

SEXUAL HARASSMENT IN THE VA AND H.R. 1703, DEPARTMENT OF VETERAN'S AFFAIRS EMPLOYMENT DISCRIMINATION PREVENTION ACT

HEARING
BEFORE THE
SUBCOMMITTEE OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
FIRST SESSION

—————
JULY 17, 1997
—————

Printed for the use of the Committee on Veterans' Affairs

Serial No. 105-18



U.S. GOVERNMENT PRINTING OFFICE

45-229 CC

WASHINGTON : 1998

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-056267-8

COMMITTEE ON VETERANS' AFFAIRS

BOB STUMP, Arizona, Chairman

CHRISTOPHER H. SMITH, New Jersey	LANE EVANS, Illinois
MICHAEL BILIRAKIS, Florida	JOSEPH P. KENNEDY II, Massachusetts
FLOYD SPENCE, South Carolina	BOB FILNER, California
TERRY EVERETT, Alabama	LUIS V. GUTIERREZ, Illinois
STEVE BUYER, Indiana	JAMES E. CLYBURN, South Carolina
JACK QUINN, New York	CORRINE BROWN, Florida
SPENCER BACHUS, Alabama	MICHAEL F. DOYLE, Pennsylvania
CLIFF STEARNS, Florida	FRANK MASCARA, Pennsylvania
DAN SCHAEFER, Colorado	COLLIN C. PETERSON, Minnesota
JERRY MORAN, Kansas	JULIA CARSON, Indiana
JOHN COOKSEY, Louisiana	SILVESTRE REYES, Texas
ASA HUTCHINSON, Arkansas	VIC SNYDER, Arkansas
J.D. HAYWORTH, Arizona	CIRO D. RODRIGUEZ, Texas
HELEN CHENOWETH, Idaho	
RAY LAHOOD, ILLINOIS	

CARL D. COMENATOR, Chief Counsel and Staff Director

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

TERRY EVERETT, Alabama, Chairman

BOB STUMP, Arizona	JAMES E. CLYBURN, South Carolina
FLOYD SPENCE, South Carolina	VIC SNYDER, Arkansas
STEVE BUYER, Indiana	FRANK MASCARA, Pennsylvania

CONTENTS

	Page
OPENING STATEMENTS	
Chairman Everett	1
Hon. James Clyburn	2
Prepared statement of Congressman Clyburn	62
Hon. Frank Mascara	3
Prepared statement of Congressman Mascara	66
Hon. Lane Evans, ranking democratic member, Committee on Veterans' Affairs	4
Prepared statement of Congressman Evans	67
Hon. Mike Bilirakis, a Representative in Congress from the State of Florida ...	4
Prepared statement of Congressman Bilirakis	70
Hon. Steve Buyer	5
Hon. Vic Snyder	29
WITNESSES	
Faircloth, Hon. Lauch, a U.S. Senator from the State of North Carolina	6
Prepared statement of Senator Faircloth	73
Gober, Hon. Hershel W., Acting Secretary, Department of Veterans Affairs; accompanied by: Hon. Kenneth W. Kizer, M.D., Under Secretary for Health, Veterans Health Administration; Hon. Stephen L. Lemons, Acting Under Secretary for Benefits; Hon. Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration; Mr. Neal C. Lawson, Assistant General Counsel; Ms. Patricia A. McKlem, Director, VA Medical Center, Prescott, AZ; and Ms. Ventris C. Gibson, Director, Office of Human Resources, Veterans Benefits Administration	13
Prepared statement of Mr. Gober	76
Merriman, William T., Deputy Inspector General, Department of Veterans Affairs; accompanied by: Ms. Maureen Regan, Counsel for Inspector General; and Ms. Judy Shelly, Senior Analyst, Special Inquiries Division	38
Prepared statement of Mr. Merriman	87
MATERIAL SUBMITTED FOR THE RECORD	
Bill:	
H.R. 1703	47
Reports:	
"Report of the Equal Employment Opportunity Complaint Process Review Task Force," prepared by Hershel Gober, Eugene Brickhouse and Neal Lawson	99
Preliminary report re follow-up review of management actions at the VA Medical Center, Fayetteville, NC	58
Written committee questions and their responses:	
Congressman Evans to Department of Veterans Affairs	89
Congressman Evans to William T. Merriman, Department of Veterans Affairs	96

SEXUAL HARASSMENT IN THE VA AND H.R. 1703, DEPARTMENT OF VETERAN'S AFFAIRS EMPLOYMENT DISCRIMINATION PREVENTION ACT

THURSDAY, JULY 17, 1997

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

The subcommittee met, pursuant to call, at 9:30 a.m., in room 334, Cannon House Office Building, Hon. Terry Everett (chairman of the subcommittee) presiding.

Present: Representatives Everett, Buyer, Clyburn, Snyder, and Mascara.

Also Present: Representatives Bilirakis and Evans.

OPENING STATEMENT OF CHAIRMAN EVERETT

Mr. EVERETT. The hearing will come to order. Good morning.

Today's hearing will examine how the VA has responded to compelling testimony from five courageous women at our April 17 hearing on Fayetteville VA Medical Center. At the hearing, I asked the VA to investigate additional allegations of sexual harassment and abusive and threatening inappropriate behavior by Jerome Calhoun, the former Director, Fayetteville VA Medical Center.

We will hear about the findings and recommendations of VA's special task force convened to review the Department's equal employment opportunity complaint system. We will hear about the findings of the VA's employee survey regarding work-related sexual harassment.

We will also discuss H.R. 1703, the Department of Veterans Affairs' Employment Discrimination Prevention Act, which I introduced with our full committee ranking democratic member, Lane Evans. It is also cosponsored by the full committee chairman, Bob Stump; Jim Clyburn, the ranking democratic member of the subcommittee; Mike Bilirakis; and Steve Buyer.

This proposal will establish within the VA an Office of Employment Discrimination Complaints Resolution headed by the director, who would be solely responsible for resolving all complaints of unlawful employment discrimination within the Department. Currently directors of VA facilities are also the EEO officers for their own facilities.

From past testimony in 1992, 1993, and in April of this year, we have heard over and over again that the system VA now has does

not work. Too many of the men and women of the VA perceive that some senior management within the Department does not take the EEO process seriously. I intend to ensure that VA's zero tolerance policy translates into an EEO organization in which employees have confidence.

Today we will hear from our Senate colleague from the State of North Carolina. It was Senator Faircloth's initial inquiry to the VA Inspector General that led to the uncovering of the severe problems in Fayetteville and that ultimately led to the House and Senate hearings and the House and Senate EEO bills. Senator Graham and Senator Faircloth have introduced S. 801, the companion bill to H.R. 1703.

Senator Faircloth, we appreciate you being over here. And we'll get to your testimony in just a moment. Right now I'd like to recognize our ranking member, Mr. Clyburn, who has absolutely been one of the finest ranking members anybody could have on a subcommittee.

OPENING STATEMENT OF HON. JAMES CLYBURN

Mr. CLYBURN. Well, you're so kind, Mr. Chairman. Thank you very much for recognizing me.

I want to thank you for your continued interest in holding hearings on the extremely sensitive and serious problem of sexual harassment within the Department of Veterans Affairs.

During this subcommittee's testimony in April on this subject, we called on the Department to conduct a follow-up review of the troubling incidents at the Fayetteville facility. We also asked that the Department finalize its long-awaited survey of VA employee attitudes on sexual harassment. I am pleased that the Department has completed these tasks, although I believe everyone understands that much more needs to be done.

I am encouraged by the VA's willingness to consider adopting significant provisions from H.R. 1703, the VA Employment Discrimination Prevention Act. Lane Evans and I were original cosponsors of the bill back in 1993, when it was first introduced. At that time, the VA told us that changes were in the works regarding the EEO process at VA and throughout government and that there was no need for this legislation.

As most of us know by now, this expected government-wide solution never happened, and the problems within the VA's EEO process have continued to fester. Five years after the first hearings were held on this subject, the same problems remain at VA.

It is a tribute to Chairman Everett that he has recognized the continuing need for legislation to improve the EEO process at VA. This May with bipartisan support, Terry introduced H.R. 1703, legislation derived from the bill that was first introduced in 1993.

It is also a tribute to Acting Secretary Hershel Gober that he has recognized the serious problems with the EEO process at VA and that he has proposed an administrative solution that draws in large part from the bill we have introduced during this Congress.

In my view, however, the VA's proposals in this area do not go far enough, and there is still the need for legislation in this area.

I am extremely interested in hearing the VA's testimony on this issue this morning. I look forward to working with the VA and my

colleagues on this committee to ensure that we finally address this critical issue and that we restore the faith and trust in the EEO process that our VA employees and our veterans deserve.

Thank you, Mr. Chairman. I'll yield back.

[The prepared statement of Congressman Clyburn appears on p. 62.]

Mr. EVERETT. Thank you, Jim.

Mr. Buyer? Doc Snyder? Any other member wish to make a comment? Excuse me. I'll recognize you in my traditional way.

OPENING STATEMENT OF HON. FRANK MASCARA

Mr. MASCARA. Thank you very much, Mr. Chairman. Good morning.

As a new member of this subcommittee, I am honored to be participating in this important hearing this morning to examine H.R. 1703, the VA Employment Discrimination Prevention Act. I am pleased the top leaders of the Department of Veterans Affairs are present to give us an update on the Department's effort to no longer tolerate and truly eliminate sexual harassment at all levels of the VA.

I understand Acting Secretary Goyer will testify that the VA opposes enactment of H.R. 1703 and would prefer to establish a stronger equal employment opportunity process administratively. While I know the VA's intent is honorable and well-intentioned, I would hope you all understand the members of this subcommittee are going to expect some firm action to see that these kinds of incidents no longer occur. We are going to expect some definite, independent process that will fully investigate sexual harassment complaints and see that the appropriate disciplinary actions are taken.

My understanding is that in the past the VA General Counsel has overturned 85 percent of the findings of sexual harassment that have been found as a result of the current administrative process. I think the most objective observer would say that clearly shows something is wrong with the process and that the VA needs to do better.

Finally, I want to also praise my colleagues Ranking Member Lane Evans and Representative Clyburn for championing this issue over the years. I understand you both were successful in winning House approval of legislation very similar to H.R. 1703 following an incident that occurred at the Atlanta facility in 1992.

I am sorry that after 5 years we seem to be back to square one. However, I do have the hope that with a strong commitment from Acting Secretary Goyer and Dr. Kizer, we can all work together to see that the VA truly lives up to its zero tolerance for sexual harassment policy.

I look forward to listening to this morning's testimony, and I yield back the balance of my time, Mr. Chairman.

[The prepared statement of Congressman Mascara appears on p. 66.]

Mr. EVERETT. Thank you.

This committee is fortunate to have as a member of the committee our full committee ranking member, Lane Evans. Lane?

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

Mr. EVANS. Thank you, Mr. Chairman. I appreciate the fact that you and the ranking member are holding this hearing, I think keeping the focus on this issue.

I associate myself with many of the remarks my colleagues have made. We are pleased with the important first steps that are being taken by the VA and by Secretary Hershel Gober to fix a EEO process that is clearly broken. I believe Hershel is serious about correcting the sexual harassment and EEO problems at the VA. I am encouraged by his willingness to take personal responsibility for solving this festering issue.

I recognize the VA's honest efforts to propose an administrative fix to the EEO process. Unless the VA is willing to make significantly greater changes in its EEO procedures, however, I still believe it will take legislation like H.R. 1703 to get the job done.

I believe Chairman Everett and Jim Clyburn share this view and am encouraged by the Secretary's willingness to work with us on this issue. I look forward to the testimony this morning.

Thank you, Mr. Chairman.

[The prepared statement of Congressman Evans appears on p. 67.]

Mr. EVERETT. Thank you, Lane.

An outstanding member of the full Veterans Committee is Mr. Bilirakis from Florida, who has an ongoing interest in this. We now recognize Mr. Bilirakis.

**OPENING STATEMENT OF HON. MIKE BILIRAKIS, A REP-
RESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. BILIRAKIS. Thank you so much, Mr. Chairman. And I, too, want to commend you and Mr. Clyburn for scheduling today's follow-up hearing. And I certainly very much appreciate the opportunity to participate in the hearing, even though I'm not a member of the subcommittee. And I also want to welcome Senator Faircloth to our committee.

Mr. Chairman, at our April hearing, several VA employees testified about their experiences with sexual harassment at the Fayetteville VA Medical Center. It took a great deal of courage for them to come forward and share their stories with us. I think most members of this subcommittee, I would like to say all members of this subcommittee, were dismayed with the situation at the Fayetteville medical facility.

I could not help but experience a sense of *deja vu*, as others have already said, at our first hearing. The stories we heard at our April hearing closely mirror those of VA employees who testified before the Oversight Subcommittee in 1992, when I served as the ranking minority member to Mr. Evans.

That 1992 hearing revealed that the VA process in place at the VA for investigating sexual harassment was seriously flawed. The 1997 hearing showed that the process is still flawed. In this regard, I'm pleased to be an original cosponsor of Chairman Everett's legislation.

And, although I'm heartened to see that the Department is taking action to correct its EEO process, I must admit, even though

I sincerely do have great confidence in Secretary Gober, that I'm disappointed, really, that the VA is not supporting this legislation.

I think we have to ask ourselves, all of us: Can anyone blame us for being skeptical that the Department's administrative actions will adequately correct the problems within the current process? I think not.

The skepticism is based on the track record on this matter. In 1993, the House approved legislation that would have provided for improved and expedited procedures for resolving complaints of employment discrimination, including sexual harassment complaints. At that time Secretary Brown opposed the bill because he preferred to take administrative action and the bill was not enacted into law. The Secretary certainly was sincere. He's truly intended to fix the problem. But it was not done. Almost 5 years later, we are faced with a similar situation at the VA.

I believe that Secretary Gober is sincere in his efforts to address the sexual harassment problems that were documented in our April hearing, but I am not convinced that Congress should defer legislative action.

Mr. EVERETT. What I would really prefer to see, Mr. Chairman, is that maybe possibly a result of the testimony that we hear here today, that Secretary Gober will sit down us because I don't think we want to do anything that will be an obstacle or roadblock or some of the things that he plans to do there.

But at the same time I really think that maybe we ought to codify some of these ideas, maybe even some of his ideas, codify them, rather than basically leave it up to whoever is on duty at the time.

So I commend you, sir, and hopefully we'll be able to solve this problem.

Thank you.

Mr. EVERETT. Thank you. I think that would be very helpful.

I'd like now to recognize our a member of our subcommittee. Mr. Buyer also is the subcommittee chairman, the person in the National Security Committee and has a lot of experience along these lines. Mr. Buyer?

OPENING STATEMENT OF HON. STEVE BUYER

Mr. BUYER. Thank you. I know we want to get to the witnesses, but I just have to make a comment, two of them. Many of my colleagues are well-aware that myself and Jane Harmon, Tilley Fowler are leading the whole effort with regard to sexual harassment fraternization and sexual misconduct, all of those issues in the United States military. And we're leaving tonight to go to Great Lakes training center. We've got Parris Island yet to do. And we'll be down at San Antonio.

We've got an interim report that we submitted a couple of weeks ago if anybody would like to take a look at it.

We have had to jump in and do some micromanaging. I don't like to do that type of thing. I think the services ought to be able to take control of each of their services and do things correctly. But we have had to jump in and do some actual micromanaging. That's what's in some of this defense bill that we're going to move to conference with someone else has signed. Hopefully we won't have to do that with the VA.

I agree with Michael Bilirakis' statement. Many of us were here in 1993 when the Secretary really asked us to back off, not to micromanage, that he would take care of it. And even though my good friend from Florida used the word that the former Secretary was very "sincere," I have to question that because we asked him to come here.

We asked him to testify. He chose to go cut a ribbon for a homeless shelter in southern California. When he was faced with nine of his senior managers that were up for sexual harassment, I think Mr. Brown really was more interested in leaving town.

