA).

The EEOC Office of Federal Operations has oversight of the equal employment opportunity (EEO) complaint process in the federal sector, including the hearings and appellate processes. The office provides guidance and assistance to the EEOC Administrative Judges who conduct hearings on discrimination complaints filed against agencies. OFO adjudicates appeals of federal agency decisions on discrimination complaints and ensures agency compliance with decisions issued on those appeals. While the statutes we enforce require agencies to comply with our decisions, EEOC has no coercive authority in the federal sector. Although we can issue orders at the appellate level -- and most are followed -- unlike the private sector, we cannot take a federal employer to court to resolve a complaint of discrimination.

The federal EEO complaints process is governed by 29 CFR Part 1614. In addition, the Commission has issued specific implementation guidance to agencies through EEO Management Directive 110. Within the framework established by the regulations and management directive, each agency has great flexibility in structuring its EEO program. Some agencies have independent EEO offices reporting directly to the head of the agency. The EEO program at DVA is under the direction of the Deputy Assistant Secretary for Equal Opportunity who reports to the Assistant Secretary for Human Resources and Administration. Other programs have different structures.

Each agency is responsible for investigating EEO complaints filed against it and issuing a decision on the merits or taking other action to resolve or dismiss the complaint. Final agency actions on complaints can be appealed to the EEOC. The following is an overview of the process for EEO complaints and the basic aspects of that process -- EEO counseling, investigation, hearings, appellate review and compliance.

EEO Counseling

The complaint process begins when a federal employee or applicant contacts an EEO counselor at the agency where the alleged discrimination occurred. The time limit for initiating counseling is 45 days from the date of the alleged discriminatory event.

EEO counseling is required as the first step and is an essential part of the federal complaint process. EEO counseling allows the opportunity for informal resolution and many agencies are utilizing alternative dispute resolution during the counseling stage. The counselor provides the complainant with information on the 1614 complaint process including the time limits involved in the process. The EEO counselor also contacts management and attempts to assist the parties in achieving resolution. During the counseling period, the complainant is assisted in defining the issues and bases of the complaint. The role of the counselor is to facilitate early resolution, not to advocate for either party or recommend specific terms of a resolution agreement.

Counseling must conclude within 30 days of the date of the initial contact. If counseling continues beyond 30 days, the counselor must inform the aggrieved person that he or she has a right to file a formal complaint after 30 days in counseling, regardless of whether counseling has been completed. This time limit for counseling can be extended with the written agreement of the person seeking counseling. If an agency has an established ADR procedure and the aggrieved person agrees to participate, counseling may take up to 90 days. Many agencies use collateral duty counselors while others have full time counselors. According to reports filed with the EEOC by the Department of Veterans' Affairs, DVA uses collateral duty counselors.

At the conclusion of counseling, the aggrieved person must be given written notice of the right to file a formal EEO complaint within 15 calendar days of receiving the notice. The notice also provides instructions on how to file the complaint.

Complaint Investigation

Following counseling, the aggrieved person can file a formal EEO complaint with the federal agency against which the complaint is directed. Upon receiving the complaint, the agency must acknowledge its receipt in writing. The acknowledgement notice must also advise the complainant that the agency is required to conduct a complete and fair investigation within 180 days of the filing of the complaint unless the parties agree in writing to extend the period. The notice must also advise the complainant of the right to appeal the final decision or dismissal.

If a complaint is not dismissed, the agency must conduct the investigation and must develop a complete and impartial factual record. Many agencies have full time investigative staff, while others contract with outside organizations for investigation of complaints. In FY

1996, the Department of Veterans' Affairs contracted for 59% of its investigations, with the remainder being conducted by collateral duty investigators.

The agency has 180 calendar days to complete the investigation. Following the investigation, or if the investigation has not been completed within 180 days, the agency must provide the complainant a copy of the investigative file and notice informing the complainant of the right to request a hearing or a final decision by the agency. If the complainant requests a final decision, the agency has 60 days within which to issue its final decision on the merits of the complaint. The complainant may file a civil action in United States District Court within 90 days of receipt of the agency's final decision if no appeal has been filed. The complainant also has the option to file a civil action in United States District Court after 180 days from the date of the filing of the EEO complaint if no final decision has been issued.

If the complainant requests a hearing, an EEOC Administrative Judge in one of EEOC's field offices will conduct the hearing on the merits of the complaint. The Administrative Judge has the option of assisting the parties in considering settlement of the complaint. The Administrative Judge has the authority to order discovery or the production of documents and employee witnesses and direct supplemental investigations when discovery is inadequate in developing the record.

The Administrative Judge may issue findings of fact and conclusions of law from the bench after the conclusion of the hearing, in lieu of issuing written findings and conclusions. The Administrative Judge also may issue findings and conclusions without a hearing where the material facts are not in genuine dispute and there is no genuine issue as to credibility.

Within 60 days of receipt of the Administrative Judge's findings and conclusions, the agency must issue its final decision. In its decision, the agency may reject or modify the findings and conclusions. If the agency fails to act on the Administrative Judge's findings and conclusions within 60 days, they become the final agency decision.

Appellate Review

A complainant may appeal an agency's decision to EEOC. The agency's decision may be a dismissal of the complaint based on procedural grounds, such as untimely contact with an EEO counselor, untimely filed EEO complaint, failure to state a claim, mootness, or failure to accept an offer of full relief. In addition to procedural decisions, an agency may issue a decision addressing the merits of the EEO complaint, finding or not finding discrimination.

Once an appeal is docketed, the parties are provided an opportunity to submit briefs on the appeal. When the initial appellate decision on an EEO complaint is issued, the parties are notified of their right to request reconsideration of the initial decision by the Commission.

A complainant may file a civil action, either within 90 days after receipt of the Commission's final decision on appeal or after 180 days from the date of filing an appeal if there has been no final decision by the Commission. Filing a civil action terminates Commission processing of an appeal.

If an appellate decision orders compliance action, such as remanding the complaint for further investigation or, if a finding of discrimination is made, awarding relief, the matter is assigned to a compliance officer. The compliance officer monitors for compliance with the order in the decision.

That in sum is the process for handling federal EEO complaints.

With that as background, then, and pursuant to the Committee's request, in an attachment to my written statement, we have provided you with complete data on federal sector sexual harassment complaints for fiscal years 1991 through 1995 and with the data that we currently have available for FY 1996.

The statistics provided to you are taken from reports filed annually with EEOC by other federal agencies.

The government-wide information is a compilation of data submitted by all agencies under our purview. Government-wide figures for fiscal year 1996 are in the process of being reconciled and are not available at this time.

For 1995, the last year for which we have complete data, you will note that the DVA had 8.36% of total federal workers, 8.01% of total EEO complaints filed, and 14.10% of sexual harassment complaints filed.

Again, thank you for inviting me to appear before you today. I will be happy to answer any questions.

COMPLAINTS FILED - FY 1991 - FY 1996

VETERANS AFFAIRS (VA) COMPARED TO GOVERNMENT WIDE (GW)											
TOTAL EMPLOYEES GW	TOTAL EMPLOYEES VA	PERCENT OF EMPLOYEES VA/GW	TOTAL COMPLAINTS		TOTAL VA	PERCENT OF COMPLAINTS		TOTAL COMPLAINTS	GW - SEXUAL HARASSMENT COMPLAINTS	VA - SEXUAL HARASSMENT COMPLAINTS	PERCENT OF COMPLAINTS VA/GW
			COMPLAINTS GW	COMPLAINTS VA		COMPLAINTS VA/GW	COMPLAINTS VA/GW				
			YEAR								
2,726,865	215,428	7.90%	1991	17,696	1,125	6.36%	707	79	11.17%		
2,742,491	219,742	8.01%	1992	19,106	1,220	6.39%	947	68	7.18%		
2,643,391	224,952	8.51%	1993	22,327	2,131	9.54%	1,608	95	5.91%		
2,630,755	222,215	8.45%	1994	24,592	2,216	9.01%	1,547	105	6.79%		
2,583,193	219,995	8.52%	1995	27,472	2,201	8.01%	1,390	196	14.10%		
2,532,507	211,761	8.36%	1996	NA	2,191	NA	NA	224	NA		
AVERAGE				22,239	1,779	8.00%	1,240	109	8.76%		
			FY 91 - 95								

SOURCE - COMPLAINTS - EEOC FORM 462 FILED BY FEDERAL AGENCIES
 COMPILED BY THE COMPLAINTS ADJUDICATION DIVISION, OFFICE OF FEDERAL OPERATIONS

NA - NOT AVAILABLE - GOVERNMENT WIDE DATA CURRENTLY BEING RECONCILED

**STATEMENT OF
NICHOLAS M. INZEO, DEPUTY LEGAL COUNSEL
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

APRIL 17, 1997

Good morning Mr. Chairman and Members of the Committee.

I am Nicholas M. Inzeo, Deputy Legal Counsel for the Equal Employment Opportunity Commission (EEOC). I appreciate the opportunity to appear before you today to discuss the legal issue of sexual harassment in the workplace.

Sexual harassment in employment is a form of unlawful sex discrimination that violates Title VII of the Civil Rights Act of 1964. In 1980 the EEOC issued its Guidelines on Sexual Harassment, 29 C.F.R. § 1604.11, which made clear that unwelcome sexual conduct in the workplace is unlawful when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment is unlawful only if it is unwelcome to the person claiming harassment. "Unwelcome" means that the person complaining of harassment did not solicit or incite the conduct, and regarded it as undesirable or offensive. Voluntary submission to sexual conduct does not necessarily mean that the conduct was welcome. Rather, the critical inquiry where there is an issue of conduct being unwelcome is whether the complainant behaved in a manner that communicated that the sexual conduct was unwelcome.

There are two primary categories of sexual harassment: quid pro quo and hostile environment. Although these claims are theoretically distinct, the line between the two is not always clear, and they may occur together.

Quid Pro Quo Harassment

Quid pro quo harassment occurs when a supervisor makes submission to sexual conduct a condition for job retention, promotion, or any tangible job benefits. Quid pro quo harassment can be explicit, as when a supervisor says to a subordinate that he will fire her if she does not engage in sexual conduct. Alternatively, such harassment can be implicit, as

when a supervisor makes sexual advances to a subordinate, is rejected, and shortly thereafter fires her. In the latter example, the subordinate can establish a violation of Title VII if she proves that her rejection of the supervisor's advances was a motive for her termination.

Some courts have held that quid pro quo harassment occurs only if the subordinate rejects the supervisor's sexual advances and consequently suffers tangible job harm. However, it is the position of the EEOC and of other courts that quid pro quo harassment occurs whenever a supervisor makes sex a condition for job retention or job benefits, even if the subordinate submits to the unwelcome advances and thereby avoids the threatened harm, or resists but the supervisor never carries out the threatened job harm.

An employer is automatically liable for quid pro quo harassment by a supervisor. This is because the employer is responsible for its supervisors' use or abuse of powers delegated to them.

Hostile Environment Harassment

In 1986 the Supreme Court issued a decision in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), affirming the EEOC's definition of sexual harassment in its Guidelines. The Court recognized that sexual harassment violates Title VII when it creates a hostile work environment, even if no tangible harm is threatened. This type of harassment can occur when *anyone* in the workplace -- a supervisor, a co-worker, or even a non-employee -- subjects an individual to unwelcome sexual conduct that is sufficiently severe or pervasive to create a hostile or abusive work environment.

In 1993 the Supreme Court elaborated on the legal standards for establishing a hostile environment. In *Harris v. Forklift Systems, Inc.*, 114 S. Ct. 367 (1993), the Court held that a complainant need not prove that she suffered psychological harm as a result of the harassment. Rather, she must establish that a reasonable person would have found the conduct sufficiently severe or pervasive to create a hostile work environment, and that she perceived it as such. Justice Ginsburg put it more simply: it is sufficient to prove that the harassment altered the working conditions so as to "make it more difficult to do the job." *Harris*, 114 S. Ct. at 372 (Ginsburg, J., concurring).

An employer's liability for hostile environment harassment is not automatic. When the harasser is a co-worker, the employer is liable only if it knew or should have known of the misconduct and failed to take immediate and appropriate corrective action. When the harasser is a non-employee, such as a customer, the same standard applies, except that consideration is given to the employer's ability to control the actions of the non-employee.

Courts are split as to when an employer is liable for hostile environment harassment by a supervisor. Most courts recognize that a company is always liable for misconduct by a high level official, such as the company president. This is because the actions of such individuals

are considered to be the actions of the employer. The legal standard is less clear with regard to sexual harassment by other managers and supervisors. The Supreme Court in *Meritor* stated that agency principles apply. *Meritor*, 477 U.S. at 72. Some courts have held that under those principles, an employer is not responsible for hostile environment harassment by a supervisor if it had an explicit policy against sexual harassment and effective complaint procedures, and if the complainant did not notify higher management of the harassment. Other courts and the EEOC have taken the position that an employer is liable under agency principles whenever its supervisor used or was aided by powers delegated by the employer in accomplishing the harassment. In such circumstances, preventive and corrective actions by the employer would not eliminate liability, but could reduce the amount of damages that are awarded against it.

Harassment of Both Sexes

One issue that has arisen in some recent hostile environment cases is whether Title VII is violated when an individual in a workplace sexually harasses both men and women. Such an individual might be called an "equal opportunity harasser." Since sexual harassment is a form of sex discrimination, a female complainant must prove that she would not have been subjected to the harassment had she been a man, and a male complainant must prove that he would not have been subjected to the harassment had he been a woman.

At first blush, it might seem that there is no sex discrimination when men and women are both subjected to hostile environment harassment. However, investigation into the facts of these types of cases often reveals that the harassment is more severe or pervasive with regard to employees of one gender. For example, in *Kopp v. Samaritan Health Systems, Inc.*, 13 F.3d 264 (8th Cir. 1993), the district court had issued summary judgment against a plaintiff who alleged hostile environment harassment because the harasser was abusive to both female and male employees. The Eighth Circuit reversed because the alleged incidents were more frequent and severe with regard to the female employees.

Finally, even if a harasser's behavior towards male and female employees is equally severe or pervasive, sex discrimination might still be found. For example, in *Chiapuzio v. BLT Operating Corp.*, 826 F. Supp. 1334 (D. Wyoming 1993), male and female plaintiffs challenged a supervisor's sexually abusive remarks to them. The employer argued that there was no sex discrimination because its supervisor harassed both male and female employees alike. The court rejected this argument, finding that the supervisor's conduct could constitute unlawful sexual harassment as to each plaintiff, because his behavior was designed to demean and harass each of them based on their genders.

I hope that my testimony has provided the Committee a fuller understanding of the issue of sexual harassment in employment. I will be happy to answer any questions you may have.

STATEMENT OF
HERSHEL W. GOBER
DEPUTY SECRETARY
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

APRIL 17, 1997

Mr. Chairman and members of the Committee, I appear before you today on behalf of Secretary Jesse Brown to testify about VA's policies and practices regarding sexual harassment and other forms of discrimination in the workplace.

This has been a matter of utmost importance to Secretary Brown and myself from the very beginning. I was sworn in as Deputy Secretary on February 3, 1993. One week later I was at the Atlanta VA Medical Center dealing with a terrible sexual harassment case that we had inherited. While I was there, I promised our employees that this Administration would not tolerate anything that would keep them from devoting their full attention to serving veterans. Secretary Brown and I have worked hard ever since to fulfill that promise.

Very early on, Secretary Brown established a policy of "zero tolerance" of sexual harassment and other forms of discrimination within the Department of Veterans Affairs. I strongly support this policy. Any and every allegation of sexual harassment or discrimination is thoroughly investigated, and when evidence supports the allegation, VA takes action to protect victims, and offenders are disciplined within the range of options allowed by law and supported by the evidence.

In saying this, however, it is relevant to clarify that "zero tolerance" does not mean that all offenders will, in every instance, be removed from federal service. Sexual harassment and discrimination can encompass such a broad range of conduct that removal from federal service may not always be the most appropriate or legal remedy.

Secretary Brown and I have done everything we know of to support a "zero tolerance" policy regarding sexual harassment. He has issued letters to all VA employees expressing his strong commitment to diversity, equal employment opportunity, and the prevention of sexual harassment. The Secretary has asked everyone to join him in making the effort needed to uphold this commitment.

In countless speeches to VA employees, we have emphasized and reemphasized this policy. Consistent with these efforts, the Department has developed a program designed to prevent sexual harassment and discrimination by all employees, not just by senior executives. The program takes a three-pronged approach: communication, training, and policy development.

The Secretary issued his first all-VA employee letter on sexual harassment in 1993. That letter has been followed by four others dealing with EEO and sexual harassment issues. In each, there has been an articulation of VA's policy, along with specific guidance on how to implement that policy.

VA has developed an extensive employee training program on prevention of sexual harassment and discrimination. We understand this is one of the most comprehensive programs of its type in the federal government.

In 1993, Secretary Brown established a requirement that all employees receive four hours of training about the prevention of sexual harassment and discrimination, followed by refresher training every two years. Every employee in VA was directed to receive four hours of training in 1993 and early 1994, and every employee was directed to receive two hours of refresher training in 1995 and 1996. By the end of 1996, every VA employee also had received training in valuing diversity. Both Secretary Brown and I participated in these training sessions.

In addition, VA has an on-going training program for managers and supervisors concerning VA's equal employment opportunity programs, and their responsibilities under those programs. VA has also significantly improved its training for EEO professionals, to include counselors, investigators, and program managers.

In the area of policy development, in VA Circular 00-94-2, dated February 25, 1993, VA established a requirement that all allegations of sexual harassment be elevated

above the field facility level, to the Veterans Health Administration Network or Veterans Benefits Administration area directors, for a higher level review to determine whether intervention is necessary to protect an employee or VA from harm, pending a full investigation and resolution of the allegations. That Circular has expired, but its requirements are being incorporated in VA Directives 5975 and 5977. In order to encourage employees to bring forward their allegations, and protect them when they do so, on May 26, 1993, VA established a requirement for a higher level review of all complaints of reprisal and retaliation. For those employees who wish to remain anonymous, VA has established a sexual harassment and discrimination hotline, where employees can report misconduct and find out what to do about it. The hotline number is 1-800-767-0184.

Other relevant policy developments include:

- In 1994, VA Circular 00-94-2 and VHA Directive 10-04-093, dated August 1, 1994, and VHA Directive 10-94-097, dated September 29, 1994, formal EEO complaint processing procedures were improved to speed up the investigation of complaints.
- VA has developed performance standards for senior executives, to improve workforce diversity and meet timeliness requirements for processing complaints.
- In October 1994, VA clarified its table of penalties for misconduct, so there could be no question that sexual harassment and discrimination were actionable offenses, (offense # 37) punishable by anything from reprimand to removal for a first offense.

In practice, over the past four years, we have had nine cases involving senior management officials in which we have taken action based on allegations of sexual harassment or related matters. In seven cases, the executives resigned or retired. In the other two instances, the executives were taken out of the Senior Executive Service and placed in a lower-graded positions.

I would like to address briefly the one case that precipitated this hearing, that of the Director of the Fayetteville VA Medical Center who was alleged to have engaged in sexual harassment. Following an investigation, VA management seriously considered

proposing his removal from federal service, but had significant doubts that the evidence would sustain removal action on appeal to the Merit Systems Protection Board or in the courts. As a result, a negotiated settlement was reached with the Director. To date, the former Director steadfastly denies the allegations.

That agreement insured the Director's removal from the station, from the directorship of any VA facility, from the Senior Executive Service, and from any supervisory position, but it permitted him to continue as a government employee without loss of pay. I understand that some view VA's decision to reach that agreement as indicative of a lack of management's concern about sexual harassment, or possibly as a VA practice of protecting senior managers from the consequences of improper actions. I want to assure you in the strongest possible terms that it does not.

If the verifiable evidence had been such that management was reasonably confident that the Merit Systems Protection Board, or the courts, would have sustained removal from federal service, then that action would have been pursued to its conclusion. It is important to reiterate that management felt it was extremely important -- from the standpoint of both the provision of health-care services to veterans and the work environment for our employees at this facility -- that the Director be removed from his management position and relieved of all supervisory responsibilities. Accordingly, VA entered into a settlement with him under which he was transferred out of the Fayetteville VA Medical Center. He also resigned from the Senior Executive Service and was reduced in grade and rank to a non-supervisory, GS-14 position. By these actions, management achieved what were considered to be the most critical objectives.

What concerns us most about this matter is that it has damaged VA's standing with some of our women employees and women veterans, and that is most regrettable. As I have indicated, we have taken many serious actions over the past four years to try to ensure that all of our employees have a workplace where they feel secure and safe from discrimination and harassment of any kind. We believe that this is very important for their well-being and for our ability to provide veterans with the health care and other benefits and services they deserve.

To strengthen our employees' protections further in light of the Fayetteville case, the Secretary has taken two additional recent actions:

- In order to ensure a consistent approach in treating allegations of sexual harassment and for that matter, other misconduct against senior VA executives, the Secretary has required that all such allegations and recommendations for dealing with them be brought to the attention of a committee drawn from senior staff in VA Headquarters before action is taken to resolve the matter.
- In order to ensure that the Department has a more comprehensive understanding of sexual harassment complaints in VA and that effective oversight is conducted at the policy level, he has also charged the Office of Equal Opportunity with developing aggregate information on all sexual harassment cases in VA, regardless of whether they are being handled through the formal EEO complaint process, Inspector General hotline or investigative reviews, union grievances procedures, or Administrative Boards of Investigations.

VA recently conducted a Department-wide survey to determine employee perceptions of how VA handles sexual harassment. To ensure the survey was conducted objectively and professionally, an outside contractor was chosen. The results of this survey will be available by the end of June.

In addition, Secretary Brown has decided to write a letter to all VA employees reassuring them of VA's continuing commitment to ensuring that VA employees are free of discrimination and sexual harassment in the workplace. This letter will remind our employees of the means available to them to deal with any problems they may encounter in these areas.

We are optimistic that these measures together with all of our efforts over the past four years are serving to reduce -- and, we hope, to move toward the elimination of -- sexual harassment and discrimination in VA.

Mr. Chairman and members of this Committee, if there were one thing that I wish I could accomplish at this hearing today, it would be to reassure all of our employees that VA continues to support its policy of "zero tolerance" of discrimination and sexual harassment. We want them to know that this is our policy, and we would ask them to

judge us on the strength of our entire record of actions in this area and our expressed commitment to address this difficult problem.

We will be doing all we can to get this message across to our employees and managers, and we would welcome any suggestions you may have to help us accomplish this.

I am available to answer your questions, as are the VA staff members who have accompanied me.

**ACTIONS OF SECRETARY BROWN
TO ELIMINATE SEXUAL HARASSMENT
IN THE DEPARTMENT OF VETERANS AFFAIRS**

- January 26, 1993 Met with the Deputy Assistant Secretary for Equal Opportunity to discuss his concern about sexual harassment, and to direct that actions be taken to eliminate it.
- February 2, 1993 Notified the White House of his review of the Department's EEO program, with special attention to sexual harassment.
- February 10, 1993 Sent Deputy Secretary Gober to Atlanta, GA, for an on-site review of sexual harassment issues and the employment situation in general.
- February 16, 1993 Issued an "All Employee Letter," which:
- Declared that sexual harassment was unacceptable conduct and would not be tolerated.
 - Stated his strong personal commitment to prevent and eliminate sexual harassment within VA.
 - Required that impartial reviews be conducted, and that prompt action be taken on all allegations of sexual harassment.
- February 25, 1993 Issued a Circular which suspended the decentralization of discrimination and sexual harassment complaint processing; delegated centralized responsibilities to the Office of Equal Opportunity; and established a requirement for higher-level reviews of all sexual harassment complaints, by a level above that of the field facility in which the complaint arose, in order to determine whether intervention is required..
- March 9, 1993 Issued an "All Employee Letter," which:
- Required that all current employees receive a minimum of 4 hours of training on the prevention of sexual harassment and the discrimination complaint process, with refresher training every 2 years.
 - Required that new employees receive 4 hours of sexual harassment and discrimination complaint training within 60 days of their employment.

- Required that all EEO Counselors receive training certified by the Office of Equal Opportunity before performing EEO Counselor duties.
 - Provided that employees be allowed to select an EEO Counselor of their choice.
 - Transmitted a copy of the EEO complaint procedures to all employees.
- March 10, 1993 Authorized the establishment of an EEO Information Line (Hotline), to provide employees and others a means of obtaining information and advice about sexual harassment and discrimination, and how to report it.
- March 11, 1993 Established the Secretary's Ad Hoc Work Group on Sexual Harassment, to address sexual harassment and other gender-related issues. The group is composed of headquarters and field personnel, and is representative of VA's diverse workforce.
- April 6, 1993 Met with Harriet Woods, President of the National Womens' Political Caucus, to discuss their legislative agenda for women and to discuss the Department's plans for ensuring non-discrimination and advancement of women in VA.
- April 22, 1993 Met with his Ad Hoc Work Group on Sexual Harassment to share his concerns and ask for formal recommendations. The Secretary directed that the following recommendations of the Ad Hoc Work Group be implemented:
- Field facilities be permitted to add field-specific information to the mandated 4-hours training on the prevention of sexual harassment and discrimination complaints.
 - Field facilities be given credit toward the 4-hour training requirement for training on sexual harassment and discrimination complaints given after September of 1992.
 - An employee survey be conducted to determine the extent of problems related to sexual harassment in the Department.
 - Conduct a study into problems related to the "glass ceiling" which serves to limit the upward mobility of women.
- May 18, 1993 Met with Carolyn Kroon, President, and Brigadier General Pat Foote (Ret.), Military Advisor, from Federally Employed Women (FEW), to

discuss issues of concern to women employed in the Federal Government and VA.

May 21, 1993

Issued an "All Employee Letter," which:

- Discussed the role employees played in preventing and eliminating sexual harassment.
- Provided a 3-page attachment containing guidelines on sexual harassment and what to do about it.

May 26, 1993

Issued an "All Employee Letter," which:

- Expressed his concern about retaliation and reprisal for reporting allegations of sexual harassment and discrimination.
- Established a requirement for a higher-level review of all investigative reports on EEO complaints of retaliation and reprisal, by a level above that of the field facility in which the complaint arose, in order to determine whether intervention is required.

June 1, 1993

Issued a Circular which reported on problem areas related to sexual harassment and discrimination complaints, as reported by the General Accounting Office, and which required field facilities to review those problem areas and report on what procedures were either in place or would be put in place to correct those problems.

July 30, 1993

Issued an Interim Issue which:

- Established an enhanced evaluation program for internal reviews of EEO policies and procedures, and on-site evaluations of field facility EEO programs.
- Established due dates for the 4-hour training on sexual harassment and discrimination complaints, and for the 2-hour refresher courses to be taught every 2 years.
- Established selection and appointment criteria for EEO Counselors, as well as training and continuing education requirements.
- Emphasized an employee's right to choose an EEO Counselor of his or her choice.
- Provided specific requirements for recording and reporting EEO counseling activities.

- August 2, 1994 Issued a Circular which:
- Established incremental time limits for processing EEO complaints by field, as well as headquarters personnel.
 - Established performance standards for EEO Officers (Field Facility Directors), related to meeting the time limits imposed on them.
 - Established a requirement that every field facility appoint an EEO Program Manager who would be responsible for EEO complaint processing, and who would not be employed by the Human Resources Management Service.
 - Provided guidance on the acceptance and processing of complaints.
 - Provided appointment criteria for EEO Investigators, and procedural guidance concerning their operations and control.
 - Provided guidance concerning higher-level reviews of sexual harassment and reprisal complaints, as well as concerning the use of administrative boards in connection with those higher-level reviews.
 - Provided guidance on compliance and reporting requirements for EEO complaint processing.
- May 27, 1994 Issued EEO performance standards for senior executives, which required specific and measurable achievements in meeting affirmative employment goals and in preventing discrimination and sexual harassment.
- June 13, 1994 Circulated the Secretary's Performance Agreement with the President, which included, as a major goal, becoming an employer of choice by ensuring a work environment free from discrimination. Also established a requirement that all managers and employees receive 4 hours of training on managing and recognizing diversity.
- October 18, 1994 Issued new VA regulations on Disciplinary and Adverse Actions, which specified that sexual harassment and discrimination was actionable misconduct, and provided for reprimand to removal for a first offense, depending on the seriousness of the misconduct.
- August 16, 1995 Issued an "All Employee Letter," which reaffirmed the Department's Equal Employment Opportunity policy, to include "zero tolerance" for sexual harassment and discrimination.

- 1995 to 1997 VA continued to build upon the Secretary's initiatives, by improving training, complaint processing, and program oversight.
- March 27, 1997 Established a committee of senior staff in VA Central Office to review all allegations of misconduct against senior managers and executives, to ensure that all of them are treated consistently and in accordance with the Secretary's "zero tolerance" policy towards sexual harassment and discrimination, before any action is negotiated or finalized.
- April, 1997
and continuing VA has several initiatives underway in the area of sexual harassment and discrimination complaints processing. These initiatives include:
- Development of a centralized reporting procedure for all allegations of sexual harassment, whether initiated through the EEO discrimination complaints process, or in other forums.
 - Development of a new on-site EEO inspection program, to oversee and evaluate the effectiveness of field facility EEO programs.
 - Development of new EEO regulations and handbooks, so as to improve the timeliness and quality of EEO complaint processing.

STATEMENT OF MR. WILLIAM T. MERRIMAN
DEPUTY INSPECTOR GENERAL
BEFORE THE HOUSE VETERANS' AFFAIRS COMMITTEE
HEARING ON SEXUAL HARASSMENT IN THE VA
APRIL 17, 1997

The Office of Inspector General (OIG) takes the issue of sexual harassment very seriously. Allegations of sexual harassment against senior VA managers or allegations of senior managers creating a hostile work environment by failing to respond to sexual harassment allegations against their staff are pursued vigorously by my office.

Secretary Brown has made it clear that the Department's policy on sexual harassment is "zero tolerance." It is the responsibility of senior managers to implement the Secretary's policy by establishing a work place environment that is free from sexual harassment. Effective implementation of this policy requires senior headquarters and field facility managers to set a proper example for their staff by communicating, both verbally and by their actions, their zero tolerance of sexual harassment.