I was very disappointed. I just want to put that on the record that I was extremely disappointed with Jesse Brown and how he handled this and how, instead of coming and talking with us and working through this issue, it just didn't happen. And so I want to take issue with your words about the sincerity of the issue.

This is not easy, guys. This is not an easy issue. It is, in fact, what we found in the military. Whether it's a man or it's a woman, they set the tone and the tenor for the environment for which people are to work in.

And individuals need to be treated with equal human dignity, irregardless of their race, irregardless of their gender. And it's those senior-level management. In fact, it goes all the way to the top that sets that tone.

And hopefully we don't have to, Mr. Chairman, Mr. Clyburn, get into the micromanagement, but I'm eager for this hearing today. Thank you.

Mr. EVERETT. Thank you.

Senator Lauch Faircloth, you're a distinguished senator from North Carolina. And we most welcome you to this hearing. We appreciate that you really kind of started this ball rolling. And now we're ready to receive your testimony.

Mr. FAIRCLOTH. Thank you, Chairman Everett.

STATEMENT OF SENATOR LAUCH FAIRCLOTH

Mr. FAIRCLOTH. I appreciate very much your letting me be with you today and appear before your subcommittee to discuss important matter. And it's one that, as has been stated before, has not been properly addressed.

The problem of sexual harassment within the Department of Veterans Affairs was initially brought to my attention by then scandal surrounding Jerome Calhoun at the Fayetteville, North Carolina VA Medical Center. Of course, one reason it got to me quickly was that Fayetteville is only about 35 miles from my home. But we all know the situation that existed there with Calhoun.

Today I would like to present to the subcommittee a constructive measure that would prevent such a blatant abuse of authority from occurring again.

The measure I speak of is Senate Bill 801, which Senator Graham of Florida, Senator Hutchinson of Arkansas and I are sponsoring, and House Bill 1703. This legislation establishes the Office of Employment Discrimination Complaints Resolution. Now, that is a governmental mouthful, but we know what it's saying.

This office would be run by a director, who would report only to the Secretary or Assistant Secretary of the VA.

This change represents a significant difference in the way VA currently handles sexual harassment and other employment discrimination claims. Believe it or not, the current process, which was in effect down at Fayetteville, allows for complaints to be handled within the facility where they originate. In other words, when these women complained down at the Fayetteville Medical Center, they went to Jerome Calhoun, whom they were complaining against. So it became a ludicrous situation.

This bill would centralize the authority for handling complaints and guarantee that officials at the very highest level are held accountable for the agency's response. Accountability was something sorely missing in the Jerome Calhoun case.

Further, this bill requires the Secretary of the VA to provide Congress annually with a detailed report of the progress of the OEDCR. Obviously, congressional oversight is needed within this area of the VA. As has been mentioned, it's not the role of the Congress to micromanage, but when we clearly see that the individual departments will not manage, then it's incumbent upon us as elected officials to act.

Had Congress not addressed the Calhoun incident, it well might have been kept totally under wraps.

The VA is likely to recommend that changes in the process be made internally and at the discretion of the FARC. We had tried that. It didn't work.

Mr. Chairman, this is needed legislation because the VA has previously responded to congressional pressure by saying it would adopt an absolute zero tolerance policy for sexual harassment. Jesse Brown himself stated that he would be personally responsible for the policy's implementation. Well, 4 years later and even the VA itself states that "The policy of zero tolerance has been insufficient to create a culture within the Department"—I'm quoting—"in which harassment and discrimination are neither tolerated nor condoned."

"Zero tolerance" has come to mean tolerance tolerate. And that simply became the policy in the VA hospitals around the country, anything goes, because if you complain, you simply go to the man who is running the hospital. And he pretty much says, "Forget it."

It seems clear to me that changes in the way claims are handled must be mandated by Congress legislatively. Only then will the employees of the VA be assured of a secure and reliable workplace.

Mr. Chairman, to this day I find it absolutely ridiculous that Jerome Calhoun was handling the complaints that were lodged against him. And that's simply what was going on. If this legislation had been in place, the situation would never have occurred.

And, lastly, Mr. Chairman, I would ask and hope for the cooperation of your subcommittee on this, that until Jerome Calhoun is fired, officials in the VA are not doing their job. And the Department's employees are not being justly treated.

For those of you who might not have been aware, at long last, when Jesse Brown decided to act, the punishment he placed on Calhoun was a transfer to Florida and a salary increase with less responsibility.

Now, I think it is incumbent upon us as members of the Congress and elected officials to not stop. And I do not intend to until at least this one man is fired.

Mr. Chairman, I thank you for allowing me to be with you, and I thank the other members of the committee for allowing me to testify. Thank you.

[The prepared statement of Senator Faircloth appears on p. 73.]

Mr. EVERETT. Thank you for your testimony.

I might say that in regard to Mr. Calhoun, this committee instructed the VA to conduct further investigations down at Fayetteville. I understand that that has been done or, rather, is in the process of being finalized.

And I, too, share your view that unless we make this person stand for the alleged offenses that he is alleged to have committed, then I don't think anybody would take any kind of policy seriously. And that probably underscores the reason that we should have the legislation that you testified for the House bill and the Senate bill. I'm hopeful that we'll be able to do that.

I don't know if you're aware of some of the testimony that we had over here, but we actually had testimony from the women involved. One of the secretaries actually heard people laughing about the complaints that were filed. She was in a position to hear that. And that shows you how far out of hand this has gotten. And it also shows you the culture that exists in accepting this kind of behavior.

That's one reason that I submitted my legislation, which had been submitted earlier, as pointed out by Mr. Evans and other cosponsors. And it's also one reason that I feel as though resolved that we should have legislation on this.

I'd recognize our ranking member, Mr. Clyburn, now for any comments he may have.

Mr. CLYBURN. Thank you, Mr. Chairman.

Thank you, Senator, for being here today. I do want to say, though, before I ask any question, that I would hope that this hearing will continue to pursue what we are here to pursue. I think the senator used a term in a quote you have there, an institutional "culture." That is what we're trying to get at. And I don't think that we will do ourselves any real pride by focusing on any one person.

Remember, we had Atlanta before Fayetteville. I understand we've got Seattle going on subsequent to Fayetteville. And I understand that maybe out in the State of California we've got another problem. So getting rid of Mr. Calhoun is not going to solve the problem in Seattle, nor will it solve the problem in the State of California. It didn't solve the problem in Atlanta.

So what I would hope that we would do is try to focus on policies and procedures that will allow us to root out these kinds of things when they occur and not try to find any specific scapegoat.

Now, a problem that I have with all of this is that we got this legislation through the House the last time. There was a companion bill, I believe, in 1993 in the Senate. And, of course, I understand that it didn't go anywhere. Senator, do you think that there is a willingness on the part of the Senate this time to hang with us on this issue?

Mr. FAIRCLOTH. Yes, I do. As you know, I mentioned Senator Graham from Florida and Senator Tim Hutchinson of Arkansas are still sponsoring the bill with me. And I'm sure the Senate will hang with you and go straight forward.

Mr. CLYBURN. Well, thank you.

Mr. FAIRCLOTH. I don't see any—

Mr. CLYBURN. I am really pleased to hear that because, though I am very proud of this body over here and proud to be a member of it, the way this structure is up here, we sometimes get highly disappointed with all the work we put into things and find out that there are some strange rules on the other side that keep up from really getting some of these things to fruition. So I'm glad to hear that.

Let me ask you about Fayetteville.

Mr. FAIRCLOTH. I'm sorry. I didn't hear you.

Mr. CLYBURN. I want to ask you about Fayetteville.

Mr. FAIRCLOTH. Yes.

Mr. CLYBURN. I was in Fayetteville some months ago on a matter that had absolutely nothing to do with this issue. In fact, I was not even aware of the issue when I went there for another reason. My wife and I spent 2 days there. But everywhere we went, no matter what the gathering was, everybody was talking about the VA Medical Center and this sexual harassment problem. It seemed to have taken on a life of its own throughout the community far beyond the facility itself.

Did you visit Fayetteville at all or have you visited there since this?

Mr. FAIRCLOTH. I have not visited since. Of course, over the years I've been there many times.

Mr. CLYBURN. Yes.

Mr. FAIRCLOTH. But I have not actually visited the hospital since this incident.

Mr. CLYBURN. I was just wondering: Have you gotten any reports from employees, any direct reports, about what may be employee attitudes and what may be the morale inside the center? I was just wondering whether or not—

Mr. FAIRCLOTH. Since this event?

Mr. CLYBURN. Yes, sir.

Mr. FAIRCLOTH. Well, I think that, as you well know, the ladies that were involved, of course, testified here before your committee.

Mr. CLYBURN. Yes, sir.

Mr. FAIRCLOTH. And they were over in the Senate and testified also.

Mr. CLYBURN. Oh, they did?

Mr. FAIRCLOTH. And they gave some similar testimony. I think there's a strong feeling among the hospital people now that I have talked to—I've talked to the people; I haven't actually been there—that something is going to be done. They feel like that, for once, it's at least out of the closet, that Calhoun is gone, that we were able to at least get him moved and out of the way. So there is a great feeling that the Congress is taking a strong action and is going to do something, yes.

Mr. CLYBURN. Well, as you may not know, I have almost two decades of experience with these kinds of matters. I agree with you

that, no matter what remedy we come up with, administratively there must be something in the process that takes this outside a facility or you will never get any credibility to the issue at all.

And I don't think we need to say to the people that in order to get a real adequate redress to whatever your grievance may be, you've got to wait until you get to court and go out and hire an attorney and do all of this. I think we ought to be able to have an administrative remedy that people will have faith and confidence in. And I agree with you, and I thank you for your testimony.

Mr. FAIRCLOTH. Thank you.

Mr. EVERETT. Any other member? Mr. Buyer?

Mr. BUYER. Thank you.

Senator, when you learned of this, these levels of discrimination that were at the VA hospital within your state, what type of cooperation did you receive from the Secretary of the VA?

Mr. FAIRCLOTH. Practically none. I used an expression once that getting information was like eating ice cream with a knitting needle. It was worse than that getting it out of the VA. They simply did not want to cooperate.

Mr. BUYER. And, you know, I can understand why. At our first hearing we talked about, we called the sentencing—well, we won't call it sentencing. I guess it was a proposed deal, a Club Med level of punishment for sexual harassment. I could see why they wouldn't want all of that exposed.

Mr. FAIRCLOTH. Well, yes, certainly.

Mr. BUYER. So I can understand why. I'm just as curious as to whether they were either more or less cooperative with the Senate, as opposed to the House, because we found that a little difficult.

Mr. FAIRCLOTH. No more cooperative whatsoever.

Mr. BUYER. One thing, I am also a cosponsor of this legislation. And I don't mind laying the mark on the table. I wanted to ask this question of you. In the military, when Aberdeen first broke, there were a lot of people who jumped out and said, "Oh, we have to have an ombudsman. We have to have something that goes around the chain" because at Aberdeen you, in fact, had drill sergeants who were abusers and you also had a company commander, who was also involved. And you had victims that didn't have avenues and access to report criminal behavior.

And so then there was this call for an ombudsman. And we began to look at it and see that the chain of command is, in fact, pretty important. And weakening, things beginning to weaken, in the chain of command is not a good thing in the military.

And then you talk about management as organizations. I don't care whether it's for at IBM or the VA. If we have a director and he needs to set that tone of the environment for people to work in, if we remove too much of his supervision, his abilities to provide a workplace, are we weakening him at all?

So if we say we're going to take a facility director and we remove him completely from the EEO process, from a management standpoint, are we weakening him too much or should he at least have some type—if a complaint is made, should he at least have knowledge or somehow participate? I'm trying to figure out how we can best move this legislation. I'd be interested in your comments on the management aspect of this.

Mr. FAIRCLOTH. Well, I would have no problem at all in him being notified that the complaint has been filed and it is being moved to the Secretary of VA or the Assistant Secretary. I think he absolutely should be notified and have a chance to respond.

In the private sector, certainly if somebody files an EEO or a complaint, it comes to the—in our organization, people running the company would get it immediately. Now, they don't have final authority on it, but they are very much made aware of it. And I think the same should be true with the VA.

I can't imagine it going completely around him. Now, it wouldn't necessarily have to go through him, but he should be made aware of it and have an opportunity to be involved in the investigation.

Mr. BUYER. Or take any kind of corrective actions or take management decisions and that type of thing.

Mr. FAIRCLOTH. To report that he had already corrected it. But it still should go to the Secretary for final dispensation.

Mr. BUYER. Thank you, Senator.

I yield back the balance of my time.

Mr. EVERETT. Mr. Mascara?

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

I would like to associate myself with your remarks. And I agree that he should be fired. As a county commissioner for a lot of years, the first thing that I did in 1980 was to separate the responsibilities of the personnel director and the EEO officer. They said, "Well, we're saving money."

I said, "I can't help that. Those two need to be separated." And it's incomprehensible that 17 years later I'm witnessing what's happening here with the VA and this VA facility.

You're right, Mr. Clyburn. Mr. Calhoun is just the tip of the iceberg. Someone should say tomorrow morning that no facility director will serve as the EEO officer. Is that the case? Are other facility directors serving as—

Mr. FAIRCLOTH. I don't—

Mr. MASCARA. I think tomorrow morning someone should say, "End. No more" because I saw what could happen in my own county, back in Washington County, Pennsylvania.

So I agree with you, sir, and I appreciate your coming over here and giving testimony to us. I hope that this committee will act appropriately and swiftly to change the system, whatever it takes to change the system. We just can't let that go on.

Thank you very much, Mr. Chairman.

Mr. FAIRCLOTH. Thank you.

And I did not in any way mean to make Mr. Calhoun a scapegoat. I think we should start with him and move on to Seattle or California or wherever else this is going on.

And I think it's incumbent upon Mr. Gober to ferret this out and fire these people. I don't see just letting them retire or be promoted, as has happened in his case, and any of them. I have no idea who the others are. But I think Mr. Gober has the responsibility to seek out and make a disposition of each of them.

Mr. CLYBURN. I think it's Mr. Mascara's time, but will you yield?

Mr. MASCARA. Yes.

Mr. CLYBURN. Thank you so much.

Senator, what my concern is is that when you have the Inspector General conducting an investigation that we have asked him or her to conduct, I think we will do ourselves a disservice if we pursue in the hearing, go to any conclusion that we would like to see drawn from the Inspector General's investigation. That's my fear.

I have no problem with whatever happens to Mr. Calhoun. But we've asked the Inspector General to do it. Let that process work. And we ought to stay out of it until we get that report. That's all I meant.

Mr. FAIRCLOTH. Well, I can wait until the report comes.

Mr. CLYBURN. Thank you.

Mr. EVERETT. Thank you. Dr. Snyder.

Mr. FAIRCLOTH. Mr. Chairman?

Mr. EVERETT. Yes, sir?

Mr. FAIRCLOTH. We have a vote that's ordered at 10 o'clock. So if I may wrap up if anybody has any quick questions? I don't—

Mr. EVERETT. Anybody? We would like to recognize the Senator's time. Mr. Bilirakis?

Mr. BILIRAKIS. Thank you very much.

Senator, I don't know whether you were here during my opening statement, but—

Mr. FAIRCLOTH. Yes, I was.

Mr. BILIRAKIS. My LALD here, Rebecca, just reminded me that the same comments that I made to Mr. Gober when we talked just before the hearing started were the same comments that I made to Secretary Brown back when those hearings were held. And that is basically the need to codify the good steps that have to be taken and because there are changes in the top. So someone could be up there meaning well and doing well and then, all of a sudden, there's a change, a change in administration or whatever the case may be. And then you start all over again quite often.

So I think—I can't speak for the committee or any of the committees, although I'm on the full committee and on the Health Subcommittee here. But I think we've got to sit down with the VA and codify the good things that they're trying to put into effect in addition to maybe some of the ideas that we have.