Medical center directors and regional office directors serve as the Equal Employment Opportunity (EEO) Officers for their facilities. When a senior manager, particularly one who is also the EEO Officer, is personally involved in sexual harassment or creates a hostile work environment by tolerating sexual harassment by his managers or staff, VA has a failure that could affect the integrity of the entire system at that facility. When these failures occur, the Department must be willing to acknowledge the situation and respond appropriately.

Surfacing and Investigating Allegations of Sexual Harassment

Allegations of sexual harassment against VA senior managers may surface through the EEO system, through the negotiated grievance process, through management channels, or through the OIG's Hotline and Special Inquiry function. The investigations of allegations of sexual harassment may be conducted by EEO investigators designated by the VA Central Office (VACO) Office of Equal Opportunity (OEO) staff, by an

Administrative Review Board established by one of the major operating elements of VA, or by the OIG.

Allegations of sexual harassment investigated by the OIG are those reported to us through the OIG's Hotline which includes those received in Congressional or other correspondence. In the OIG, investigations of sexual harassment are conducted by my Special Inquiries staff, who specialize in administrative investigations of misconduct and mismanagement, primarily by senior VA officials. Also, the results of our investigations of sexual harassment are closely reviewed by the OIG's legal staff.

When we receive a complaint of sexual harassment against a senior manager, we conduct an initial review of the facts relating to the complaint. This review includes a determination of whether the complaint is currently under or scheduled for an investigation by an investigator designated by the VACO OEO staff or by an Administrative Review Board. In a number of cases, employees not only report the allegation to the OIG, but also to EEO and/or management.

If the sexual harassment complaint reported to the OIG is determined to be under investigation as a part of the EEO process, we will defer to that process since it affords the employee broader relief than the OIG can offer. The statutory EEO process offers the employee the chance to seek compensatory damages and to appeal outside the VA to the Equal Employment Opportunity Commission and ultimately to the Federal court system. It is a process with multiple levels of increasingly more formal review that, once started, can only be stopped by the employee.

If the sexual harassment complaint reported to the OIG is determined to be under investigation by an Administrative Review Board, we will normally defer to the Board and open a case for tracking and oversight purposes. As a part of this oversight process, we will review the Board's final report and supporting evidence file, if necessary, to make certain a thorough review of the allegation was accomplished.

VAMC Atlanta Review

Our first major investigation of sexual harassment complaints against senior VA managers was a 1992 review at

VAMC Atlanta. In that review, we found (1) the management style, the structure of the EEO process and the high level positions of the harassers deterred female employees from reporting allegations of sexual harassment, and (2) sexual harassment, including harassment by top managers and the failure of top management to deal with allegations of sexual harassment, created a hostile work environment for female employees.

We issued our report on VAMC Atlanta on January 14, 1993. The Department took swift and effective corrective action on the systemic problems we identified in the EEO process at VAMC Atlanta and replaced the top three managers at VAMC Atlanta. These 3 managers were included in the list of 12 senior managers recently reported by the Department to the Committee as retired, demoted, or dismissed as a result of sexual harassment.

OIG Task Force and Audit on EEO Process

While our work at VAMC Atlanta was in-process, the former Inspector General established an OIG Task Force to review VA's entire EEO process, to include allegations of sexual harassment. The Task Force effort evolved into a comprehensive OIG audit of VA's EEO Program with emphasis on sexual harassment complaints. The audit report was issued on March 31, 1993, and made recommendations to develop and issue a VA-wide policy directive that, at a minimum, includes specific procedural instructions in eight areas of VA's EEO program where guidance was missing or not well defined. This audit also recommended that the Department conduct evaluations of the EEO Program's organization, performance and policy guidance.

Implementation of these recommendations are tracked through the Department's audit follow-up system. Information in that system indicates there have been delays in implementing some of these recommendations. However, the implementation of the full audit recommendations appears to be back on track. A draft version of the new Department-wide EEO Program policy and handbook is currently being circulated for concurrence prior to issuance. Also, the Department's OEO staff, beginning in May 1997, will perform evaluations of the EEO program at three field facilities and self evaluations of the EEO program will be conducted at six

other field facilities using a guide developed by the VACO OEO staff. These actions will finalize the recommendations in our March 1993 audit report.

Sample Improvements Made by VA to the EEO Program

Since we issued our March 1993 program audit report, the Department has reported a number of improvements to the EEO program to include the following:

- Required every VA employee to complete 4 hours of EEO training in 1993 and 2 hours of refresher EEO training in 1995 and 1996;
- Redefined EEO Program Managers' duties, required EEO Program Managers to be appointed at every facility, and removed EEO Program Managers from Human Resources Management oversight;
- Established a training program for EEO counselors, provided initial training in 1994, and refresher training in 1996 for the counselors;
- Reemphasized record keeping requirements for EEO counseling with semiannual reporting of the number of counseling contacts and remedies obtained during EEO counseling;
- Required EEO Officer/Senior Executive Service performance standards to contain specific measurable goals including the timeliness of complaint processing.

General Accounting Office (GAO) Report on Sexual Harassment

In June 1993, GAO issued a report on sexual harassment issues at selected VA medical centers. GAO concluded there was a need to comprehensively assess the environment and procedures for dealing with sexual harassment at medical centers. GAO recommended an agencywide survey of sexual harassment issues be taken. The VA agreed with the GAO recommendation. The survey of about 30,000 VA employees was taken during the first 6 months of 1996 by a consulting firm and we understand the final survey results will be available soon. This comprehensive survey should give the VA a good

idea of the significance, if any, of sexual harassment issues in the Department.

Sexual Harassment Complaints Received by the OIG

The OIG closely monitors complaints of sexual harassment received by our Hotline or in Congressional and other correspondence with our office. The volume of cases opened stemming from allegations of sexual harassment is quite low relative to the overall number of Hotline cases opened. Details follow:

<u>PERIOD</u>	<u>TOTAL HOTLINE CASES OPENED</u>	<u>SEXUAL HARASSMENT CASES OPENED</u>
FY 1993	855	18
FY 1994	681	6
FY 1995	637	1
FY 1996	549	3
FY 1997 to date	<u>307</u>	<u>1</u>
Total	3,029	29

While these raw numbers do not seem to indicate a widespread problem of sexual harassment in a Department of over 220,000 employees, we take each and every allegation seriously. An analysis of the 29 cases of alleged sexual harassment, indicates that senior managers were involved in 5 cases. In 4 cases, senior managers were named as harassers and in the fifth case, a senior manager was alleged to have failed to act on founded allegations of sexual harassment by an employee of the medical center.

VAMC Fayetteville Review

The most publicized of these 5 cases involved allegations of sexual harassment and other misconduct and mismanagement by the former director at VAMC Fayetteville. By mutual agreement with the Director, Veterans Integrated Service Network (VISN) 6, the OIG reviewed the allegations of sexual harassment and the VISN 6 Director asked the Director of VAMC Augusta to review the other misconduct and mismanagement charges.

The former Director was also the EEO Officer for VAMC Fayetteville. None of the three women, who made allegations of sexual harassment against the former Director to the OIG, had filed an EEO complaint.

Our review of the sexual harassment allegations made to the OIG determined that the former Director sexually harassed one of the three female employees of VAMC Fayetteville. While we determined there was insufficient evidence to support a finding he sexually harassed the other two female employees, we did conclude that the former Director's behavior toward them was abusive, threatening and inappropriate.

Regarding the first complainant, we found the former Director made inappropriate comments of a sexual nature, some of which were witnessed by other employees. However, the facts of the case were such that we concluded a sexual harassment charge would be difficult to uphold because there was evidence which might support a finding that such comments were neither uninvited nor offensive to the complainant, an element required to support a hostile environment case.

We did conclude the former Director's treatment of the first complainant was inappropriate and abusive particularly by someone in a senior management position. This complainant advised us that the former Director's verbal abuse caused her such stress that she filed a claim for workers' compensation. It should be noted that the charges we did substantiate carry equal or greater penalties to that of sexual harassment, as described by the Department's table of penalties.

The second complainant testified that the former Director made unwelcome sexual advances toward her and retaliated against her when she rejected his suggestions that they have a personal relationship. Our review substantiated quid pro quo sexual harassment and sexual harassment for creating a hostile work environment. We found the testimony of the complainant to be credible in that it was corroborated by the views of other medical center employees and another credible witness. Due primarily to stress caused by the sexual harassment, the complainant transferred at her own expense to another VA medical center.

The third complainant testified that the former Director made unsolicited verbal comments of a sexual nature to her on more than one occasion. Because we were unable to

corroborate her testimony, we did not substantiate the allegation of sexual harassment. However, we did conclude that the Director's treatment of the third complainant continued to demonstrate a pattern of inappropriate and abusive behavior by a senior manager. The complainant is still an employee of the medical center.

On September 12, 1996, we provided our draft report to the Director, VISN 6 for his review and comment. We also provided the VISN Director with a copy of all of the witness statements and documentary evidence we compiled in order to provide him with the factual basis for our findings. Our draft report recommended, given our findings of misconduct by the former Director, that appropriate administrative action be taken.

In accordance with standard practice in the Inspector General community, our report did not recommend that a specific penalty be imposed on the former Director. The decision whether to take administrative action, and the specific action that is appropriate, is vested in the management officials who supervise the employee in question. Because the OIG is independent of Department management, Offices of Inspector General do not recommend a specific penalty or disciplinary action. The OIG's function of objective oversight of Department management makes it especially important that the line between management and oversight be respected.

In addition, it is well established that, before a Federal employee can be disciplined for misconduct, the management official making such a decision must consider the 12 factors known as the "Douglas factors." The Merit Systems Protection Board has held that various factors must be considered before disciplinary action can properly be imposed. These factors include such things as the employee's length of service, past disciplinary record, the severity of the misconduct, whether the misconduct was intentional or inadvertent, the grade level of the employee, the range of penalties previously imposed for similar behavior and other potential mitigating or aggravating factors.

The facts to be considered in addressing the relevant Douglas factors for each individual employee are outside the

scope of the OIG review. The OIG function is to determine the facts with respect to the alleged misconduct and to conclude whether misconduct either did or did not occur. Consideration of the Douglas factors is a part of the analysis that the Department's deciding management officials are required to undertake when presented with proof of misconduct. The recommendation of a specific penalty for misconduct needs to result from this two part process.

By the time we issued our draft report on September 12, 1996, substantiating an allegation of sexual harassment as well as other misconduct, the VISN 6 Director had already detailed the former Director for 120 days to VAMC Durham because of the management problems he had created at VAMC Fayetteville.

On September 26, 1996, the Director, VAMC Augusta issued his report to the VISN 6 Director on the allegations of mismanagement and other misconduct by the former Director of VAMC Fayetteville. The report concluded that over 62 percent of the 76 individuals interviewed at VAMC Fayetteville expressed "a lack of respect, trust or confidence" in the former Director. The VHA management report also stated that employees "do not feel comfortable in his presence" and "felt his management style has adversely impacted morale and divided staff."

On October 18, 1996, we received the VISN 6 Director's response to our draft report and he concurred with our findings and recommendations. By letter dated October 25, 1996, disciplinary action was proposed by the VISN 6 Director against the former Director. The proposed action was based solely on the OIG's investigation and our findings of sexual harassment and disrespectful, abusive conduct by the former Director. No charges were based on the findings contained in the VHA review, which we believe evidenced further misconduct by the former Director.

We issued our final report on November 8, 1996, to the VISN Director with copies provided to VHA top management, the Office of the Secretary, and the Chairmen of the Senate and House Veterans' Affairs Committees. A copy of the final report along with the OIG file (witness statements and related documents) was also provided to the VACO Office of Human Resources for their review and preparation of an

evidence file that would support the seven charges of misconduct proposed by the VISN Director against the former Director.

On December 6, 1996, the VISN 6 Director rescinded the proposed adverse action referring to the lack of an evidence file which should have been included with the letter proposing the disciplinary action. The former Director was informed that a new letter of proposed adverse action and charges is being prepared and will be issued in the near future with an evidence file prepared by the Department.

We were informed on February 3, 1997 that effective January 19, 1997, the former Director, an SES employee, was downgraded and transferred to a GS-14 non-supervisory position at VAMC Bay Pines, Florida. We later learned that the former Director was allowed to permanently retain his SES pay and would be transferred at Government expense to Florida. The OIG was not involved in the decision relating to the penalty imposed on the former Director.

Other OIG Reviews of Allegations of Sexual Harassment

Of the 4 remaining cases of sexual harassment opened by the OIG against senior managers since October 1992, one case was investigated by the OIG and the allegations of sexual harassment were unfounded. Two cases are still under active review by the OIG. The fifth and final case was opened by the OIG as an oversight case and the allegation of sexual harassment was substantiated by a VHA review.

The individual in this case is one of the 12 senior managers whose names were recently provided to the Committee by the Department as employees who retired, were demoted, or were dismissed as a result of sexual harassment. In this instance, our preliminary work indicated that the allegation of sexual harassment was under review by a VHA Administrative Review Board. We reviewed the results of the Board's investigation and found that VHA had done a thorough job of investigating the case and, as a result of the investigation, the individual retired. There was no need for further OIG involvement and we closed our oversight case.

Thank you Mr. Chairman for the opportunity to comment on the work of the OIG in this important area.

**TESTIMONY OF DOROTHY NELMS, PRESIDENT
FEDERALLY EMPLOYED WOMEN, INC.**

APRIL 17, 1997

**HOUSE VETERANS AFFAIRS COMMITTEE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

Chairman Everett, distinguished members of the Subcommittee, thank you for the opportunity to appear before you today. I am Dorothy E. Nelms, President of Federally Employed Women (FEW). FEW is a non-profit, non-partisan membership organization representing over one million women employed by or retired from the Federal Government throughout the world. Founded in 1968, FEW actively works to eliminate sex discrimination and enhance the career potential of civilian and military women working in the Federal sector. FEW is firmly committed to the principle that every employee has the right to work in an environment that allows individuals to perform at their best and that is free from discrimination and harassment.

In light of the history of severe harassment at the VA, past scrutiny by this Subcommittee, and the VA's official zero tolerance policy against sexual harassment, it is appalling that we must be here today to address what appears to be an undiminished environment of tolerance for sexual harassment and tacit endorsement for managers who have perpetrated it.

Recognizing that sexual harassment is a major barrier to women's career advancement, FEW conducts widely-recognized national, regional, and local trainings for workers and management on sexual harassment, EEO compliance, and diversity in the workforce, among other topics.

In 1977, FEW established the independent FEW Legal and Education Fund, Inc (LEF), and in 1996, FEW established the FEW Legal Awareness Program. The Legal Awareness Program provides our members with a short legal advisory session to evaluate their individual situations, determine if legal representation is needed in order to remedy it, and, if so, to help them contact qualified attorneys. The LEF provides legal and job-related counselling, a nationwide lawyer referral service, and, for certain cases, legal defense funds.

In 1993, the LEF gave its Mary D. Pinkard Leader in Federal Equity Award to the founding members of Women Against Sexual Harassment (WASH), a group helping Veterans Affairs (VA) employees to fight discrimination and abuse. Several of those women testified before this Subcommittee in 1992. Despite their valiant support and advocacy work, the VA continues to undermine its own official zero tolerance policy by failing to take appropriate action to discipline harassers.

Today, I will provide an overview of the effects of sexual harassment in the Federal workplace, the effects of sexual harassment on the women the VA serves, an overview of some of the barriers to adequately addressing sexual harassment, and some concrete suggestions for measures to improve the Department's policy against sexual harassment and its implementation.

In addition, I want to offer any assistance that FEW can provide to the brave women who have testified here today, to the Subcommittee in its ongoing oversight efforts, and to the Department of Veterans Affairs as it works to prevent and eliminate sexual harassment.

THE EFFECTS OF SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE

Overview

In 1994, 44 percent of women and 19 percent of men working in the Federal Government who responded to a survey by the Merit Systems Protection Board (MSPB) reported that they had experienced some form of unwanted sexual

attention during the preceding two years. Among women in the VA, the percentage was roughly the same as the 1994 government-wide average, at 41 percent. However, the incidence among men was 27 percent, eight percentage points higher than the government average of 19 percent (15, MSPB, 1995).

The incidence of sexual harassment has not decreased significantly since the MSPB's 1987 study, despite widespread employee awareness programs on what constitutes sexual harassment and official efforts by Federal agencies to institute anti-harassment programs (viii, MSPB, 1995).

Sexual harassment affects both the direct targets of harassment and their coworkers. It creates a chilling climate of intimidation, fear, and mistrust. Women and men who know that an employee has harassed others will often go to extraordinary lengths to avoid working with the harasser, transferring out of a department, turning down new projects, or missing other important opportunities to participate in workplace teams.

When workers face retaliation for filing complaints, it exacerbates the hostility of the workplace environment and tacitly supports sexual harassment and the attitudes that perpetuate it. Workers who support colleagues who file complaints are often subject to retaliation as well. In 1992, for example, Mary Cavanaugh testified before this Subcommittee that she was transferred to a lesser position in retaliation for supporting Donna Grabarczyk, who had filed a sexual harassment complaint.

The cost of sexual harassment to the Federal Government continues to be significant. The MSPB estimates that between April 1992 and April 1994, sexual harassment cost an estimated \$327 million in sick leave, job turnover, and productivity losses (ix, MSPB, 1995).

Dispelling Sexual Harassment Myths

All too often, individuals and organizations attempt to deny or diminish the egregious incidence and impact of sexual harassment by claiming that the majority of occurrences are "trivial" or "minor." However, although sexual remarks, jokes, and teasing do occur far more frequently than incidents of sexual touching and assault, they are not, as some might suggest, less traumatic or detrimental in their effects on victims and their coworkers. Like low intensity warfare, this type of harassment can be most damaging to victims over the long run, because it tends to happen repeatedly over a period of one to six months (16, MSPB, 1995).

In the "grey areas," the burden of proof on victims is more difficult to bear. Victims often doubt themselves and fear that coworkers or supervisors will not support them and that they will not be able to establish adequate proof of harassment until they have endured long weeks or months of abuse and intimidation.

According to the MSPB, "data suggest that the percentages of employees who reported experiencing sexual harassment are not due primarily to the inclusion of isolated incidents of bad management or poor judgement in ... calculations of the extent of sexual harassment" (21, MSPB, 1995). Even when the MSPB excluded incidents of sexual harassment defined as "less serious" -- looks/gestures, pressure for dates, letters, calls, and jokes and remarks -- from its calculations of incidence rates, it still found that 38 percent of women and 15 percent of men reported experiencing sexual harassment.

It is also common to dismiss many sexual harassment complaints as retaliatory gestures by disgruntled Federal employees. However, according to the American Psychological Association (APA), research shows that less than one percent of sexual harassment complaints are false. In fact, victims of sexual harassment rarely file complaints even when they are justified in doing so because of the continuing stigma, time, and threat of reprisal involved (APA fact sheet).

Federal workers, in particular, do not seem to make allegations of sexual harassment lightly. Government-wide, 17 percent of victims chose not to take formal action because they did not want to hurt the perpetrator of the harassment, and 29 percent thought it would make their work situations unpleasant (35, MSPB, 1995). Only 6 percent of victims reported taking formal action (33, MSPB, 1995).

THE EFFECT OF SEXUAL HARASSMENT ON WOMEN VETERANS

Lack of appropriate treatment of sexual harassment and abuse at the VA not only undermines the confidence, health, safety, and productivity of the women and men who work at the VA, but it also undoubtedly undermines the confidence of the women the VA serves.

Over the years, the VA has been charged with providing inadequate service to women veterans and, in response, the VA has made a public effort to improve the quality and scope of services it provides. Secretary Brown recently sent a letter to more than 400,000 women veterans explaining the services offered by the VA and assuring them that the VA has the "resources and the commitment to provide the counseling and care needed by those suffering the effects of sexual assault, battery, or harassment while in military service" (St. Petersburg (FL) Times, 2/5/97).

Unfortunately, this latest sexual harassment debacle sends a stark contradictory message to all women who deal with the VA: "You are not safe here. We will not take your concerns seriously." Women patients, who are in the vulnerable position of needing to discuss the intimacies of their health with VA doctors, the majority of whom are men, may exacerbate their conditions by delaying or avoiding seeking care because they fear harassment or abuse from VA staff.

The hostile environment at the VA and the Department's apparent unwillingness to deal with it are of even graver concern to the huge numbers of women veterans have endured sexual harassment or domestic abuse while serving in the military and who are now seeking care for the ongoing physical and psychological effects of the abuse. A 1993 study of women using the Minneapolis VA Medical Center concludes that women serving in the armed services may be at higher risk of sexual assault than other government employees and, thus, are even more likely to need sensitive, comprehensive services to address their concerns. 90 percent of women under age 50 and 37 percent of women over age 50 reported having been sexually harassed while serving in the military, and 25 percent reported that a partner had physically abused them within the last year (Family Violence Prevention Fund).

How can an agency that has a history of tolerating or even, it seems, rewarding, sexual harassment within its own ranks reasonably instill confidence that it is ready, willing, and able to help heal the effects of sexual harassment and assault among the veterans it serves?

BARRIERS TO ADEQUATELY ELIMINATING AND ADDRESSING SEXUAL HARASSMENT

FEW feels strongly that the best indicators of a successful sexual harassment policy are a low incidence of sexual harassment and employees' confidence that their agencies will deal with it effectively if it does occur.

Unfortunately, there seems to be a government-wide disparity between employee and employer perceptions both of agencies' willingness to confront sexual harassment and of their effectiveness in doing so.

- Although 100 percent of agencies reported taking swift action to investigate complaints, only 32 percent of employees shared this perception (34, MSPB, 1988).
- Although 82 percent of agencies reported enforcing penalties against harassers, only 27 percent of workers thought harassers were punished (34, MSPB, 1988).
- Although 59 percent of agencies reported enforcing penalties against managers who perpetrated or tolerated harassment, only 18 percent of employees (34, MSPB, 1988).
- Although 85 percent of agencies reported that their disciplinary actions against managers were effective, only 65 percent of employees shared that perception (37, MSPB, 1988).

The most recent incidents at the VA underscore how important it is to narrow the gap between agencies' official stance and the daily reality that employees confront in their work environments.

If employees are not confident that their agencies are committed to or effective at confronting, punishing, and eliminating sexual harassment, they will be reluctant to come forward with complaints and victims will endure, rather than report harassment. Harassers will feel emboldened to initiate or continue their behavior because they know they can "get away with it."

Government-wide, a significant percentage of victims who decided not to take formal action did not do so because they lacked confidence in their agencies' willingness to support them or to follow-up appropriately on their complaints:

- 20 percent thought nothing would be done;
- 17 percent feared reprisal;
- 8 percent feared they would not be believed and 9 percent feared they would be blamed for the incidents (35, MSPB, 1995).

Based on the distressing testimony we have just heard and the publicity surrounding these incidents, it is clear that workers at the VA must suffer high levels of mistrust and fear. No matter how effective agencies think their policies are, if employees do not perceive them to work, the policies will not have the deterrent or remedial effects they are intended to have.

Agencies use low numbers of formal complaints to justify their confidence in and reliance on their official policies.

The VA, for example, points to its written condemnation of sexual harassment and its mandatory trainings as evidence of its zero tolerance program. However, all employee letters and four-hour trainings are not enough. By failing to take complaints of sexual harassment seriously or to adequately discipline perpetrators, the VA has further undermined employee confidence and allowed both sexual harassment and the attitudes that support it to flourish.

Government-wide, the MSPB found that

- managers were reluctant to confront harassers;
- supervisors and managers took inappropriate or inadequate actions against harassers; and
- managers failed to investigate complaints or made errors in pursuing investigations of alleged harassment (37, MSPB, 1995).

The specific problems that exist at the VA go beyond those listed above. FEW questions the extent to which the criticisms levied in a 1993 GAO review of sexual harassment at the VA have been adequately addressed. The review found that

- certain medical center directors and supervisors "actively sought to discourage complaints from being filed" (3, GAO, 1993);
- one-third of complaints at the VA were rejected on procedural grounds, suggesting both that complainants may not have been given sufficient information to file complaints in a timely basis and that EEO counselors and investigators needed further training (3, GAO, 1993);
- consistent evaluation of training for handling sexual harassment "was difficult to ensure" given that the VA's EEO system is decentralized to 171 medical centers (3, GAO, 1993);
- complaints were not investigated promptly -- an average of over 5 months elapsed before cases were

investigated (4, GAO, 1993); and

- 50 percent of victims felt that they suffered reprisal or threats of reprisal in response to their complaints.

Despite specific identification of barriers to deal with sexual harassment effectively, evaluation of the VA's treatment of sexual harassment, and the VA's official efforts to implement a zero tolerance policy, it is clear that most of these obstacles persist.

RECOMMENDATIONS FOR IMPROVING THE VA'S TREATMENT OF SEXUAL HARASSMENT

Following are FEW's recommendations for improving the VA's treatment of sexual harassment.

- **Widely publicize the range of penalties and disciplinary actions for sexual harassment.**

The VA's manual, "The Prevention of Sexual Harassment in the Department of Veterans Affairs," which describes the Department's zero tolerance policy, stops short of describing the range of possible disciplinary actions against sexual harassment. However, according to the MSPB,

Employees should be made aware of how the agency intends to discipline proven harassers. Victims should always be informed about what happened to their harassers, and penalties should be public enough to serve as examples to potential harassers that management's prohibition of sexual harassment is more than lip service (xi, MSPB, 1995).

72 percent of employees surveyed felt that publicizing the range of penalties that can be imposed on perpetrators would be among the most effective action an agency could take to address and deter sexual harassment (41, MSPB, 1995).

- **Conduct a periodic review of both formal and informal complaints and their outcomes and publicize general descriptions of the cases.**
- **Strengthen affirmative action efforts to create and maintain a diverse workforce of talented, dedicated individuals.**

In 1992, 56 percent of the VA's staff were women, yet only 7 of the 171 VA hospitals had women as directors. The vast majority of the EEO staff were men. The VA should learn from other agencies' experiences: a GAO review of the Drug Enforcement Administration's handling of sexual harassment and discrimination found that women workers expressed little confidence in the internal investigative process because the vast majority of investigators were men, many of whom had shown lack of sensitivity in the past (GAO, 1994).

Seeking out qualified women for supervisory and leadership roles would go a long way toward alleviating the mistrust that employees feel toward management and increasing confidence that coworkers and supervisors alike would be sensitive in dealing with complaints.

- **Initiate memorandums of understanding with other Federal agencies that would allow VA employees to seek counsel from a limited number of EEO staff outside of the VA.**

This will both diversify the group of available EEO officers from which employees can choose and help to avoid real or perceived conflicts of interest.

- **Empower full-time EEO investigators who can focus exclusively and independently on EEO complaints.**

The current system with part-time EEO counselors may not allow EEO staff enough time to adequately investigate complaints, counsel complainants, or resolve cases in a timely manner. It also may fail to provide sufficient freedom from potential reprisal when making inquiries (22, IG, 1993 and testimony of Donna Grabarczyk, 1992).

- **Improve systematic oversight of entire complaint process.**

A periodic summary report of the nature, extent, and form of resolution of formal and informal complaints at each facility would help keep the Secretary informed of EEO activity. To quote the 1993 Inspector General's report, "continuing deficiencies in the same VA program areas may result from merely issuing new policies without the attendant requisite to ensure that they are effective" (27, IG, 1993).

- **Take action against perpetrators of sexual harassment based on the seriousness of the offense rather than on the rank of the offender.**

FEW supports the MSBP's recommendation that

managers and supervisors should not give undue weight to the harasser's performance and value to the agency [T]he value of a harasser's contributions to the organization is likely to be diminished by behavior that hurts morale, demonstrates a lack of ethics, or exhibits a double standard. Further, the example that management sets in following through with appropriate penalties can be more effective as a preventative measure than the policies it promulgates (p.xi, MSPB, 1995).

Similarly, lack of action to discipline managers adequately undermines stated official policy and sends an unwritten message that zero tolerance is a sham.

- **Work harder to prevent reprisal and take strong action against those who do retaliate against complainants.**

The MSPB's 1994 survey shows that, for almost half of those employees who filed a grievance or adverse action appeal, taking action made their situations worse. The Secretary's own letter, dated May 6, 1993 confirms that "a considerable number of the discrimination complaints" filed at the VA are reprisal cases.

If the VA is going to maintain its largely internal complaint and investigation process, it must find a way to guarantee workers that they can come forward without being victimized a second time.

67 percent of employees felt that protecting victims from reprisal is critical to effectively dealing with sexual harassment (41, MSPB, 1995).

Specific steps to take should include:

- expanding treatment of reprisal in VA training materials on sexual harassment;
- including in the pending survey of workers' experiences with sexual harassment additional questions regarding both retaliation and employees' perceptions of management and supervisory response to allegations of sexual harassment;

Clearly, it is established that sexual harassment is a problem at the VA; thus, doing additional surveys on the type and extent of harassment need not be the primary focus of the survey. Instead, the VA should concentrate on dealing with the consequences of sexual harassment.

- referring all complaints against top management to the region-level to avoid conflict of interest; and

- including the results of EEO reviews and the presence or absence of reprisals against workers who file complaints of sexual harassment in performance ratings for managers and supervisors (24. IG. 1993).
- **Collaborate with other agencies and the private-sector to improve anti-sexual harassment training and to expand the base of EEO compliance trainers and experts.**
FEW has a cadre of qualified trainers who have excellent experience dealing with sexual harassment.
- **Improve evaluation of the effectiveness of the anti-sexual harassment training the Department provides for employees, managers, and EEO counselors and investigators (xi, MSPB, 1995) by establishing measurable standards for successful training outcomes.**

Finally, FEW would strongly support a measure like the 1993 proposed VA Employment Discrimination Act. H.R. 1032 would have created a central Office of Employment Discrimination Complaints Resolution within the VA, empowered full-time investigators who would have reported to the Office of Complaints Resolution instead of to local managers, and appointed administrative law judges who would have been the final arbiters of employee complaints, eliminating potential conflicts of interest between management and alleged perpetrators.