Would the Senate be willing to do that also so that we can be consistent?

Mr. FAIRCLOTH. Oh, I'm sure we would. And, of course, you know Bob Graham and Tim Hutchinson.

Mr. BILIRAKIS. Yes.

Mr. FAIRCLOTH. I'm sure we would. I won't speak for them. But I know that I would, and I'm sure that they would.

Mr. BILIRAKIS. Thank you.

Mr. EVERETT. I think the comment that Mr. Buyer made earlier would be a good place to start for us getting together with Mr. Gober.

Senator, we certainly thank you for being over here today. And we appreciate the work, your interest in this. Hopefully you can make it back in time for that vote.

Mr. FAIRCLOTH. We'll make it. Thank you, Chairman Everett. Thank you.

Mr. EVERETT. Thank you. I would now like to call Secretary Gober and his staff as our second panel. And for each of the wit-

nesses' panels, I ask that each witness limit their testimony, oral testimony, to 5 minutes. Your complete written statement will be made a part of the official hearing record.

I would ask our members to hold the questions until the entire panel has testified.

Mr. Secretary, welcome. I would ask you now to introduce your panel. After that, we would hear your testimony, please.

Mr. GOBER. Thank you, Mr. Chairman.

STATEMENT OF HON. HERSHEL W. GOBER, ACTING SECRETARY, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY: HON. KENNETH W. KIZER, M.D., UNDER SECRETARY FOR HEALTH, VETERANS HEALTH ADMINISTRATION; HON. STEPHEN L. LEMONS, ACTING UNDER SECRETARY FOR BENEFITS; HON. EUGENE A. BRICKHOUSE, ASSISTANT SECRETARY FOR HUMAN RESOURCES AND ADMINISTRATION; MR. NEAL C. LAWSON, ASSISTANT GENERAL COUNSEL; MS. PATRICIA A. MCKLEM, DIRECTOR, VA MEDICAL CENTER, PRESCOTT, AZ; AND MS. VENTRIS C. GIBSON, DIRECTOR, OFFICE OF HUMAN RESOURCES, VETERANS BENEFITS ADMINISTRATION

Mr. GOBER. I have with me: Dr. Ken Kizer, Under Secretary of Health; Dr. Steve Lemons, the Acting Under Secretary for Benefits; Mr. Eugene Brickhouse, the Assistant Secretary for Human Resources; Mr. Neal C. Lawson, who is the Assistant General Counsel and Co-Chair of the EEO Complaint Process Review Task Force; Ms. Patricia McKlem, who is the Director of the Prescott, Arizona VA Medical Center and Chair of the Secretary's Working Group on Sexual Harassment; and Ms. Ventriss Gibson, who is the Director of Human Resources in the Veterans Benefits Administration and was a team leader of the group that recently reviewed issues at the Fayetteville VA Medical Center.

Mr. EVERETT. Mr. Secretary, thank you for introducing your staff. I think you sensed the mood of perhaps over in the Senate and the House on the pending legislation. And we'll hear your testimony now. I'm sure you'll have something to say about that also.

Mr. GOBER. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, it's a pleasure to be here. I'm pleased to be here to testify about the very important issue of sexual harassment in the workplace.

There are four areas that I would like to address today: first, an update on the issues at the Fayetteville, North Carolina Medical Center; second, a review of all pending complaints and claims at the Fayetteville Medical Center; and, third, plan for changing the EEO procedures within VA; and, finally, results of the VA sexual harassment survey.

We have made great progress in resolving the issues at the Fayetteville Medical Center. We take very seriously the negative impact of this issue on the employees at Fayetteville. And we are working hard to heal the emotional wounds which have occurred.

The employees at Fayetteville are good people, and I am disturbed that they were subjected to such a difficult situation. We are now engaged in the process of making sure that the medical center is a workplace worthy of the commitment and dedication re-

peatedly shown by its employees. They remain faithful in their service to veterans during some very trying times.

I personally visited the Fayetteville VA Medical Center on June 5 to meet with all of the employees and reassure them that I am aware of the problems that exist there. I conveyed my sensitivity about the number of reviews which have been conducted at the Fayetteville Medical Center and the resultant anxiety and discord among employees and the negative publicity it generated. I assured them that such reviews were necessary in order to get to the very root of the problem and to work toward a permanent solution.

I opened up the discussion for employees to ask any question they wanted. They had a chance to ask me any question they wanted to. Every question asked of me was about "How can we get more resources to do more for our veterans?"; not one self-serving question. These are good, hard-working people.

Mr. Chairman, that's what we're about in VA, taking care of veterans. And that's why it is so important that we resolve this issue so we can move forward and accomplish the things that we need to do for veterans.

VA employees should not have to worry about how they will be treated when they come to work. They should know that they will be able to work in an environment in which there is respect for every individual and value placed on their contributions. In that kind of work environment, they can devote 100 percent of their time and energy to the important work at hand.

I have sent a memorandum to the employees of the Fayetteville Medical Center thanking them for their continued professionalism and compassion toward our veterans. It further assures them that they should not fear any act of reprisal by any official. And I am pleased to share a copy of the memorandum with the committee.

On May 16, I commissioned a team of highly experienced professionals to determine the progress of all pending complaints complaining in the Fayetteville VA Medical Center, regardless of whether the employees filed the complaints under the EEO discrimination complaint procedures, the grievance procedures, or through the Office of the Inspector General.

I also charged the team with determining if Fayetteville employees were reassigned, transferred, demoted, or otherwise harmed by order of or action by the former director. I gave the team broad authority to review any other issues they found that we should make sure received the attention of the interim management team.

The team visited Fayetteville on May 21 for a 10-day period speaking with approximately 100 employees and examining a large number of official records and other relevant documents. After analyzing the information, the team returned to Fayetteville on June 16 to obtain sworn statements. The findings of the team are now being reviewed for appropriate personnel action.

To further the healing and restoration of employees at Fayetteville, I approved the detail of an interim EEO manager, a human resource management specialist in the Veterans Benefit Administration, Mr. Austin Lewis. He is highly respected, extremely knowledgeable.

He has conducted training, a program for supervisors and managers to ensure that they fully understand the EEO responsibil-

ities. Next week he will provide EEO training with emphasis on discrimination complaint procedures, employees' rights to all Fayetteville VA Medical Center employees.

Mr. Michael Phaup has been the Acting Director of the VAMC Durham. He has been the Acting Director since May 2. He has done a great job down there in providing direction and leadership while serving as a stabilizing force during this difficult period.

He has refocused the attention of the medical center on quality care and customer satisfaction and regularly tours the medical center and work site, where he informally interacts with the employees, patients, and visitors. In addition, he has established and put into place a process for recruitment and selection of personnel for vacant positions.

A new management team for the Fayetteville VA Medical Center will be in place very soon. Yesterday I selected Mr. Richard J. Baltz, the current Associate Director of the VA Medical Center in Jackson, Mississippi, to serve as Director of the Fayetteville Medical Center beginning July 27. Mr. Baltz will be coming to Washington, DC and will be available to meet with any members of this subcommittee or anyone else that would like to meet with him.

With a new director in place and employees understanding that the practices of the past will not be tolerated, we believe that there will be a dramatic improvement in employee morale and a workplace which encourages and supports the best services possible for our veterans.

On May the 27th-28th, finalists for the Chief of Staff position were interviewed at the University of North Carolina School of Medicine, Division 6 Office, and the Fayetteville Medical Center. The final selection for Chief of Staff, however, will be made by the new Medical Center Director, Mr. Baltz.

Morale of the employees at Fayetteville has been a major concern for me and for the leadership at the VA. A team of skilled chaplains has been providing counseling support to staff at the medical center. They were well-received by employees who use their services. Meetings with the chaplains were confidential and allowed many employees to express their emotions and concerns in a safe, supportive environment.

With regard to the employees at the Fayetteville Medical Center—and I think this is very important—who suffered adversely because of actions or decisions of the former director, it is our intent to do everything possible to make them whole.

Mr. Chairman, I realize I've run over my time. And I would ask that my written statement be entered into the record.

Mr. EVERETT. So ordered.

[The prepared statement of Mr. Gober appears on p. 76.]

Mr. EVERETT. Any of the others? Dr. Kizer, did you have a statement? Anybody else have a statement from the panel?

Dr. KIZER. I have no prepared statement.

Mr. EVANS. Mr. Chairman?

Mr. GOBER. I did not cover everything that I—

Mr. EVANS. Would it be permissible to ask for an additional 5 minutes for the Secretary to—

Mr. EVERETT. Sure. Yes. You didn't notice it, Mr. Secretary, but I had motioned for the clock to be cut off so that you could go

ahead and finish your testimony. So we can give you some additional time.

Mr. GOBER. Well, I had figured I had already gone through the green, the orange, and the red. And so I thought it might be time to stop so that you could get to asking the questions.

I would appreciate that time because this is a very important issue to us. And our folks work very hard to provide the committee with the answers.

Mr. EVERETT. You never got to the red. I had already cut the clock off before that.

Mr. GOBER. Thank you, sir.

Mr. EVERETT. If you're prepared to continue, please do.

Mr. GOBER. Within the facility, we will establish an interim EEO advisory committee that will replace the people who have been serving as EEO personnel there to make sure that we are starting with a clean slate.

Our major concern is the well-being of our employees. And we want to make sure they know and believe that we will make the EEO complaint process work in their behalf. In the meantime, we will continue providing progress reports to this committee every 60 days until there is a consensus between us that Fayetteville is back on the right track.

We have learned many lessons in dealing with the Fayetteville issue. And I am duty-bound to institute systems at all levels at the VA to see that our honest, hard-working employees are never again subjected to the misuse of power.

I intend to make all employees, including line supervisors at all levels, accountable for their actions. And I intend to promote and enforce a secure working environment for all VA employees. In that regard, on May 15 this year, I announced that an agency task force would be appointed to review and propose a more credible EEO system for VA.

The task force was charged with three responsibilities. First, it was to examine the present EEO process. Second, it was to determine whether the current process requires change. And, third, it was to report to me by July 1 with the recommended changes it deemed necessary and appropriate. The task force also, as you recall, promised this committee that we would do this and have the report back within 60 days.

The task force has provided me its report. And I'm in general agreement with its findings and recommendations. This report and my reaction have been provided to this committee.

The recommendations closely resemble the model set out in H.R. 1703. Additionally, the recommendations respond to criticism raised by this committee and others regarding the role of line management in the complaint process.

The report recommends that facility directors no longer function as EEO officers; a separate Office of Complaint Resolution be established and given total responsibility for complaint processing; the Office of Complaint Resolution report to the Secretary through the Assistant Secretary of Human Resources, rather than through a line component; and EEO counselors and investigators be primarily full-time employees appointed and supervised by the Office of Complaint Resolution.

In short, management of EEO complaint processing has been moved outside the normal chain of command. This does not mean the facility manager is relieved of responsibility. It is important to maintain a commitment to zero tolerance of sexual harassment.

Making sure that all the employees understand that sexual harassment is not appropriate behavior in the workplace has always been the responsibility of the facility manager. In fact, it is the responsibility of every supervisor, manager, and employee.

I believe the structural change in the EEO complaint process is entirely consistent with and achieves the major objectives of H.R. 1703 without the need for legislation. And it preserves the Department's administrative discretion to further adjust the process quickly and efficiently as circumstances require.

We do want to make sure that implementation of the new process is a team effort involving leadership at the national level and management at the facility level and oversight by the appropriate congressional committees. We also intend to involve and enlist the talent and experience of employees throughout the system at all levels of employment.

As a result of the report of the task force, I have directed that an implementation committee be assembled to establish goals, milestones, and dates to bring about the necessary change. This committee will be directed to present its report for information to me no later than October 1 of this year. Then we'll begin the work of changing our procedures to make sure that a fair and mutual process is implemented.

Finally, the recently completed survey of VA employees on sexual harassment issues was conducted under contract by Klemm Analysis Group following recommendations by the Secretary's ad hoc working group on sexual harassment.

The final report on this survey was delivered to VA by the contractor on Monday of this week. And a copy of this survey was provided to this committee on that same day.

The survey clearly demonstrates that VA's actions over the last 5 years have made a positive impact in dealing with the issues of sexual harassment in the workplace. The VA will meet the challenge on this issue head on.

Make no mistake, Mr. Chairman. VA is firmly committed to making the agency an employee first choice and ensuring that a fair and mutual process outside the control of local management is available to those employees who believe they have been victims of discrimination.

Mr. Chairman, I have used and will continue to use every appropriate forum at my disposal, including the Congress, to send the message to VA employees that sexual harassment and discrimination will not be tolerated or condoned at any level in any circumstance under this administration. And I expect all managers in the chain of command and all employees to do likewise.

Mr. Chairman, this completes my statement. We're prepared to answer any of your questions.

Mr. EVERETT. Thank you very much.

Mr. Secretary, I'm tempted to say fool me once, fool me twice. Mr. Secretary, since our April 17 hearing, we've seen a lot of sin-

cere effort by the VA to address specific areas I requested to be addressed. And I commend you for it.

We have had some private conversations as well as your testimony today. And I sincerely appreciate your efforts in that direction. I have no reason to doubt that you're heading in the direction the committee would like for you to head.

In your prepared remarks, you stated that your recommendations include putting in place an organizational structure that in large measure resembles the model set out in H.R. 1703. Now, I will commend you for your choice of models on that.

I agree that it would accomplish much of what H.R. 1703 and the Senate companion bill, S. 801, would do. There remain some important differences between VA's outlined approach and the House and the Senate bills, which I want our staffs to explore, particularly the sense of the use of collateral duty employees and the role of the General Counsel's office.

I do at this time, however, remain committed to taking legislative action. I think given VA's EEO organization, a statutory imprint has a virtue of its own and does not really distract from VA's flexibility issue, which we can discuss.

No significant changes I'm aware of have been made to VA's current EEO organization in quite some time. And I've not noticed that the Executive Branch usually moves any faster than the Legislative Branch when changes are needed. In 1993, you know only too well that Congress, especially the House, was willing to move but VA was not.

Having made that, let me also say, Mr. Secretary, I recognize that my question here, the next issue I'm going to touch on, is essentially a sensitive area and that your ability to respond publicly may be limited.

At the April 17 hearing, I asked the VA to investigate allegations of misconduct by the former director of Fayetteville beyond, beyond the three cases of sexual harassment investigated by the VA's Inspector General. Has that been done?

Mr. GOBER. The investigation has been completed. And I think that's all I'd like to say publicly.

Mr. EVERETT. I understand. I appreciate it.

I think I made it very clear in the April 17 hearing—and you touched on it in your testimony. I'm very concerned that the VA does everything possible to make Mr. Calhoun's victims whole. Could you go in a little more detail about that?

Mr. GOBER. Yes, sir. We are going to do that. As I said, we're looking. It has been looked at, everyone that had a complaint or it looked like there was some action taken that shouldn't have been taken. We are going to do everything we can to make it right.

In some cases, in one case, a person that has left the agency, left the medical center, is being brought back. And we're trying to deal with each case individually and do the right thing.

Mr. EVERETT. I think you recognize, Mr. Secretary, this committee, recognizes that it was an extreme act of courage for these women to testify. And we're extremely concerned that no reprisals are taken against them. I would like your assurance that any that you hear of would be investigated immediately.

Mr. GOBER. Absolutely. There will be no reprisals. There will be no retaliations because that to me is a far more serious offense than some of the other offenses that we have. And we will deal with anybody that does that.

I don't think we'll have that happen there because Fayetteville has been under the spotlight so much that I think that we won't have that happen. But if we do have it happen, violators will be dealt with very rapidly.

Mr. EVERETT. I don't know what you can do about the cold shoulder approach, and I don't know that that's happening. If it is happening, I would say to those who have been very helpful to us in this investigation, I simply wouldn't let anybody control my life that way. But anything that you hear of that nature, this committee would like to know.