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Dorothy E. Nelms

Dorothy E. Nelms, National President of Federally Employed Women, Inc. (FEW), a former federal employee, took early retirement after 28 years of service to complete law school. A graduate of George Washington University National Law Center, Washington, DC, Ms. Nelms specializes in civil rights, criminal, and domestic law. This experience has greatly enhanced her training programs. Most recently, as an attorney, she has conducted agency-wide training on sexual harassment with Mitsubishi, the U.S. Geological Survey, and the U.S. Indian Health Bureau.

Ms. Nelms has been a professional public speaker and trainer for many years. As an internationally renowned speaker, she has spoken and conducted trainings in all 50 states, Germany, Japan, Belgium, and Canada. Although most of her work has been with the public sector, she also has worked extensively with the private sector.

Highlights of Professional Experience

- National President, Federally Employed Women, Inc. (FEW), 1996 to present: Leading a national organization of over 200 chapters in the U.S., Germany, Japan, and Korea engaged in legislative and policy issues to help end sex discrimination in the federal government.
- President, Nelms and Associates, Washington, DC, 1981 to present: Attorney-at-Law and Consultant to Management on human resources, equal employment opportunity, and affirmative employment planning.
- Director, Organizational Development and Training, Hubbard and Revo-Cohen, Inc., a human resources consulting firm, Reston, VA: Consulted on issues such as team-building, conflict management, executive and staff development, managing cultural diversity, and equal employment opportunity laws.
- Director of Executive Resources, U.S. Department of Housing and Urban Development, 1975-1978: Managed a staff responsible for personnel functions of all executives, consultants, and political appointees in the Department.
- Director of Training, U.S. Department of Housing and Urban Development, 1971-1975: Directed a staff responsible for the training of 17,000 employees of the Department and managing two national training centers.

International Assignments

- Germany: Frankfurt, Heidelberg, Wiesbaden, Wurms, Augsburg, Kaiserslautern, Graefenwoehr, and Munich in 1990, 1991, and 1992.
- Japan: Tokyo in 1990 and 1991.
- Canada: Toronto in 1992.

Organizational Affiliations

- American, National, and D.C. Bar Associations
- American Society for Training and Development
- National Capital Speakers Association
- Federally Employed Women
- Business and Professional Women

Special Awards and Recognition

- Distinguished Service Award, U.S. Department of Housing and Urban Development
- Distinguished Service Award, FEW

Education

J.D., George Washington University National Law Center, Washington, DC.

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B.S., Howard University, Washington, DC.



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Statement of
the Nurses Organization of Veterans Affairs
(NOVA)

Maura Farrell Miller, Ph.D., ARNP, CS
President

Before the
United States House of Representatives
Committee on Veterans Affairs
Subcommittee on Oversight and Investigations

on

The Effectiveness of the DVA's Sexual Harassment Awareness Programs
and
Enforcement of the DVA's *Zero Tolerance* Policy

April 17, 1997

Mr. Chairman and Members of the Subcommittee, I am Dr. Maura Farrell Miller, a Gerontological Nurse Practitioner at the West Palm Beach Veterans Affairs Medical Center in Palm Beach Gardens, Florida. As President of the Nurses Organization of Veterans Affairs (NOVA), I am pleased to present the testimony on behalf of NOVA. I speak for our membership and for the more than 40,000 professional nurses employed by the Department of Veterans Affairs (DVA). I also speak as a woman, representing thousands of other professional women, employed in a male, physician-dominated, paternalistic, Federal agency.

Sexual Harassment of Subordinates

NOVA is a professional organization whose mission is: *Shaping and influencing professional nursing practice within the DVA healthcare system.* To date, NOVA has not received any official reports of cases of alleged sexual harassment of subordinates by senior managers within DVA. This includes the specific case of the demotion and transfer to the Bay Pines, Florida DVA Medical Center of the former medical director of the Fayetteville, North Carolina VA Medical Center for alleged sexual harassment. NOVA is a professional organization, not a labor union or collective bargaining group; we do not handle day-to-day issues at the local level. In the event that a registered nurse reported an incident of alleged sexual harassment to NOVA, NOVA would refer that nurse back to his/her medical center to report the incident to his/her immediate supervisor and to the Office of Equal Opportunity (EEO) in accordance with VHA Policy for Prevention of Sexual Harassment (10-25-055).

NOVA applauds Secretary Jesse Brown for his "Zero Tolerance" policy on sexual harassment in the VA workplace. NOVA supports the DVA policy that prevention and reporting of sexual harassment is every employee's responsibility. My preparation for this testimony included inquiries with Dr. Nancy Valentine, Chief Consultant, Nursing Strategic Healthcare Group, DVA Headquarters. Dr. Valentine has informed me that to date, there have been no reported incidents of sexual harassment regarding DVA professional nurses.

Enforcement of DVA's Zero Tolerance Policy

Experts acknowledge that "only a fraction of those who are sexually abused ever report it" (Lippman, 1993). However, the total absence of reported incidents of sexual harassment of VA professional nurses is contrary to data that has been cited in the literature. No one

really knows just how pervasive a problem sexual harassment is for nurses. Dianna Johnston, RN, JD, Assistant Legal Counsel for the Equal Employment Opportunity Commission (EEOC) has stated: "Sexual harassment has little to do with sex and a lot to do with power." One reason why nurses are vulnerable for harassments by doctors or administrators, who are higher up in the hospital hierarchy. In one recent study, more than half the nurses surveyed said they had been "sexually abused" [suggestively touched, sexually insulted or propositioned] at least once. Three of 10 nurses reported they are subject to sexual harassment at least once every two or three months (Diaz & McMillan, 1991). A recent *RN Magazine* survey of readers confirmed that common forms of abuse, including verbal, sexual harassment, and threats of being fired, were still commonplace in the healthcare workplace (Begany, 1995). The typical respondent in this survey was a 39 year old female registered nurse with 13 years in nursing, not unlike the profile of the career VA professional nurse.

Preventing and reporting sexual harassment is every DVA professional nurses' responsibility. The total absence of reported incidents of sexual harassment involving DVA professional nurses could be a symptom of other problems and may be reflective of what is going on in the agency as a result of healthcare reorganization. For its very survival, the downsizing and subsequent healthcare reorganization has forced men and women to compete for a shrinking pool of healthcare resources and positions of power and authority at an intensity never before seen in the DVA. As a female, professional nurse working in a historically male, physician-dominated, paternalistic healthcare system, NOVA suggests that incidents such as this be used as catalysts for change. Further dialogue is needed on this and other perceived problems, to make the DVA a healthier workplace and the "employer of choice" for registered professional nurses. As the DVA healthcare system evolves, NOVA encourages the DVA to: use opportunities such as these to bring attention to women's issues in the workplace; use more women in solving problems within the agency; and open up executive healthcare management positions to all genders and disciplines.

I would like to thank NOVA's Legislative Co-Chairpersons, Dr. Sarah V. Myers, Ph.D., MSN, RNC, and Barbara Zicafoose, RN, MSN, ANP, for their assistance in the preparation of this testimony. Thank you for the opportunity of presenting this written testimony on behalf of the Nurses Organization of Veterans Affairs (NOVA).

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AFGE

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STATEMENT BY

KITTY PEDDICORD

**WOMEN'S DIRECTOR
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

BEFORE

**THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

ON

SEXUAL HARASSMENT IN THE DEPARTMENT OF VETERANS AFFAIRS

APRIL 17, 1997



Mr. Chairman and Members of the Subcommittee:

My name is Kitty Peddicord. I am the Women's Director of the American Federation of Government Employees, AFL-CIO. AFGE represents over 700,000 federal employees in some 42 federal agencies, and approximately 100,000 employees of the Department of Veterans Affairs.

AFGE has a long history of leadership in the fight against workplace sexual harassment. As early as 1978, AFGE established the elected office of Women's Director, and ever since then, we have been in the forefront of the battle against sexual harassment. Our activities include the sponsorship of the amendment to the Civil Rights Act of 1991 that brought compensatory damages for the first time to victims of sexual harassment in the federal government; numerous national training conferences on this issue; AFGE workbooks, pamphlets, posters and even a video on sexual harassment in the federal government; and constant litigation and representation of sexual harassment victims in arbitrations, EEO complaints, court civil actions, and elsewhere.

As you know, sexual harassment is an unfortunate reality in the nation's workplaces, whether it be in the private sector or the public sector. Comprehensive studies by the U.S. Merit Systems Protection Board have revealed that approximately 42% of all women (and 14% of all men) in the federal government, have experienced sexual harassment. Additional studies in the private sector show numbers consistent with the federal sector experience. Unions and women's groups, naturally, find these results intolerable. Employers too are beginning to take this problem seriously, not only because of the increased damages now available to victims of sexual harassment, but also because sexual harassment costs employers, daily, millions of dollars in lost productivity, job turnover, and sick leave.

Under the present Administration, the VA has announced a "zero tolerance" policy against sexual harassment. Secretary Jesse Brown has repeatedly acted to

turn around any previously-accepted view that allegations of sexual harassment will merely meet the "good old boy" system of cover-up, denial, and frustration. For instance, the VA now requires agency-wide training in sexual harassment, and AFGE applauds Secretary Brown for his decision to train all employees, not just managers, in sexual harassment. This is something that is not routine in the federal government or the private sector. For instance, the employees of Mitsubishi are only now receiving such training, and while employees of the Department of the Navy have had such training, most other employers do not now provide such training to all their employees. The VA has also established a toll-free phone number for allegations of sexual harassment, and it is our experience that employees in the VA are now aware that such gestures reflect a sincere effort to address the problem from the Secretary's Office.

Nonetheless, incidents of sexual harassment continue. It may even be true that the nature of the VA's service itself contributes to a culture that permits some forms of sexual harassment. I am referring here to the fact that the VA facilities operate independently, under the control of separate directors, and that the workplace provides a ready mixture of a male supervisory force, women nurses, and round-the-clock staffing. However, anecdotal evidence from AFGE Local officials confirms the general observation that the VA is moving away from a culture that overlooks allegations of sexual harassment and toward a culture that responds quickly to such allegations.

Therefore, AFGE is particularly concerned about the several incidents identified today, and known to AFGE, in which high level managers benefit from some sort of favored treatment in the agency's response to sexual harassment allegations. We know for a fact that the typical worker at the VA would be unable to hold onto his or her job under such circumstances, and obviously, we can see no reason why VA Directors or managers should be granted exemptions from the new get-tough policy at the VA. For this reason, we have remained vigilant on the issue of sexual harassment and other forms of unlawful discrimination at the VA, even under the present, more concerned, VA administration.

Two other observations from today's witnesses should be noted. First, it is often the fact that the most abusive cases of on-going, festering, unresolved sexual harassment occur by managers against other managers. Why? Simply because union members have access to an expeditious and inexpensive remedial process for such violations of federal law; namely the grievance/arbitration process. Under the AFGE contract with the VA, union representatives can address and remedy sexual harassment before an independent arbitrator within just a few months, and there is nothing a recalcitrant VA Director can do to thwart the process. This compares sharply with the agency EEO process (known as Part 1614), where managers must go if they want a hearing on allegations of sexual harassment. As you know, in the agency EEO complaint process, the VA is in charge of investigating itself, and can easily extend numerous deadlines, drag out the case for years prior to a hearing, and even reject findings of discrimination for no good reason whatsoever (thereby assuring years more of delay), while all along continuing harassment and reprisal against the complainant. When such abuses occur, as they often do, to a union member, the AFGE representative can take the next incident of discrimination or reprisal to an independent arbitrator quickly, thereby putting an immediate end to the practice and controlling the overall cost to the agency and to the employee as well. The value of union representation in this adversarial process is equal to its value in today's partnership process, and clearly demonstrates why the long-term outrageous cases often involve non-bargaining unit employees.

The second observation from today's witnesses is our firm belief that the series of sexual harassment practices attributed to senior-level management is merely reflective of other serious failings in management capabilities, the managers' total arrogance of power that affects many other employment related decisions, and the VA's total lack of checks and balances on the various facility Directors. Long before these managers committed the outrageous acts of sexual harassment, they learned that they could ignore their obligations in the labor relations area, sabotage the EEO process (as I stated before), and otherwise behave indiscriminately with impunity.

While we are certainly grateful that the agency hotline telephone number will help to remedy future cases of sexual harassment, the union would like the same kind of attention to earlier signs of other blatant mismanagement. In some of the egregious cases detailed today, AFGE's early warnings about the irresponsible conduct of the Directors in question went unheeded.

As I stated earlier, AFGE will remain vigilant on the progress recently taken by the VA in response to sexual harassment and other civil rights violations. As an example, I would like to show the Committee the attached flyer which announces our campaign at selective VA sites across the country to survey the workforce on sexual harassment, racial discrimination, and abuses of the agency EEO process. As you may know, two recent studies of the federal government have shown large disparities in the discipline of federal employees by race, and the VA was identified as one of the more serious offenders. We would hope that attention to demonstrated racial discrimination would equal that of sexual harassment cases. AFGE's union survey, which kicks off next week and continues throughout the summer, will explore this problem by establishing a toll-free phone number for employees to call with their civil rights concerns. I will be glad to share the results of the survey with the Committee when we conclude this AFGE-VA civil rights project. Again, I thank you for your attention, and I would be glad to answer any questions.

GRANT DISCLOSURE

AFGE has no grants or contracts to declare.

BIOGRAPHY OF KITTY PEDDICORD

Kitty Peddicord brings a lifetime of government and union experience to her position with AFGE. She was elected to her post at AFGE's National Convention August 17, 1994, after an unprecedented grassroots campaign. Never afraid to stand up for workers' rights, Peddicord appeared before Congress in 1987 as a whistleblower while still employed by the Social Security Administration (SSA). In 1970, Peddicord joined the federal service as a GS-2 file clerk at SSA's Division of Personnel where she soon became an AFGE steward with Local 1923. After several years at home and in the private sector, Peddicord returned to the SSA Office of Disability Operations as a part-time GS-3 typist in the typing pool. She moved up to Benefit Authorizer and resumed her post as a steward with the Local. She also served as a member of the Local's Health and Safety Committee, and later as Chief Negotiator fighting for improved working conditions for clerical employees.

In 1987, Peddicord joined AFGE's National Office as an organizer in the Membership and Organization Department. In an eight-year span, Peddicord racked up an impressive string of organizing victories, never once losing a campaign that she led. Along with her AFGE responsibilities, Peddicord also serves as a board member of the Coalition of Labor Union Women (CLUW), the A. Philip Randolph Institute (APRI), the National Association for the Advancement of Colored People (NAACP), the White House Conference on Aging and the Democratic National Committee. She and her sons, Ryan and Gary, live in Sykesville, Maryland.

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FMA

Federal Managers Association

STATEMENT OF

BERRY D. JORDAN

PRESIDENT, ZONE 4

FEDERAL MANAGERS ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

VETERANS' AFFAIRS

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

ON SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE

APRIL 17, 1997



1641 Prince Street • Alexandria VA 22314-2818 • (703) 683-8700 • FAX (703) 683-8707



Mr. Chairman and members of the Subcommittee:

My name is Berry D. Jordan and I am the President of the Federal Managers Association (FMA) Zone 4 (Southeastern United States) and Chair of the Association's Professional Development Committee and Federal Management Institute. On behalf of the 200,000 managers and supervisors in the Federal Government whose interests are represented by FMA, I would like to thank you for holding this important hearing and for allowing us to present our views to the Veterans Affairs Oversight Subcommittee on sexual harassment in the Federal workplace. I applaud the Subcommittee's concern and leadership in dealing with the very sensitive subject of sexual harassment.

BACKGROUND

In opening, I would like to briefly highlight some facts about sexual harassment. In the Civil Rights Act of 1964, Title VII prohibits employment discrimination on the basis of race, color, religion, national origin, and sex. There is no mention of sexual harassment in the statute or its legislative history. Additionally, the 1964 act did not, at the outset, apply to the Federal Government. In 1972, the act was amended by P.L. 92-261, marking the first time that discrimination on the basis of race, color, sex, religion, and national origin in the Federal Government was prohibited by statute. It was not until 1980 that the Equal Employment Opportunity Commission (EEOC) issued guidelines interpreting the law to forbid sexual harassment as a form of sex discrimination (29 CFR 1604.11), and in 1981 a Federal appeals court endorsed the EEOC's position that Title VII liability can exist for sexual insults and propositions that create a sexually hostile environment.

According to the Merit Systems Protection Board, nearly half the women (44%) and one-fifth (19%) of the men surveyed in 1994, reported that they had experienced some form of unwanted sexual attention in the Federal workplace. The October 1995 MSPB study, *Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges*, reports that Federal agencies have been successful in their efforts to increase awareness and educate Government workers about sexual harassment. Over 87% of Federal supervisors and 77% of nonsupervisory personnel have received training in the area of sexual harassment. Somewhat ironically, MSPB cites the success of education efforts as a factor contributing to the slight increase in reported incidence in sexual harassment since the Board's last survey in 1987. This



is mainly due to an evolving definition of sexual harassment that is becoming progressively more inclusive.

MSPB also estimates that sexual harassment cost the Federal Government \$327 million between 1992 and 1994 in increased use of sick leave and an increase in employee turnover. At a time when the civil service has eliminated a quarter million positions and agency budgets are being strained to the limit, Federal workers, agencies and the American public cannot afford the negative costs of sexual harassment.

ZERO TOLERANCE

FMA's position on sexual harassment, is unequivocal. Harassment on the basis of sex is clearly a violation of Section 703 of Title VII.

Zero tolerance should not just be an empty phrase. It should mean that Federal agencies will take immediate corrective action after being put on notice that an employee is being subjected to sexual harassment on its premises. Failure to take corrective measures is unacceptable and subordinates the spirit and intent of the law. FMA supports EEOC's position that employers are required to take prompt remedial action when sexual harassment occurs and is supported by the evidence.

NO ONE IS ABOVE THE LAW

In the MSPB survey previously mentioned, both men and women employees concluded that managers were not consistent in punishing harassers, sometimes basing discipline on the harassers rank, instead of the seriousness of the offense. While agencies may be tempted to weigh the influence of an individual in deciding what actions are appropriate, punishment should be based solely on the offense and not on rank. Strong leadership in this area will pay dividends in the form of a professional and motivated workforce secure in the knowledge that no one in the agency is above the law.

In addition to the importance of effectively addressing acute cases of sexual harassment, FMA is concerned that more education and training should be available for managers and supervisors on understanding their roles in identifying, preventing, and responding to sexual harassment. Upper levels of management must understand what sexual harassment is and set the example for others to follow.



FMA supports the EEOC definition that sexual harassment at work occurs whenever unwelcome conduct on the basis of gender affects a person's job. This definition is not strictly limited to a traditional notion of sexual harassment, i.e., "if you don't sleep with me you won't get that promotion you want." It is defined as any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Managers must enforce the law that says any unwelcome sexual conduct or attention is sexual harassment if it affects an employee's ability to perform their job.

It is equally important that, just as managers understand their roles in responding to sexual harassment matters, employees need to receive training focused on: what constitutes sexual harassment; the agencies position; and, the complaint system procedure for processing allegations of sexual harassment.

FMA supports making sure that everyone from file clerk to political appointee knows: the law on sexual harassment in clear terms; that sexual harassment will not be tolerated in any form; that agencies will treat every incident seriously by developing and implementing guidelines; that each employee in the work place knows prompt corrective action will be taken; and, that supervisors and managers will follow up on decisions and be alert to possible future problems.

SUCCESSFUL EEO OPERATION PROMISING PRACTICES

There are 1.9 million employees in the Executive Branch in numerous departments, agencies and bureaus serving in professions as varied as military upgrade and repair work, controlling air traffic, processing Social Security benefits, collecting taxes, caring for our veterans and enforcing our Nation's labor laws. The people who are Government's greatest resource are as diverse as the countless occupations in which they serve. The marvelous diversity of America's workforce is a tremendous asset that when managed properly produces remarkable results. In FMA's view and experience the following are hallmarks and promising practices of successful EEO operations:

- A sound EEO program's mission should be to resolve EEO complaints of discrimination at the lowest possible level within the organization;
- Program ownership should rest under the agency's head;



- A full-time properly trained chief EEO counselor should be given authority to manage the program;
- EEO counselors should be selected and trained to advise employees and managers, conduct limited fact finding, and be neutral in attempts to resolve employee concerns;
- EEO program should be structured to identify problem areas in the agency;
- EEO programs should process and resolve complaints in a timely manner in accordance with EEOC guidelines;
- EEO chief counselors should keep senior leaders of the agency informed about EEO issues;
- Implementation of an aggressive EEO education program should include some type of Alternative Dispute Resolution (ADR) initiative;
- An automated tracking system of EEO complaints should be established;
- Key managers should be briefed on EEO complaint data quarterly;
- Pamphlets and/or brochures should be developed and distributed to the workforce outlining the steps in the EEO process including the pre-complaint and complaint stages;
- Periodic complainant surveys should be developed and distributed to the workforce to let the agency know how well complainant's needs are being met;
- Monthly reports to directors highlighting departmental EEO activity should be provided for review and action;
- Quarterly EEO meetings chaired by a senior management official and attended by agency heads should be implemented for an agency-wide prospective of EEO activity;
- Chief EEO counselors should analyze report data and provide results to senior level management for review and action;
- Chief EEO counselors should develop workshops on conflict resolution;
- As is currently the practice in DOD, agencies should establish partnerships between themselves and an independent investigative body to prevent the perception of conflict of interest.

Agencies implementing these practices enjoy: 1) higher resolution rates of EEO complaints; 2) lower numbers of formal complaints; 3) stability of the EEO counseling program; and, 4) a proactive approach to complaint resolution.

**RECOMMENDATIONS**

In conclusion, FMA recommends:

1. The concept of hostile environment and sexual harassment should be institutionalized through education and training of both supervisors and employees.
2. When a preponderance of evidence reveals sexual harassment has occurred, immediate corrective action should be taken.
3. Public agencies should be encouraged to expand the use of alternative dispute resolution to supplement the current EEO complaint process.
4. Supervisors and managers should be made aware of their rights when identified as principle agency witnesses in sexual harassment complaints.
5. That the above listed elements of a successful EEO operation should be implemented
6. Agencies should incorporate clear criteria into their personnel performance evaluations requiring adherence to EEO principles.

CONCLUSION

I want to thank you again for inviting FMA to present our views to the Subcommittee on sexual harassment. FMA looks forward to working with you this year to improve the ability of Federal managers and supervisors to take responsibility by acting promptly and taking corrective action to stop discrimination and ensuring there is not reprisal against the victims.

This concludes my prepared remarks I would be happy to answer any questions you may have.

FEDERAL GRANTS: FMA has not received any Federal grants or contracts within the last two years.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES
CHAIRMAN EVERETT TO DEPARTMENT OF VETERANS AFFAIRS

POST-HEARING QUESTIONS
CONCERNING THE APRIL 17, 1997
HEARING ON SEXUAL HARASSMENT IN THE VA

FROM THE HONORABLE TERRY EVERETT
CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

1. Is the Department satisfied with the way the Calhoun case was handled with respect to the IG investigation, the VISN site visit, management actions and decisions, and human resources and legal support?

Answer: Overall, the Department accomplished its goal of removing Mr. Jerome Calhoun as Director, VA Medical Center, Fayetteville, NC. In retrospect, we believe if the evidence was further developed with enhanced coordination between the Office of Inspector General, VISN management, human resources and regional counsel, a removal from Federal service may have been pursued. VA has now established a policy that requires all proposed actions against senior officials be reviewed by the Office of Human Resources Management, Office of General Counsel, and the Office of the Secretary prior to the action being taken.

2. Why does VA believe Mr. Calhoun should be considered for re-entry into the SES?

Answer: At this time, VA does not believe Mr. Calhoun should be accepted back into the SES. However, under existing law, VA does not have the ability to prevent any citizen from applying for any position in the Senior Executive Service, even if the applicant's lack of qualifications or negative past employment record make it clear that the applicant is not a credible candidate for selection. If Mr. Calhoun does apply for re-entry into the SES with the Department of Veterans Affairs, VA would consider his past performance as a medical center Director, and whether he met the rehabilitation terms of his settlement agreement, before making any determination on his re-entry.

3. Was Dr. Gross receiving conflicting advice and case evaluations from VA's attorneys, personnel advisors and the IG's office.

Answer: VA's attorneys, personnel advisors, and the IG's office gave Dr. Gross appropriate advice and case evaluations on the Calhoun case. However, there were weaknesses in communication between managers, lawyers and personnel advisors. VA is taking action to strengthen the communications among all of these parties involved in disciplinary cases, particularly those concerning senior management employees. On March 28, 1997, the Assistant Secretary for Human Resources and Administration, issued a memorandum requiring that all proposed actions related to conduct or performance involving occupants of positions centralized to the Secretary (which include all SES and GS-15 positions) be reviewed in VA Central Office by an appropriate high-level official, who is required to coordinate his or her review with the Office of Human Resources Management, the Office of General Counsel, and the Secretary's Office.

4. Do you believe that the Whatley Report was an adequate and accurate portrayal of the situation at Fayetteville?

Answer: Based on the limited charge that the VISN Director gave to Mr. Whatley, we believe the report was adequate and accurate.

5. The Committee has information that Mr. Whatley was informed of Ms. Doris Moore-Russell's possible concerns about Mr. Calhoun. Why was she not interviewed?

Answer: She was not interviewed because Mr. Whatley's charge was to review the effectiveness of top management at the Medical Center; specifically, the effectiveness of the Director. In this case, individual allegations of sexual harassment were the responsibility of the Inspector General to investigate.

6. Why was the proposed removal not based on anything other than what was in the Inspector General's report on the three cases of alleged sexual harassment and abusive treatment at Fayetteville?

Answer: At the time, it was VA management's primary goal to remove the former Director as quickly as possible, based on the IG's findings and on the personal assessment of the VISN Director, as confirmed by the Whatley report. In retrospect, we believe that the sexual harassment and the abusive atmosphere, coupled with performance issues, may have made the case against Mr. Calhoun stronger.

7. Was there ever an "evidence file" to accompany the proposed removal in the Calhoun case?

Answer: No.

8. Did you consider mitigating and extenuating circumstances in Mr. Calhoun's case? If so, please describe the circumstances.

Answer: There are no mitigating or extenuating circumstances that would serve to excuse sexual harassment or discrimination, or abusive treatment of employees.

9. Please describe the authority of a network director to issue a letter of proposed removal for a hospital director.

Answer: The Under Secretary for Health had been delegated authority to effect disciplinary and adverse action for Senior Executive Service employees. He may further delegate this authority to propose and decide disciplinary and adverse action to other officials in the supervisory chain. A Network Director would not have authority to independently issue a letter of proposed removal for a hospital director unless this were expressly delegated by the Under Secretary for Health.

10. Did Dr. Gross have the proper authority to issue the letter of proposed removal to Mr. Calhoun?

Answer: No. The Under Secretary for Health had not delegated authority to Dr. Gross to issue the October 25 letter of proposed removal.

11. If the proposed removal had gone forward, who would have been the deciding official for the case?

Answer: As noted, no formal delegation of authority had been made. However, the most likely decision would have been to designate the Chief Network Officer as the deciding official, acting on a proposal from the Network Director.

12. How many other VHA employees with a similar position or responsibilities as Mr. Calhoun make over \$100,000?

Answer: Two.

13. Does Mr. Calhoun make more than his immediate supervisor? If so, what is his immediate supervisor's salary?

Answer: Yes, Mr. Calhoun does make more than his immediate supervisor, whose annual salary is \$81,429.

14. How many EEO complaints or grievances are pending against Mr. Calhoun at Fayetteville, and what is their status and general nature?

Answer: A recent review showed that the EEO complaint files at the VAMC Fayetteville are in disarray. VA is sending an experienced EEO manager in to Fayetteville to organize these files and to put the EEO program back on track. At this time, we know of 11 formal EEO complaints, filed by 9 different complainants, that are currently pending against Mr. Calhoun. There are no

grievances currently pending. The EEO complaints allege a variety of different things, but are primarily concerned with general harassment and sexual harassment. They are pending at various stages in the complaint process.

15. How does the "save pay" provision operate, and how did it specifically apply to Mr. Calhoun's situation?

Answer: In accordance with 5 U.S.C. 5363 and 5 CFR 536.104(b), an agency may grant pay retention to an individual whose pay would otherwise be reduced as a result of a management action. Individuals granted this "saved pay" protection may retain the rate of basic pay they were earning immediately before the management action, up to 150 percent of the maximum of the grade of their new position.

In Mr. Calhoun's case, he was earning \$101,600 basic pay as an ES-2 immediately before his reassignment to Bay Pines, Florida. VA granted pay retention to Mr. Calhoun, enabling him to retain his rate of basic pay at \$101,600. He is entitled under the law to one half of any future increases in the maximum rate of pay for GS-14.

Mr. Calhoun was receiving locality comparability pay (LCP) at Fayetteville, NC, of \$4,888, for a total pay of \$106,488. He continues to receive the same amount of LCP in Bay Pines. The LCP for Bay Pines is the same as for Fayetteville, so there was no change in Mr. Calhoun's pay upon his reassignment.

16. Is "save pay" possible if a member of the Senior Executive Service has been formally disciplined?

Answer: Although saved pay is not guaranteed in formal disciplinary actions, it may be appropriate in situations where formal charges are resolved by settlement. Saved pay is provided in accordance with 5 U.S.C. 3594 and 5 CFR Part 359, Subpart G when a "career" Senior Executive Service (SES) employee is placed in a position outside the SES at a GS-15 or equivalent, or higher, as a result of (1) removal during probationary period for performance, (2) removal for less than a fully successful performance rating, (3) removal for failure to be recertified, or (4) reduction in force.

In addition, all SES employees are also entitled to saved pay (in accordance with 5 U.S.C. 5363 and 5 CFR 536.104(b)), if they are placed in a GS position at any grade level if (1) the placement is based on a management action and would otherwise result in a reduction in basic pay, (2) the placement is not for personal cause or at the employee's request, and (3) pay saving under 5 U.S.C. 3594 is not applicable. The saved pay may not exceed 150% of the pay rate of the grade to which the former executive is assigned.

17. Was Mr. Calhoun ever formally disciplined?

Answer: No, and a review of Mr. Calhoun's official personnel folder indicates no incidents of prior disciplinary action.

18. The VA provided the Subcommittee with a chart called "Saved Pay for Former SES employees." It lists the reasons for which saved pay can be granted. Please state which reasons VA used in agreeing to Mr. Calhoun's saved pay in the settlement.

Answer: VA retained Mr. Calhoun's pay in accordance with 5 U.S.C. 5363 and 5 CFR 536.104(b), because the placement was based on a management action that would otherwise result in a reduction in basic pay.

19. Please identify the individual(s) who actually drafted the settlement agreement in the Calhoun case.

Answer: Dr. Leroy Gross, Director, VISN 6, dictated the points to be included in the settlement agreement to Mr. Larry Sullins, Employee Relations Specialist, VA Headquarters. Mr. Sullins typed the settlement agreement based on the information provided by Dr. Gross. The agreement was faxed to Kathleen Oddo, a Regional Counsel staff attorney, who provided technical comments on the agreement. Some of those comments were incorporated into the agreement.

20. The Inspector General prepared a three volume case file which consists of transcripts and other related documents compiled during the IG investigation at Fayetteville. A copy of the file was provided by VA to the Subcommittee. At the very beginning of the first volume, there is a type written note with the title "CALHOUN CASE". In bold print, it says, "No quid pro quo sexual harassment", the VA OIG erred". Please describe the purpose of this document, identify its author and the reason for its presence in the IG case file.

Answer: The document was prepared for internal discussion purposes only. The document should have been removed prior to being reviewed by external sources. The document was prepared by Mr. Larry Sullins, Employee Relations Specialist, for the purpose of discussing potential problems/weak points in the IG investigation.

21. There is another statement in the same document which says, "VA Central Office MCCR official encouraged Ms. Force to fabricate sexual harassment charge". Please explain the basis of this statement.

Answer: This statement was listed as a potential argument that could be made by Mr. Calhoun's attorney that could possibly weaken VA's case upon a third party review. If the statement was found to have merit, this could seriously damage any case against Mr. Calhoun.

22. Whose responsibility was it to prepare the "evidence file" for the proposed removal? Was one prepared? If not, why not?

Answer: Evidence files are routinely prepared by human resources management staff, regional counsel, and supervisors/managers. The evidence file should have been prepared prior to issuance of the proposed removal letter. Generally, the individual(s) who prepare the proposed action would also prepare the evidence file. In this particular case, the proposed removal letter was prepared by the office of the VISN 6 Director and the office of Regional Counsel. The proposed removal letter was erroneously issued prior to the development of the evidence file and finalizing of the charges.

23. What remedial or other training will Mr. Calhoun undergo as a result of his behavior at Fayetteville?

Answer: Mr. Calhoun will participate in the established training in cultural diversity and the prevention of sexual harassment required of all employees at the Bay Pines facility. Bay Pines' management is also identifying other appropriate training in these areas. Mr. Calhoun is also responsible for identifying and participating in additional training as part of his own efforts at rehabilitation. Local VA Medical Center management will be monitoring activity and results in both aspects of this training endeavor.

24. In one of the 12 sexual harassment cases about which VA provided information to the Subcommittee, VA entered a settlement where the alleged harasser received a \$25,000 retirement buyout. Please provide the Subcommittee the details and the chronology of the buyout and the related sexual harassment or hostile environment allegations, including when any persons in the EEO or grievance process, and in management first became aware of the sexual harassment or hostile environment allegations.

Answer: In March 1995, VHA received approval from the Office of Management and Budget (OMB) to offer buyouts to selected categories of employees to help restructure and redesign the organization, while reducing the numbers of managers and supervisors. VHA offered the buyout to all Medical Center Directors as a class, and did not impose any other criteria for eligibility. The chart following this answer shows a chronology of the buyout and the related sexual harassment or hostile environment allegations.

VHA offered buyouts to each of the 16 directors who had expressed interest including one director who had sexual harassment allegations against him. At the time the buyouts were offered, VHA had no formal basis on which to deny this director the buyout. Based upon the advice provided by the Office of Personnel Management (OPM), these allegations were not a basis for which to withhold the buyout unless there was an evidence file, a letter of formal

charges issued to the employee, receipt and consideration of the employee's response, if provided, and a formal decision letter issued imposing disciplinary or adverse action. VHA had not reached any of these stages in its review of this case.

The statutory authority to provide buyouts to employees expired on March 31, 1995. If VHA declined to offer the buyout to the director pending adjudication of the charges, it would not have had the authority to subsequently offer the buyout to him. If the charges had been found to be without merit, he would have been unjustly penalized, with no provision to make him whole.

On May 17, 1995, the Office of the General Counsel dismissed the EEO complaint filed against this director.

Date	EEO Complainant	Management's Action	Buyout Authority
September 1, 1993	Initial Contact with Counselor		
November 30, 1993	Final Interview with Counselor		
March 22, 1994	Filed Formal Complaint		
April 29, 1994	Notice of Receipt Sent from EEO Officer		
April 29, 1994	Ltr. from EEO Officer requesting additional information for Complaint		
May 3, 1994	Complainant received letter requesting additional information, no response		
Circa May 16, 1994	Complainant requested that an attempt be made to informally resolve issues. Too many uncounseled allegations in formal complaint		
January 8, 1995	Complainant Resigned from Medical Center		
February 16, 1995	Complaint to OGC for Acceptability Determination		
February 23, 1995		Detailed from Directorship due to a complaint raised by an employee at the facility	
March 10, 1995		Associate CMD for Operations appointed a Board of Investigation to investigate allegations	
March 25, 1995			VHA Received Buyout Authority
March 31, 1995		Buyout approved and director retired	
March 31, 1995			Buyout Authority Expired
May 17, 1995	Complaint Dismissed by OGC		

25. Please describe the involvement of each of the Department's lawyers both in the regional counsel's office and the Office of General Counsel in the disciplinary case involving Mr. Calhoun, including the drafting of the proposed removal, the negotiation of the settlement agreement, the drafting of the settlement agreement and the review of the settlement agreement.

Answer: Materials previously furnished to the Committee address the involvement of the attorneys in the Regional Counsel's office in the Calhoun disciplinary case, and specifically address the process that was followed in connection with the draft removal charges. The Regional Counsel attorneys consulted an attorney in the Office of General Counsel, who reviewed the draft charges and made some suggestions. No VA attorneys were involved in negotiating the settlement agreement. An attorney in the Regional Counsel's Office made some technical and substantive suggestions to a draft of the settlement. As part of this process, an attorney in the Office of General Counsel informally reviewed the proposed settlement, but advised VHA staff that it needed additional waiver language and other modifications. These changes were not incorporated in the final document, nor was the final document sent to the Office of General Counsel for concurrence.

26. What allegations or charges against Mr. Calhoun did the settlement cover?

Answer: The settlement covers the charges of sexual harassment, hostile work environment, and abusive treatment of subordinates by Mr. Calhoun involved in the rescinded proposed removal letter and Inspector General investigation.

27. Does the settlement agreement preclude VA from bringing other disciplinary actions against Mr. Calhoun, if other disciplinary matters are found relating to his conduct in VA Medical Centers at Fayetteville, NC; Batavia, NY; or elsewhere?

Answer: The settlement agreement would not preclude VA from bringing disciplinary action for other substantiated offenses at VAMC Fayetteville or other VAMC's. The settlement agreement would preclude VA from bringing disciplinary action only for offenses related to the charges of sexual harassment, hostile work environment, and abusive treatment of subordinates by Mr. Calhoun involved in the rescinded proposed removal letter and Inspector General investigation.

28. Is it correct that a staff attorney in the VA Office of General Counsel in Washington, DC, only informally looked at the settlement of the Calhoun case to ascertain whether it was an enforceable agreement and that your office did not formally review or concur in this legally binding resolution of cases involving serious charges against a very senior VA official? Please clarify the circumstances of the involvement of the Office of General Counsel in the Calhoun case.

Answer: See response to question 25.

29. What is VA policy regarding General Counsel review and concurrence in important VA legal matters?

Answer: VA policy is, and has been, to require General Counsel review and concurrence in all matters which involve substantive legal issues. Steps have been taken to better identify such matters, and to ensure appropriate General Counsel participation in all future matters requiring such review.

**POST-HEARING QUESTIONS
CONCERNING THE APRIL 17, 1997
HEARING ON SEXUAL HARASSMENT IN THE VA**

**FROM THE HONORABLE MICHAEL BILIRAKIS
MEMBER, SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

1. In 1993, GAO reported that the Secretary had approved its recommendation to do an agencywide survey to assess employee concerns about sexual harassment, discrimination and the handling of complaints. In your written testimony you stated that a survey was conducted in 1996. Why did it take three years to conduct this study?

Answer: Initially, there was debate over whether the survey should include all VA employees, or just a scientifically selected representative sample. That required consultations with a contractor and evaluations of costs and sources of funding. Once that was resolved, the contract had to be arranged, which took several months, and was concluded on September 30, 1994. Thereafter, the contractor had to be given sufficient time to propose questions, test those questions on focus groups (1/95), conduct pretests (8/95), revise the questions as needed, and then mail them out (1/96). All surveys were received by the end of April, 1996, and a preliminary report was prepared at the end of July 1996. That preliminary report was returned with comments and suggestions for improvement in January of 1997 and the penultimate product was presented by the contractor for review and approval on March 31, 1997. It is now being reviewed by the Secretary's Ad Hoc Working Group on Sexual Harassment, which was the body that commissioned the survey. We expect a final report in the very near future.

2. Concern has been expressed about the apparent lenient actions taken in cases of substantiated harassment by senior VA officials. How does the VA go about determining the severity of actions it will take in such instances? What factors enter into the decision-making process and who has the final decision-making authority?

Answer: VA uses a "Table of Examples of Offenses and Penalties" for determining the severity of actions to be taken against senior officials. The table is listed in VA's policy, MP-5, Part 1, Chapter 752, dated October 18, 1994, and identifies a range of penalties for specified offenses. Among other things, the decision official considers the severity of the offense, the individual's response and past disciplinary record, and the Douglas Factors. The decision-making authority for disciplinary actions against senior officials has been delegated to Assistant Secretaries, Administration Heads, and Other Key Officials with the Department.

3. VA recently organized into 22 veterans integrated service networks. What role do the directors of networks play in overseeing the processing of complaints of sexual harassment, particularly complaints that involve the medical centers' management triad - the director, chief of staff, and the associate and or assistant directors?

Answer: Network Directors are responsible for fulfilling the role and responsibilities of the EEO Officer by providing a "Higher Level Review" of all formal complaints of sexual harassment, to include those involving Medical Center Directors, Chiefs of Staff, and Associate/Assistant Directors. The Network Directors are required to review the complaints to determine whether their intervention is appropriate and to monitor the processing until they have received the formal complaint of investigation from the Office of Equal Opportunity.

4. We have been dealing with executive misconduct. For comparative purposes, can you provide the Subcommittee with information on the frequency of similar misconduct by non-executive personnel and the actions taken in these cases?

Answer: This information is not readily available, as our personnel database does not distinguish those disciplinary actions taken for acts of sexual harassment from disciplinary actions taken for other types of misconduct. VA is presently developing a reporting system for allegations of sexual harassment which will, among other things, report on disciplinary actions. The directive

is presently in the concurrence process, after which it must be coordinated with VA's employee unions. VA expects to have it issued by the end of the summer.

5. We have been talking about sexual harassment cases. What has been the VA's experience with executives found to have been involved with other forms of misconduct such as the misuse of government property, etc.?

Answer: When allegations of misconduct are sustained, VA has taken corrective action, which ranges from counseling to demotion. Some individuals have retired before disciplinary action was taken. Administrative disciplinary proceedings do not survive a resignation and are not a basis for withholding voluntary retirement, under present law.

6. Did Mr. Calhoun receive any sexual harassment training?

Answer: Yes. Mr. Calhoun received training on the prevention of sexual harassment at the VAMC Buffalo, New York, while serving as the Associate Director. Just prior to, and in anticipation of his appointment as Director of the VA Medical Center in Fayetteville, he also received 3 days training at VHA's national EEO conference in Orlando, Florida. As part of his participation in the training conference, he received training on the recognition and prevention of sexual harassment.

7. Will Mr. Calhoun receive any remedial training as a result of his behavior at Fayetteville?

Answer: Mr. Calhoun will participate in the established training in cultural diversity and the prevention of sexual harassment required of all employees at the Bay Pines facility. Bay Pines' management is also identifying other appropriate training in these areas. Mr. Calhoun is also responsible for identifying and participating in additional training as part of his own efforts at rehabilitation. Local VA Medical Center management will be monitoring activity and results in both aspects of this training endeavor.

8. Is Mr. Calhoun's current salary being paid out of the Bay Pines medical center budget?

Answer: The Bay Pines facility was allocated funds from VHA Headquarters, so it did not have to absorb Mr. Calhoun's salary from its budget.

9. How many employees who have been found guilty of sexual harassment still work for VA. What are their current positions?

Answer: At present, VA has only surveyed actions against senior management officials. Nine have resigned or retired after having been informed of the allegations against them. Two have been demoted and reassigned. We cannot report on all disciplinary actions taken as a result of the zero tolerance policy, with respect to all other employees, unless the employee has been found guilty of sexual harassment in a final agency decision issued on an EEO complaint. There have been 6 findings of sexual harassment discrimination, involving 4 different VA employees (3 supervisors who were not senior managers and 1 co-worker). Only the co-worker still works for VA. That co-worker's case involved a sign which another co-worker found offensive. The employee was required to take the sign down and was counseled.

10. How much money has the VA spent on sexual harassment settlements?

Answer: There is no centralized repository in VA for reporting this information.

11. At our 1992 hearing, the Inspector General's office testified that an IG task force survey of the EEO processes at both Central Office and at 21 VA facilities to review and resolve sexual harassment and other EEO complaints found that:

- 1. The training requirements for EEO counselors appeared non-specific and there was a lack of training plans and documentation that the training had in fact taken place.**

2. The documentation requirements for informal complaints as well as the reporting requirements for such complaints need strengthening.

3. There is the potential for under reporting of formal complaints of sexual harassment because there was no such category specified on the EEO complaint form.

What steps has the Department taken to correct these deficiencies?

Answer: All EEO Counselors, by regulation, must now be trained at an approved course before they assume their counseling responsibilities. A new training course was developed to ensure that the training was appropriate. Reporting requirements were strengthened in an interim regulatory issuance, and more changes are pending. In addition, VA revised its EEO complaint form to include, among other things, a separate category for sexual harassment.

12. As I understand it, under the terms of the settlement, Mr. Calhoun may be considered for re-entry into the Senior Executive Service (SES) after three years. Is this correct?

Answer: Any individual may apply for appointment to the SES at any time in response to a notice of potential vacancy. This includes individuals previously removed from the SES. Mr. Calhoun can re-apply to the SES after 3 years of the date of the settlement agreement. Without this provision, Mr. Calhoun could have re-applied to the SES immediately. Additionally Mr. Calhoun would also have to be recertified for the SES by the Office of Personnel Management, which would also consider his past record.

13. Under the terms of the settlement, Mr. Calhoun was not admitting guilt to any of the allegations of sexual harassment, isn't that correct?

Answer: Yes, that is correct.

14. Based on the Inspector General's investigation into the sexual harassment complaints and the other management issues at the Fayetteville Medical Center, it seems to me that the Department should have been taking steps to remove Mr. Calhoun from Federal service. Why did the Department negotiate a settlement with him instead?

Answer: VA reviewed the evidence against Mr. Calhoun which was developed by the Inspector General. VA was not convinced it would have prevailed in either the Merit System Protection Board or the courts upon appeal. VA determined that its overwhelming priority was to remove Mr. Calhoun from his role as medical center Director, and place him in a setting where he had no supervisory or managerial duties. The settlement achieved those objectives.

15. What are Mr. Calhoun's current responsibilities?

Answer: A copy of Mr. Calhoun's position description is attached.

16. What is his current grade?

Answer: Mr. Calhoun is a GS-14.

17. How is it that a GS-14 can make \$106,000 a year?

Answer: Mr. Calhoun retained his Senior Executive rate of pay under the provisions of 5 CFR 536.104(b) as provided in the settlement agreement.

18. What is the maximum a GS-14 normally makes?

Answer: The maximum rate for a GS-14 employee in the Bay Pines locality would be \$82,120 per annum.

**POST-HEARING QUESTIONS
CONCERNING THE APRIL 17, 1997
HEARING ON SEXUAL HARASSMENT IN THE VA**

**FROM THE HONORABLE LANE EVANS
RANKING DEMOCRATIC MEMBER
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

1. What obstacles have prevented the Department from fully implementing the EEO program recommendations made by the Office of Inspector General in March, 1993?

Answer: All recommendations have been implemented, with the exception of issuance of revised Departmental directives and handbooks, which are presently in the concurrence process in VA Central Office. However, those may be delayed or significantly revised, as a result of a comprehensive review of the Department's EEO complaint processing program, which is currently underway and which will be completed in the near future.

2. What changes are needed in the structure of the EEO process in VA?

Answer: A task force has been convened to review the current EEO process. The members of the task force are Eugene Brickhouse, Assistant Secretary for Human Resources and Administration; Linda Belton, Network Director, VISN 11; Art Goff, Civil Rights Advisor to the Under Secretary for Health; Patricia Grysavage, Director, External Management and Communications, Office of the Under Secretary for Benefits; C. Faye Norred, Director, VA Regional Office, Washington, DC; Caren Eirkson, Chief, Personnel Division, National Cemetery System; Patricia Novak, Director, Quantico National Cemetery; Neal Lawson, Assist General Counsel; Beatrice Pacheco, Staff Attorney, Office of General Counsel; Shirley Carozza, Deputy Assistant Secretary for Budget; Joe Schumacher, Executive Assistant to the Deputy Assistant Secretary for Information Resources Management; Patricia O'Neil, Special Assistant to the Assistant Secretary for Policy and Planning; Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity; Joyce Felder, Associate Deputy Assistant Secretary for Human Resources Management; Alma Lee, President, National VA Council, AFGE; and Lorraine Payton, President, VA Council, NFFE.

The task force will review all aspects of VA's EEO complaint process and prepare recommendations for the Secretary. The first task force meeting was May 28, 1997. Their report will be submitted to the Secretary within 60 days.

3. Regarding the December 6, 1996 rescission by the VISN 6 director of proposed adverse action, have you determined why the evidence file was not included with the letter proposing disciplinary action? What disciplinary action was proposed in the letter rescinded by the VISN 6 director on December 6, 1996?

Answer: The evidence file was not included because the VISN Director did not know that an evidence file must be prepared and included with a notice of proposed adverse action. That was one of the reasons why the notice of proposed adverse action was rescinded. The notice proposed Mr. Calhoun's removal from Federal service.

4. Why are VA employees who are victims of sexual harassment, a hostile work environment and/or discrimination not filing EEO complaints? What changes would encourage more employees to file a complaint?

Answer: We are not sure. It has been noted by the MSPB, in several of their surveys on sexual harassment, as well as in statistics reported by the EEOC, that formal complaints of sexual harassment are significantly lower than the incidence of sexual harassment reported in surveys.

Anecdotal evidence from some of the victims of sexual harassment suggests that removing the local field facility Director from his or her role as the facility's EEO Officer would encourage more employees to come forward with sexual harassment claims.

5. How and when did Mr. Calhoun's superiors first become aware of his inappropriate and unacceptable behavior?

Answer: Mr. Calhoun was appointed Director of the Fayetteville, NC, VA Medical Center on April 3, 1994. At that time, his immediate supervisor was the Regional Director, Southern Region. Subsequently, the Fayetteville VA Medical Center was incorporated into the new VISN structure and, as a result, formal management supervisory control was transferred to the Director, VISN 6, Durham, NC, on February 11, 1996.

During the time that Mr. Calhoun reported to the Southern Region, the Regional Director intervened on one occasion in the Spring of 1995 to review strained relations between the local union, AFGE Local 2080, and VAMC management officials. Through collaborative efforts, suggestions were made on ways to improve the labor-management relationship resulting in the establishment of a partnership agreement.

There were no other allegations about Mr. Calhoun's inappropriate or unacceptable behavior (excepting the complaints about his "excessively aggressive management demands and style" made by the VAMC's MCCR Coordinators to the Regional MCCR Office) which surfaced to the Regional Director, Southern Region, during this period.

The Director, VISN 6 became aware of allegations that there were problems shortly after his appointment in March of 1996.

6. How frequently, and by whom, are senior VA managers evaluated and does this evaluation include the manager's behavior and treatment of employee's?

Answer: VA employees in the Senior Executive Service receive annual performance evaluations. The initial rating is recommended by the official, usually the immediate supervisor, who is responsible for the development of the executive's performance plan and approved by an official at a higher level. Each performance plan requires the executive to play a leadership role in promoting equal employment opportunity, affirmative action and the elimination of discrimination and sexual harassment.

Physician, Nurse and Dentist senior managers are evaluated annually under the Proficiency Rating System covering individuals employed under the provisions of Title 38. The initial rating is recommended by the manager's immediate supervisor and approved by an official at a higher level. The proficiency rating elements for these individuals take into consideration their management assignments, and provide for evaluation of such aspects of their performance as administrative competence and personal qualities. In addition, the performance standards for Chiefs of Staff specifically require a demonstrated commitment to achieving EEO goals and objectives.

All other senior managers (not covered by SES or Title 38) are rated under VA's Performance Management System on an annual basis. The initial rating is recommended by the manager's immediate supervisor and approved by an official at a higher level. The manager's performance plan must have standards that relate to equal employment opportunity and affirmative action.

If the manager's behavior becomes a conduct issue, corrective action would be processed through disciplinary channels.

7. How many disciplinary actions have been taken by VA as a result of the zero tolerance policy?

Answer: At present, VA has only surveyed actions against senior management officials. Nine have resigned or retired after having been informed of the allegations against them. Two have been demoted and reassigned. We do not have a report of all disciplinary actions taken as a result of the zero tolerance policy, with respect to all other employees. We are developing a semi-annual report that will allow VA to capture this information.

8. What actions can VA take to change employee perceptions that the EEO process is biased toward management? What actions will VA take and when will these actions be taken?

Answer: VA is currently studying reform of the EEO complaint process. We expect to have our review completed and reforms proposed in the near future.

9. How many EEO investigators are employed by VA and how many are full-time EEO investigators? How long does it take an EEO investigator to complete an investigation and what is the duration of the longest ongoing current investigation?

Answer: VA employs 480 collateral-duty EEO investigators. VA has no full-time EEO investigators. VA also contracts with 129 EEO investigators, who are retired VA employees. EEO Investigators average 45 days from assignment to completion of the investigation. Investigations are not assigned on the date the complaint is filed. On average, in FY 1996, 181 days elapsed from the filing of a complaint to the completion of the investigation. This is very close to the 180 day time limit afforded by the Equal Employment Opportunity Commission in its regulations. As to the longest ongoing current investigation, it has been pending for 154 days.

10. Have Secretary Brown's policies to reduce, if not eliminate, sexual harassment and other forms of discrimination in the VA workplace been implemented fully and effectively? As a result, is the VA workplace safer, less hostile and less discriminatory?

Answer: In our view, the policies and the awareness campaign that were implemented to reduce sexual harassment and other forms of discrimination in the VA workplace have been successful. There are indications that VA employees and managers are receiving the message that these types of behaviors will not be tolerated. For example, the three Merit Systems Protection Board surveys of sexual harassment show a decrease in incidents of sexual harassment in VA between 1981 and 1995.

Sexual harassment and discrimination are very difficult topics to deal with and we hope change in the culture will continue. The results of the VA sexual harassment survey will assist us in determining how well we are doing and where our focus should be to continue zero tolerance.

11. According to testimony by the office of the VA Inspector General, the General Accounting Office (GAO) recommended in 1993 that an agency-wide sexual harassment survey be conducted at the VA. The testimony further indicates that the VA did not conduct the survey until the first six months of 1996. Is this information correct, and if so, why did the VA take so long to conduct the survey, and why don't you have the final results and analysis almost a year after the data was collected?

Answer: Initially, there was debate over whether the survey should include all VA employees, or just a scientifically selected representative sample. That required consultations with a contractor and evaluations of costs and sources of funding. Once that was resolved, the contract had to be arranged, which took several months, and was concluded on September 30, 1994. Thereafter, the contractor had to be given sufficient time to propose questions, test those questions on focus groups (1/95), conduct pretests (8/95), revise the questions as needed, and then mail them out (1/96). All surveys were received by the end of April, 1996, and a preliminary report was prepared at the end of July 1996. That preliminary report was returned with comments and suggestions for improvement in January of 1997 and the penultimate product was presented by the contractor for review and approval on March 31, 1997. It is now being reviewed by the Secretary's Ad Hoc Working Group on Sexual Harassment, which was the body that commissioned the survey. We expect a final report in the very near future.

12. During hearings on this identical issue five years ago, former representative Jill Long (D-IN), concluded that the VA's sexual harassment policy essentially boiled down to this: "If you are sexually harassed, you get demoted, but if you harass, you get transferred, and the taxpayers support your defense as well as your salary." Given the recent incident involving Director Calhoun, how has your zero tolerance policy changed since Ms. Long made such observations? What steps is the Department taking presently to toughen its policy and keep, as Mr. Clyburn stated during the hearing, another Fayetteville from occurring?

Answer: VA did not have a zero tolerance policy five years ago. It does now. Where an individual is proven guilty, he or she is disciplined appropriately, if he or she does not resign or

retire first. In every proven incident of sexual harassment, that is exactly what happened. Mr. Calhoun is still under investigation for other allegations of sexual harassment and misconduct. If evidence warrants additional charges, he will be disciplined. In addition, as mentioned before, VA is currently studying reform of its EEO complaint process, in order, among other things, to keep another Fayetteville from occurring.

13. As you know, the Committee staff has had the opportunity to review the case file regarding the charges against Mr. Calhoun. In her statement alleging harassment by Mr. Calhoun, Ms. Force indicated that she contacted the VA's Regional MCCR Coordinator concerning Mr. Calhoun's attempt to relieve her of her MCCR duties, as well as her sexual harassment complaints against Mr. Calhoun. According to Ms. Force, the regional coordinator told her she should accept a lateral transfer because there was "no way [you] could fight a Director." The regional coordinator allegedly went on to say that the "only way to win against someone like [Mr. Calhoun] was if 5-6 people went to the media and caused a stir." To your knowledge, did anyone at the VA or the Inspector General's office investigate these claims?

Answer: No.

Has anyone attempted to determine whether the (southern MCCR) regional coordinator expressed such views?

Answer: Yes, but only very recently (5/13/97).

In summary, the then-Regional MCCR Coordinator (Mr. Andy Enos) states that to his recollection of events occurring on this issue during the time period in question, Ms. Force's first quote in the above question is essentially correct. However, the second quote is not something he recalls ever making. In fact, he distinctly remembers no discussion at all by Ms. Force with him concerning her sexual harassment complaints against Mr. Calhoun; all conversations revolved around Mr. Calhoun's attempts to coerce her to work surreptitiously against Mr. Jim Crocker (one of her bosses). Apparently, when she told Mr. Calhoun that she could/would not do that, he then began to make her work life miserable.

Background Information: Mr. Enos and the Assistant Regional Coordinator at that time (Ms. Pat Barker) both recall telephonic and/or in-person conversations with Ms. Force and her VAMC replacement (in April 1996), both of whom recounted tales of Mr. Calhoun's "excessive and profane management style" toward their individual administration of the VAMC's MCCR program and their alleged failure to cooperate with him in various aspects of its overall management. At one point during the period that Ms. Force was beginning to recount her initial difficulties with Mr. Calhoun, Ms. Barker received a call from Mr. Calhoun asking her to conduct an on-site review of the VAMC's MCCR program, so that he could supposedly verify all the bad things going on within its administration and get the Region's help in making changes. Upon completion of her review---during which she found no real indications of any significant problems with the local MCCR program---she so informed Mr. Calhoun, who was reportedly not pleased with her report.

14. During the course of the VA's investigation, did the Department take a look at Mr. Calhoun's previous employment record to see whether any similar harassment claims had been made against Mr. Calhoun in the past? If so, what did the Department find out? If not, what has the VA found out since that time concerning prior complaints against Mr. Calhoun?

Answer: The Inspector General conducted the VA's investigation at the time. The Inspector General investigated Mr. Calhoun's previous employment record. We have since double-checked his record, and have found no report of previous complaints of sexual harassment against Mr. Calhoun.

15. In 1993, Senator Barbara Mikulski, expressed concern with the VA's handling of sexual harassment complaints against a hospital director in Atlanta. In Senator Mikulski's view, the VA ignored complaints against the Atlanta Director that had been festering for years at that facility. In response to Senator Mikulski's criticism, the VA announced an overhaul of its sexual harassment policies. Specifically, the Secretary announced his "zero

tolerance” policy against sexual harassment; called for the institution of mandatory training on the issue for all VA employees; created a Departmental Task Force on Harassment; and called for simultaneous review of sexual harassment complaints by the individual hospital and by regional officials. Please explain in detail how such changes have been implemented and the status of these policies. Has VA implemented these changes? How has the VA measured the success or failure of its “zero tolerance” policy?

Answer: VA has implemented all of these changes. The following chronology explains the actions taken by the Secretary in detail:

- February 2, 1993 The Secretary notified the White House of his review of the Department’s EEO program, with special attention to sexual harassment.
- February 10, 1993 Sent Deputy Secretary Gober to Atlanta, GA, for an on-site review of sexual harassment issues and the employment situation in general.
- February 16, 1993 Issued an “All Employee Letter,” which:
- Declared that sexual harassment was unacceptable conduct and would not be tolerated.
 - Stated his strong personal commitment to prevent and eliminate sexual harassment within VA.
 - Required that impartial reviews be conducted, and that prompt action be taken on all allegations of sexual harassment.
- February 25, 1993 Issued a Circular which suspended the decentralization of discrimination and sexual harassment complaint processing; delegated centralized responsibilities to the Office of Equal Opportunity; and established a requirement for higher-level reviews of all sexual harassment complaints, by a level above that of the field facility in which the complaint arose, in order to determine whether intervention is required.
- March 9, 1993 Issued an “All Employee Letter,” which:
- Required that all current employees receive a minimum of 4 hours of training on the prevention of sexual harassment and the discrimination complaint process, with refresher training every 2 years.
 - Required that new employees receive 4 hours of sexual harassment and discrimination complaint training within 60 days of their employment.
 - Required that all EEO Counselors receive training certified by the Office of Equal Opportunity before performing EEO Counselor duties.
 - Provided that employees be allowed to select an EEO Counselor of their choice.
 - Transmitted a copy of the EEO complaint procedures to all employees.
- March 10, 1993 Authorized the establishment of an EEO Information Line (Hotline), to provide employees and others a means of obtaining information and advice about sexual harassment and discrimination, and how to report it.
- March 11, 1993 Established the Secretary’s Ad Hoc Work Group on Sexual Harassment, to

address sexual harassment and other gender-related issues. The group is composed of headquarters and field personnel, and is representative of VA's diverse workforce.