I had intended to start the 5-minute clock on myself. So I'm going to cut my questions at this time because I feel like I'm at the 5-minute. I'll turn to the ranking member, Mr. Clyburn. And we will probably have a second round.

Mr. CLYBURN. Thank you, Mr. Chairman. Let me thank you, Mr. Secretary, for being here.

I think you said in your testimony that you now have the report from the task force.

Mr. GOBER. Yes, sir.

Mr. CLYBURN. Now, having looked at that report from the task force—and I think you visited. Did you visit Fayetteville?

Mr. GOBER. Yes, sir.

Mr. CLYBURN. Well, how would you characterize the people's attitudes toward the EEO process within the VA—

Mr. GOBER. Well, I think—

Mr. CLYBURN (continuing). The employees' attitudes?

Mr. GOBER. The task force recognized that we have to make some changes. And I want to say this. I am disappointed that we didn't do this earlier. It's always you find something like this, and you say, "Gosh. That sticks out like a sore thumb. Why didn't we do that earlier?" And I guess that is not an excuse, but I guess it's the thing you've got so much on your plate you don't know what to eat first. And that's not an excuse in any way, but we recognized that the system needed to be fixed.

Fayetteville pointed that out very graphically that it had to be fixed. A situation like that should have bubbled to the surface very, very quickly. And we should have been able to pick up on that.

You asked a question of Senator Faircloth earlier, Mr. Clyburn, that I would like to comment on, the morale of the people at Fayetteville, at the VA Medical Center. I was amazed. They really didn't want to talk about this. They want to get beyond it. I think they felt like that we are interested in doing it now.

We have had the team down there. The team that went down there did a great investigation. And I think that they want to move beyond it, beyond this situation, and they want to get back to becoming a center of excellence to take care of our veterans, which I have nothing but the greatest admiration for them. They're a wonderful bunch of people.

Mr. CLYBURN. Well, Mr. Gober, I appreciate hearing that. My background and experience in this field tell me and the fact that

I am the father of three daughters I know a little something about the issue of sexual harassment. And the people who are not subjected to it may want to get beyond it, but the people who have been subjected to it, the people whose dignities have been compromised and the people whose workforce environment has been poisoned, I'm not too sure that they want to get behind them or to ignore or want anybody else to ignore it.

I think Ms. Gibson headed the team down there that did this investigation. And maybe we ought to let some of the—would you like to respond to that or do you feel comfortable responding?

Ms. GIBSON. Specifically, sir, the environment there is one of healing at this time, especially post Mr. Gober's visit, especially post the team having spent a total on 2 different visits of 24 days there.

Concerning how people feel about putting sexual harassment behind them? If they are victims of sexual harassment, typically it's been my experience that there is a measure of relief once attention is given and we consider the sensitivity of what has happened to the individual and that appropriate mechanisms are put in place to make that person whole and the environment whole.

Mr. CLYBURN. Well, let me ask you this. Do you think based upon the aura that you encountered there and from what you heard from people there, do you really believe that people would be satisfied with the process that kept the administrative remedy within the facility?

Ms. GIBSON. The team heard several versions of employee satisfaction and dissatisfaction with the current EEO process. Some employees believe that the process does not work. Some employees who have never experienced the process obviously have no comments. Others who have experienced the process seem to feel that that process worked for them depending on the nature and the type of complaint filed. However, it was the general feeling of the employees that we met with that the process needed repairing.

Mr. CLYBURN. I agree. My question, though, is you can repair the process and still keep the administrative remedy, the ultimate administrative remedy, in the agency or within the facility.

Ms. GIBSON. I believe the EEO task force's finding within the Department is one that would, in fact, repair the process and work very well for the Department.

Mr. CLYBURN. I hear you, but I want you to hear me. How do you define repair? Now, we understand. We're going to try to repair this process. Now, I'm trying to get beyond repair and talk about the kind of repair. My problem is I cannot seem—maybe I'm wrong about this, Mr. Chairman, but I keep hearing that the ultimate repair will not go to the issue of who has the final administrative say-so about this.

Now, you heard what the senator said about the EEO officer being the director of the facility. I think that is ridiculous. I've never seen it work. And I'm talking about one who has supervised maybe somewhere between 15 and 20 thousand allegations of sexual harassment, race discrimination, gender discrimination. I've never seen that process work. And I don't think you will find any instance in any administrative procedure where it has ever worked. And if you do, I want to hear about it.

So my question, then, is: How can we have a successful repair? You can go through the process, but do you really believe that the people at Fayetteville, the people in Seattle and California and Atlanta will be satisfied with the repair process that keeps the final administrative remedy within the Department?

And nobody wants to go out and hire lawyers every time they've got an allegation. These lawyers are going to take these cases if they see a clear road to success because they know they only get paid if they win.

Now, we don't want people to have to hire lawyers every time they've got something that ought to be provided for with administrative remedies. And so we have been proposing in our legislation, in your legislation, Mr. Chairman, that we go to administrative law judges.

I'm saying: Do you really believe that those people would be satisfied with a process that kept the final administrative remedy within the institution?

Mr. GOBER. You're saying within the medical center? Our process moves it out. We're moving it out of there. The task force recommended that the medical center directors not have the authority to make this remedy. All of it comes through a new office created, by administrative reorganization which reports to Central Office and processes all of the complaints.

Mr. CLYBURN. That is still within the agency?

Mr. GOBER. Oh, yes, sir. It's within the Department of Veterans Affairs.

Mr. CLYBURN. Which is different from what we have been proposing.

Mr. GOBER. Yes, sir.

Mr. CLYBURN. Okay. Now, we understand—and I may be wrong about this, but I understand that around 60 or 70 cases that went to the General Counsel's Office have been overturned because of error found at the lower level, that, what, 90 percent of them—

Mr. GOBER. Two-thirds, sir, I think it is.

Mr. CLYBURN. Two-thirds?

Mr. GOBER. Two-thirds of them.

Mr. CLYBURN. Well, that may be in—

Mr. GOBER. That's the initial—

Mr. CLYBURN (continuing). Round numbers, but the actual numbers that I saw seemed to add up to a little bit more than two-thirds. In fact, if we do a percentage on it, two-thirds is 66 percent, 67, two-thirds.

Mr. GOBER. Yes, sir.

Mr. CLYBURN. I think we have come up with 85 percent. That's more than three-fourths since 1981.

Mr. LAWSON. The last 3 years in the EEOC annual reports I think were 81 percent, 73 percent, and 66 percent.

Mr. CLYBURN. Where you sustain the findings at the lower level?

Mr. LAWSON. No. These were—

Mr. CLYBURN. Overturned?

Mr. LAWSON. These were recommended decisions by EEOC administrative judges that found discrimination which we set aside.

Mr. CLYBURN. So you set aside 81 percent, 70-some odd percent, and 60-some odd percent? Now, if you add that together and aver-

age those 3, you're still going to be around 75 percent, around three-quarters.

Mr. LAWSON. It could be, yes.

Mr. CLYBURN. Yes, sir. Now, you're telling me that a process that fails that often you would call a good process?

Mr. LAWSON. Well, this is the process that EEOC has in effect for all government agencies. I can note that across the government, there is a fairly high rejection rate of recommended findings of discrimination. Ours is somewhat higher than other agencies.

Mr. CLYBURN. Absolutely.

Mr. LAWSON. But there is at least one agency higher than ours. So I think that has to be looked at in terms of the mix. There is a high general rejection rate across the government.

Mr. CLYBURN. I want you to know, Mr. Lawson, you're talking to someone who sat on the task force to help to rewrite that stuff—

Mr. LAWSON. I understand.

Mr. CLYBURN (continuing). When we were trying to get federal employees at administrative levels. We brought EEOC in it because, if you recall, before EEOC was brought into it, a federal employee had to step outside of the system and really had no real good administrative remedy. We were trying to give administrative remedies.

Mr. LAWSON. Exactly. And that—

Mr. CLYBURN. So all I'm saying is if you've got a process that's trying to give people administrative remedies and that process seems to be breaking down every time it's used, then we ought to repair that, don't you think?

Mr. LAWSON. Well, I guess the criticism of the proposal under the bill is that if the perception is that the agency is the judge of itself, is the bill going to correct that perception?

Essentially the administrative law judges, as I understand it, under the bill would be agency employees. They would be hired by the VA. They would be supervised by the VA. They would be evaluated by the VA. So they would be in no different position in terms of decision-making than the present decision-makers and—

Mr. CLYBURN. Mr. Chairman, this is your legislation. I don't want to be trying to defend your legislation, but I don't mind defending it.

Mr. EVERETT. I would point out that the ranking member is absolutely on target. And this Committee relies heavily on the experience that the ranking member has had in this line.

Mr. CLYBURN. Well, I appreciate that. And you're so kind. I have some experience with administrative law judges. And administrative law judges, in spite of the fact that they may be housed inside of the facility, it's like the Inspector General. There's an independence to the administrative law judge that you will not find in the General Counsel's Office or that you will not find in the directorship of the facility.

Mr. LAWSON. I was—

Mr. CLYBURN. I'm a little bit insulted for you to sit here and tell me—

Mr. LAWSON. No. I didn't mean it the way you took it. What I was trying to say is we were talking about perception, the percep-

tion of employees. Is there going to be a perception of fairness? And I think the problem with the administrative law judges is within the Washington area and for the higher-level employees, they understand what administrative law judges are and they understand the degree of independence that the ALJs would have.

However, I think if we're looking at it from a perception standpoint, we have to also look at it in terms of how the rank and file would view that process. And if they see that these administrative law judges are, in fact, hired by the agency, they are employees of the agency, and they are performing agency tasks, the perception may well be that it is similar, may be slightly different but similar, to the process that presently exists. And that was the concern. If the perception of employees is such that the complaint process should be changed, it's not absolutely certain that the ALJ feature would change that perception to the rank and file. That's the point I'm trying to make.

Mr. CLYBURN. Well, you're absolutely correct, but one thing that is absolutely certain, that what has prevailed for the last 4 years is not working and has not worked. And we have done it Secretary Brown's way. I'm asking that you do it Chairman Everett's way. Let's try Chairman Everett's way.

And if we need to come back here and clean this up 2 years from now or make some modifications to the process, that's fine. But let's try something different if what we've got is not working.

I have a little bit of a problem saying, "Well, this new thing may not work." It may not. But I really believe that we've got some good actual factual experience with the current way. And I am a little bit concerned about putting in a new process in place that will not allow for the final arbiter of these things to have some independence from administrative or managerial oversight over the person's next evaluation.

Mr. GOBER. Of course, I understand the reluctance to let us do our own thing based upon the experience of 1993 and then here we are again in 1997.

However, our proposal, Mr. Clyburn, does almost everything that the bill, the Chairman's bill, would do except it does not set up the ALJ, the administrative law judges. It does keep it within the system. It is a living document. We can change it if it doesn't work. We don't need to come back for legislation. We would want to work with the EEOC. We would want to work with this committee, the Congress to make the system work, a system that would be credible.

But it does do the one important thing. It takes managers at the VA hospital or the regional offices, out of the complaint process. It makes it independent with a Deputy Assistant Secretary reporting up to the Secretary's office.

And it can be done with the resources we currently have, the estimate that we have, while it is that it would cost \$17 million more start-up costs to implement the bill plus it would cost us \$2 million or more a year in continuing costs.

Now, I'm not saying that we don't have to pay something to make sure our people have the right process and make sure that the people are protected and that we're there for them. I really think that we can do it, and I think that we could take the process.

If it's not good right now, our recommendations from the task force, if we can work with the committee or anybody else to try to change it, I'd like to just keep it as simple as we possibly can but make it a good one. And then we don't have to have legislation to change it. We can change it immediately.

Mr. CLYBURN. Well, I yield back my time, but I want to say to you I want to support whatever legislation you champion over here, but I also want you to know that I'm going to have a real, real problem with anything that keeps this thing inside the system.

Mr. EVERETT. I thank the ranking member for his comments, and I must say that I've just scratched off a lot of questioning that you pursued. And I agree with the comments made by the ranking member.

One of the problems we're dealing with here is perception becomes real close to being reality. And the perception out there right now I would think is not real good.

Mr. Buyer.

Mr. BUYER. Thank you.

Mr. Gober, I was going through your executive summary from the task force. When I moved over to recommendations on an overview, the very first paragraph—it's really just two sentences, Mr. Clyburn—it says, "The task force concluded that the VA must create a process perceived as objective, fair, and effective by employees, managers, and external stakeholders. In doing so, it is necessary that system impediments, real or perceived, that resulted in management and manipulation of the process be removed." So your owner is saying that. So I don't know why you had to go through all of that considering it was already written in there.

As I was also looking at this, Mr. Gober, I noted you had at the very beginning, where you had signed the report, said, "I favor a more streamlined approach to the headquarters staff with a single high-level official responsible for VA's EEO program."

I hate to belabor my analogies with the active forces, but I've spent the last 9 months now and, of that, 40 percent of my time in Congress has been spent on those issues. So it's hard for me to get out of that dimension. And I've lived through some of the difficulties and observations with the United States Army having allegations against the senior sergeant major, the highest ranking NCO in the Army.

So as we're going to streamline this process all the way to your headquarters, let's start with the flagpole. And so let me ask you whether there are any pending allegations or complaints regarding sexual harassment in the workplace at the headquarters staff.

Mr. GOBER. I'm not aware of any.

Mr. BUYER. Okay. If, in fact, there were such a complaint at your headquarters staff, how would that be handled?

Mr. GOBER. It would depend on which level of staff. If it was in the Secretary's office, it would be handled, be looked into by someone of a senior rank that I would appoint. If it were at a lower level, it would be investigated.

We've changed the procedures since Fayetteville. We send in a good investigative team in places like that. But here at the headquarters, it would be looked at by someone senior to the person who had been, one person or two people or three people, that were

senior to the person the allegations were against. And then they would report to me or the chief of staff.

Mr. BUYER. Are those procedures already in place or are you just supposing how you think it may happen?

Mr. GOBER. Well, the procedures are in place, but I haven't had any allegations at that level. We have procedures that would let us investigate complaints like that. And we have had complaints you know in the headquarters but not by high-ranking staff that I'm aware of, Mr. Buyer.

Mr. BUYER. Well, I've seen the Army struggle with. That's why I—

Mr. GOBER. Right.

Mr. BUYER (continuing). May as well throw it right into—

Mr. GOBER. Sure.

Mr. BUYER (continuing). Your camp that you also ought to be thinking in that light—

Mr. GOBER. That's a good point.

Mr. BUYER (continuing). That it doesn't necessarily always happen in somebody else's watch. It could happen right in your own camp.

The other thing I would like to note is that the Army is under the microscope. And the Secretary of the Army I believe did a good thing when he organized the senior panel to do a very extensive review, not only a domestic basis but around the world.

Now, I know that you did a survey. Okay? That's a good thing. It's also easy. I like the fact that the task force went to Fayetteville, but I have to sit here and question whether or not we have a full understanding of the scope of the problem.

If, in fact, we have 33 percent of the women identify the most serious allegations over the last 12 months and we've had 9 senior within the health side, has the other side of the house been looked at? Fifty-eight regional offices, how is that going to be handled? Do we fully understand the scope of the problem? Should you be taking a task force or a panel that has a 3-month or 6-month charter and you go out there and you find out what all the systems are and let's report back?

If you're doing that type of thing, I'd like to know about it. If you're not going to do that kind of thing, then perhaps here in the Congress we may, in fact, come up with our own commission or panel and we'll do that microscopic examination.

We've had to do it with the military. I don't want to do it with the VA, but if we have to, I'd appreciate your comments.

Mr. GOBER. The Benefits Administration, Cemetery Systems, they have been surveyed. They're part of this survey. And let me say this. Yes, we're sensitive to all of it, to each one of the agencies.

The Health Department, of course, our VHA, has the largest majority of employees. And there are 172 facilities, hospitals and all the outpatient clinics and things like that, scattered around the country. So obviously there's where the majority of the complaints come from because of the environment. But we are sensitive to the regional offices and cemeteries. And we did survey those employees as well.

Mr. BUYER. Survey? I'm talking about people going out, looking in the closets, turning over the stones. I don't know if that's going

to be done or not done, if the task force—see, you've got a very good product here.

The task force did a great job, I mean, because I'm having to do this very same thing. See, it's very easy. I could direct staff to do that. That's easy. But for me and Tilley Fowler and others to actually travel the world and see these things, we have been able to institute some very good changes.

So my question is whether you are interested in staking this task force out to understand systematic problems in a methodical way. And if you're not interested—and we're going to have a discussion here on whether we should implement our own commission to do an examination—

Mr. GOBER. I'm very much interested in it, very much interested. And I put together this team to go to Fayetteville, a SWAT team. I'm keeping that team in place. It's going to be my immediate reaction force. Now, that doesn't keep something from happening, but the fact is that when something does happen, I want to get there very quickly because sometimes there is nothing.

It's just a rumor or there's nothing happening there. But when we have an allegation come up that needs to be looked at, we'll have somebody initially go in and say, "Yes. You need a recon of the area" and come back and say, "Yes. You've got something happening there." We'll send this team out that when down that Ms. Gibson ran down at Fayetteville. And they'll go in. And they did a great investigation, and we'll be able to do that.

I'd like to ask Dr. Lemons, if he could, to respond to some of your concern there, Mr. Buyer.

Mr. BUYER. Thank you.

Mr. LEMONS. Mr. Buyer, I would like to identify myself with your earlier comments that there are two aspects of this that really need to be addressed. One is the discrimination complaints process, how complaints are elevated; and what type of attention is paid to them. The other is what type of an environment is a manager or a supervisor creating amongst the workforce.

We in VBA have taken a very aggressive stance in both of these aspects in our operation. On the complaints aspect, any allegation of any type made against any line official is immediately elevated to my personal attention. We are consistent with the Acting Secretary's policies in elevating these to the right people who can take responsibility for ensuring that an adequate and appropriate investigation and development of alternatives for correction of the instant complaint as well as any implications for the environment occur. We reinforce the notion that we treat these issues seriously and that we will address both of those aspects of the situations.

Second, we aggressively incorporated affirmative action; and managerial responsibility for creating a discrimination-free workforce into managers performance standards, and performance evaluations. I personally issued statements in writing to all employees within VBA about my policies and my desire to ensure that I will not only not tolerate any kind of discrimination but will quickly investigate and resolve any issues that should be raised by anybody in the organization.

Mr. BUYER. I thank the Chair's tolerance here in my questioning.

Are you comfortable that you have an understanding of the scope of the problem?

Mr. GOBER. Yes. Yes, I am. I think I have spent a lot of time on this issue, as you know, over the last several months. And I won't sit here and begin to tell you that I know every problem out there, but I get at least once, twice a week—well, more than that. We talk about areas where we might have problems, and I say, "I want it looked at quickly. I don't want somebody else having to come in and tell me to go look at it. I want to find it."

I appreciate working with the committee and the staff of the committees because I think working together we have the same goal. And our goal is to make sure we serve veterans. We can't do that if we people that don't want to come to work because they're being sexually harassed or discriminated against. So we've got to get to that.

Mr. BUYER. How helpful are we to you if this committee were to fund an independent commission to examine these issues within the VA, do a systematic, methodical review, find out what systematic problems or cultural problems? I mean, if we've got 33 percent of the women talk about most serious allegations, how helpful would we be to you to have an independent commission come in and do a review? Would you be receptive and welcome such a review?

Mr. GOBER. Whatever the committee would want to do, of course. But I really don't think we have to do that to have that looked at. I think this is an issue that we can solve. I feel very comfortable about it.

Mr. BUYER. Okay.

Mr. GOBER. It's a big issue. Ms. McKlem ran the survey, worked on that, and pointed out to me that, you know, the sexual harassment task force is going to review the results of the survey. And there will be areas where we may need to do other things like do visits, send out a team to look at this or look at that.

I am concerned because we have the top 20 areas where we have a lot of problems or we have a lot of complaints filed. And that could be indicative of the fact that maybe the system works where people are filing complaints.

If I have a hospital where nobody ever files a complaint, I'd think I'd want to go look at that one, too, because there's something going on there. You know, that's not always good news. It may mean that the people are being told, "You'd better not file a complaint."

So I think we're getting a pretty good understanding of how this works.

Mr. BUYER. All right. Mr. Chairman, based on the answers here from the Acting Secretary, I can understand his hesitance, but I'd like to entertain discussions with you and the ranking member with regard to an independent commission to come in and actually review these issues with the VA so we can also understand, get a thorough scope of, in fact, the problem.

I agree with the Acting Secretary that these problems are very large and enormous. It is almost analogous to what we're doing within the National Security Committee for all the services. But I would like to entertain those discussions with you at a later date.

Mr. EVERETT. The Chair would be more than happy to do so. And the Chair also appreciates the experience that the gentleman from Indiana has had as the Subcommittee Chairman of Personnel along these lines. And we appreciate your comments.

Mr. Mascara?

Mr. MASCARA. Mr. Secretary, I applaud you and commend you for your hard work and your sincerity and sensitivity to the issues, but I do disagree with you that these matters can be handled administratively. We were burned once. We were burned twice.

I want to move on to the comparison of features that was in the material that I had that looks at the present system, the task force recommendations, and the congressional proposal.

The initial statement here is that the facility director is the EEO officer under the present system. Under the task force recommendation, that removes the facility director from the EEO process. And, of course, the congressional proposal also does that.

My question is whether the problems in Fayetteville might be just the tip of the iceberg? Are you looking across the board at all facilities to remove the facility director from any EEO activities?

Mr. GOBER. Yes. Yes, sir, across the system.

Mr. MASCARA. Are you currently looking at that and moving forward with that without legislation or—

Mr. GOBER. I'm not going to wait. Our procedures—you know, we can all—I'm going to move fast to take action on that. As a matter of fact, we'll start implementing some of these task force recommendations. And then if Congress passes the legislation, I'm halfway there anyway because we have to do that.

We will take action. And I assume that's been done already. It will be done. If it hasn't been done, it will be done.

Mr. MASCARA. That bothers me.

Mr. GOBER. Yes, sir. We just—

Mr. MASCARA. For that to continue to exist—

Mr. GOBER. We're not going to do that. It's going to be taken away. This report just got completed this week. And we delivered it up here on Tuesday, I think it was. We will begin implementing the recommendations of the task force. And then, as I say, if Congress passes the legislation, we'll be halfway there anyway.

But we've got to do that. I agree with you totally.

Mr. MASCARA. On Page 4 of the report of the equal employment opportunity complaint process review by the task force, the third paragraph mentions the length of time. And it does some benchmarking with other agencies.

Are you saying that it takes 380 days instead of—and this is what is stated here, the regulatory 180 days to move with a complaint and that government-wide it took 305 days in 1995? Is that how long it takes?

Mr. GOBER. That's my understanding that's the length of time that it takes.

Mr. MASCARA. Isn't it discouraging to those people who make a complaint, then have to wait a year to have it adjudicated or someone to make a ruling on their complaint or—

Mr. GOBER. Yes, sir. I think it would be demoralizing, but I would imagine it comes down to dollars and having enough people,

EEO people, to work the claims. They're swamped, just like the people in our agency.

We have the same problem with processing claims. We have the same problem in a lot of our places. It comes down to having the dollars to hire the people. And it makes it very difficult.

But I agree. It would be great if you could, within 30 days you could, wrap up something like that. But these people are very much overloaded.

Mr. MASCARA. I have no further questions. Maybe perhaps I agree with Mr. Buyer. Maybe we need to look at the whole process and come up with some conclusions and some suggestions that make the process move, and move efficiently, rather than have these people wait a year.

It's awfully discouraging. We're trying to repair the system. You know, I look at this as one of the problems here also, in addition to the problem with Fayetteville, that across the whole system there is a problem of processing these complaints.

Mr. GOBER. It's not just in our agency either.

Mr. MASCARA. Oh, across the government agencies.

Mr. GOBER. It's all the government.

Mr. MASCARA. I see you used the other agencies, including the Air Force and the Treasury and Commerce and Labor and other agencies when you did your benchmarking. So the problem is massive. It's massive.

Mr. GOBER. Yes, sir.

Mr. MASCARA. Thank you, Mr. Chairman.

Mr. EVERETT. I agree the problem is probably government-wide, but I also agree that this is our little red wagon. And that's the one that we're going to pull. And hopefully we'll do something about that.

Mr. Snyder.

OPENING STATEMENT OF HON. VIC SNYDER

Mr. SNYDER. Thank you, Mr. Chairman.

I want to greet you, Mr. Gober. It's always good to see an Arkansan doing well. I congratulate you on your recent consideration for the appointment.

Mr. GOBER. Thank you, sir.

Mr. SNYDER. My recollection from the previous hearing that we had back in April was that there were several problems that were identified. One we talk about a lot here is that the director of the facility investigates the complaints, the charging complaints, even if the complaints are made against him. And it appears that we're on the path to try to take care of that.

Another problem that I recall that we discussed was that with regard to Mr. Calhoun, there was poor execution of what was then current policy. I mean, under your current policies, if they had been carried out appropriately, Mr. Calhoun could have been taken care of once you were put on notice. My recollection is that you had had a new person, probably with not much experience of dealing with that level of complaint, that there had been a letter mailed, that it kind of had to be modified, and that it was just a screwed-up situation, which reflects perhaps more on the quality and back-

ground of the people that are put into these slots to oversee those kinds of things and the training they receive.

There also was the issue of the remedy, that once there were allegations that were confirmed against Mr. Calhoun, you still apparently felt that you did not have the ability to get him fired. And we still had to deal with this issue of going to Florida, which my recollection is that some of the complainants felt that that was actually what he had wanted, that he had a retirement home down there.

A fourth issue that I recall that came up was that there was an overall sense, at least in the Fayetteville VA, that nobody cared, that there was kind of this pervasive sense that all of this stuff had been going on for a long time and the system just didn't care.

And, finally, one very specific issue that came up, to the best of my recollection, was that when these complaints are being investigated and a Mr. Calhoun or the alleged perpetrator would respond to questions, that there apparently was no penalty for giving false information. Mr. Clyburn I think had picked up on that, that that was something unusual in this kind of business.

Those are my recollections of what we had talked about before. And the two that I want or I guess the three that I want to mention, I mean, I'm optimistic that you're going to take care of this issue of the overall sense of the expectation of the agency. I know you are very concerned about what you heard at that hearing, too, and you have a reputation in Arkansas as being somebody who gets things done.

As I read through the different proposals, the issue of the remedy of how a Mr. Calhoun gets fired I guess is the bottom line. A specific question is: Do we foresee that that's going to change under your chosen method of dealing with the changes?

Are we dealing at all or in the legislation are we dealing with this issue of some kind of perjury penalty if you lie to the investigators, which I don't see anywhere in—

Mr. EVERETT. That's correct. We do not have anything addressing that issue.

Mr. SNYDER (continuing). In this legislation. And maybe there are reasons why we don't, but that would seem to be a very big concern when we dealt with our investigators.

And then the issue, too, in terms of, which I suspect you're dealing with, you can have the greatest system in the world, but if the people who are put in there are inadequately trained to deal with it, which I think is what happened with Mr. Calhoun.

That's a lot of rambling, but those are the things that my recollection is are what we saw come out of the last hearing. Any thoughts you might have on any of those areas, I would appreciate it.

Mr. GOBER. Yes. Well, Mr. Snyder, as I said at the first hearing, this thing can be Monday morning quarterbacked to death because there were some mistakes made.

Mr. SNYDER. I don't want to Monday morning quarterback it, but those are the problems that we—

Mr. GOBER. No. I'm agreeing with you.

Mr. SNYDER (continuing). Saw as we look ahead to what changes we need to make in statute, what changes you need to be making

administratively, and what changes you need to be making in terms of personnel changes.

Mr. GOBER. I think we can handle it administratively. And certainly it would be handled through the legislation. But we have changed. We have learned from this, what happened here. And the cases that we look at now are being better investigated. They're being put together better, which will make it. In case we come to the point where you have to issue a letter of removal, a notice to remove, we'll have the evidence to do so.

Education is a big thing that we are doing. I know that Dr. Kizer has meetings with his VISN directors, the hospital directors. They've spent a great deal of time talking about this case, Fayetteville, the lessons learned, which I think is something they have to do.

New people coming into the system have got to be better orientated to know how to handle these type situations. So there were some things that we did there that if we had to go over it again would be done a lot differently.

I think if there is any good that came out of this—and I'd prefer that we didn't have to learn like this, but if there is any good that came out of it, it's the fact that we are correcting a system that was flawed and should have been corrected a long time ago.

Mr. SNYDER. I'll just conclude by saying my impression was, though, as much as we're trying to write new systems and talking about study commissions, that it wouldn't have mattered what some of the words in the law would have been. It was going to get screwed up because of how they were carried out. We can have on paper the best system in the world if the training isn't there and the right people carrying them out.

I'm optimistic you'll be the right head person for that. I'm glad you're in the job you are. Thank you.

Mr. GOBER. Thank you, sir.

Mr. EVERETT. Thank you, Mr. Snyder.

Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Hershel, you indicated in your testimony that the legislation we have introduced would not significantly improve the morale in the VA. What in your plan would do that? And additionally what can we do to help with the professional employees' attitude towards the VA EEOC process?

Mr. GOBER. Well, I think that Mr. Clyburn said it very well earlier and other members of the committee. I think we have to give a system that the people believe in. They have to understand that it's going to work.

You know, I'm not so sure that—I think we can run that internally. And certainly we could run it externally. But I think that the bottom line is credibility. And I think that's been touched on very well here because the people have to understand that I can go file a complaint. Nobody is going to retaliate against me. Nobody is going to cold shoulder me. I'm exercising the rights that I have as a citizen and as a federal employee.

And then if they're sure of the fact that I'm going to get a serious hearing on this—you know, many of the complaints filed are dealt with at the local level. The largest majority of them are solved just

by getting two people together and talking it out. And we're using alternative dispute resolution and things like that to help us get beyond that. Of course, something where you have a serious situation like this, you can't do that.

But I think we have to have a system, one of these systems, that gives the people the assurance that it does, in fact, work.

Mr. EVANS. In a private conversation we had, you talked about this being a working document or——

Mr. GOBER. Living document.

Mr. EVANS. Living document. Could you maybe explain that a little bit more in detail?

Mr. GOBER. Right. We did this in 60 days. We did it. We wanted to keep the promise that we made to the committee. And it's a good document. I'm very proud of it. I agree with everything but one thing in the report, but I wanted to send you the whole report so you could see what my folks did. And then I wanted you to also see the part that I disagreed with.

I didn't have them change their report because I think if you make people change their report, you end up getting exactly what I would want. So I wanted them to have the free thought there to do it.

But I envision this as a document that we put into effect. After we work with the committee, we have an implementation team that would meet and talk about better ways to do it because we might if we talk to the union people, our employees, the committee, our public staffers, we would come up with changes that we could make just like that, no legislation, no amendment required or anything else. We can just do it.

And if we go down the road and we see that it's not working a month from now, 2 months from now, 3 months after it's implemented, if we see it's not working, we say, "Hold it. That doesn't work. Let's change this and let's change. And let's make it different."

That's what I meant by "living document," that we could change it whenever we saw the need to.

Mr. EVANS. That's why I liked Mr. Bilirakis' suggestion that we sit down maybe kind of informally and talk about some of these issues in the near future.