- April 6, 1993 Met with Harriet Woods, President of the National Womens' Political Caucus, to discuss their legislative agenda for women and to discuss the Department's plans for ensuring non-discrimination and advancement of women in VA.
- April 22, 1993 Met with his Ad Hoc Work Group on Sexual Harassment to share his concerns and ask for formal recommendations. The Secretary directed that the following recommendations of the Ad Hoc Work Group be implemented:
- Field facilities be permitted to add field-specific information to the mandated 4-hours training on the prevention of sexual harassment and discrimination complaints.
 - Field facilities be given credit toward the 4-hour training requirement for training on sexual harassment and discrimination complaints given after September of 1992.
 - An employee survey be conducted to determine the extent of problems related to sexual harassment in the Department.
 - Conduct a study into problems related to the "glass ceiling" which serves to limit the upward mobility of women.
- May 18, 1993 Met with Carolyn Kroon, President, and Brigadier General Pat Foote (Ret.), Military Advisor, from Federally Employed Women (FEW), to discuss issues of concern to women employed in the Federal Government and VA.
- May 21, 1993 Issued an "All Employee Letter," which:
- Discussed the role employees played in preventing and eliminating sexual harassment.
 - Provided a 3-page attachment containing guidelines on sexual harassment and what to do about it.
- May 26, 1993 Issued an "All Employee Letter," which:
- Expressed his concern about retaliation and reprisal for reporting allegations of sexual harassment and discrimination.
 - Established a requirement for a higher-level review of all investigative reports on EEO complaints of retaliation and reprisal, by a level above that of the field facility in which the complaint arose, in order to determine whether intervention is required.
- June 1, 1993 Issued a Circular which reported on problem areas related to sexual harassment and discrimination complaints, as reported by the General Accounting Office, and which required field facilities to review those problem areas and report on what procedures were either in place or would be put in place to correct those problems.
- July 30, 1993 Issued an Interim Issue which:

- Established an enhanced evaluation program for internal reviews of EEO policies and procedures, and on-site evaluations of field facility EEO programs.
 - Established due dates for the 4-hour training on sexual harassment and discrimination complaints, and for the 2-hour refresher courses to be taught every 2 years.
 - Established selection and appointment criteria for EEO Counselors, as well as training and continuing education requirements.
 - Emphasized an employee's right to choose an EEO Counselor of his or her choice.
 - Provided specific requirements for recording and reporting EEO counseling activities.
- August 2, 1994 Issued a Circular which:
- Established incremental time limits for processing EEO complaints by field, as well as headquarters personnel.
 - Established performance standards for EEO Officers (Field Facility Directors), related to meeting the time limits imposed on them.
 - Established a requirement that every field facility appoint an EEO Program Manager who would be responsible for EEO complaint processing, and who would not be employed by the Human Resources Management Service.
 - Provided guidance on the acceptance and processing of complaints.
 - Provided appointment criteria for EEO Investigators, and procedural guidance concerning their operations and control.
 - Provided guidance concerning higher-level reviews of sexual harassment and reprisal complaints, as well as concerning the use of administrative boards in connection with those higher-level reviews.
 - Provided guidance on compliance and reporting requirements for EEO complaint processing.
- May 27, 1994 Issued EEO performance standards for senior executives, which required specific and measurable achievements in meeting affirmative employment goals and in preventing discrimination and sexual harassment.
- June 13, 1994 Circulated the Secretary's Performance Agreement with the President, which included, as a major goal, becoming an employer of choice by ensuring a work environment free from discrimination. Also established a requirement that all managers and employees receive 4 hours of training on managing and recognizing diversity.
- October 18, 1994 Issued new VA policy on Disciplinary and Adverse Actions, which specified that sexual harassment and discrimination was actionable misconduct, and provided for reprimand to removal for a first offense, depending on the seriousness of the misconduct.
- August 16, 1995 Issued an "All Employee Letter," which reaffirmed the Department's

	Equal Employment Opportunity policy, to include "zero tolerance" for sexual harassment and discrimination.
1995 to 1997	VA continued to build upon the Secretary's initiatives, by improving training, complaint processing, and program oversight.
March 27, 1997	Established a committee of senior staff in VA Central Office to review all allegations of misconduct against senior managers and executives, to ensure that all of them are treated consistently and in accordance with the Secretary's "zero tolerance" policy towards sexual harassment and discrimination, before any action is negotiated or finalized.
May 9, 1997	Issued an "All Employee Letter," which re-emphasized the Department's zero tolerance policy for sexual harassment, discrimination, and reprisal.
May 13, 1997	Established a Task Force to conduct a thorough review of VA's sexual harassment and discrimination complaints system.
Ongoing	VA has several initiatives underway in the area of sexual harassment and discrimination complaints processing. These initiatives include: <ul style="list-style-type: none"> • Development of a centralized reporting procedure for all allegations of sexual harassment, whether initiated through the EEO discrimination complaints process, or in other forums. • Development of a new on-site EEO inspection program, to oversee and evaluate the effectiveness of field facility EEO programs. • Development of new EEO directive and handbooks, which will improve the timeliness and quality of EEO complaint processing.

16. Have all VA employees been trained on sexual harassment issues? Can you describe for us the nature of the training that has been provided? Does the VA feel such training has been useful in curbing harassment? What has been employee reaction to the training?

Answer: Almost all VA employees have received the mandatory 4 hours initial, and mandatory 2 hours of refresher training since 1993. Due to unusual circumstances, a few employees may not have attended one training module or the other. The attached training module describes the training in detail, and was used with the vast majority of VA employees. VA believes that this training has been useful in curbing sexual harassment. Employee reaction to the training has generally been positive.

17. Can you summarize for us the work of the Departmental Task Force on Harassment? How many members are on the Task Force? Who are the members of the Task Force?

Have rank and file employees been included in the Task Force and what is the gender breakdown of the Task Force?

Was the Task Force consulted with regard to the allegations against Mr. Calhoun? Is the Task Force generally consulted when allegations are made against high level VA officials?

Has the Task Force made any formal recommendations concerning VA's sexual harassment policies and procedures?

Answer: The Task Force is officially called the Secretary's Ad Hoc Working Group on Sexual Harassment. They have met on several occasions since 1993, to discuss sexual harassment and the Department's survey on sexual harassment. Their focus has been on issues related to that survey. Rank and file members were not included on the Working Group.

The Working Group consists of 14 members; 8 women and 6 men. The Chairperson is Patricia McKlem, Director VA Medical Center, Prescott, AZ, and the members are Diana Bloss, Staff

Attorney, Office of General Counsel, Pittsburgh, PA; Patricia Carrington, Special Assistant to the Secretary, VA Central Office; Jose Coronado, Director, VA Medical Center, San Antonio, TX; Harold Gracey, Chief of Staff, Office of the Secretary, VA Central Office; Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity, VA Central Office; R. LaMont Johnson, Associate Director, Discrimination Complaint Service, Office of Equal Opportunity, VA Central Office; Dorothy MacKay, Veterans Benefits Administration, VA Central Office; Aline Norman, Director, VA Medical Center, Lake City, FL; Robert Perreault, Director, VA Medical Center, Decatur, GA; Catherine Smith, Director, VA Regional Office, Denver, CO; Eloise Tamez, Chief, Nursing Service, VA Medical Center, Brecksville, OH; Julius Williams, Assistant Director, VA Regional Office, Washington, DC; Patricia Grysavage, Director, Office of Executive Management and Communication, Veterans Benefits Administration, VA Central Office; Ellis Jones-Hodges, Director, Affirmative Employment Service, Office of Equal Opportunity, VA Central Office; and Fred L. Watson, Director, Field Programs Service, National Cemetery System, VA Central Office.

The Working Group was not consulted about the Calhoun matter, nor is it routinely consulted about individual cases. The Working Group's made recommendations concerning sexual harassment policies and procedures, and they are included in the response to question 15 (see April 22).

18. How has the VA implemented its dual processing system for handling complaints? Are all complaints investigated at both the facility and the regional level?

Answer: The "dual processing system" does not require any investigations. VA's policy is that all complaints of sexual harassment are to be referred for higher-level review above the facility level, to determine whether or not intervention is required to protect the complainant or VA until such time as an investigation is completed. There is usually only one investigation; either by an Administrative Board, or by an EEO investigator, depending on whether the complainant has chosen to file a formal EEO complaint.

19. Has the VA had a policy in place that sets forth the criteria used to appoint EEO Officers at the individual facilities? If so, what criteria is used to decide the EEO Officers?

Answer: By current internal regulations, the EEO Officer is always the field facility Director.

20. In cases where a senior manager has been accused of harassment, please explain how the VA will conduct its initial investigation into the allegations? Will these allegations always be passed on to EEO or Human Resources personnel outside the facility, or will some investigations still be conducted by individuals employed at the facility?

Answer: Where a senior manager has been accused of harassment, it will always be reported to the next higher level of supervision (VISN Directors for VHA or Area Managers for VBA and NCS). If a formal EEO complaint has been filed, an outside investigator will always be appointed by the Office of Equal Opportunity in VA Central Office. The complainant determines whether or not a formal complaint will be filed. If one is not filed, an Administrative Board, composed of outside employees will be convened, if the Director is involved. If the Associate Director or the Chief of Staff is involved, there may be some local members appointed to the Administrative Board who do not work under the supervision of the alleged harasser.

21. The EEOC has testified that its guidelines require the VA to complete its investigation of a sexual harassment complaint within 180 days. What has been the VA's record with regard to this 180-day requirement? Has the VA typically completed its investigation at the conclusion of the 180-day period?

Answer: For the 12-month period ending April 30, 1997, the VA-wide average for all reports of investigations containing allegations of sexual harassment was 199 days.

22. Secretary Gober, has indicated in his testimony that the VA seriously considered removal of Director Calhoun from the federal service, but decided not to pursue this course because of concerns that the Merit Systems Protection Board or the Courts would not uphold the removal. What message does that send to VA employees regarding VA's zero tolerance" policy? Does "zero tolerance" truly mean that the VA will tolerate

substantiated allegations of harassment unless it is confident its disciplinary action will be upheld by the courts?

Answer: No. However, in this case, VA determined that the risk of not prevailing made it necessary to negotiate a settlement which assured Mr. Calhoun's removal from the Director's position in Fayetteville, and from the SES. In every substantiated case of sexual harassment, VA will pursue the most appropriate discipline. In retrospect, considering all of the evidence of misconduct, including the sexual harassment charges, VA may have been incorrect in its assessment that disciplinary action could not have been sustained on appeal.

23. In spite of the fact that she transferred to the Durham VA Medical Center and was unhappy with her job responsibilities at Durham, Mr. Calhoun stated in an interview with the OIG that Ms. Force had not suffered because her pay had not been reduced. Does the Department agree with Mr. Calhoun's stated opinion that Ms. Force did not suffer? (As a result of her transfer and assumption of new job responsibilities she didn't enjoy?)

In view of Mr. Calhoun's views, does the Department believe the reassignment of Mr. Calhoun with no reduction in pay was a disciplinary measure? Based on his attitude expressed to the OIG, do you believe Mr. Calhoun considered his reassignment at the same pay a disciplinary measure?

Answer: VA does not believe that the retention of existing salary levels is the sole criterion for determining an employee's level of satisfaction in their employment. VA recognizes that Ms. Force's transfer to Durham and assumption of new duties may have significantly reduced her job satisfaction and caused dislocation in her personal life. Therefore, VA does not agree with Mr. Calhoun's opinion that she did not suffer.

VA believes that the fact that Mr. Calhoun had to resign from the Senior Executive Service, and give up the prestige, influence, authority and autonomy associated with being a medical center Director was a severe degradation of his employment situation, even though he did not suffer an immediate reduction in his pay.

THE PREVENTION OF SEXUAL HARASSMENT AND THE
DISCRIMINATION COMPLAINTS PROCESS

Congratulations!

You have been selected to assist in a very important training initiative — entitled "The Secretary's Initiative on The Prevention of Sexual Harassment and The Discrimination Complaints Process."

The Secretary of Veterans Affairs has required 4 hours of training for every VA employee in these two EEO program areas by December 31, 1993. In addition he has required that all employees receive a minimum of two hours refresher training every two years, and new employees must receive training within 60 days of employment. This training module has been designed to assist you in providing two hours of training at your facility. It may be used in total, in part, or be tailored to meet any specific requirements that your facility may have.

This module is also a supplement to a two-hour videoconference to be broadcast on August 24, 1993, that will provide the latest information on identifying and dealing with sexual harassment as well as detailed steps for processing EEO complaints of discrimination. This videoconference and the presentation of the information contained in this module will complete the Secretary's initial requirement for training. Detailed information has also been provided to help you prepare for the broadcast.

I am very appreciative of your efforts to assist the Veterans Health Administration in this major training program.

Sincerely,

*T.J. Hogan, Director
Management Support Office*

CREDITS

This instructional course was designed by the Management Support Office, EEO/Civil Rights Staff in co-operation with Regional EEO Offices and the Office of Academic Affairs.

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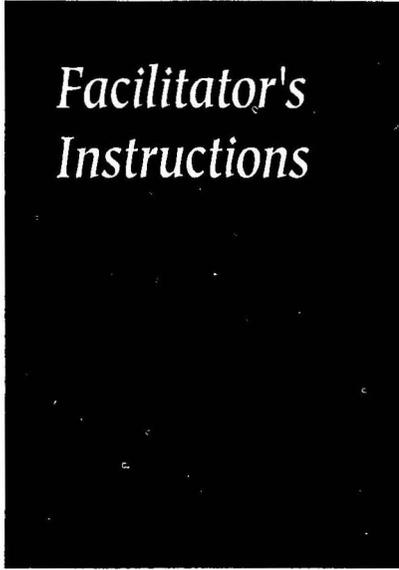
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TABLE OF CONTENTS

- Facilitator's Instructions
- Background Letters and MSPB Study Summary
- Part 1 Background, Policy, and Definition of Sexual Harassment
Numbers 1 thru 13
Activity One (#13)
- Part 2 Identifying Sexual Harassment: Its Effects and Consequences
Numbers 14 thru 25
Activity Two (#25)
- Part 3 The Discrimination Complaints Process: Steps in the Informal Process
Numbers 26 thru 42
Activity Three (#27)
- Part 4 Discrimination Complaints: Steps in the Formal Process

How to Prevent Sexual Harassment
Numbers 43 thru 47
Activity Four (#47)
- Additions



FACILITATOR'S INSTRUCTIONS



Instructions

Please read the notes below before using this course.

This training course has been designed to assist you in providing two hours of training in "The Secretary's Initiative on the Prevention of Sexual Harassment and the Discrimination Complaints Process" at your health care facility. The course may be used to provide two of the four hours of mandated training and/or may be used in total, in part, or may be tailored to meet any specific needs for training. We strongly suggest that you do a "dry run" with your colleagues before your first session. This will allow you to become familiar with the manual, the different materials, and the length of time required to complete the session.

The course is organized into 4 parts:

- Part 1: Background, Policy, and Definition of Sexual Harassment (1—13)
- Part 2: Identifying Sexual Harassment: Its Effects and Consequences (14—25)
- Part 3: The Discrimination Complaints Process: Steps in the Informal Process (26—42)
- Part 4: Discrimination Complaints: Steps in the Formal Process, and How to Prevent Sexual Harassment (43—47).

Within each section there are:

1. Transparency Masters

These illustrate the facilitator's notes and statements. To use them, they must be removed from this book and photocopied onto transparency film suitable for overhead projectors. If you need assistance to produce the transparencies, you should be able to get help from your VAMC Medical Media. We have included in this section 2 blank transparency masters to use at your discretion.

2. Accompanying Facilitator's Notes

These notes accompany each transparency master and reference them by number. They include supportive background information to

clarify and explain the points being made. All or some of the supportive information may be used at the facilitator's discretion; the facilitator should feel free to add additional studies, illustrations, or anecdotes to help get these points across.

3. Four Reproducible Handouts

These are activities designed to stimulate discussion and participation in your training. The four activities should be photocopied for distribution to attendees at the beginning or end of each section. An annotated facilitator's copy remains in the book, for your reference during the discussion.

Before each training session, do the following:

1. *Reserve a room and an overhead projector for the training.* You will need 2 1/2 hours, including set up time.
2. *Make the transparencies.* There is a large number of them (almost half the book), so be sure they are made in advance. You need to do this only before the very first session because they can be reused for each successive training. After the transparencies are made, replace the masters in their positions in the book (they are numbered; place them before the corresponding facilitator's notes), for reference during the sessions.
3. *Set up an overhead projector to show the transparencies.*
4. *Photocopy the sign-up sheet from this section.* Make enough copies to list all the attendees' names. Put it on a clip board so it is easily seen and doesn't get lost.
5. *Photocopy the activity pages.* Make enough for each trainee to receive one of each.

How to structure the session

Before the trainees enter, place the first transparency on the overhead projector so it can be viewed as they come in.

Have each trainee sign in as he or she enters. Note that employees will be given credit on their official training record for attending the course, and that the sign-up sheet will be used by Medical Center directors to certify that employees have attended the training.

Greet the trainees and begin the session with facilitator's note #1.

Continue with subsequent transparencies and notes, following any instructions. You can control the presentation of information by covering a transparency with paper, exposing data when you are ready to discuss each point. In the instances where there are lengthy illustrative notes, you may summarize the contents as long as the important points are made. You are encouraged to supplement the materials with relevant anecdotes and information of your choice.

As the session progresses, show each transparency and follow corresponding facilitator's notes.

Break up into small groups for exercises (see following note on larger groups).

During the session, allow time for general comments and questions from participants.

Suggestions for large groups:

We suggest that when training a large group, you break it down into smaller groups to facilitate discussion. Ask the smaller groups to discuss the handouts among themselves for activities 1-4, at the appropriate time. Exercises take about 4 minutes to read, with additional time needed for discussion. Then you may lead the larger group in discussion, asking each smaller group to represent their collective ideas.

Remember that this is a flexible course and you may want to tailor your presentation to your particular audience.

If you have more questions, contact your Regional EEO Manager. Keep this book. As changes are made in policy, revisions will be sent out to facilitators to keep the course as current as possible. Be alert to events in the news; these can help you illustrate points presented in the book.

Thank you for taking the time to be a facilitator. Good luck.

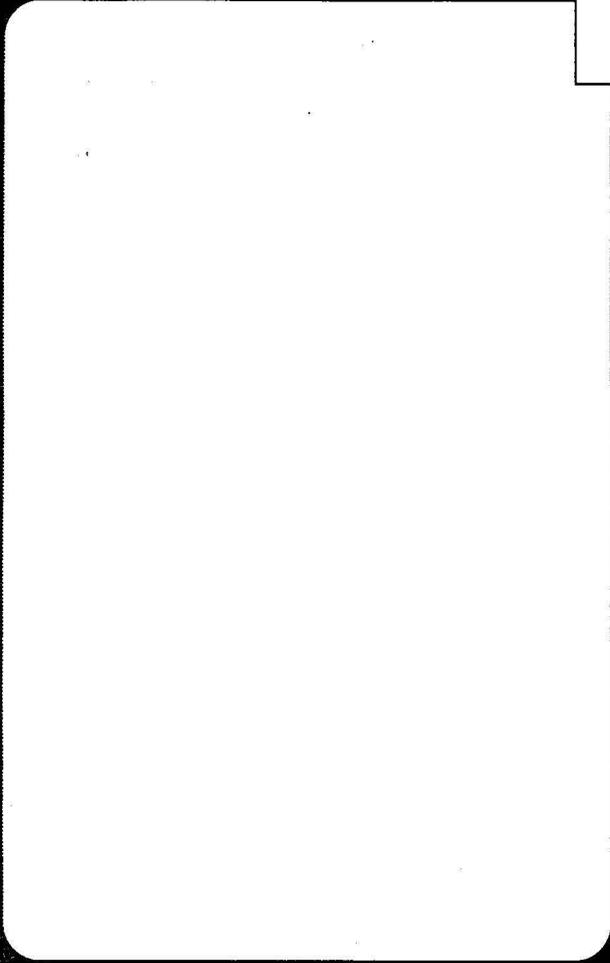
Facilitator's Note about the national videoconference "The Secretary's Initiative: The Prevention of Sexual Harassment and the Discrimination Complaints Process":

On August 24, 1993, from 1:30—3:30 pm ET, The Veterans Health Administration will hold a two hour videoconference, featuring Secretary Jesse Brown. It will focus on the Prevention of Sexual Harassment and the Discrimination Complaints Process.

This broadcast is required viewing for all VHA employees. Please ensure that all participants sign the sheet provided when they enter. Employees will be given credit on their official training record for attending the course. The sheet will be used by Medical Center directors to certify that employees have attended the training.

For those employees unable to attend the training, VHA will provide a recording of the event to each Medical Center. EEO training facilitators are requested to ensure and certify that all employees in your facility view this videotape, using the sign-up sheet provided in this book.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**





*Background
Letters and
MSPB Study
Summary*



BACKGROUND LETTERS AND MSPB STUDY SUMMARY



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

FEB 16 1993

TO ALL EMPLOYEES

I am proud to work with you to serve our Nation's veterans and am strongly committed to providing a work environment that reflects the diversity of those who have served our Country. Through an effective Equal Employment Opportunity (EEO) Program, I believe we can make this happen at every level of our organization.

My goal is to eliminate discriminatory practices in delivery of services and in the workplace. I am strongly committed to providing equal opportunity to all and to eliminating discrimination in employment based on race, color, religion, sex, age, national origin, and disability -- wherever it may occur. All employees will be expected to give the highest level of respect, courtesy, and support to one another and to those we serve. I am also strongly committed to the prevention and elimination of sexual harassment in the Department. Sexual harassment is inappropriate and unacceptable conduct that will not be tolerated. Allegations of sexual harassment must be addressed immediately and all employees raising complaints of discrimination must be provided prompt, fair, and impartial review and handling of their complaints.

To achieve my goal, it is necessary for all managers and supervisors to carry out an effective affirmative employment program that will bring about further diversity in the workplace and help employees reach their career goals. I will hold all managers and supervisors accountable for taking an active role in ensuring that employees under their supervision are treated fairly. I also charge managers and supervisors to reach out and recruit the very best individuals from all sources for employment; and I call upon them to help advance employees to their highest potential. These practices not only promote the EEO Program but are good management practices.

I am committed to expanding the Department's EEO training and awareness activities and to taking whatever other actions are required to achieve a VA workplace free from discrimination and sexual harassment. I ask you to join me in this important effort. Working together, I am confident we will succeed.


Jesse Brown

Dist: RPC 6006



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

MAR 9 1993

TO ALL EMPLOYEES

On February 16, 1993, I issued an "All Employee Letter" stating my strong commitment to prevention and elimination of discrimination and sexual harassment in the Department of Veterans Affairs. This is a follow-up to share with you the initial steps being taken to achieve this goal.

Several significant changes have been proposed in the policies which govern VA's discrimination complaint program. Subject to appropriate union negotiations these changes will be incorporated in VA policy. The key proposals are described below:

- The Office of Equal Opportunity will monitor the sufficiency of EEO complaint processing operations and affirmative employment accomplishments at field facilities through comprehensive program and on-site evaluations.
- All current VA employees must receive a minimum of 4 hours training on the prevention of sexual harassment and the discrimination complaint process as early as practical and before December 31, 1993, and thereafter must receive a minimum of 2 hours refresher training every 2 years. Employees new to VA must receive training within 60 days of employment.
- Part-time EEO counselors shall be appointed for a specific term not to exceed 2 years and may be reappointed for additional terms at the discretion of the EEO Officer.
- All EEO counselors must receive training certified as adequate by the Office of Equal Opportunity before counseling any employees. Both full-time and part-time EEO counselors must receive certified refresher training at least once every 2 years.
- Employees must be allowed to select an EEO counselor of choice from among the EEO counselors serving the facility where the event in dispute arose.

Attached for your information is the revised discrimination/sexual harassment complaint procedures which became effective October 1, 1992. They were issued by the Equal Employment Opportunity Commission to improve and speedup the processing of EEO complaints.

As we take other steps to improve the VA work environment, I will report what is being done. Again, I ask for your support and active participation in this important effort.

Jesse Brown

Attachment

Dist: RPC 6006



DEPARTMENT OF VETERANS AFFAIRS
 DEPUTY ASSISTANT SECRETARY FOR
 EQUAL EMPLOYMENT OPPORTUNITY
 WASHINGTON DC 20420

DISCRIMINATION COMPLAINT PROCEDURES

A. Authority for the Complaint Process

The administrative complaint process is authorized by the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; and the Rehabilitation Act of 1973, as amended. All Acts delegate responsibility to the Equal Employment Opportunity Commission (EEOC) to promulgate regulations which set forth the particulars of the complaint process. The EEOC regulations are published in Title 29, Code of Federal Regulations, Part 1614.

The bases for filing complaints are outlined in those regulations. They provide for the acceptance of complaints from any employee, or applicant for employment who believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or in reprisal for having opposed such discrimination.

B. Processing Stages

1. **Informal Stage.** The aggrieved person must first seek counseling from an EEO Counselor about the event causing him or her to believe that he or she has been discriminated against, within 45 calendar days of the date of occurrence. The EEO Counselor will then make whatever inquiry is necessary and will attempt to seek a solution to the matter on an informal basis. The counselor is required to keep a record of his or her activities and to complete counseling within 30 calendar days of initial contact with the aggrieved person. If counseling cannot be completed within 30 calendar days, the counselor must obtain the written permission of the aggrieved person for an extension. The requested extension may not exceed 60 calendar days (for a total of 90 calendar days after initial contact) under any circumstances. Additionally, the written permission of the aggrieved person regarding an extension must be obtained prior to the end of the 30th calendar day. If the written permission of the aggrieved person to extend this period is not obtained before the end of the 30th calendar day after initial contact, the counselor must issue a Notice of Final Interview to the complainant on the 30th calendar day. Should counseling activities be completed prior to expiration of the 30 calendar day time limit, the counselor shall issue the Notice of Final Interview to the complainant at that time.

2. **Formal Complaint Stage.** The complaint must be reduced to writing, signed by the complainant and submitted to either the EEO Officer, the Deputy Assistant Secretary for Equal Opportunity or the Secretary of Veterans Affairs, within 15 calendar days of receipt of the written Notice of Final Interview. Complaints are usually submitted on VA Form 4939, but any written document containing the same information is acceptable. Authority to accept a complaint is delegated to EEO Officers at VA field installations. However, in the VA, only the Office of General Counsel is authorized to dismiss or reject a complaint.

3. **Investigative Stage.** If a complaint is accepted, an investigator will be assigned to the case. The person assigned may not be an employee of the installation where the complaint arose. The investigator is authorized to take statements from witnesses, under oath and without a pledge of confidence, gather pertinent documents and records and conduct whatever other inquiry may be necessary. An investigation of a complaint must be completed within 180 calendar days of its filing, unless the parties agree in writing to extend this period. The investigator must assemble the file and prepare an investigative report, which summarizes the evidence gathered.

4. **Advisement of Rights.** The EEO Officer will give a complete copy of the report of investigation, along with an advisement of rights letter, to the complainant and to the complainant's representative (if any). Pursuant to 29 CFR 1614.108(f), the advisement of rights letter which is presented to the complainant and his or her representative upon completion of the investigation shall notify the complainant that, within 30 calendar days of receipt of the investigative file, the complainant has the right to request either a hearing before an EEOC Administrative Judge followed by a Final Agency Decision from the VA Office of General Counsel, or an immediate Final Agency Decision from the VA Office of General Counsel, without a hearing.

5. **Hearing Stage.** If the complainant elects a hearing, the complaint will be transmitted to the nearest office of the EEOC for assignment to an Administrative Judge. The Administrative Judge will review the file to determine if further investigation is necessary. If none is necessary (usually one will not be), the Administrative Judge will schedule the hearing for a convenient time and place.

Although more informal, the hearing will be conducted in a manner similar to a court trial. Witnesses will be called to testify and may be cross-examined by the complainant and a representative of the VA. The hearing will be recorded and transcribed verbatim. All documents submitted by the parties and accepted by the Administrative Judge will be entered into the record. Upon completion of the hearing, the Administrative Judge will prepare an analysis, findings, and recommended decision regarding the complaint, which will be forwarded to the VA Office of General Counsel for a final agency decision.

6. **Final Agency Decision Stage.** The VA Office of General Counsel will prepare the final agency decision on the complaint. If there has been a hearing, the Office of General Counsel may agree or disagree with the recommended decision of the Administrative Judge. The final decision of the Agency will address all issues in the complaint; find discrimination or find no discrimination; and advise the complainant of his or her right to appeal the decision to the Office of Federal Operations, EEOC, or to file a civil action in Federal District Court.

7. **Appeal Stage.** If the complainant disagrees with the final agency decision, he or she may file an appeal with the Office of Federal Operations, EEOC within 30 calendar days of receipt of the final agency decision. If the appeal is timely, the EEOC will adjudicate the complaint. The appellate decision of the EEOC is final and binding on both parties, unless either party timely requests reopening and reconsideration by the members of the Commission (i.e., the Presidentially appointed Commissioners of the EEOC).

8. **Reopening and Reconsideration Stage.** If either the complainant or VA disagrees with the appellate decision of the Office of Federal Operations, one or both may request reopening and reconsideration by the Commissioners of the EEOC within 30 calendar days of receipt of an appellate decision by the EEOC, or within 20 calendar days of receipt of an opposing party's request for reopening and reconsideration. The party requesting reopening must demonstrate that there is new and material evidence which was not readily available at the time of the appellate decision; or the appellate decision involved an erroneous interpretation of law or regulations or misapplication of established policy; or the appellate decision is of such exceptional nature as to have effect beyond the case at hand.

The decision of the Commissioners completes the administrative process. The complainant, however, may file a civil action in US. District Court. Also, civil action rights accrue at any time after 180 calendar days from the date the complaint was filed, if there has been no final agency decision or 180 calendar days after filing an appeal with EEOC, if there has been no appellate decision. A civil action may also be filed within 90 calendar days of receipt of an appellate decision from EEOC (or from the Commissioners of EEOC after a request to reopen).

Department of Veterans Affairs
Veterans Health Administration
Washington, DC 20420

VHA DIRECTIVE 10-93-056

May 12, 1993

TO: Regional Directors; Directors, VA Medical Center Activities, Domiciliary, Outpatient Clinics, and Regional Offices with Outpatient Clinics

SUBJ: VHA (Veterans Health Administration) Policy for Prevention of Sexual Harassment

1. **PURPOSE:** The purpose of this VHA (Veterans Health Administration) directive is to re-issue policy for implementing the Program for the Prevention of Sexual Harassment in VHA. This directive replaces VHA Directive 10-93-025, and will not be incorporated into a manual at this time.

2. **POLICY:** It is the policy of VHA to maintain a work environment free from sexual harassment and intimidation. Sexual harassment is unacceptable conduct in the workplace and will not be tolerated. This policy applies to all employees and covers employees outside of the workplace while conducting government business, and nonemployees while conducting business in the VA workplace.

a. Sexual harassment is a form of employee misconduct which seriously undermines the integrity of the employment relationship. Specifically, sexual harassment is unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

(2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual;

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

b. Jokes, remarks, teasing, or questions that contain sexual overtures can also be a form of sexual harassment and are not acceptable in a professional work environment and will not be condoned.

c. Managers, supervisors, and employees should become thoroughly knowledgeable of what constitutes sexual harassment and responsive to any form of improper behavior that could lead to such allegations.

3. **ACTION:** It is imperative that VHA officials at the field and Central Office levels be in full compliance with both the spirit and intent of Agency and Department policy as well as all other applicable federal regulations. All employees are expected to refrain from all forms of sexual harassment. Any employee engaging in sexually harassing activities may be subject to disciplinary action. Managers and supervisors who tolerate such behavior by failing to take appropriate action, or who retaliate against employees who report incidents or file formal complaints of sexual harassment may also be subject to disciplinary action. Persons who believe they are victims of sexual harassment should

THIS VHA DIRECTIVE EXPIRES MAY 12, 1994

VHA DIRECTIVE 10-93-056
May 12, 1993

address the incident through the Agency's EEO (Equal Employment Opportunity) Discrimination Complaints process or the Union's negotiated grievance procedure. Allegations of such conduct will be responded to immediately, appropriately, and with the seriousness they deserve.

4. REFERENCES

- a. MP-7, part I, chapter 2, section F.
 - b. Section 703 of Title VII of the Civil Rights Act of 1964.
 - c. Reorganization Plan No. 1 of 1978, issued pursuant to 5 U.S.C. (United States Code), 901, et seq.
 - d. Executive Order 12106 (44 F.R. 1063, January 3, 1979).
5. FOLLOW-UP RESPONSIBILITY: Director, Management Support Office (163A).
6. RESCISSIONS: VHA Directive 10-93-025 is rescinded. This VHA directive expires on May 12, 1994.


James W. Holsinger, Jr., M.D.
Under Secretary for Health

DISTRIBUTION: CO: E-mailed 5/12/93
FLD: RD, MA, DO, OC, OCRO and 200 - FAX 5/12/93
EX: Boxes 104, 88, 63, 60, 54, 52, 47 and 44 - FAX 5/12/93



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

IL 10-92-030
In Reply Refer To: 163

October 23, 1992

CHIEF MEDICAL DIRECTOR'S INFORMATION LETTER

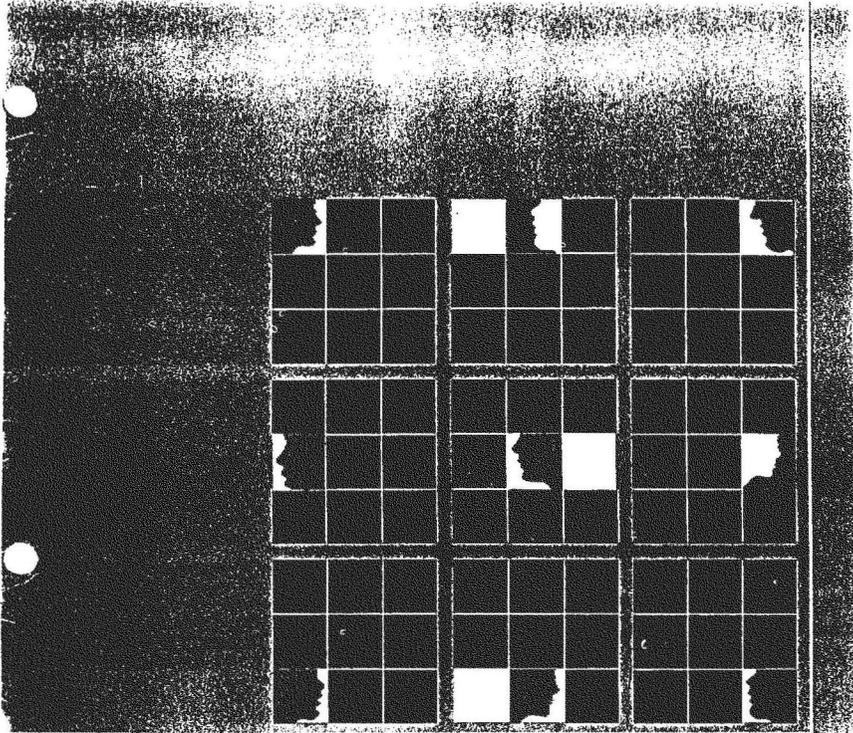
TO: Regional Directors; Directors, VA Medical Center Activities, Domiciliary, Outpatient Clinics, and Regional Offices with Outpatient Clinics

SUBJ: Sexual Harassment in the Workplace

1. The purpose of this letter is to emphasize that sexual harassment is a demeaning form of behavior that is not acceptable and will not be tolerated in any VHA (Veterans Health Administration) facility.
2. VHA management officials should lead the effort to eliminate all vestiges of sexual harassment, and the attitude and culture that promote it, from the workplace. Each of you needs to take personal charge of the effort to prevent and eliminate sexual harassment at your facility and ensure that every employee and management official understands the VHA policy and my expectations on this important issue.
3. VHA has already taken a proactive role in this direction. A written policy, contained in VHA Circular 10-91-147 dated December 9, 1991, has been established. This policy includes:
 - a. Sexual harassment is a key module in the EEO (Equal Employment Opportunity) training for managers and supervisors with some 19,000 supervisors and managers having already received this training over the past 3 years.
 - b. To aid oversight on this matter, EEO staffing in each of the Regional Directors offices will be enhanced in FY (Fiscal year) 93.
 - c. A sexual harassment training module will be presented at the 1992 Senior Managers Conference.
4. Now is the time, if it has not already been done, to assess the climate within your facility to determine where you are and what needs to be done to nurture an environment free of sexual harassment. This is the right thing to do for our employees and our veteran patients and I know that I can depend on each of you to act with vigor and sensitivity.


JAMES W. HOLSINGER, JR., M.D.
Chief Medical Director

DISTRIBUTION: CO: E-mailed 10/23/92
FLD: RD, MA, DO, OC, OCRO and 200 - FAX 10/23/92
EX: Boxes 104, 88, 63, 60, 54, 52, 47 and 44 - FAX 10/23/92



SEXUAL HARASSMENT

FEDERAL GOVERNMENT
AG UPDATE

June 1988

A Report to the President and the Congress of the United States by
the U.S. Merit Systems Protection Board



Executive Summary

This report discusses the results of a major 1987 survey and study dealing with sexual harassment in the Federal workplace. It marks the second time the U.S. Merit Systems Protection Board has focused on this important topic. As an update, the report provides some contrasts and comparisons with data gathered in the Board's first landmark study of sexual harassment in 1980. It details findings on employee attitudes toward and experiences with uninvited behavior of a sexual nature. It also describes the actions Federal agencies have taken in their efforts to reduce sexual harassment, and the financial as well as human costs when those efforts fall short. The report reviews relevant case law that has developed over the last 7 years as the Board and the courts have sought to define the legal rights and redress for victims of sexual harassment. It concludes with recommendations for future action within the Government.

Background

In late 1979, the Subcommittee on Investigations of the U.S. House of Representatives' Committee on Post Office and Civil Service requested that the U.S. Merit Systems Protection Board (MSPB) conduct a thorough and authoritative study of sexual harassment in the Federal workplace. The Board was asked to carry out the study since it is an independent, quasi-judicial agency that decides appeals from personnel actions taken against Federal employees and conducts studies of the civil service and other merit systems. It is responsible for protecting the integrity of the Federal civil service system from abuse.

The initial study of sexual harassment conducted by MSPB in 1980, with a final report issued in early 1981, was a "first of its

kind" broad-scale survey of the attitudes and experiences of a representative cross-section of both self-identified victims and nonvictims within the Federal Government.

In 1986, on its own initiative, the Board decided to conduct a followup study on sexual harassment to determine what changes, if any, had occurred in the Federal Government since the time of the first study. As part of this followup study, which was conducted in 1987, a questionnaire that replicated much of the original survey was used so responses for 1987 could be compared with the 1980 data. The questionnaire was sent to a representative cross-section of approximately 13,000 Federal employees, and 8,523 employees responded.

Research Design

The data in this report are based primarily on employee questionnaires distributed Governmentwide in 1980 and 1987. To obtain trend data, the Board's 1987 questionnaire replicated many of the questions from the 1980 survey. The 1987 survey was sent to approximately 13,000 full-time permanent Federal employees during March 1987, and 8,523 employees responded. The respondents form a representative cross-section of Federal employees. In addition, in December 1986, a formal information request was sent to the heads of the 22 largest Federal departments and agencies to obtain relevant data on their institutional efforts to reduce sexual harassment.*

The incidence data on sexual harassment contained in this report are based upon the number of respondents who indicated they had received uninvited and unwanted sexual attention. Thus the method of identifying victims was one of self-identification on the part of the respondents.

It should also be noted that the term "sexual harassment" is defined differently by different people. OPM defined sexual harassment as "deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome." EEOC expanded upon this definition by outlining the conditions under which such conduct would constitute sexual harassment. EEOC also noted that a determination of the legality of alleged sexually harassing conduct would be made from the facts, on a case-by-case basis. Since the EEOC guidelines were issued, the Board and the courts have developed a body of case law that provides further clarification as to what constitutes sexual harassment within a legal context.

It should not be presumed that each reported incident of uninvited sexual attention meets the current legal definition of sexual harassment.

One of the difficulties inherent in any discussion of sexual harassment is that the term itself is a "term of art" that holds different meanings for different people. In late 1979, the U.S. Office of Personnel Management (OPM) issued a policy statement that defined sexual harassment as "deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome." In 1980 the Equal Employment Opportunity Commission (EEOC) issued guidelines on unlawful discrimination because of sex that expanded this definition. EEOC specified, for example, that conduct of a sexual nature could be considered sexual harassment if it created "an intimidating, hostile, or offensive working environment." The EEOC guidelines also noted that a determination of the legality of alleged sexually harassing conduct would be made from the facts, on a case-by-case basis.

Since the EEOC guidelines were issued, a body of legal precedents, including a 1986 Supreme Court decision, has provided legal clarification as to what constitutes sexual harassment. For purposes of this report, however, the Board relies upon the expressed views of Federal employees for its definition. If a respondent to the Board's survey stated that he or she had received uninvited or unwanted sexual attention during the preceding 24 months, that was counted as an incident of sexual harassment even though not every incident, if fully investigated, would necessarily meet the legal definition of sexual harassment.

As this report discusses, sexual harassment in the workplace, like racial discrimination, can be a pervasive form of illegal discrimination that is both difficult to precisely measure and difficult to change. Yet, like racial discrimination, sexual harassment must be addressed so that positive change can occur. The purpose of this report is to clarify the nature and extent of the problem within the Federal Government, to review some of the actions taken during the last 7 years to address that problem, and to offer some suggestions for future efforts.

Summary of Findings

Compared to 7 years ago, Federal workers are now more inclined to define certain types of behavior as sexual harassment. For example, in 1980 approximately 77 percent of all employees considered uninvited pressure for dates by a supervisor to be sexual harassment. In 1987 that percentage had increased to almost 84 percent. Likewise, in 1980, 84 percent of male employees and 91 percent of female employees considered unwanted supervisory pressure for sexual favors to be sexual harassment. In 1987 those percentages had increased to 95 percent and 99 percent, respectively. Similar changes were seen in employee attitudes about most other types of behavior.

In 1987, 42 percent of all women and 14 percent of all men reported they experienced some form of uninvited and unwanted sexual attention. Despite an apparent increase in the level of sensitivity about what behavior may be considered sexual harassment, there has been no significant change since the Board's last survey in 1980 in the percentage of Federal employees who say they have received such uninvited and unwanted attention. Within the context of this report, unwanted and uninvited sexual attention is considered sexual harassment. Interestingly, among current Federal employees who had also worked outside the Federal Government, the preponderant opinion is that sexual harassment is no more of a problem in the Government than outside it.

The most frequently experienced type of uninvited sexual attention is "unwanted sexual teasing, jokes, remarks, or questions." The least frequently experienced type of harassment—"actual or attempted rape or assault"—is also arguably the most severe. Sexual harassment takes many forms and an employee may experience more than one form. In answering the Board's 1987 survey, 35 percent

of all female respondents and 12 percent of all male respondents said they experienced some type of "unwanted sexual teasing, jokes, remarks, or questions." Also in 1987, approximately .8 percent of all female respondents and .3 percent of male respondents said they experienced "actual or attempted rape or assault."

The incidence rate for alleged sexual harassment varies by agency. For example, in 1987 a high of 52 percent of the female employees at the Department of State claimed they experienced some form of uninvited sexual attention, compared to a low of 29 percent of the female employees at the Department of Health and Human Services. Moreover, among the 16 agencies whose employees were surveyed in both 1980 and 1987, several did show some shifts in the percentage of employees claiming they experienced uninvited and unwanted sexual attention. A few agencies (for example, the Departments of Labor and Transportation) experienced a significant decline in the percentage of female employees who said they were harassed.

Coworkers are much more likely than supervisors to be the source of sexual harassment. In 1987, 69 percent of female victims and 77 percent of male victims said they were harassed by a coworker or another employee without supervisory authority over them. Only 29 percent of the female victims and 19 percent of the male victims cited someone in their supervisory chain as the source of their harassment. This pattern is consistent with the Board's 1980 findings.

Some individuals are more likely than others to be victims of sexual harassment. For example, based on the data obtained in 1987, women who: are single or divorced; are between the ages of 20 and 44; have some college education; have a nontraditional job; or work in a predominantly male environment or for a male supervisor have the greatest chance of being sexually harassed.

However, as the Board found in 1980, despite this generalization, sexual harassment is still widely distributed among women and men of all ages, backgrounds, and job categories.

Many victims tried more than one response to unwanted sexual attention. Although later judged ineffective by most of them, almost half of all victims tried to ignore the behavior or otherwise did nothing in response. In 1987, only 5 percent of both female and male victims said they took some type of formal action. Although most employees were aware of the availability of formal action—e.g., filing a grievance or a discrimination complaint—very few chose to use those potential remedies.

When victims of sexual harassment did take positive action in response to unwanted sexual attention, it was largely informal action and, in many cases, was judged to be effective. The most effective and frequently taken informal action was simply telling the harasser to stop. Forty-four percent of the female victims and 25 percent of the male victims said they took this action and, in over 60 percent of the cases, both groups said it "made things better."

Among the 22 largest Federal departments and agencies surveyed, all had issued policy statements or other internal guidance during the 7-year period from FY 1980 through FY 1986 concerning prohibitions against sexual harassment. How frequently that guidance was updated and each agency's method of dissemination varied. Most employees, however, said they are aware of their agency's policies regarding sexual harassment and the internal complaint procedures available to victims.

Every agency maintained it provided training on the issue of sexual harassment, although most efforts were directed at managers and personnel and equal employment opportunity

officials rather than nonsupervisory employees. Most (18 of 22) agencies estimated that during the 7-year period from FY 1980 through FY 1986, the average employee spent 2 hours or fewer in training related to sexual harassment. It should be noted, however, that agencies are not required to keep detailed records in this regard and, therefore, most responses tended to be "best estimates."

Most agencies maintained that they have taken a number of different actions in an effort to reduce sexual harassment and that, in most cases, those actions have been effective. Employees were more skeptical. For example, every agency surveyed said it provided "swift and thorough investigations of complaints" and that such investigations were effective. Only 32 percent of the employees surveyed felt their agencies provided such investigations.

During the 2-year period from May 1985 through May 1987, sexual harassment cost the Federal Government an estimated \$267 million. This cost is in addition to the personal cost and anguish many of the victims had to bear. This conservative estimate is derived by calculating the cost of replacing employees who leave their jobs as a result of sexual harassment, of paying sick leave to employees who miss work as a consequence, and of reduced individual and work group productivity.

Conclusions and Recommendations

Based on the findings discussed in this report, since the Board conducted its first study of sexual harassment, there is evidence that some positive changes have occurred in Federal employee attitudes and perceptions regarding uninvited sexual attention. More employees, both men and women, are aware that certain behaviors of a sexual nature can be both un-

wanted and inappropriate in the workplace. In addition, most employees are now aware that sexual harassment is contrary to established agency policy. During this time, Federal agencies have also taken a number of actions designed to reduce the incidence of sexual harassment and at least a few agencies have had some success in this regard.

Despite these positive trends, however, the overall bottom line did not change. Uninvited and unwanted sexual attention was experienced by almost the identical proportion of the work force in 1987 as in 1980. Sexual harassment is still a pervasive, costly, and systemic problem within the Federal workplace.

The Board recommends that:

- All agency employees should be periodically reminded of their responsibilities and held accountable for compliance with Federal law and agency policy prohibiting sexual harassment in the workplace. It must be clear that sexually harassing behavior by any employee cannot and will not be tolerated. This can be accomplished in a number of ways, including issuing an agency policy statement signed by the head of the agency detailing the specific prohibited practices and the penalties associated with those practices. This statement should be updated annually or as needed. Agencies should also require each employee to acknowledge that he or she has read and understands the policy.
- With regard to enforcement of the law and agency policies on sexual harassment, each agency should:
 - Seek to identify, on its own initiative, possible instances of sexual harassment;
 - Quickly and thoroughly investigate allegations (within 120 days if possible); and
 - Establish and exercise strong sanctions against harassers where the facts warrant.

• Federal agencies should provide training on sexual harassment to nonsupervisory employees as well as to managers and EEO and personnel officials. The training should include discussion of the various behaviors that may be construed as sexual harassment and, for victims, some of the appropriate and more effective

responses possible. The training should also stress that individuals need to be sensitive to the ways in which their actions may be interpreted by others. Whether certain behavior constitutes sexual harassment depends not only on the intent behind the behavior but also on the perceptions of those affected.



*Background,
Policy, and
Definition
of Sexual
Harassment*

PART 1



THE PREVENTION OF SEXUAL HARASSMENT AND THE DISCRIMINATION COMPLAINTS PROCESS

Objectives

At the conclusion of this program, the participant should understand:

- The importance of a work environment free from discrimination and sexual harassment.
- The definition of sexual harassment.
- Examples and effects of sexual harassment.
- Actions to take if sexual harassment occurs.
- How to use the EEO complaints process: formal and informal steps.
- The rights and responsibilities of all parties in the complaints process.
- How to prevent sexual harassment.

Facilitator's notes

1

**Leave on screen during registration
and seating.**

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Introduction

Why is the prevention of sexual harassment important to you and the Department of Veterans Affairs?

Facilitator's notes

2

Open with this question. Then answer using the following information:

Prevention is the best way to eliminate sexual harassment. Even if you are never personally involved in an incident of sexual harassment, you are affected by this behavior because it impacts the work environment.

Sexual harassment is:

- sex discrimination
- stressful for the employee
- a barrier to productivity
- against the law

It is an important issue because it is an offensive misuse of power, and every VA employee has the right to work in an environment that is free from discrimination and harassment.

THE PREVENTION OF SEXUAL HARASSMENT AND THE DISCRIMINATION COMPLAINTS PROCESS

Recent Events

- 1980 U.S. Merit Systems Protection Board Study
- 1987 U.S. Merit Systems Protection Board Study
- 1991 Clarence Thomas Confirmation Hearing
- 1991 U.S. Navy Tailhook Scandal
- 1992 VA Receives National Attention

Facilitator's notes

3

Recent events have brought this issue to the forefront:

-In 1980 the Merit Systems Protection Board conducted its first official study regarding sexual harassment with a follow-up study in 1987. The findings revealed that sexual harassment in the federal government is a pervasive, costly, systemic problem. (An Executive Summary of the MSPB Study Results is in the Background Letters and MSPB Study Summary Section.)

-The Clarence Thomas confirmation hearing brought the issue of sexual harassment to national attention. Women became aware of their right and responsibility to report these incidents.

-We are now aware that sexual harassment is a major concern within the Department of Veterans Affairs.

-The recent U.S. Navy Tailhook scandal points out the repercussions of ignoring allegations of sexual harassment. Allegations had been made internally but were ignored until the media heard about and publicized them. As a result, the Secretary of the Navy was forced to resign and top Navy officials were removed from their posts. This illustrates why there will be "zero tolerance" in the VA. All allegations will be investigated.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

The Secretary's Commitment:

...I am also strongly committed to the prevention and elimination of sexual harassment in the Department. Sexual harassment is inappropriate and unacceptable conduct that will not be tolerated. Allegations of sexual harassment must be addressed immediately and all employees raising complaints of discrimination must be provided prompt, fair, and impartial review and handling of their complaints."

Facilitator's notes

4

Our commitment to the EEO program starts at the top with Secretary Jesse Brown. The "quote" shown is from his February 16, 1993, letter to all employees regarding his personal commitment to this program. You have all received a copy of this letter.

Today's training puts this pledge into action. All employees are required to receive four hours of training before December 31, 1993 which may include participation in a videoconference. A videoconference is planned for August 1993, in order to discuss pertinent issues. In addition, the Secretary's continuing commitment is reflected in his policy that all employees receive refresher training every two years. New employees are to receive training within 60 days of their employment.

The purpose of this training is to provide information on the two major components of the EEO Program: The Prevention of Sexual Harassment and The Discrimination Complaints Process. The training course is divided into four parts: Parts 1 and 2 focus on the behaviors that constitute sexual harassment. Parts 3 and 4 focus on the response to incidents of sexual harassment and its prevention, as well as the steps in processing EEO complaints of discrimination. Specific objectives for this training appear at the beginning of the course and again within each appropriate section.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Part One Objectives

At the conclusion of this section, you should understand:

- The definition of sexual harassment.
- The importance of a work environment free from discrimination and sexual harassment.

Facilitator's notes

5

Read through objectives on transparency.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

MSPB Study

The Department of Veterans (VA) was second among all federal agencies in the percentage of women experiencing sexual harassment (49%).

Facilitator's notes

6

In dealing with sexual harassment in the Department of Veterans Affairs, it is useful to look at some background from the 1987 study mentioned earlier.

This study by the Merit Systems Protection Board identified several facts about sexual harassment that are still relevant today.

NOTE:

The study found that the #1 federal agency in which women experienced sexual harassment was the State Department.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

MSPB Study

The VA was first among all federal agencies in the percentage of men experiencing sexual harassment (21%).

Facilitator's notes

7

Requires no additional information.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

MSPB Study

The study indicated that a high percentage of sexual harassment allegations went unreported.

Facilitator's notes

8

Unreported can mean that:

- a) the situation has been resolved and the behavior stopped, or
- b) that the situation continues but the victim fears reprisal.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

MSPB Study

The harasser was most frequently a coworker

- Quid Pro Quo
- Hostile Work Environment
- Sexual Favoritism

Facilitator's notes

9

Point out that the 1980 study showed that the majority of sexual harassment was by a supervisor toward a subordinate. The 1987 study revealed that most sexual harassment was committed by co-workers.

Explain that sexual harassment takes on distinct forms:

1. Quid pro quo. Quid pro quo sexual harassment occurs when submission to sexual conduct is made an express or implied condition of employment or when submission to or rejection of such conduct is used as a basis for an employment decision.

2. Hostile environment. The hostile work environment claim generally arises when sexual conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment, or of unreasonably interfering with an employee's work performance.

3. Sexual Favoritism. A relatively new theory that is accepted by some courts and rejected by others. EEOC recently issued interpretive policy guidance clarifying the rules on sexual favoritism found in its Guidelines. Previously, the Commission and a few courts had ruled that sexual favoritism could, regardless of the circumstances, give rise to a claim of sexual harassment by employees who, although not themselves harassed, were allegedly denied benefits given to other employees who submitted to a supervisor's sexual advances. Several courts refused to recognize such a claim and the Commission's recent interpretive guidance on the issue somewhat limits the

circumstances under which this type of claim will lie.

Consensual Relationships: The most typical situation involves instances of preferential treatment based upon a consensual romantic relationship between a supervisor and a subordinate. Preferential treatment given to one's spouse, mistress, or special friend may be unfair to other employees in the unit, and is obviously inconsistent with merit principles. Nevertheless, the Commission now believes that such preferential treatment, provided the relationship is consensual (i.e., welcome) does not discriminate against men or women since all employees in the unit, regardless of gender, are equally disadvantaged. In other words, a female who is denied an employment benefit under such circumstances would not have been treated more favorably had she been a male nor, conversely, was she treated less favorably because she is a woman. Hence, such preferential treatment will not give rise to a sexual harassment claim by other employees in the unit.

Coerced Relationship(s): The Commission takes the position that if a female employee is coerced into submitting to a sexual relationship in return for a job benefit, other female employees may be able to establish quid pro quo sexual harassment if there is evidence that the harasser publicized or boasted about his conquest or regularly harassed the victim in the presence of other employees. The theory is that such evidence would support a conclusion that sex was generally a condition to receipt of job benefits. Even absent such evidence, however, the Commission believes that both

Facilitator's notes

continued

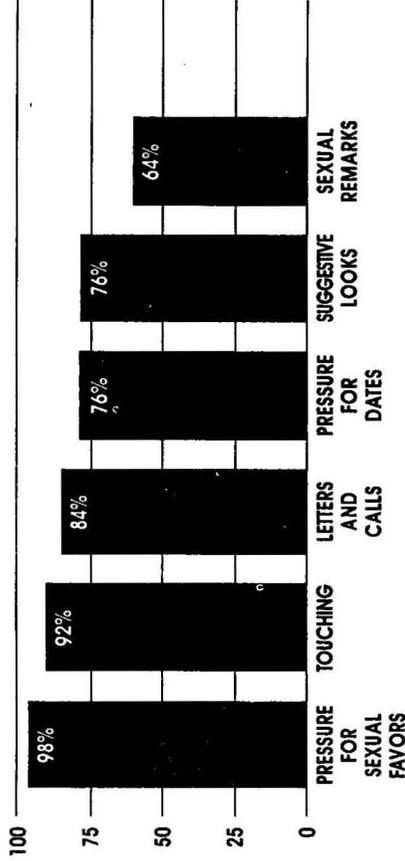
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male and female employees will have standing to challenge the favoritism if they can demonstrate a specific personal loss or injury as a result of the discrimination directed against the woman who was coerced.

Widespread Favoritism: If a number of women benefit from favoritism granted in exchange for sexual favors, the Commission believes that both male and female employees who do not welcome this conduct can establish a hostile work environment regardless of whether any objectionable conduct is directed at them and regardless of whether those who granted the favors did so willingly. Furthermore, managers who engage in widespread favoritism may be conveying the message to women that the granting of sexual favors is a condition precedent (i.e., a quid pro quo) to advancement.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Sexual Harassment



Percentage of women who consider certain behavior to be sexual harassment.
Source: U.S. Merit Systems Protection Board.

Facilitator's notes

10

Sexual harassment involves an interaction between two people. The perceptions of the person being harassed are often quite different from those of the person accused of doing the harassing. Likewise, the perception of certain behavior as sexual harassment will vary from person to person.

The definition of sexual harassment does not rely solely on the perspectives of the parties involved. It also considers the circumstances surrounding the event.

Reasonable Woman Standard: Recent decisions by several circuit courts of appeal have held that employers must focus on the perspective of the victim when evaluating the severity or pervasiveness of the sexual harassment. This new standard holds that conduct will constitute sexual harassment if a reasonable woman in the victim's shoes would consider it as such, notwithstanding the fact that a reasonable man might conceivably consider the conduct as harmless or even amusing.

(The courts and EEOC are considering changing reasonable woman to reasonable victim because reasonable woman does not encompass male victims of sexual harassment.)

This new standard for evaluating the evidence in sexual harassment cases could possibly have an impact on the number of incidents necessary to demonstrate severity and pervasiveness. In other words, previous cases defined these concepts based on the reasonable man standard and reasonable men might consider certain types of conduct as harmless or common social interaction rather than harassment (e.g., complimenting a woman for having a "great figure" or "nice legs"). A reasonable woman (defined by the courts and the EEOC as one who is not hypersensitive), on the other hand, might view such actions as harassment and be willing to tolerate far fewer of them than a male might consider necessary to demonstrate pervasiveness.

Definition of Sexual Harassment

- Sexual Harassment is a form of sex discrimination.
- Sexual Harassment is deliberate or repeated unsolicited verbal comments, gestures, or physical conduct of a sexual nature which are unwelcome.

Facilitator's notes

11

Sex discrimination occurs when individuals are treated or impacted in a different manner because of sex (gender) distinctions. Although sexual harassment is a form of sex discrimination, it is concerned only with unwelcome sexual behavior that interferes with an individual's employment, benefits, or ability to work effectively.