Thank you. Thank you, Mr. Chairman.

Mr. GOBER. I think that's excellent. And I welcome the chance to do that.

Mr. EVANS. Thank you.

Mr. EVERETT. Thank you, Mr. Evans.

Mr. Buyer? Oh, I'm sorry. I beg your pardon. Mr. Bilirakis? Excuse me.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

We sit up here, and it's easy for us to take potshots. There isn't any question about it. We're the ivory tower, I guess, whatever the word ivory tower. We've used it all of our lives. I'm not sure any of us ever had looked up what the actual meaning of it is. But you're in the field. You're in the trenches, as are your people, your staffers and your people, mostly in the medical centers and what-not.

A lot of the things that have been talked about here and words like "cooperation," "We'd like to work with you," things of that nature, have been mentioned. One thing that we do know is that, no matter how hard we may try, you can't really legislate minds. You can't legislate hearts. You certainly can legislate remedies, if you will. And I guess that's much of what we're talking about here.

Mr. Clyburn certainly concentrated on it. That's really what our legislation tries to do. This is what you have been working on trying to do. But we also have to try to do everything we can with those people out in the field because, even though we can't legislate their minds or hearts, they've got to know that we're pretty serious about certain conduct.

I've got to keep harping. I'm not one of those people who feels that more government is better, more legislation is better. I think my record up here is indicative of that. But because we have been burned in the past, because we know that there will be changes made at the top as far as the Veterans Administration is concerned, for whatever reasons, God forbid something happens to Hershel Gober, there's a new Secretary, et cetera, et cetera, I personally have great concerns that some of the things that you're trying to put into effect—and I take a look at your comparison of features there. And there aren't that many differences.

Administrative law judges is different. And I agree with Mr. Clyburn. I've worked with administrative law judges. I worked with one of the government agents here years ago when I was an engineer. They were called examiners at that time. And they were hired by the agency. But I tell you they probably found against the agency attorneys and the agency engineers more than for them. So I think there is an element, an adequate element, of independence there.

I guess what I'm saying is, you know, facility director, your task force recommends removes facility director from EEO complaints process. Our proposal does the same thing.

Appointment of EEO officials, there's a difference there. But I don't know why that can't be discussed.

EEO officer, there's a difference there. But I don't know why that can't be discussed.

EEO counselors, you say primarily full-time counselors employed by DAS, Deputy Assistant Secretary, et cetera. We say full-time counselors employed by OEDCR. That certainly is pretty close.

EEO investigator is exactly the same, full-time investigators, except how they're employed.

Then, of course, we go on down. And the final decision, final agency decision, there's a distinction there.

I look at your review team's preliminary report. Wonderful. Some of the things Mr. Buyer talked about, I don't know why anything our legislation does interferes with what is taking place there.

Mr. Secretary, your opposition to the legislation, this bill would remove the administrative flexibility needed. And I believe very strongly in the flexibility. I don't know why we can't sit down with the staffs, if you will, and make sure that our legislation is such—and I can't speak for the Chairman. Please forgive me, Mr. Chairman. I'm not—

Mr. EVERETT. Go right ahead, please.

Mr. BILIRAKIS. But the point of the matter is I don't know why we can't maybe make some changes so that you can retain the administrative flexibility.

Singling out the VA and its employees as against other government agencies is a concern, but the fact of the matter is apparently, Mr. Clyburn, if there are distinctions between what we want for the VA and other agencies and other departments, maybe we ought to be looking at the other agencies and other departments in terms of the remedy process. So I'm not sure that that's a good enough reason, although I can understand you don't want to be singled out as against the other groups.

And then, of course, the administrative law judges, the fox guarding the henhouse idea, again, I feel the administrative law judge is adequately independent.

And then you say, sir, finally and perhaps most significant, "Most of the changes in the bill can be accomplished by administrative reorganization" I discussed previously and you discussed so very well today.

Well, what's the harm? So you're accomplishing it administratively. What is the harm in codifying it so that if these are good ideas they can be carried forward Secretary through Secretary through Secretary?

So I guess I'm going right back to all of that, Mr. Secretary. I applaud you. Mr. Mascara, others have complimented you. I'd like to think that I have, too. You're sincere. I thought Mr. Brown was sincere. I may have been wrong.

But, even with all of the sincerity in the world or all of the best intentions in the world, what is wrong with codifying some of these things so that these remedies will continue on?

And if changes have to be made, granted, it takes a little harder going through the process here, congressional process, and administratively. But that's not really so bad either. I don't know that that's enough of a reason to not be willing to sit down, rather than just oppose, to not be willing to sit down and say, "Hey, these are some of the things that we're doing. We think they ought to be codified. But we'd like to have maybe suggest some changes in some of your wording," that sort of thing.

I've used up all of my 5 minutes, but if the Chairman would be willing, maybe we can get a quick response from you.

Mr. GOBER. Well, I understand the concern not being codified. And I guess if we can sit down—and I think we can. I think we have to sit down and work it out together so that we get something that we can work with, we can administer for you and make sure that we meet the requirements that Congress passes because we certainly want to do that. It's something that reassures our people.

So I guess, Mr. Bilirakis, I think that we should maybe sit down and talk about it.

Mr. BILIRAKIS. Okay. You know, you have promised me, Mr. Secretary, and I think your promise is gold. You have promised this committee, and I know you really mean it. But, again—

Mr. GOBER. Yes, sir.

Mr. BILIRAKIS (continuing). We're talking about—

Mr. GOBER. I understand totally. We're going to handle this problem. We've got a lot of very, very important issues that we need

to deal with running the VA system. We're going to. We have to solve this issue before we can get on to doing that. Our people have got to be able to help do it, and we've got to reassure them. So we're going to officially——

Mr. BILIRAKIS. So, essentially, you're saying to this committee that if the Chairman and the ranking member and the staffs are willing and request that you and your staffs sit down and discuss our legislation and maybe some——

Mr. GOBER. Be glad to, sir.

Mr. BILIRAKIS. You're willing to do that?

Mr. GOBER. Be glad to do it.

Mr. BILIRAKIS. All right. Thank you. Thank you, Mr. Chairman.

Mr. EVERETT. Thank you very much. And we have requested in our opening statement that be done. And I appreciate the gentleman's input on this.

We're going to have a second round. I've contacted all of the members. And, Mr. Buyer, you're up.

Mr. BUYER. Thank you, Mr. Chairman.

I only have two things. One, I want to be very candid. And, Dr. Kizer, let me say to you that I think you're doing a very good job. Let me extend that compliment to you. But also I got tickled last fall. I always got tickled last fall and last summer because you were out in the field instituting good changes to systems who are resistant to change but they've got to get with it.

And Jesse Brown had fun. Whenever he would come under attack by a local facility about changes for which he had instituted, "Well, it's the Republicans that were doing it to you." I got kind of tickled by that.

Let me just say, politics aside, that's the games that were played. You keep your head down and keep doing the right thing. I extend the compliment to you. What you're doing out there in the field in delivering health services to the veterans is very good. So I want to take that opportunity to compliment you.

Dr. KIZER. Thank you.

Mr. BUYER. The other is, Mr. Gober, I went back to the parking lot issues identified over here. You're on a hot seat today. I didn't mean to put you on that hot seat, but you've stepped forward to the plate. And I compliment you for being here. That's why I'm so upset that Jesse Brown didn't come. I compliment you for being here and stepping up to the plate.

Some of the things in these parking lot issues, they said too often the ball had been dropped between the initial indicators of a problem and senior management efforts to deal with it. There are some very candid remarks.

The other, they talked about disciplinary action for offenders. They talked about the old boy system, not being able or willing to discipline senior management officials. They also said that moving disciplinary problems and parking them somewhere, rather than actively deal with them; on culture, we need a change in our culture. Those are strong words. That's very candid for a task force to come back and report such things.

I'm back to my analogies again. In a meeting with high-level Army officials, I said, "You know, you just can't go out there and

discipline those of whom perpetrated, the perpetrators at Aberdeen. We've also got a chain of command."

You've got commanders who permitted such an environment to exist. Commanders are responsible for what they know and perhaps what they should have known also. They've got to get out and look under the rocks. They've got to be around. They've got to be visible.

Not long ago some of the chain of command had been relieved administratively. I'm here concerned. You know, we can jump on Mr. Calhoun. But you know what I'm concerned about? I'm concerned that there was such a chain of command in the disciplinary function that permitted such decisions to have been made.

So my question is to you: What review or actions will you be taking to examine how those decision-making processes were done or permitted or are you doing anything about that chain of command that made such a decision that we all find so horrible?

Mr. GOBER. Mistakes were made. And I think honest mistakes were made, too, and lack of knowledge, lack of communication, not talking to people, saying, "Hey, what do I do in this area? How do I handle this?"

Everything is not over yet regarding this case, but I am concerned more about how we handle cases in the future. I feel very comfortable that we have a process in place that will preclude this type of instance from happening again, the fact that we get involved in it very early on, it is reviewed within the Office of the Secretary to make sure and the right lawyers are involved to make sure that we have conducted the investigation and everything in the right way.

So I guess, Mr. Buyer, I don't have any plans to go out and cut off a bunch of heads. I would say that because of this. I would think that we have had many discussions among ourselves because the ultimate responsibility, of course, now is mine. And I don't shirk from that responsibility. But I think I'm more interested in what happens in the future than what happened in the past.

I have already admitted that we made mistakes. And I think that now I have to concentrate on making sure that we don't make those same mistakes again.

Mr. BUYER. All right. You're right. The past sets the foundation for corrective action so it's not repeated in the future. It takes me back to my independent commission discussion.

Thank you.

Mr. EVERETT. Thank you, Mr. Buyer.

Mr. GOBER. Mr. Chairman, if I may?

Mr. EVERETT. Certainly.

Mr. GOBER. One thing. Mr. Buyer asked the question earlier. I'd like to ask Ms. McKlem. The 36 percent question, I'd like to have her explain it to you, sir, if you don't mind.

Ms. MCKLEM. Thank you.

When you're looking at the sexual harassment survey results, the comment that you made about 36 percent of the employees identified a "most serious incident," I think that has to be put into perspective. All of the survey respondents, which was over 20,000 people of the 30,000 who were surveyed, were asked to identify if one

of a list of 30 incidents had happened to them. They were then asked to describe the most serious incident.

Of the 35 people who responded yes to one of those types of incidents, approximately half of them said that they did not consider that behavior to be sexual harassment. There's room for debate on that, whether it's appropriate or not, but that was the respondents' description of the incidents that happened to them.

When asked to describe the most serious incident, the largest majority of those were things like comments, touching of a shoulder, those kinds of experiences.

It doesn't mean that we're not looking seriously at all of the comments and all of the behaviors and that we will not be addressing those in terms of training, but in terms of describing a most serious incident, I think that that has to be put in perspective. And it's not, in fact, a serious kind of sexual harassment that occurred. It doesn't mean that we don't take it seriously.

Mr. EVERETT. I would at this time order the report of the equal employment opportunity complaint process review task force be made a part of the record; in addition to that, that the preliminary report of Ms. Gibson be made a part of the record.

[The equal employment opportunity complaint process review task force appears on p. 99.]

[The human resources report appears on p. 58.]

Mr. EVERETT. Mr. Secretary, there's a tone here which I hope that you've picked up on. You're not dealing with simply this issue of sexual harassment. We're dealing here I think it's become apparent with a couple of other issues.

You're dealing with an issue of broken trust. You're dealing with an issue of a word that we used a lot around here, but I'm not real sure that in the rank and file of the VA administration that it is quite understood. And that's one of a culture that exists.

This Chairman has personally experienced what he feels to be an obstruction put in his way by a director. We can't have that. We have constitutional duties. We're going to pursue those constitutional duties.

I don't know what has to happen, but if I were in your shoes—I'm not, thank goodness—if I were, I would recognize that there is an issue of broken trust here. And there is a larger issue or at least the same magnitude of we really believe that there is a culture within the VA that defies overshoot by this committee and perhaps by this Congress and that some of them even think it is laughable.

Now, it doesn't matter to me. I'm positive if Mr. Clyburn was sitting in this chair or I'm sitting in this chair, that would be this feeling of this committee and that this is going to be pursued on a very bipartisan basis. I think you've seen here today that the comments have been very bipartisan. We're interested in the same thing you're interested in, and that is what's best for the veteran.

And, to be very honest with you, you have a challenge in front of you. I see a great gap between the trust of this committee and between the VA. I get increasing reports of the culture that I'm speaking of that defies and I think in some cases resents oversight by the Congress. And I would ask you to take that into consideration. This is something that we need desperately to work closely

in the coming years with the VA to pursue the best interests of our veterans.

And on today's hearing, I certainly appreciate your willingness to report back to this subcommittee every 60 days, as stated in your written testimony. And I would ask that we be notified sooner if any significant events relating to Fayetteville arise.

Thank you today for your testimony.

Mr. GOBER. Thank you, sir.

If I may, in closing, I want to assure you that I have a great respect for the Constitution of this country. And we want to not widen the gap. I want it to be closer. I want us to work together because I think we can only be successful in doing our job if we don't play games with each other, play "Gotcha," as you and I discussed the other day.

I think we have to understand what our real job is, and our job is to make sure we take care of veterans. Your job is to watch us and make sure we do that. I fully respect that, and I pledge to you that we will not grow farther apart. We will work closer together. It's easier to do it that way. And, besides that, it's the right thing to do.

Mr. EVERETT. I appreciate those comments, and I will echo the comments of Mr. Buyer. We really don't want to have to micromanage, but if it comes to that, it will come to that.

Thank you, Mr. Secretary.

Mr. GOBER. Thank you, sir.

Mr. EVERETT. We now have one more panel: Mr. Bill Merriman. He's Deputy Inspector General. We would ask him to step up to the table, please.

Mr. Merriman, thank you very much. Will you introduce members of your panel and then proceed with your testimony, please? We'll ask you to hold your testimony to within 5 minutes of—

Mr. MERRIMAN. Thank you, Mr. Chairman.

Mr. EVERETT (continuing). Oral testimony. And your complete testimony will be made a part of the record.

Mr. MERRIMAN. Thank you.

STATEMENT OF WILLIAM T. MERRIMAN, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY: MS. MAUREEN REGAN, COUNSEL FOR INSPECTOR GENERAL; AND MS. JUDY SHELLY, SENIOR ANALYST, SPECIAL INQUIRIES DIVISION

Mr. MERRIMAN. On my right, I have Ms. Maureen Regan, counsel for the Inspector General; on my left, Ms. Judy Shelly, who is a senior analyst in our Special Inquiries Division.

Mr. Chairman, during the hearing before this committee in April, the Department of Veterans Affairs made a commitment to investigate outstanding and new allegations of impropriety by Jerome Calhoun, the former Director of the VA Medical Center in Fayetteville, NC. In fulfilling that promise, the Department asked for assistance from the Office of the Inspector General on two specific issues. This assistance was provided.

The first issue was whether there were any sexual harassment complaints against Mr. Calhoun during his tenure as the Associate director at the VA Medical Center in Buffalo, New York or during

the time he was Acting Director at the VA Medical Center in Batavia, New York. These were Mr. Calhoun's assignments prior to his appointment as Director in Fayetteville.

To review the allegation, two senior members of my staff conducted a site visit at these VA medical centers. At our request, prior to the site visit, the director of the medical centers notified the employees of the visit by distributing a letter to the medical center staff at both facilities and by announcing the visit on e-mail. Employees were invited to meet with or otherwise contact the IG team if they wanted to discuss their experiences with Mr. Calhoun.

More than 20 employees were interviewed by my staff during the review. No current or former female employees came forward with an allegation that they were sexually harassed by Mr. Calhoun.