According to the Equal Employment Opportunity Commission guidelines, sexual harassment is:

"deliberate or repeated unsolicited verbal comments, gestures or physical conduct of a sexual nature which are unwelcome."

It is important to note key words in the definition: deliberate, repeated, unsolicited, sexual nature, unwelcome.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when....

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- Such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

Facilitator's notes

12

Read this statement:

The EEOC (Equal Employment Opportunity Commission) has issued official guidelines which define sexual harassment as a form of sex discrimination under Title VII of the Civil Rights Act of 1964.

Explain the following:

To determine whether alleged conduct constitutes sexual harassment, the Commission looks at the record as a whole and at all the circumstances related to the incident. These circumstances include the nature of the sexual advances and the context in which the alleged incident occurred. The legality of a particular action is determined from the facts, on a case by case basis.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Activity One

READ THE INCIDENT DESCRIBED IN YOUR HANDOUT FOR ACTIVITY ONE

- *Why is this incident an example of sexual harassment?*

Handout for Activity One

- Please read the incident described below
- Applying the definition of sexual harassment and other EEOC guidelines, determine how this incident constitutes sexual harassment

Brenda is a lab technician in a VA Medical Center. She has excellent job performance evaluations and an outstanding academic background. When the Chief of Laboratory Services retires, the new male Chief reorganizes the lab structure, creating a new supervisory position.

One evening, the Chief finds Brenda working late to finish up a project. He invites her to join him for a quick dinner, and Brenda accepts. At dinner, the Chief encourages Brenda to apply for the supervisory position. The next morning, he sends flowers to her lab station, along with a note thanking her for a "special evening." The next day, he invites Brenda to again join him for dinner. She refuses, indicating she has to go directly home. He later offers her a ride home, which she also refuses. That night, the Chief calls Brenda at home and asks her for a date. She again refuses.

For a few weeks, Brenda doesn't hear from the Chief. In the meantime, she submits her application for the supervisory position. Shortly after, the Chief begins to leave notes at Brenda's desk and frequently calls her home. She continues to refuse his overtures.

Finally, the Chief calls Brenda in for a conference. He mentions how impressed he is with her work performance and what a strong candidate she is for the new position. However, the position will require travel to and participation in out-of-town conferences. The

Chief questions whether Brenda can "handle" that responsibility, since she has no such experience. He mentions a conference coming up in the next week, where he will be a contributor. He suggests that she accompany him in order to observe what goes on and assist him with his activities. He also reminds her that the experience would help strengthen her bid for the new position. Brenda declines to accompany him. Subsequently, the supervisory position is awarded to another lab technician.

Discuss Conclusions

Facilitator's notes

13

The participant's copy of Activity One (Handout) is to be duplicated and distributed to each participant at this point in your presentation.

Leave transparency #13 on the screen and distribute the handout.

Give participants at least 4 minutes to read the handout, keeping in mind that they will discuss the following question: "Using terms from the definition of sexual harassment and other EEOC guidelines, determine how this incident constitutes sexual harassment."

You may break into smaller groups for discussion purposes. Select a leader from each group to summarize its discussion. Be sure everyone has had enough time to read the incident and to discuss it as a group.

Lead a discussion with the whole group. Be sure the following points are made:

- there are repeated and unsolicited verbal comments, gestures, or physical contact
- the Lab Chief repeatedly asks Brenda for private time together or dates
- at no time does Brenda express an interest in the Chief or in having a relationship with him other than whatever professional involvement her position requires
- the Lab Chief sends flowers to Brenda's work station with a personal note

The Chief's overtures are unwelcome —
-after the initial dinner, Brenda refuses the Lab Chief's requests for dates or time together

Submission to...such conduct is made implicitly a condition of an individual's employment or used as the basis for employment decisions - "Quid pro quo"
-the Lab Chief implies that if Brenda accompanied him out-of-town, he would return the favor with a promotion to the supervisory position

INCIDENT:

Brenda is a lab technician in a VA Medical Center. She has excellent job performance evaluations and an outstanding academic background. When the Chief of Laboratory Services retires, the new male Chief reorganizes the lab structure, creating a new supervisory position.

One evening, the Chief finds Brenda working late to finish up a project. He invites her to join him for a quick dinner, and Brenda accepts. At dinner, the Chief encourages Brenda to apply for the supervisory position. The next morning, he sends flowers to her lab station, along with a note thanking her for a "special evening." The next day, he invites Brenda to again join him for dinner. She refuses, indicating she has to go directly home. He later offers her a ride home, which she also refuses. That night, the Chief calls Brenda at home and asks her for a date. She again refuses.

For a few weeks, Brenda doesn't hear from the Chief. In the meantime, she submits her

Facilitator's notes

continued

13

application for the supervisory position. Shortly after, the Chief begins to leave notes at Brenda's desk and frequently calls her home. She continues to refuse his overtures.

Finally, the Chief calls Brenda in for a conference. He mentions how impressed he is with her work performance and what a strong candidate she is for the new position. However, the position will require travel to and participation in out-of-town conferences. The Chief questions whether Brenda can "handle" that responsibility, since she has no such experience. He mentions a conference coming up in the next week, where he will be a contributor. He suggests that she accompany him in order to observe what goes on and assist him with his activities. He also reminds her that the experience would help strengthen her bid for the new position. Brenda declines to accompany him. Subsequently, the supervisory position is awarded to another lab technician.

Discuss Conclusions.



*Identifying
Sexual
Harassment:
Its Effects
and
Consequences*

PART 2



Part Two Objectives

At the conclusion of this section, you should understand:

- Examples and effects of sexual harassment.
- Actions to take if sexual harassment occurs.

Facilitator's notes

14

This second part of the training module will continue to focus on behaviors that constitute sexual harassment.

Read through objectives on transparency.

Examples of Sexual Harassment

Verbal

- Sexual innuendoes
- Suggestive remarks
- Insults
- Humor and jokes about sex or gender-specific traits
- Sexual propositions
- Threats

Facilitator's notes

15

Expand on the transparency list with the following examples:

COMMENTS:

-Sexual comments about a person's body, clothing or looks

SUGGESTIVE REMARKS:

-Conversations about sexual fantasies, preferences, or history
-Personal questions about a person's social or sexual life

PROPOSITIONS:

-Repeatedly asking out a person who is not interested

INSULTS:

-Telling lies or spreading rumors about a person's personal sex life

Examples of Sexual Harassment

Non-Verbal

- Suggestive or insulting sounds
- Leering or ogling
- Whistling
- Obscene gestures
- Obscene/graphic materials

Facilitator's notes

16

Expand on the transparency list with the following examples:

LEERING

- Staring in general or at a particular part of the anatomy

OGLING

- Looking up and down (elevator eyes)

OBSCENE GESTURES

- Suggestive facial expressions or sexual gestures

OBSCENE MATERIALS

- Displaying sexually suggestive visuals of any kind

In addition, non-verbal harassment can include:

- Following a person
- Giving personal gifts
- “Hanging around” a person

Examples of Sexual Harassment

Physical

- Touching others
- Pinching
- Touching oneself
- Brushing the body
- Cornering
- Actual or attempted rape or assault

Facilitator's notes

17

Expand on the transparency list with the following:

TOUCHING:

- Touching a person's clothing, hair or body
- Hugging, kissing, patting, pinching, or stroking
- Touching or rubbing oneself sexually while around another person

BRUSHING:

- Standing close to or brushing up against a person

CORNERING:

- Blocking a person's path

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Effects of Sexual Harassment on the Victim

- Mental anguish and stress
- Uncomfortable working environment
- Impact on productivity and efficiency
- Constructive discharge (forced resignation)
- Reprisal
- Potential for litigation

Facilitator's notes

18

Read through list on transparency and explain:

Sexual harassing activity is always inappropriate and counterproductive. The conduct can have devastating and adverse effects on the morale, behavior, productivity, and many times on the health of the victim.

Effects of Sexual Harassment on the Organization

- Loss of morale, productivity, and efficiency
- Increased absenteeism and turnover
- Uncomfortable work environment
- Potential litigation
- Adverse publicity

Facilitator's notes

19

Read the list on transparency, then add:

We are all the victims of sexual harassment when it affects the organization for which we work. Individual incidents of sexual harassment have a "ripple effect" that ultimately harm an organization and create an unpleasant working environment for everyone.

Consequences of Sexual Harassment on the Offender

- **Written Counseling**
- **Disciplinary/Adverse Action**
 - Admonishment
 - Suspension
 - Reprimand
 - Removal
- **Potential Liability**
 - Payment of Civil Suit Damages
 - Criminal Prosecution
- **Potential Adverse Impact on Family and Social Standing**

Facilitator's notes

20

Read the list on transparency, then:

Explain that sexual harassment is an issue of conduct. Therefore, it is handled through a progression of disciplinary actions. The degree of discipline is based upon the seriousness and repetitiveness of the conduct.

NOTE:

Personal Tort Liability: In the past, federal employees, if found by a court to have engaged in sexual harassment, could rest assured that they would not be held personally liable for any monetary judgment. This is because, under federal civil rights laws, only the head of the department or agency involved can be named in the suit. Any judgment handed down is a judgment against the agency payable out of the government's Judgment Fund. This is still true insofar as federal civil rights laws are concerned. This includes the recently-enacted Civil Rights Act of 1991 which provides for compensatory damages of up to \$300,000 over and above any backpay which may be owing.

However, with increasing frequency, federal courts are beginning to permit victims bringing sexual harassment claims to add, under certain circumstances, state tort law claims to their federal claims. This permits them to hold the harasser personally liable for damages. A tort is a civil wrong for which compensatory and punitive damages may be assessed against the wrongdoer. Typical state tort claims being raised by plaintiffs in sexual harassment cases include, but are not limited to, assault, battery, intentional infliction of emotional distress, outrageous conduct, and false imprisonment.

Generally, before a federal court will allow a victim to raise a state tort claim in connection with the federal claim of harassment, the case must usually be one involving indecent touching or some other objectionable conduct. Judgments in these state tort claims have sometimes resulted in compensatory and punitive damage awards against the individual harasser in excess of one million dollars. The Federal Government will not pay such judgments on behalf of the employee since the employee was clearly not acting within the scope of employment while engaging in the identified conduct.

It is important to mention the landmark case that was decided against the former Chief, Fiscal Service, VAMC Lyons, NJ (This article was published in *The (Newark, NJ) Star-Ledger*, 11/26/92):

Former Top Official at VA Hospital Admits Guilt in Sexual Harassment Case — A former top official at the VAMC in Lyons, N.J., pleaded guilty in federal court in Trenton, NJ, to sexually harassing a female employee. Chauncy W. Lewis, 55, Chief of the Fiscal Service, pleaded before U.S. Magistrate John J. Hughes to one count of "abusive sexual contact," according to Assistant U.S. Attorney Dyana Lee. Lewis' case was the first in New Jersey and possibly the nation in which federal authorities brought criminal charges against a government official for alleged sexual abuse. Sentencing for Lewis is scheduled to take place before Hughes on January 15. Lewis faces a maximum of six months in federal prison and \$5,000 in fines.

Employee Responsibility and Conduct

Title V, Code of Federal Regulations, Part 735

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by government employees is essential to assure the proper performance of the government business and the maintenance of confidence by citizens in their government.

The avoidance of misconduct on the part of government employees...through informed judgment is indispensable to the maintenance of these standards.

Facilitator's notes

21

Federal employee and employer responsibilities for conduct while acting within the scope of employment are set forth in the Code of Federal Regulations.

As a federal employee, you have a responsibility to avoid misconduct such as sexual harassment.

Please read regulation from transparency.

Employer Responsibility and Conduct

Title 29, CFR, Chapter XIV, Part 1604, Section II

Item C:

An employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment, regardless of whether the employer knew or should have known of their occurrence.

Item D:

An employer may rebut apparent liability for such acts by showing it took immediate and appropriate corrective action.

Facilitator's notes

22

Read transparency and explain:

An employer is responsible for acts of sexual harassment in the workplace where the employer (its agents or supervisory employees) knows or should have known of the conduct.

Implicit in this statement is management's responsibility to take action based on awareness of sexual harassment activity regardless of whether a complaint has been filed.

Management must respond to all allegations of sexual harassment with an inquiry and intervention designed to end, and to repair the effects of, the harassment. Where the employee alleges hostile environment sexual harassment, the VA may avoid liability by showing that there was immediate and appropriate corrective action as soon as management was put on notice of the harassment.

In a hostile environment claim, the first step in fixing an employer's liability is to determine whether the misconduct was committed by a co-worker or a supervisor. In general, if the hostile environment is created by a co-worker, liability will attach only if the employer knew (actual knowledge), or reasonably should have known (constructive knowledge), of the harassment and failed to take immediate and appropriate corrective action. "Actual knowledge" is usually present when the employer's supervisors/managers become aware of the abusive environment through first-hand observation, or when the victim informally complains to his or her supervisors, or when an EEO Counselor discusses the victim's allegations with management officials, and, of course, when

the victim files a formal complaint of discrimination.

"Constructive knowledge" is present when management officials should have known of the harassment. For example, a supervisor may claim lack of actual knowledge; that is that he or she never observed any misconduct and was never informed of it. On the other hand, if the facts in the case clearly demonstrate that the harassment was widespread and well-known among employees, the supervisor cannot shield his or her employer from liability simply by arguing that he or she was oblivious to what was happening. This situation often occurs when there is more than one harasser and/or more than one victim. Under these circumstances, the employer will be deemed to have constructive knowledge of the harassment and will be liable if it fails to take immediate and corrective action.

Where the employee alleges quid pro quo sexual harassment, the VA cannot avoid all liability. Supervisory employees represent the VA and/or are authorized to act on behalf of the VA such that the VA is strictly liable for their actions. This means that the VA is held accountable for sexual harassment by a supervisor in the course of employment even where no other management official had knowledge of the sexual harassment. Although a prompt appropriate management response will not reduce the VA's liability for the sexually harassing conduct of its supervisory employees, management still has a duty to respond. Intervention by management will minimize the effects of the harassment on the individual victim, and will support management's goal of preventing further harassment in the workplace.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Note That:

- The harasser is most frequently a coworker.
- Often the harasser is not directly employed by the agency.

Facilitator's notes

23

While we have already identified that the harasser is most frequently a co-worker, we need to be aware that the harasser may include people who are not directly employed by the Agency. For example, vendors and outside contract personnel may be involved in sexual harassment. These incidents also need to be brought to the immediate attention of management.

You have the right to be protected from non-employees in the workplace. This includes anyone who is on VA property to conduct business or receive medical care. Sexual harassment victims should contact their supervisor, the Personnel Office, or Medical Administration Service for guidance if a patient is the harasser.

Victim's Responsibility

- *Tell the harasser to stop because the behavior is unwelcome.*
- *Keep a journal or record.*
- *Tell someone:*
 - supervisor or other appropriate management official
 - EEO counselor
 - CO-worker
- **Utilize VAMC resources:**
 - grievance process
 - informal complaint process
 - formal complaint process

Facilitator's notes

24

Read:

When an individual feels he or she has been the victim of sexual harassment, the following actions should be taken:

Read through list on transparency.

The majority of employees in the VA are mature and responsible adults who, if informed that their behavior is offensive and that such behavior must be stopped, will act accordingly. If the behavior does not stop, the victim must take immediate action to alert and inform the appropriate officials.

(Appropriate informal and formal action is described further in Part 3)

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Activity Two

READ THE INCIDENTS DESCRIBED IN HANDOUT 2

- *Do these incidents involve sexual harassment?*

Handout for Activity Two

- Please read the 3 incidents described below
- Applying the definition of sexual harassment, EEOC guidelines, and other information received, determine whether these incidents involve sexual harassment

1. A representative of a hospital supply vendor routinely visits the Procurement Office. This "rep" considers himself a "ladies man" and always makes suggestive remarks to the two female clerks in the office. He addresses them as "Sweetie" and "Honey," and comments on their appearance, with specific references to parts of their anatomy. At the end of each visit, he always asks the unmarried clerk for a date, and leaves her his personal phone number, written on his business card. The clerk repeatedly turns down his request for dates and tries to refuse the phone number, but the "rep" always forces the issue. Fearful of creating bad feelings, the clerk takes the business card, smiles politely, and promises to "think about it." This clerk is very uncomfortable with the man's behavior and confides her feelings to the other clerk. The second clerk tells the supervisor that both women find the rep's behavior objectionable. The supervisor responds, "Yeah-he's a real smooth talker. But he's just trying to be friendly to his customers. Ignore him and he probably won't bother you." Shortly thereafter, the unmarried clerk contacts an EEO counselor with a complaint of sexual harassment.

2. A woman member of the housekeeping staff at a Medical Center is assigned to a work team comprised of men and women. Members of the team work together on tasks, and since the work is physical, they usually talk as they work. In addition, team members often take breaks together, so the team is a social group as well as a work team. They feel comfortable with each other and are on friendly terms. The new woman member of the team seems to fit in quickly, making friends with the other workers and joining in their conversations. She uses vulgar language freely in her speech and often initiates sexually oriented conversations with her co-workers. She asks male team members about their marital sex lives and whether they engage in extramarital affairs. She freely discusses her own sexual encounters in conversations with both male and female co-workers. A few weeks after she joined the work team, the woman alerts her supervisor to the fact that she has been propositioned by male co-workers and subjected to sexual remarks. She claims sexual harassment.

3. A resident physician at a VA hospital routinely stops by the nurses station on his ward. He always greets the nurses by hugging them or touching them in some sexual way. Some of the nurses laugh and go along with his "playfulness," while others gently push him away and dismiss his forwardness. Those nurses who object to his behavior move away to avoid him. The doctor does not force his attentions on the nurses who avoid him, and he does not pursue the others beyond the physical contact he initiates. One of the nurses finds this daily scene to be very upsetting, although she has always made her displeasure obvious and has never been approached by the doctor. Even so, she claims that she is a victim of sexual harassment because of the environment created by the doctor.

Discuss Responses

Facilitator's notes

25

The participant's copy of Activity Two (Handout) is to be duplicated and distributed to each participant at this point in your presentation.

Leave transparency #25 on the screen and distribute the handout.

Give participants at least 4 minutes to read the handout, keeping in mind that they will discuss the following question: "Applying terms from the definition of sexual harassment, EEOC guidelines, and other information received, determine whether these incidents involve sexual harassment."

You may break into smaller groups for discussion purposes. Select a leader from each group to summarize its discussion. Be sure everyone has had enough time to read the incident and to discuss it as a group.

Lead a discussion with the whole group.

In evaluating responses, consider the following points:

- Is the victim subjected to verbal, non-verbal or physical harassment?
- Is the behavior deliberate, repeated, unsolicited, unwelcome, of a sexual nature?
- Is submission to the conduct made a condition of the victim's employment or used as the basis for an employment decision affecting the victim?

- Does the conduct interfere with the victim's work performance or create a hostile environment?
- Has the victim let the harasser know the behavior is unwelcome?
- Has the victim recorded or reported the incident?
- Did the employer know of the alleged conduct?
- Has the employer taken immediate and appropriate corrective action?

Incident #1: (Key points)

- The vendor's behavior is deliberate, repeated, unsolicited.
- The vendor verbally harassed the unmarried clerk with terms of endearment and suggestive comments. He continues to ask her out, even though she has turned him down repeatedly.
- Management may be responsible for the actions of people who are not directly employed by the agency, such as vendors, when they know of their behavior. This supervisor was informed about the behavior, but did not take immediate and corrective action.

Incident #2: (Key points)

The propositions and sexual remarks made by the co-workers to the woman were deliberate, repeated, and of a definite sexual nature. However, the question here is whether the behavior was unsolicited and unwelcome, and whether it resulted in a hostile environment. In this case, the court found that the co-worker's behavior was prompted by the woman's own sexual aggressiveness and her own sexually explicit conversations.

Facilitator's notes

continued

25

Incident #3: (Key points)

Even though the doctor in question does not have direct verbal or physical contact with the nurse/victim, his behavior may indeed create a hostile environment. The nurse feels that if she does not continually make a definite effort to avoid him and discourage him, she will be subjected to the same behavior. This is subtle harassment, but very real to the victim, and it may interfere with her work performance. By not participating in this behavior, the nurse has indicated to the doctor that it is unwelcome. We do not know whether she has shared her feelings with the other nurses or her supervisor. We also do not know whether the supervisor knows about these incidents; however, since they are repeated on a routine basis, it might be expected that the head nurse would be aware of the situation or present during their occurrence.

INCIDENTS:

1. A representative of a hospital supply vendor routinely visits the Procurement Office. This "rep" considers himself a "ladies man" and always makes suggestive remarks to the two female clerks in the office. He addresses them as "Sweetie" and "Honey," and comments on their appearance, with specific references to parts of their anatomy. At the end of each visit, he always asks the unmarried clerk for a date, and leaves her his personal phone number, written on his business card. The clerk repeatedly turns down his request for dates and tries to refuse the phone number, but the "rep" always forces the issue. Fearful of creating bad feelings, the clerk takes the business card, smiles politely, and promises to "think about it." This clerk is very uncomfortable with the

man's behavior and confides her feelings to the other clerk. The second clerk tells the supervisor that both women find the rep's behavior objectionable. The supervisor responds, "Yeah—he's a real smooth talker. But he's just trying to be friendly to his customers. Ignore him and he probably won't bother you." Shortly thereafter, the unmarried clerk contacts an EEO counselor with a complaint of sexual harassment.

2. A woman member of the housekeeping staff at a Medical Center is assigned to a work team comprised of men and women. Members of the team work together on tasks, and since the work is physical, they usually talk as they work. In addition, team members often take breaks together, so the team is a social group as well as a work team. They feel comfortable with each other and are on friendly terms. The new woman member of the team seems to fit in quickly, making friends with the other workers and joining in their conversations. She uses vulgar language freely in her speech and often initiates sexually oriented conversations with her co-workers. She asks male team members about their marital sex lives and whether they engaged in extramarital affairs. She freely discusses her own sexual encounters in conversations with both male and female co-workers. A few weeks after she joins the work-team, the woman alerts her supervisor to the fact that she has been propositioned by male co-workers and subjected to sexual remarks. She claims sexual harassment.

3. A resident physician at a VA hospital routinely stops by the nurses station on his ward. He always greets the nurses by hugging them or touching them in some

Facilitator's notes

continued

25

sexual way. Some of the nurses laugh and go along with his "playfulness," while others gently push him away and dismiss his forwardness. Those nurses who object to his behavior move away to avoid him. The doctor does not force his attentions on the nurses who avoid him, and he does not pursue the others beyond the physical contact he initiates. One of the nurses finds this daily scene to be very upsetting, although she has always made her displeasure obvious and has never been approached by the doctor. Even so, she claims that she is a victim of sexual harassment because of the environment created by the doctor.



*The
Discrimination
Complaints
Process: Steps
in the
Informal
Process*

PART 3



Part Three Objectives

At the conclusion of this section, you should understand:

- How to use the EEO informal complaints process.
- Rights and responsibilities of all parties in the informal complaints process.

Facilitator's notes

26

Read through objectives on transparency.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Activity Three

ANSWER THE TRUE/FALSE QUESTIONS ON HANDOUT 3

- *At the end of this section, see if you agree with your original choices.*

Facilitator's notes

27

Duplicate the handout for Activity Three. Before you begin section three, distribute the handouts to participants and give them a few minutes to answer the questions. You will discuss the answers at the end of the section.

Read:

Before we explore the details of the complaints process, let's determine what we know about how the process works. Take a few minutes to answer these True/False statements. Then, at the conclusion of this section, see if you agree with your original choices.

Read through True/False statements:

1. A complaint of sexual harassment must also show evidence of disparate treatment, reprisal, non-accommodation, adverse impact, or perpetuation of past discrimination. (True) (False)
2. The complaint system is designed to informally resolve a discrimination dispute, where possible, without deciding who is right or wrong. (True) (False)
3. A complainant does not have to seek counseling if he or she intends to file a formal complaint of employment discrimination. (True) (False)
4. A good counselor is the advocate of the complainant. (True) (False)
5. No further steps in the complaint process are pursued once the complaint has been resolved informally. (True) (False)
6. A complainant's right to remain anonymous expires when he or she files a formal complaint. (True) (False)
7. An aggrieved person is responsible for using the complaints process only as a means to ensure equal employment opportunity, and not to pursue resolution of other problems at the work-site. (True) (False)
8. The responsible management official does not have to be given access to all case materials if the counselor believes that certain information would be an invasion of the victim's privacy. (True) (False)
9. While the complainant is entitled to official time off in order to pursue counseling, he or she must have the supervisor's permission to be absent from the work-site. (True) (False)
10. The responsible management official should withhold relevant case information if it would jeopardize his or her present and future employment status. (True) (False)

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Basis for Filing a Complaint of Discrimination

- Race
- Color
- Religion
- Sex and Sexual Harassment
- Age
- National Origin
- Physical or Mental Disability
- Reprisal

Facilitator's notes

28

Please explain the following:

BASIS FOR FILING A COMPLAINT

The law states that if a person feels that he or she has been discriminated against they may file an EEO complaint. However, to file a complaint the action must fall within eight protected categories. Each of the categories has specific criteria which help determine discriminatory actions.

RACE

Often confused with "Nationality," refers to the biological origin of a person; may differ in color of skin, color and texture of hair, and other external characteristics.

COLOR

The complexion of people who are not classed as Caucasian, such as Black, Red, and Yellow.

SEX

Male or Female (Homosexuality and Lesbianism are not accepted issues for an EEO Complaint within the Federal Government, at this time)

SEXUAL HARASSMENT

NOTE: This information has already been defined in Part 1 and can be referenced here rather than restated.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or,

(3) Such conduct has the purpose of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

NATIONAL ORIGIN

National origin discrimination is broadly defined as including, but not limited to, the denial of equal employment because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group.

RELIGION

Includes all aspects of religious observances and practices, as well as beliefs.

AGE

If someone is 40 years or older at the time that the discrimination took place.

DISABILITY (PHYSICAL OR MENTAL)

A disabled person is defined as one who:

(1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities (life activities are walking, seeing, hearing, speaking, breathing, learning, and working); or

(2) Has a record of such impairment (this means the person has a history of, or has been classified as having a physical or mental disability that substantially limits one or more major life activities); or

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continued

28

(3) is regarded as having an impairment (this means that; (a) a person might have a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as having such limitations or (b) a person has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward the impairment; or (c) a person might not have a physical or mental impairment but is treated by an employer as having such an impairment.

REPRISAL

Because of participation in a process protesting discrimination (includes negotiated grievance), the individual feels that management is taking action against them. Participation can be: filing a complaint; being a witness, an EEO Counselor, EEO Investigator or anyone associated with the program; and those who express a belief in the program.

Theories of Discrimination

- Disparate Treatment
- Reprisal
- Accommodation
- Adverse Impact
- Perpetuation of Past Discrimination

Facilitator's notes

29

Acts of discrimination can be further classified according to these theories of discrimination.

Read through list on transparency.

Disparate Treatment

- All cases where the complainant says that he or she was treated differently from other members of other groups on the basis of race, color, religion, sex, age, national origin, physical/mental disability, or in reprisal
- 80% of all formal complaints are based on the disparate treatment theory

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30

The Disparate Treatment Theory of Discrimination

The first of the five theories identifies discrimination based on disparate treatment. This theory is listed first because it applies to most complaint situations. Approximately 80 percent of all complaints filed against the Department of Veterans Affairs are properly analyzed using this theory.

It applies to all allegations that the victim was treated differently from similarly situated individuals of a different and non-protected class. For example, an employee may allege that he or she was not selected for promotion because of race (black), where the person selected is white. This would be a disparate treatment case. Similarly, a complaint may allege that a female employee was reprimanded because of sex (gender), where similarly males were (allegedly) disciplined less harshly. This is also a disparate treatment case.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Reprisal

Cases where an employee is warned that his or her job situation could become uncomfortable if he or she participates in the discrimination complaints process or opposes any unlawful discriminatory practice

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31

The Reprisal Theory of Discrimination

This theory applies to allegations that the victim was treated improperly because of prior EEO activity. The prior EEO activity may encompass protests of allegedly discriminatory acts, as well as participation in the EEO complaint process as a complainant, a witness or a representative.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Accommodation

Complaints filed on the basis of disability or religious discrimination, which allege that the complainant was entitled to a reasonable accommodation to his or her religious beliefs or disabling condition

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32

The Accommodation Theory of Discrimination

This theory applies to certain complaints of religious or disability discrimination. These complaints allege that the victim was entitled to a reasonable accommodation to his or her religious beliefs, or to his or her disabling condition. This theory does not apply to race, color, sex, national origin, age or reprisal complaints. In addition, it does not apply to all religion and disability complaints—only to those involving accommodations.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Adverse Impact

Complaints which allege that a policy or practice, though applied equally to everyone, has an adverse impact on particular protected classes

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33

The Adverse Impact Theory of Discrimination

In an adverse impact case, the focus is on the consequences of an employment practice, rather than on the motive. Adverse impact complaints are those which allege that a policy or practice, though applied equally to all employees or applicants for employment, has an adverse impact or effect on particular protected classes. For example, let us suppose there is a Nursing Service education requirement applied to all applicants, regardless of race. If this results in black nurse applicants being hired at a rate significantly lower than white nurse applicants, this would be an adverse impact case.

Perpetuation of Past Discrimination

A practice or policy which serves to continue past
discrimination

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34

The Perpetuation of Past Discrimination Theory of Discrimination

This theory concerns situations where, in the past, management has had a discriminatory policy or practice which it eliminated and replaced with another policy or practice. The new practice is neutral on its face, but still perpetuates the discriminatory effect of the past policy. For example, let us suppose that management had a past practice of hiring only white registered nurses. Let us also suppose that it eliminated that practice several years ago, but replaced it with the practice of hiring only those registered nurses who were referred to management by members of its all white registered nurse corps. The policy of considering only internally referred applicants is neutral on its face, because the current registered nurse corps is free to recommend any qualified candidate, regardless of race. Nevertheless, if the policy results in black registered nurse applicants being selected at a rate which is significantly below the rate that white registered nurse applicants are selected, then the policy perpetuates the past discrimination.

As should be apparent, perpetuation cases are very much like adverse impact cases, with the added factor of a past discriminatory practice. The analysis of the impact of the replacement policy or practice is conducted in the same way as in adverse impact cases. Also, as with adverse impact cases, once discrimination is established, the burden shifts to management to justify the policy or practice as a business necessity.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

EEO Complaints

- Most allegations of discrimination are based on race and/or sex in connection with personnel actions.
- Complaints based on sexual harassment have increased over 100% since 1987.

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35

Promotion, termination, appointment, and disciplinary actions are the most common personnel actions that result in the filing of formal EEO complaints.

Between 1987 and 1992, the number of complaints filed on the basis of sexual harassment increased over 100 percent.

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Complaint Process

- Stage 1: Informal
- Stage 2: Formal

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36

Many think of the complaint system as a means of deciding who is right or wrong. This is called "adjudication," but it is only one way to resolve a complaint, and not the goal of the complaint process. Actually, the system is carefully designed to informally resolve disputes at the lowest level possible (the informal complaint process).

"Adjudication" (the formal complaint process) — In the form of an agency decision as to who is right and who is wrong—takes place only when good faith efforts towards informal resolution fail.

Administrative Board of Investigation

Some medical center directors appoint Administrative Boards of Investigation to investigate allegations of sexual harassment because the process moves faster than the EEO complaints process. If an administrative investigation is conducted, it is important to understand the following:

- The administrative investigation and the EEO complaints process are separate processes that can occur at the same time.
- The administrative investigation process does not supersede or stop time lines set forth in the EEO complaint process.
- The EEO complaints process will not be influenced by the administrative investigation.

Informal Complaints Process

- **Step 1:** Complainant contacts counselor within 45 calendar days
- **Step 2:** Counselor seeks informal resolution of complaint
- **Step 3:** Counselor gives written Notice of Final Interview within 30 calendar days (may be extended)
- **Step 4:** Complainant has 15 calendar days to file formal complaint

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37

Uncover each step as you discuss them

Step 1. Pre-complaint counseling is a prerequisite for filing a formal complaint of employment discrimination. The employee must seek such counseling from a designated counselor within 45 days of the alleged discriminatory event, or if it is a personnel action, within 45 days of its effective date. Counseling may not be waived, even by the Department against which the complaint is raised. Similarly, the 45-day time limit is a rigid one.

Note - The 45-day time limit was changed through CFR 1614 which was effective October 1, 1992. Previous to this, the time limit was 30 days.

Step 2. The counselor represents neither the complainant nor management but is a neutral fact finder who facilitates resolution of the complaint during the informal process.

Counselors are expected to:

- Conduct fact finding
- Review records
- Interview parties relevant to the issue
- Facilitate meetings between complainant and management
- Facilitate resolution of employee/applicant-management disputes
- Advise the parties to a complaint of their rights
- Record counseling efforts

Step 3. The counselor must conduct a final interview with the complainant (employee or applicant) within 30 days of initial contact. This period may be extended up to an additional 60 days through written

agreement between the complainant and the agency. During this step, the agency is represented by the EEO Director or his/her designee. The agency or the unit of the agency where the counseling occurs may have an established alternative dispute resolution procedure. If so, and the victim agrees to participate in the procedure, the pre-complaint processing period shall not exceed 90 days.

Step 4. Following receipt of the "Notice of Final Interview" (or the "Notice of Right to File EEO Complaint") the employee or applicant is free to file a formal complaint. The formal complaint must be in writing. A Discrimination Complaints Form (VA Form 4939) is available in the personnel office. A plain sheet of paper may be used as long as the information that VA Form 4939 requires is included. The complaint must be signed personally by the complainant and it must be filed within 15 calendar days of receipt of the "Notice of Final Interview" if one was issued. It may be filed with the EEO Officer (the Director of the field facility at which the complaint arose) or with the Secretary of Veterans Affairs, the Deputy Assistant Secretary for Equal Employment Opportunity, or the VA Federal Women's Program Manager in the Office of Equal Opportunity, VACO.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Complainant's rights

- Right to use the EEO complaint process
- Right to an EEO counselor of choice
- Right to representation
- Right to reasonable on-the-job time to pursue complaint process
- Right to remain anonymous
- Right to freedom from restraint, interference, coercion and reprisal
- Right to file a formal complaint

Facilitator's notes

38

The aggrieved person's most basic right is to use the complaint process to protest any employment action or inaction which he or she believes to have been discriminatory. If the allegation of discrimination is sustained, the victim has the right to be "made whole". That means he or she is entitled to receive corrective action which restores him or her to the status that would have been enjoyed if the discrimination had not occurred.

The victim has the qualified right to select an EEO Counselor of his or her choice among those designated to serve the particular facility. This right, under VA Policy, is considered "qualified" because it is not absolute. In instances where a popular counselor is vastly overburdened with counseling while another counselor is underutilized, the first EEO Counselor may direct the aggrieved person to another EEO Counselor, or to the EEO Officer for assistance in finding another available EEO Counselor. Additionally, there are other circumstances under which it would be inappropriate for a selected EEO Counselor to accept a particular counseling assignment.

The aggrieved person has the right to be represented by an individual of his or her choice, provided that person, if a VA employee, does not occupy a position where a conflict of interest could be presented. A management official, an EEO practitioner, or a personnel specialist employed in the same facility as the complainant and serving as representative is an example where such a conflict would arise. The representative may be, but is not required to be, an attorney. Frequently, it will be a union shop steward or other union official.

EEO counselors, EEO officers, and EEO program managers have vital roles in the resolution of discrimination complaints. To operate effectively they must have the confidence of both the agency and the employees. It is inconsistent with their neutral roles for EEO counselors, EEO officers, and EEO program managers to serve as representatives for agencies or complainants. Therefore, EEO counselors, EEO officers, and EEO managers cannot serve as representatives for complainants or for agencies in connection with the processing of discrimination complaints. (See generally, 29 C.F.R., 1614.605(c)—disqualification of representatives for conflict of duties).

The right to remain anonymous exists only during the informal counseling stage of the process. After a formal complaint is filed, the aggrieved person becomes a complainant and no longer has the right to anonymity.

The aggrieved person has the right to a reasonable amount of official time away from the job to develop and present his or her complaint, including time for pre-complaint counseling. What is "reasonable" is up to the judgment of the EEO Officer, depending on the complexity of the case. "Reasonable" is usually defined in terms of hours, however, not in terms of days, weeks, or months. While the aggrieved person's right to official time to prepare and present the case is absolute, he or she does not have the right to leave his or her work site for this purpose without the permission of his or her supervisor.

Complainant's responsibilities

- Use the complaint process for its intended purpose
- Cooperate throughout the entire process
- Make a good faith effort for resolution at the lowest level possible
- Request a reasonable amount of on-the-job time
- Adhere to all time frames
- Provide written advisement of representative and changes in representation
- Be specific about the incident
- Keep Management informed of any address change
- Do not misuse information gained during the process

Facilitator's notes

39

Above all, the victim/aggrrieved person is responsible for using the discrimination complaints system for the purpose for which it was established: to provide a mechanism for ensuring equal employment opportunity. The process should not be used for purposes of pursuing a personal vendetta, harassment, and other abuses. Such uses limit the system's availability to respond to the legitimate concerns of those who truly believe they have been discriminated against.

Other complainant responsibilities include:

- Good faith cooperation in the prosecution of his or her complaint, such as promptly furnishing requested supplemental information, being available to the investigator, and similar requirements.
- Limiting his or her absence from the work site to the minimum required for effective pursuit of the complaint. He or she is also responsible for keeping the supervisor informed of the official time required for this purpose and for obtaining the supervisor's approval in advance for any required absences from duty.
- Adhering to the time limits prescribed for contacting the counselor and for each of the subsequent steps of administrative processing of a complaint.

- Providing sufficient specific details about the harassment incident so that it can be investigated. This includes providing the names of people having knowledge of the events in question.

- Keeping the agency informed of his or her current address, and his or her whereabouts if away from that address for any significant period of time.

- Not misusing information gained in the course of pre-complaint counseling or the investigation.

The Respondent Mgt. Official's (RMO) Rights & Responsibilities

Rights:

- The agency official responsible for allegedly discriminatory activity is a witness and is entitled to no more than the rights of any witness.

Responsibilities:

- To cooperate with ongoing investigations
- To provide all relevant and material information

Facilitator's notes

40

RMO is the term now used to replace ADO (Alleged Discriminating Official). Another term you may hear that is synonymous with Respondent Management Official is Responsible Management Official.

The responsible management official should have access to case materials to the extent needed to respond to allegations and give evidence. The agency has the burden of determining which case material may be released in accordance with The Privacy Act.

After the Commission deleted the term and concept of an ADO, some federal agencies decided to coin new terms for ADO's, such as "Responsible Management Officials, Responding Management Officials," and others. From a legal standpoint, complaints are filed against federal agencies as entities, regardless of whether a complainant names or identifies the person responsible for the action which gave rise to the complaint.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Management's Responsibilities

- Attempt resolution of the complaint at the lowest possible level
- Insure timely processing of complaints
- Insure that employees be allowed to select an EEO counselor of their choice based upon availability
- Provide an adequate number of EEO counselors
- Post pictures, names and telephone numbers of counselors, along with complaint processing time frames

Facilitator's notes

41

Read through list on transparency.

**THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS**

Activity Three

REVIEW THE TRUE/FALSE QUESTIONS ON HANDOUT 3

- *Compare your original answers to your current response.*

Handout for Activity Three

Before we explore the details of the complaints process, let's determine what we know about how the process works. Take a few minutes to read through and answer these True/False statements. Then, at the conclusion of this section, see if you agree with your original choices.

- | | | |
|---|------|-------|
| 1. A complaint of sexual harassment must also show evidence of disparate treatment, reprisal, non-accommodation, adverse impact, or perpetuation of past discrimination. | TRUE | FALSE |
| 2. The complaint system is designed to informally resolve a discrimination dispute, where possible, without deciding who is right or wrong. | TRUE | FALSE |
| 3. A complainant does not have to seek counseling if he or she intends to file a formal complaint of employment discrimination. | TRUE | FALSE |
| 4. A good counselor is the advocate of the complainant. | TRUE | FALSE |
| 5. No further steps in the complaint process are pursued once the complaint has been resolved informally. | TRUE | FALSE |
| 6. A complainant's right to remain anonymous expires when he or she files a formal complaint. | TRUE | FALSE |
| 7. An aggrieved person is responsible for using the complaints process only as a means to ensure equal employment opportunity, and not to pursue resolution of other problems at the work-site. | TRUE | FALSE |
| 8. The responsible management official does not have to be given access to all case materials if the counselor believes that certain information would be an invasion of the victim's privacy. | TRUE | FALSE |
| 9. While the complainant is entitled to official time off in order to pursue counseling, he or she must have the supervisor's permission to be absent from the work-site. | TRUE | FALSE |
| 10. The responsible management official should withhold relevant case information if it would jeopardize his or her present and future employment status. | TRUE | FALSE |

Facilitator's notes

42

At this point, you have reviewed the steps in the informal complaints process and the rights and responsibilities of all parties involved. Now, go through the True/False questionnaire, revealing one question at a time. Ask participants to correct their original responses. Answer any questions.

ACTIVITY THREE ANSWER SHEET

1. A complaint of sexual harassment must also show evidence of disparate treatment, reprisal, non-accommodation, adverse impact, or perpetuation of past discrimination. **TRUE**
2. The complaint system is designed to informally resolve a discrimination dispute, where possible, without deciding who is right or wrong. **TRUE**
3. A complainant does not have to seek counseling if he or she intends to file a formal complaint of employment discrimination. **FALSE**
4. A good counselor is the advocate of the complainant. **FALSE**
5. No further steps in the complaint process are pursued once the complaint has been resolved informally. **FALSE**
6. A complainant's right to remain anonymous expires when he or she files a formal complaint. **TRUE**
7. An aggrieved person is responsible for using the complaints process only as a means to ensure equal employment opportunity, and not to pursue resolution of other problems at the work-site. **TRUE**
8. The responsible management official does not have to be given access to all case materials if the counselor believes that certain information would be an invasion of the victim's privacy. **TRUE**
9. While the complainant is entitled to official time off in order to pursue counseling, he or she must have the supervisor's permission to be absent from the work-site. **TRUE**
10. The responsible management official should withhold relevant case information if it would jeopardize his or her present and future employment status. **FALSE**



*Discrimination
Complaints:
Steps in the
Formal Process*

*How to
Prevent Sexual
Harassment*

PART 4



Part Four Objectives

At the conclusion of this section, you should understand:

- How to use the EEO formal complaints process.
- The rights and responsibilities of all parties in the formal complaints process.
- How to prevent sexual harassment.

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43

Read through objectives on transparency.

Steps in Formal Complaint Process

- **Step 1:** Complainant files formal complaint with one of the following:
 - EEO Officer/Medical Center Director
 - Secretary of Veterans Affairs
 - Federal Women's Program Manager
 - Deputy Assistant Secretary for Equal Opportunity
- **Step 2:** EEO Officer reviews for acceptability determination
 - Submits to Office of Equal Opportunity for assignment of investigator
 - Refers to Office of General Counsel for acceptability decision
- **Step 3:** Investigation conducted

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44

Complaints are considered filed when delivered to an appropriate official. If the complaint is mailed and addressed to an appropriate official, the postmark indicates the complaint has been filed. The complainant is not required to identify a responsible management official on the complaint form.

According to Title 29 of the Code of Federal Regulations, a federal employee who is covered by a collective bargaining agreement may elect to pursue allegations of discrimination through one of two channels. The matter may be pursued either through the grievance and arbitration procedures in the collective bargaining agreement, if the matter is grievable under the agreement, or it may be pursued through the EEO process. An employee may not pursue both procedures. If a written grievance is filed first, the complainant may not thereafter file an EEO complaint on the same matter. This holds true even if the grievance raises an allegation of discrimination within the negotiated grievance procedure. Choosing a procedure constitutes an "election of forum." An election is triggered by the filing of a formal complaint or a written grievance.

Steps in Formal Complaint Process

- **Step 4:** Investigative report is issued to the EEO Officer, complainant and complainant's representative, along with an advisement of rights letter
- **Step 5:** EEO Officer has the option to meet with the complainant to pursue resolution. If resolution is achieved, a written settlement agreement will be drafted and signed by all parties involved
- **Step 6:** If complaint is not resolved, complainant requests decision from OGC or requests hearing conducted by EEOC

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45

The EEO Officer has the authority to accept formal complaints but not dismiss them. Only the Office of General Counsel has the authority to dismiss complaints.

-Investigator will not be an employee of the facility where the complaint originated

-Investigators are authorized to administer oaths

-Official affidavits may be taken by taping or use of court reporter

-Investigator will make a good faith effort to facilitate resolution

THE PREVENTION OF SEXUAL HARASSMENT AND
THE DISCRIMINATION COMPLAINTS PROCESS

Preventing Sexual Harassment

- Communicate VA policy
- Enforce the policy
- Train employees
- Encourage compliance by personal example
- Report unacceptable behavior

Hot-line number: 1-800-767-0184

46

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46

Our goal is a work environment free of sexual harassment. Prevention is the best method for achieving this goal.

The VA has established an explicit policy against sexual harassment. It relies on managers and employees to put the policy into practice.

Managers/Supervisors should:

- 1. Communicate the policy in writing to all employees.**
- 2. Educate employees to assure understanding and sensitivity.** Train employees in the specific applications of the policy.
- 3. Become more observant.** Try to anticipate circumstances in which sexual harassment may occur.
- 4. Diligently enforce the policy.** Pursue complaints quickly. Take immediate and appropriate corrective action. This sends a strong message to everyone about your commitment to the policy.
- 5. Encourage individuals who believe they have been harassed to report such incidents.** Make sure that subjects of harassment know they are protected and that there are alternate, accessible routes for complaint.

In addition:

-Cooperate fully with any ongoing investigation.

-include compliance with the policy on sexual harassment as a component of performance appraisal.

Policy and pressure are only part of the solution. All employees are responsible for complying with the spirit and the letter of the policy. We can only reach our goal if each of us is committed to the idea of fair and equal treatment.

Activity Four

**PLACE THE SEVEN STEPS IN THE COMPLAINT
PROCESS IN THE APPROPRIATE POINT ON THE
TIMELINE**

List of 7 steps: (Note: in scrambled order)

- Complaint filed
- Counselor contacted
- Hearing if requested, with findings and conclusions
- Occurrence (of Sexual Harassment)
- Agency final decision
- Notice of right to file
- Complaint investigated and notice issued

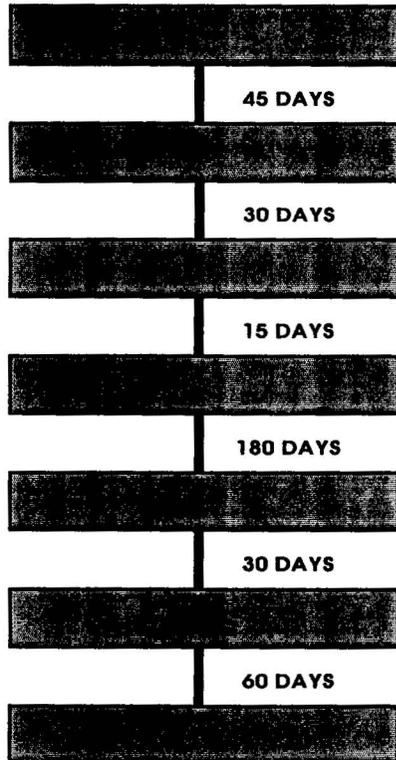
THE PREVENTION OF SEXUAL HARASSMENT AND THE
DISCRIMINATION COMPLAINTS PROCESS

Handout for Activity Four

This chart shows an overview of the progressive steps in the EEO Complaint Process. Using the information you have received on the formal and informal process, place the seven steps listed into the appropriate point on the timeline

STEPS IN THE PROCESS

- COMPLAINT FILED
- COUNSELOR CONTACTED
- HEARING IF REQUESTED, WITH FINDINGS AND CONCLUSIONS
- OCCURRENCE (OF SEXUAL HARASSMENT)
- AGENCY FINAL DECISION
- NOTICE OF RIGHT TO FILE
- COMPLAINT INVESTIGATED AND NOTICE ISSUED

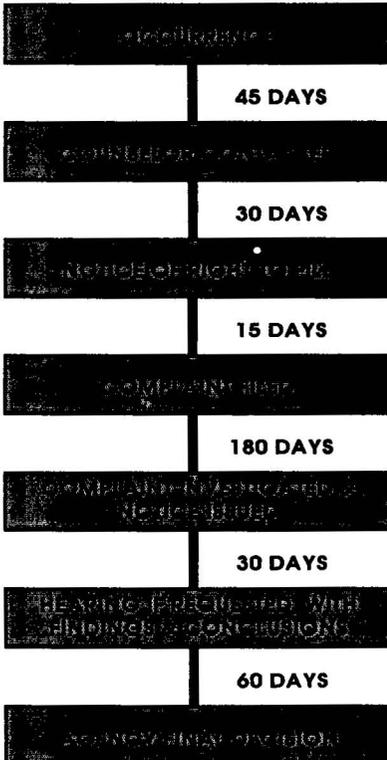


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47

ACTIVITY FOUR ANSWER SHEET

This chart shows the progressive steps in the EEO Complaint Process (under 29 C.F.R. Part 1614).



Distribute copies of "Handout for Activity 4". Review the chart "Overview of the Complaint Process", revealing each step on the screen, one by one. Solicit answers from the participants. Answer any questions.

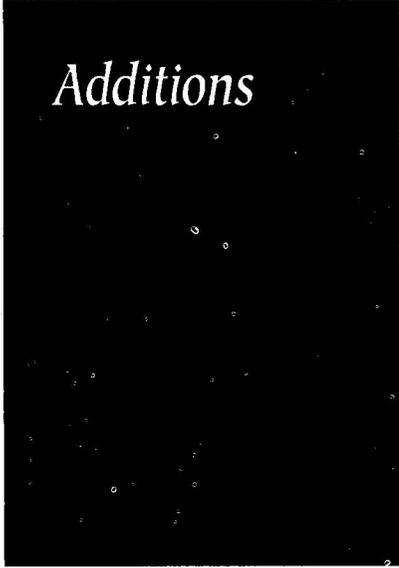
Conclude by explaining:

This is the end of this training module on the Prevention of Sexual Harassment and the Discrimination Complaints Process.

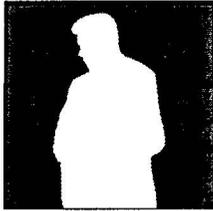
It is hoped that you now understand the importance of a work environment free from discrimination and sexual harassment, and that you know how to prevent and deal with such problems if they occur.

If you have further questions, you may contact your supervisor, your union steward, an EEO counselor, or the Human Resources Service (Personnel Office).

Thank you for coming to the training.



ADDITIONS



**OFFICE OF INSPECTOR GENERAL
 RESPONSE TO QUESTIONS FROM
 THE HONORABLE LANE EVANS
 RANKING DEMOCRATIC MEMBER OF
 THE COMMITTEE ON VETERANS AFFAIRS
 HEARING ON SEXUAL HARASSMENT: APRIL 17, 1997**

QUESTION 1. Does the VA IG take any steps to inform VA employees concerning how to make a hotline inquiry? What steps do you or the VA take to notify employees of the availability of the hotline?

RESPONSE The IG Web Site (<http://www.va.gov/oig>) gives extensive information on the VA IG's jurisdiction and how and where to report allegations of fraud, waste and gross mismanagement. In addition, the VA employee handbook includes an explanation of the IG's function and the employee's responsibility to report information on potential fraud, waste and mismanagement. The handbook includes information regarding the IG's protection of complainants' confidentiality, as well as the rights and protections afforded complainants under the Whistleblower Protection Act.

The process for filing a complaint with the IG hotline is easy. A simple letter (signed or unsigned) to the IG or a call to our well publicized 800 number can be used to register a complaint with the IG hotline. Also, the hotline can be contacted through e-mail, and our e-mail address is listed in our Web Site.

The IG hotline's 800 number and/or mailing address is publicized in a number of ways to include the following:

- In the Internet Web Site, where the March 1997 contacts with the IG Web Site totaled over 52,000,
- On posters that have been distributed to all VA facilities,
- On business cards that have been handed out by IG staff during investigations, audits, inspections and other reviews at VA facilities,
- In the VA telephone directory,
- In the yellow pages of major metropolitan areas,
- On pay slips for all VA employees,
- On the back cover of the IG's Semiannual Report.

The number of contacts with our hotline are, to our knowledge, the highest in the IG community. This high rate of contacts indicates to us that complainants are not having any difficulty in determining how and where to file a complaint with the IG hotline.

QUESTION 2. With regard to the VA IG review of the allegations against Director Calhoun in Fayetteville, please explain how you conducted your investigation and explain to the Subcommittee when the initial hotline calls were received, how many people took part in your investigation, how many witnesses you talked to, and the basis upon which you reached your ultimate findings?

RESPONSE The initial indication of potential problems at VAMC Fayetteville was disclosed to the IG in a signed constituent's letter forwarded to us by Senator Lauch Faircloth. We received this information on March 4, 1996. The initial allegations did not mention sexual harassment, but instead focused on the alleged use of foul language in mixed company by the Director, the Director's alleged penchant for lying to the staff, and alleged stress experienced by the staff and unfavorable impact on staff morale created by the Director's actions.

Since the complainant's letter did not contain specific examples, a member of the IG hotline staff contacted the complainant on March 12, 1996 and asked him to provide the IG with whatever details he had on the alleged problems created by the Director, VAMC Fayetteville. On March 20, 1996 the complainant called in a list of current and former employees of VAMC Fayetteville who he believed could confirm his allegations against the Director.

During the next two weeks, the hotline staff member contacted 5 individuals on the complainant's list. One of the individuals contacted was Ms. Cindy Force. During the discussion with the IG hotline staff member, Ms. Force made an allegation of sexual harassment against the Director. This was our first indication that the misconduct allegations against the Director may also involve sexual harassment.

At this point, there was enough information for the IG to open a Special Inquiry into the allegations. Ms. Judy Shelly, a senior analyst with over 4 years experience on the IG's Special Inquiry staff and prior GAO experience, was assigned the case. She conducted the interviews with assistance from the Special Inquiries Division Director, Mr. Michael Staley. Mr. Staley has been the Division Director since September 1995 and prior to that was a senior auditor in the VA IG organization for over 20 years.

At the beginning of the special inquiry, as is our normal practice, we contacted the VISN 6 staff to discuss our review and make arrangements for a site visit. During those discussions, VISN 6 staff indicated they were aware of "management" problems with the Director, VAMC Fayetteville and were planning a visit to VAMC Fayetteville to review the situation.

In follow on discussions with the VISN 6 staff, they indicated that they had received a complaint from Ms. Judy Hawkins' husband alleging the Director's actions created a hostile work environment for his wife. This allegation was forwarded to us since it contained some indication that the Director may have, among other things, used inappropriate language of a sexual nature with Ms. Hawkins.

The VISN Director and the IG's special inquiries staff struck an informal agreement that the VISN would perform an independent review of the management issues at VAMC Fayetteville and the IG would review the alleged sexual

harassment by the Director. Given the limited staffing in the Special Inquiries Division and the willingness of the VISN staff to investigate what could be extensive management problems, the agreement seemed a reasonable two-pronged approach to getting at the alleged problems with the Director.

After we began our on-site interviews, our hotline received a call from the original complainant that Ms. Sue Caruana had also been sexually harassed by the Director. With that information, we now had three potential cases of sexual harassment by the Director. Also, as in many other reviews we conduct, once we go on site it is not unreasonable to expect other victims to step forward with complaints and/or for interviewees to provide other names of individuals with similar complaints. This is precisely what happened in our previous investigation of sexual harassment at VAMC Atlanta.

In conducting the special inquiry, our records indicate that we interviewed 21 employees, or former employees of VAMC Fayetteville, as well as other individuals. These interviews are key to this type of investigation because acts of sexual harassment are not usually documented in a written record or witnessed by others.

The IG report clearly outlines our findings and conclusions regarding the Director's alleged sexual harassment and abuse of the three women we reviewed. Prior to finalizing the report, the evidence collected was thoroughly assessed by senior managers in the office of the Assistant Inspector General for Departmental Reviews and Management Support and the Office of the Counselor to the Inspector General. In the opinion of these individuals and after a careful analysis of the evidence relative to laws, regulations, policies and case law pertaining to sexual harassment, the conclusions were made that one woman was sexually harassed and the Director's behavior towards all three women was abusive, threatening and inappropriate.

QUESTION 3. You have testified that your office investigated three separate allegations of harassment by Mr. Calhoun made by three individual employees at the Fayetteville VA facility. You were unable to substantiate one of the allegations because your office was unable to corroborate the allegations with testimony from other witnesses. Does that mean that any time you investigate an allegation involving no other witnesses other than the alleged victim and the accused, you would be unable to substantiate the allegations.

RESPONSE Not necessarily. In all cases, we look for evidence to corroborate or refute the testimony of the accused and the alleged victim. In some types of cases, such as sexual harassment, it is not unlikely that the prohibited conduct occurred outside the presence of third party witnesses. We routinely ask the alleged victim whether he or she related the incident(s) to anyone or made any contemporaneous writings about the incident. The existence of such evidence could corroborate the alleged

victim's testimony and could be the basis for a finding that the sexual harassment complained of did, in fact, occur.

As stated in our report, this is the type of evidence we used to substantiate Ms. Force's allegation that she was sexually harassed by Mr. Calhoun. Unlike Ms. Force, Ms. Caruana was unable to provide us with any information, other than her own testimony, to corroborate her allegations. In addition to seeking the existence of evidence to corroborate the testimony of the alleged victim, we also ask the accused whether there is any evidence to corroborate his version of the events of circumstances. As with the alleged victim, such evidence would either support or refute the testimony. Like Ms. Caruana, Mr. Calhoun could not provide us with any evidence to corroborate or refute the allegations, other than his own testimony.

When neither the accused nor the alleged victim can provide evidence to corroborate or refute the allegations, the creditability of the two witnesses becomes the key ingredient in a "he said, she said" type of case. If it can be established through testimony on related issues that one or the other witness is not creditable, then we may be able to conclude that the unreliable witness is not being entirely truthful with us and the other person is the more creditable of the two witnesses.

In this case, we did question Mr. Calhoun's creditability. However, the longtime friendship between Mr. Calhoun and Ms. Caruana and other evidence of Ms. Caruana's more recent bias and bitterness towards Mr. Calhoun tended to cloud the issue. Therefore, based on a thorough review of all the evidence, it was the opinion of our legal staff, that it would have been extremely difficult for a charge of sexual harassment to be sustained by the Merit Systems Protection Board (MSPB) should the Agency have charged Mr. Calhoun based on Ms. Caruana's allegations.

As noted in our report, we did conclude that Mr. Calhoun's conduct towards Ms. Caruana was inappropriate. In our view, Mr. Calhoun could have been charged with misconduct, not sexual harassment of Ms. Caruana, and the misconduct charge could reasonably be expected to be sustained by MSPB.

QUESTION 4. You have indicated that you are currently investigating two other sexual harassment allegations against senior VA managers. When can we expect a report on these investigations, and what is the status of these investigations?

Are there any other pending allegations of sexual harassment against VA employees that the IG's office is currently investigating? If so, can you provide the subcommittee with a status report on the nature and number of such investigations?

RESPONSE We currently have two on-going special inquiries of allegations of sexual harassment against senior VA managers. The first case involves the allegation that a

lower graded employee engaged in sexual harassment and misconduct over a period of time, and senior managers at the facility who were aware of the employee's conduct did nothing to stop it. If valid, this could create a hostile working environment for employees . The field work and interviews are nearly complete. After a careful review by senior IG staff, including IG legal staff, we will issue a draft report for management comment. At this time, we are targeting July 15, 1997 for the release of the draft report.

The second active case under review involves allegations of verbal sexual harassment by a senior VA manager. We are in the midst of this investigation and at this time it is too early to predict a date for release of the draft report.

Also, at this time, the IG is not conducting any other investigations of sexual harassment by VA employees.



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