The employees interviewed included a number of employees who were involved in and familiar with the EEO programs during the time Mr. Calhoun was employed at the two New York VA medical centers. No one had any recollection of a formal or informal complaint of sexual harassment against Mr. Calhoun. We reviewed the EEO files for both facilities and found no documentation of a formal complaint of sexual harassment against Mr. Calhoun. Because centralized records of informal complaints are not routinely maintained, we were unable to review records relating to informal complaints filed during the relevant time period.

Based on our review, we concluded that there was no evidence that the complaints of sexual harassment were filed against Mr. Calhoun while he was Associate Director of the VA Medical Center in Buffalo or the Acting Director of the VA Medical Center in Batavia.

During the review, current and former employees did bring issues to our attention that were unrelated to the issue of sexual harassment. Because the issues were similar to and within the scope of the review being conducted by the Department at the VA Medical Center in Fayetteville, we forwarded the information to the Department for follow-up and action if deemed appropriate. If the Department needs assistance in following up on these or any other issues, the Office of the Inspector General will provide the necessary assistance.

With respect to the second issue referred to us by the Department, we are in the process of obtaining, reviewing, and analyzing records and other relevant information. We expect to refer the results of our investigation to the Department in the near future for whatever action the Department deems appropriate. Because the review is ongoing and the information is maintained in a Privacy Act system of records, I do not believe it would be appropriate to provide further detail on this issue in a public forum at this time.

Thank you, Mr. Chairman, for the opportunity to provide you with an update on our work conducted by the Office of Inspector General since April relating to the Department's commitment to follow up on allegations of impropriety by the former Director of the VA Medical Center in Fayetteville, NC.

I'd be happy to address any questions you might have.

[The prepared statement of Mr. Merriman appears on p. 87.]

Mr. EVERETT. Let me recognize our ranking member now for any questions that he may have.

Mr. CLYBURN. Yes, Mr. Chairman. Thank you.

There's something said there that raises a question in my mind. And if it's a problem, then okay. You indicated that something turned up in your visits to these two New York facilities that was related to—it seemed to be saying something was related to management procedures or management, managerial habits of Mr. Calhoun, but it was outside the scope of sexual harassment but inside the scope of your review.

Mr. MERRIMAN. The first thing we wanted to pin down was: Had a sexual harassment complaint been filed?

Mr. CLYBURN. Right.

Mr. MERRIMAN. Okay. So we found out that wasn't the case.

Mr. CLYBURN. Right.

Mr. MERRIMAN. We did talk to employees. No one came to us and indicated that there was any further sexual harassment while he was up there, that happened to them or that they witnessed.

Some people complained about behavior up there similar to some of the complaints at Fayetteville. And we referred that to the committee. I don't want to go—

Mr. CLYBURN. You referred that to?

Mr. MERRIMAN. To the Department's investigative group that was looking at those types of complaints.

Mr. CLYBURN. Were you present when we had that hearing? What was it, in March?

Mr. MERRIMAN. I testified, sir.

Mr. CLYBURN. Or April?

Mr. MERRIMAN. April.

Mr. CLYBURN. April. Were you here?

Mr. MERRIMAN. I testified. Yes, sir.

Mr. CLYBURN. You testified. You may recall some issues raised by the ladies who testified. I was a little bit careful because I didn't want them to misunderstand because a couple of the allegations, especially the lady who testified who followed Mr. Calhoun from the New York facility to Fayetteville, I kind of warned her that the issues she raised were not sexual harassment issues as I understood the law but that had a lot to do with management style and whether or not he was a good manager.

Am I to understand that you are pursuing management style or whether or not he is a good manager as a part of what you are looking to?

Mr. MERRIMAN. That's correct, in conjunction with the Department. Wherever there was an allegation of poor management or inappropriate behavior, we identified that. We're working with Ms. Gibson. And it will all come together.

Mr. CLYBURN. Very good. Thank you.

Mr. EVERETT. I thank my ranking member.

Mr. Merriman, thank you for your testimony. You have informed us the status of your activity, which is what the subcommittee asked you to do. Because your investigation is ongoing and you have indicated you will report your results in the near future, I have no questions for the public record. We want to be careful not to compromise your work. Please provide the subcommittee a copy of your report when it is issued.

The panel is dismissed. Today's hearing as a follow-up to keep the focus on the VA's efforts to address specific problems at Fayetteville VA—oh, I'm sorry.

I'm sorry. Forgive me. Go ahead, any questions you may have.

Mr. BILIRAKIS. I really don't, Mr. Chairman.

I guess I have a curiosity. You testified in April. So you heard the other testimony. You heard the testimony from the ladies who had the problems. And you've sat through what went on here today.

I'm not going to ask you at this point, but we've prepared this legislation. It's the Chairman's legislation. Some of us have cosponsored it. We've shown an interest in the past. I don't know that that legislation actually goes into the IG and your function.

I guess again, with all due respect to the Chairman, at least on my part, I would invite you, on behalf of the overall committee anyhow, to make any suggestions in terms of the role or maybe a better role or whatever, the role that the IG may play in all of this.

I know when I was in the military,—and that was many years ago—it was the IG. I mean, my gosh, back in the old military, you were concerned about chain of command and honor. If you had a complaint, you almost didn't go through the chain of command. I mean, you reached out, looked to try to find the Inspector General. And, unfortunately, not too many of the lower-level troops were even aware of an Inspector General being available.

So the role, as I see it, the role that the IG would play in all of these matters, sexual harassment, if you will, in the military and in government, is maybe a bigger one than some people would see your role being. I don't know whether you have any comments on that.

Mr. MERRIMAN. We'd be happy to look at the legislation from the standpoint of how it might impact the IG. I think the Acting Secretary has indicated that he would be willing to publicize things like the IG hotline, if people didn't feel comfortable with going through the EEO process, that they could come to us.

The only caution I would have is to not duplicate processes. I'd like to see an EEO process that works and works well and that people can inject themselves into that process so that we as the IG wouldn't have to look into individual EEO complaints, that they would be handled by a well-established process that everybody agrees is working well. That would be my concern, that we don't duplicate what everybody else has put in place.

Mr. BILIRAKIS. Thanks.

Mr. EVERETT. Yes?

Mr. MERRIMAN. Go ahead.

Ms. REGAN. I think one of the concerns we would have is if people would come to the IG, they might lose their due process rights that they would have in the EEO system, which has some significant time limitations. So unless there was legislation that would address that issue.

That's one of the reasons we're reluctant to get into EEO complaints or other complaints that have time restrictions on them.

Mr. BILIRAKIS. Okay. I see. And there are others. Certainly Mr. Clyburn is maybe the leader in that regard, who understands that process better than I. But I do know that based on personal experi-

ence the IG process is also a very significant one. And I just really wasn't sure what more we could do or should do in that regard.

Well, again, it's in your hands. You have an invitation for an input if you'd like to do so.

Mr. MERRIMAN. I appreciate that, sir.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. CLYBURN. If I may, Mr. Chairman?

Mr. EVERETT. Certainly. Go ahead.

Mr. CLYBURN. Let me ask, if I may. As I understand the process, if an employee were to file a complaint totally in the time, at any point in that system, the employee could ask that that complaint go to a different level, to another avenue without losing his or her due process rights. I mean, the time would have been tolled from the time the complaint was filed.

Mr. MERRIMAN. I think Ms. Regan was talking about coming to us, instead of getting into the system, and making certain milestones that were implicit in the system. In other words—

Mr. CLYBURN. I don't think any of us here envision a process that would have the employee going directly from the incident to the Inspector General. I don't think that's what Mr. Bilirakis is talking about at all.

We're talking about when the incident occurs and the complaint is made. Whatever the first step in that complaint may be, the times are tolled unless you've got something different from any process I'm familiar with. And then if the employee is not satisfied that his or her supervisor or whoever may be supervising the person the allegation is made against and decided to go from that point to the Inspector General, that person will not lose any due process rights because the time tolled or the time the complaint was filed, not when the time he or she may have asked to come to you, but from the day the complaint was filed.

Ms. REGAN. After somebody came to us—

Mr. CLYBURN. I mean, the clock stops running. Let's just have—

Ms. REGAN. If it's a situation where the clock would stop running, they still have some time constraints when they go through the informal process. When that ends, we get into the formal process.

And I'm not sure where you would envision we would come in, but I think what Mr. Merriman was saying earlier, if they're in the EEO process, there is a process there for an investigation to be conducted. And we wouldn't want to duplicate those efforts. Now, if it could be an either/or, maybe there's legislation that would take care of that.

But at this point in time, we've never been asked when somebody has been in the process to come in and conduct an investigation. It has always been when people come to us who haven't gotten into the process yet. And that's more what we were talking about earlier.

Mr. CLYBURN. Okay. Well, we understand, but what we're talking about here is trying to find some independent arbiter in this process before it goes into the court system.

We have historically in this country, especially with these issues, tried to provide administrative remedies to people. We don't want

to clog up the court systems. I mean, we can't even get federal judges appointed right now. So we don't want anything going to court. We want there to be administrative remedies. We want there to be an independent investigation.

What we are asking for is for a system to be put in place that will provide an administrative remedy independent from the agency or the facility. That's what we're asking for.

Now, you've got something there that you're dealing with that came to you because the administrative procedure did not work. And that's all we're talking about here.

Mr. BILIRAKIS. I'm sorry. I didn't catch the introductions. But you made the comment that you were talking about where they come to you, in effect, in lieu of going through the administrative process.

Ms. REGAN. Correct.

Mr. BILIRAKIS. All right. Why don't we just very briefly explore that? When that happens, give us the scenario.

Mr. MERRIMAN. They would come to us?

Mr. BILIRAKIS. Yes. They come to you, yes. For some reason, they don't go through the—they don't have any confidence in the process. God knows we can understand why they wouldn't because of some of the testimony we've heard over the years.

But when they come to you, what happens? I mean, what—

Mr. MERRIMAN. Well, it's not been very frequent, to start with. But if they came to us, the first thing we would want to know is why they're not in the process.

Our preference would be to get them in there because they have greater relief than they can get from us. I believe there are financial inducements that can come from that approach.

But if there was a problem, such as Fayetteville, where they did not make a complaint, they had no confidence in the director, that's where we would get interested. We would probably be the only ones as opposed to going to court, to get some remedy for the individual.

Our concern would be that a remedy can be provided to them. We would encourage them to use the process if they had confidence in it. Otherwise, then we'd have to get involved.

Mr. BILIRAKIS. I know, but when you get—

Mr. CLYBURN. Believe it or not, there are a lot of employees today who may not know about the EEO process within the system. It always surprises me to know the number of people who just don't know. And they'll go downtown to a local attorney.

Any attorney worth his or her salt, the moment that person walks in the door will pick up the phone and make sure that the person filed the complaint with the proper administrative agency.

And it would seem to me that if someone were to come to the Inspector General's Office, your first order of business, as you said, was to make sure that that person filed the complaint properly in the administrative process, even if you are going to suspend whatever you will do until it works its way back.

So I think that it shouldn't be an either/or here. I think you can do either one or both at the same time. Even administratively the EEOC process, anybody that files a complaint at the state agency under the current system, that complaint is automatically dually

filed by law with the federal agencies. So the person will not lose any federal rights.

Mr. BILIRAKIS. So if they go to the IG in lieu of, you're saying it's automatically considered—

Mr. CLYBURN. If we can have dual legislation, just as we have done with the federal bureaucracy, that complaint will be considered dually filed in the system.

Mr. BILIRAKIS. So your power or your influence would be to try to take care of that complaint on an immediate kind of a basis? What would you do? Would you go to the person against whom the complaint is made and basically try to solve it right then and there?

Mr. MERRIMAN. No. If they came to us, first of all, once again, we'd want to know why they weren't getting into the system.

Mr. BILIRAKIS. Yes. No, I appreciate that, sir. But, I mean, where in the rare cases when—actually, I may be taking too much time on this. I don't know. But in the rare cases—as you indicated, it's a rare case—where, in fact, they stay with you, although it's dually filed, what do you do? Do you then make an immediate contact against the person being complained against and use your influence to accomplish something there?

Mr. MERRIMAN. We try and understand the facts first.

Mr. BILIRAKIS. All right.

Ms. REGAN. If, in fact, somebody has already filed an EEO complaint and they are in that process, very frequently we won't do anything because the process provides for them an investigation by—

Mr. BILIRAKIS. A remedy, right.

Ms. REGAN (continuing). An investigator. And that would get them through the system and give them their rights to the EEOC as well as their rights to the federal court.

Now, we may get a case—in fact, I guess some of the women who testified here back in April were ones who hadn't filed a complaint. It was against the senior manager. In that case, we will conduct an investigation and report our findings to the Department, as we would under the IG Act.

So we would have no authority to take any action or give them any remedy.

Mr. BILIRAKIS. So you would report that to the Department?

Ms. REGAN. Right, which is what we did in this particular case.

Mr. BILIRAKIS. But the Department was in this case the head of the—who? "The Department" being who, the Secretary of the Veterans Affairs?

Ms. REGAN. I believe in this case we reported to the VISN Director.

Mr. MERRIMAN. The VISN Director.

Mr. BILIRAKIS. The Assistant Director.

Mr. MERRIMAN. The VISN Director.

Ms. REGAN. Dr. Gross.

Mr. BILIRAKIS. I see.

Ms. REGAN. And that's the process that's set in place under the IG Act. So we have no authority to order any kind of remedy for either party, either against the person or for the person.

Mr. BILIRAKIS. All right. Thank you.

Mr. EVERETT. Again, I apologize for my friend from Florida and do appreciate his continuing interest because oftentimes Mr. Clyburn and I look around at this time of the day and there's nobody here but us.

As I was saying, today's hearing was intended as a follow-up to keep the focus on VA's efforts to address specific problems at Fayetteville VA Medical Center and the need for VA to change its management culture Department-wide. It was also clearly put on the table the issue of how to make the changes in the VA's EEO system.

Now that the VA appears to accept and perhaps even embrace the need for change in the way it deals with sexual harassment and other discrimination cases, this is a work in progress. And this subcommittee is committed to see it finished for the sake of the VA employees and the people they so ably serve: our Nation's veterans.

I mentioned earlier that I think there's a wide gap of broken trust between the VA and this committee. We've talked over and over about culture that exists. We're beginning to experience that culture more and more. The culture is there, is an incorrect culture, is a culture that this committee is not going to tolerate. And I've had some very frank discussion with the Secretary about that.

I do appreciate your report and the effort that you folks have put into it and in doing what we have asked you to do. I will say that this panel is dismissed. And members will have 5 legislative days to submit questions to the record for the hearing witnesses.

The hearing is adjourned.

[Whereupon, at 11:58 a.m., the subcommittee was adjourned.]

APPENDIX

I

105TH CONGRESS
1ST SESSION

H. R. 1703

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1997

Mr. EVERETT (for himself, Mr. EVANS, Mr. STUMP, Mr. CLYBURN, Mr. BILIRAKIS, and Mr. BUYER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Department of Veter-
5 ans Affairs Employment Discrimination Prevention Act".

1 **SEC. 2. DEPARTMENT OF VETERANS AFFAIRS EMPLOY-**
2 **MENT DISCRIMINATION RESOLUTION PROCE-**
3 **DURES.**

4 (a) IN GENERAL.—Title 38, United States Code, is
5 amended by inserting after chapter 7 the following new
6 chapter:

7 **“CHAPTER 8—EMPLOYMENT**
8 **DISCRIMINATION**

“Sec.

“801. Scope of chapter.

“802. Office of Employment Discrimination Complaints Resolution.

“803. Informal complaint resolution.

“804. Investigation of complaints.

“805. Final agency decision; hearings.

“806. Review of final agency decisions.

“807. Unlawful employment discrimination defined.

9 **“§ 801. Scope of chapter**

10 “(a) The procedures established in this chapter shall
11 be implemented in a manner consistent with procedures
12 applicable under regulations prescribed by the Equal Em-
13 ployment Opportunity Commission.

14 “(b) In the case of an employee of the Department
15 who alleges that the employee has been subjected to un-
16 lawful employment discrimination (as defined in section
17 807 of this title), the allegation shall be considered under
18 the procedures applicable to the Merit Systems Protection
19 Board under title 5 (rather than under the procedures set
20 forth in this chapter) if the action (or failure to act) of
21 which the employee complains is an employment action or

1 practice that is otherwise appealable to the Merit Systems
2 Protection Board.

3 “(c) Nothing in this chapter supersedes—

4 “(1) the rights and remedies available to em-
5 ployees under title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.), including the rights
7 and remedies provided in section 1977A of the Re-
8 vised Statutes (42 U.S.C. 1981a); or

9 “(2) any right or obligation of an employee to
10 elect (in lieu of procedures under this chapter) to
11 raise an allegation of unlawful employment discrimi-
12 nation under grievance procedures established under
13 a collective bargaining agreement.

14 **“§ 802. Office of Employment Discrimination Com-
15 plaints Resolution**

16 “(a)(1) There is in the Department an Office of Em-
17 ployment Discrimination Complaints Resolution (herein-
18 after in this chapter referred to as the ‘Office’), which
19 shall be headed by a Director. The Director shall report
20 only to the Secretary and Deputy Secretary.

21 “(2) Subject to the direction of the Secretary, the Di-
22 rector shall have sole responsibility within the Department
23 for administering the procedures under this chapter for
24 resolving complaints of unlawful employment discrimina-
25 tion arising within the Department.

1 “(3) In addition to the functions of the Director
2 under paragraph (2), the Director shall perform such
3 other functions as the Secretary may prescribe consistent
4 with the functions of the Director under paragraph (2).

5 “(b) The Secretary shall employ within the Office ad-
6 ministrative law judges appointed in accordance with sec-
7 tion 3105 of title 5 for the purposes of this chapter and
8 such other personnel as the Office may require. In ap-
9 pointing administrative law judges, the Secretary should
10 consider the composition of the persons appointed, taken
11 as a group, in terms of race, sex, and veterans status,
12 compared with the composition of the total Department
13 workforce in terms of race, sex, and veterans status.

14 “(c) The Secretary shall ensure that the Director is
15 furnished sufficient resources to enable the Director to
16 carry out the functions of the Office under this chapter
17 in a timely manner.

18 “(d) The Secretary shall include in the documents
19 submitted to Congress by the Secretary in support of the
20 President’s budget for each fiscal year—

21 “(1) detailed information on the budget for the
22 Office;

23 “(2) the Secretary’s opinion as to whether the
24 resources (including the number of employees) pro-
25 posed in the budget for that fiscal year are adequate

1 to enable the Secretary to comply with statutory and
2 regulatory deadlines for the administration of the
3 procedures under this chapter and other provisions
4 of law relating to the resolution of complaints of un-
5 lawful employment discrimination involving the De-
6 partment; and

7 “(3) a report on the activities of the Office dur-
8 ing the preceding fiscal year, including (A) a state-
9 ment of the number and nature of complaints of un-
10 lawful employment discrimination received and the
11 number and nature of complaints resolved, and the
12 results of any appellate review, during the year, (B)
13 a description of the timeliness of the resolution of
14 complaints during the year, and (C) a statement of
15 significant decisions and trends affecting the work of
16 the Office.

17 “(e)(1) The Director shall prescribe—

18 “(A) standards of timeliness for the expeditious
19 resolution of complaints of unlawful employment dis-
20 crimination under this chapter;

21 “(B) the qualifications and training require-
22 ments for employees of the Office;

23 “(C) requirements for record-keeping pertaining
24 to counseling and investigations by employees of the
25 Office; and

1 “(D) standards for the conduct of investigations
2 under section 804 of this title.

3 “(2) Regulations under paragraph (1) shall be con-
4 sistent with regulations prescribed by the Equal Employ-
5 ment Opportunity Commission, except that, in the interest
6 of the expeditious resolution of complaints, the Director
7 may prescribe shorter time periods with respect to any
8 deadline or administrative period that is applicable only
9 to the time within which the Government may (or is re-
10 quired to) act.

11 **“§ 803. Informal complaint resolution**

12 “Employees of the Office shall counsel employees of
13 the Department, and applicants for employment with the
14 Department, who allege that they have been subject to un-
15 lawful employment discrimination by an officer or em-
16 ployee of the Department. The Office shall seek to resolve
17 such complaints in an expeditious and impartial manner
18 through informal investigation and conciliation using pro-
19 cedures prescribed by the Director.

20 **“§ 804. Investigation of complaints**

21 “(a) If a complaint of unlawful employment discrimi-
22 nation is filed with the Department and the complaint is
23 not resolved through the informal resolution process under
24 section 803 of this title, the Director shall assign the com-

1 plaint to an administrative law judge, who shall determine
2 whether the complaint shall be accepted for investigation.

3 “(b)(1) The administrative law judge assigned to a
4 complaint shall make such determination in accordance
5 with regulations of the Equal Employment Opportunity
6 Commission, except that if the administrative law judge
7 determines that the complaint is without merit, the admin-
8 istrative law judge may determine that the complaint is
9 not to be accepted for investigation.

10 “(2) A decision that a complaint is not to be accepted
11 for investigation is a final agency decision of the matter.

12 “(c)(1) If the administrative law judge determines
13 that the complaint is to be accepted, the Director shall
14 promptly provide for an investigation of the complaint,
15 which shall be carried out by employees of the Office (or
16 by contract personnel acquired by the Director). The em-
17 ployee (or contractor) conducting the investigation shall
18 submit to the Director a complete written report of the
19 results of the investigation.

20 “(2) If a portion of a complaint is accepted for inves-
21 tigation and a portion is not accepted, the individual filing
22 the complaint or the Department may request the admin-
23 istrative law judge to direct the suspension of the inves-
24 tigation of the portion of the complaint accepted for inves-

1 tigation pending the results of any review of the decision
2 not to accept the other portion.

3 “(3) The Director shall furnish a copy of the inves-
4 tigative report (including a copy of the investigative file)
5 to the administrative law judge, the individual who filed
6 the complaint, and the Secretary. The administrative law
7 judge may direct that an additional investigation be made
8 if the administrative law judge determines that an addi-
9 tional investigation is warranted.

10 **“§ 805. Final agency decision; hearings**

11 “(a) The final agency decision on a complaint of un-
12 lawful employment discrimination, in a case not resolved
13 through informal procedures under section 803 of this
14 title, shall be made by an administrative law judge.

15 “(b) The individual filing the complaint may request
16 a hearing on the matter. Any such request shall be made
17 in such time and manner as may be prescribed by the Di-
18 rector. The administrative law judge shall grant a request
19 for a hearing unless, after giving appropriate notice and
20 allowing an opportunity to respond to such notice, the ad-
21 ministrative law judge determines that there is no genuine
22 dispute as to a material fact.

23 “(c) If the administrative law judge grants a request
24 of the individual filing the complaint for a hearing, the
25 administrative law judge—

1 “(1) may conduct the hearing on the matter; or

2 “(2) may refer the matter for a hearing by a

3 hearing examiner.

4 “(d) In any hearing under this section, the adminis-
5 trative law judge or hearing examiner presiding at the
6 hearing shall have the authorities set forth in section
7 556(e) of title 5.

8 **“§ 806. Review of final agency decisions**

9 “(a) If the final agency decision in a case complaining
10 of unlawful employment discrimination by an officer or
11 employee of the Department is adverse to the individual
12 filing the complaint, the individual may appeal the deci-
13 sion to the Equal Employment Opportunity Commission
14 or may institute an action on the case in the appropriate
15 United States district court, as provided by law.

16 “(b) If the final agency decision in such a case is
17 adverse to the Department, the Secretary may appeal the
18 decision to the Equal Employment Opportunity Commis-
19 sion. Any such appeal shall be made within 30 days after
20 the date of the receipt by the Secretary of the decision.
21 The Equal Employment Opportunity Commission may act
22 on such an appeal in the same manner as in the case of
23 an appeal by an individual against a final agency decision.

1 **“§ 807. Unlawful employment discrimination defined**

2 “For purposes of this chapter, the term ‘unlawful em-
3 ployment discrimination’ means any action, or failure to
4 act, that is a violation of any of the following:

5 “(1) Title VII of the Civil Rights Act of 1964
6 (42 U.S.C. 2000e et seq.).

7 “(2) The Age Discrimination in Employment
8 Act of 1967 (29 U.S.C. 621 et seq.).

9 “(3) Section 6 of the Fair Labor Standards Act
10 of 1938 (29 U.S.C. 206).

11 “(4) Section 501 of the Rehabilitation Act of
12 1973 (29 U.S.C. 791).”.

13 (b) **CLERICAL AMENDMENT.**—The tables of chapters
14 at the beginning of title 38, United States Code, and at
15 the beginning of part I of such title, are amended by in-
16 serting after the item relating to chapter 7 the following
17 new item:

“8. Employment Discrimination 801”.

18 **SEC. 3. TRANSITION.**

19 Chapter 8 of title 38, United States Code, as added
20 by section 2, shall apply with respect to complaints of un-
21 lawful employment discrimination that are filed after the
22 end of the six-month period beginning on the date of the
23 enactment of this Act. Any complaint filed before the end
24 of such period shall be resolved in accordance with the

57

11

1 procedures in effect on the date of the enactment of this
2 Act.

○

Department of Veterans Affairs Medical Center
Fayetteville, North Carolina
Review Team's Preliminary Report

On May 16, 1997, the Deputy Secretary commissioned a Review Team comprised of highly qualified human resources (HR), equal employment opportunity (EEO), attorneys, and management officials from various organizations within the Department of Veterans Affairs (VA). The Deputy Secretary charged the Review Team with conducting a follow up review of management actions at the Department of Veterans Affairs Medical Center (VAMC), Fayetteville, North Carolina.

The Review Team focused its review on the following statement of work:

- To report on the progress of all pending complaints and claims;
- To pursue other claims and complaints not filed under EEO or other pertinent procedures, e.g., Inspector General, Special Counsel, or grievance procedures; and,
- To determine whether employees were reassigned, transferred, demoted or otherwise harmed.

Members of the Team were:

Team Leader	Ventriss Gibson	Director, Office of Human Resources Veterans Benefits Administration Washington, DC
Member	Caren E. Eirkson	Chief, Personnel Division National Cemetery System Washington, DC
Member	Michael Walcoff	Director, VA Regional Office Huntington, West Virginia
Member	Nancy M. Moran	Staff Attorney (Outstationed) Oklahoma City, Oklahoma Office of Regional Counsel Waco, Texas

Member	Ronald H. Dooley	Regional Counsel Office of Regional Counsel Nashville, Tennessee
Member	Thomas McKeever	General Attorney Office of General Counsel Washington, DC
Member	Peggy Joyner	Team Leader, Team West Office of Equal Opportunity Washington, DC

On May 20, 1997, the Team began their review with an initial 10-day visit to the Fayetteville VAMC and concluded by conducting an additional 10-day investigation and review utilizing a structured approach focusing on the effects of Mr. Calhoun's tenure on the Fayetteville VAMC. In preparing the preliminary report, the Team included recommendations as to appropriate action for each incident reported and substantiated.

The Team embraced very specific and clearly defined approaches and procedures. These include the following:

- a) Ensured that the review did not interfere, or in any way compromise, the Fayetteville VAMC's ability to provide patient care, nor did it interfere with an employee's duties and responsibilities.
- b) Reviewed relevant records including the Inspector General's Report, the settlement agreement between VA and Mr. Calhoun, David Whatley Report, Alexander and Alexander Consulting Firm's Report, the EEO Climate Survey, and the Site Visits Memorandum dated May 16, 1997. The Team also gained input from the servicing Regional Counsel officials about any additional pending Fayetteville cases. Additionally, the Team reviewed a transcript involving Dr. Leroy Gross, VISN 6 Director.
- c) Met with the Interim Director, Associate Director, Acting Chief of Staff, and the Chief of Engineering (who acted as the Associate Director for a period of time) on May 21, 1997, at 9:00 a.m., to discuss their general observations.
- d) Obtained appropriate office and conference room space with locking capability, equipped with telephones, personal computers and printers, and general office supplies located away from the Director's Suite.

- e) Disseminated information to employees by electronic mail and bulletin board postings to inform them of the Team's presence and availability, should they wish to discuss concerns.
- f) Ensured that employees could communicate with the Team outside of official duty hours by providing a 24-hour telephone number from Wednesday, May 21, 1997, through close of business Tuesday, May 27, 1997. The Team was available 12 hours each business day and up to 14 hours on Saturday, Sunday, and Memorial Day.
- g) Met at the end of each day, to discuss that day's events and established the agenda and schedule for the next day.
- h) Examined all pending EEO complaints. Through the examination of EEO cases, supporting documentation, and in speaking with numerous employees, the Team believed it could focus its review towards meeting its charge. The rationale for this first approach was designed to ferret out as much information from as many different sources as possible to minimize the chances that discrimination or other kinds of misconduct might be concealed from the Team, and ultimately, the Secretary and Congress.
- i) Met with Union Officials, Service Chiefs, the EEO Manager, the Associate Director, the Executive Board of the Blacks In Government, national Blacks In Government officials, and the EEO Counselor with the largest case load. In addition, the Team met with approximately 100 employees, among which included many professional, managerial, and supervisory employees. At the Team's request, the Human Resources Manager provided the chronological files of Personnel Actions for the past two years on all accessions, reassignments, demotions (with evidence files), voluntary change to lower grades, details, and separations. Further, the Team reviewed relevant merit promotion records, official personnel folders, travel documents, time and leave documents, Director's Office correspondence files, IG Hotline Inquiries, computerized listings, organizational charts, incentive awards, case law, and all current EEO complaint files and disciplinary/adverse actions from February 1994 to June 19, 1997.
- j) Analyzed preliminary information obtained from approximately 100 witnesses.
- k) Returned to Fayetteville on June 15, 1997, and obtained sworn testimony from a host of witnesses, internal and external to VA. VA employees were advised of their rights and given an opportunity to have a representative present during questioning.
- l) Advised the President, American Federation of Government Employees, Local 2080, of the Team's intent to speak with bargaining unit employees

- m) Worked closely with the Office of Inspector General (IG) and other organizations. Remained aware of the status of subpoenas issued to non Federal entities.
- n) Identified and fully investigated new issues.
- o) Prepared recommendations to the Deputy Secretary.
- p) Obtained approval from the Deputy Secretary to review findings to determine the appropriate personnel action.
- q) Met June 30, 1997, through July 3, 1997, to begin analyzing the information obtained from Fayetteville and to finalize its report.

The Team recognized that no matter how well officials perform in meeting EEO and Human Resources responsibilities, or in advancing anti-discriminatory policies, there is a good probability, some employees will view some actions or decisions as being unfair or discriminatory. Further, an efficient EEO Program within VA provides a full and fair opportunity for all employees, regardless of race, age, religion, sex, color, national origin, reprisal, or persons with disabilities. The EEO Officer of a facility is the key to a successful EEO program, and decisions made by the EEO Officer directly impact the success or failure of the program. This heightened awareness served as the guiding principle for the Team during its review and resulted in the Team using broad authority and discretion to pursue the review at the Fayetteville VAMC and other places the evidence led.

STATEMENT OF THE HON. JAMES CLYBURN
RANKING DEMOCRATIC MEMBER
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
HEARING ON SEXUAL HARASSMENT IN THE VA
July 17, 1997

**MR. CHAIRMAN, THANK YOU FOR YOUR
CONTINUED INTEREST IN HOLDING HEARINGS ON
THE EXTREMELY SENSITIVE AND SERIOUS
PROBLEM OF SEXUAL HARASSMENT WITHIN THE
DEPARTMENT OF VETERANS AFFAIRS.**

**DURING THIS SUBCOMMITTEE'S TESTIMONY IN
APRIL ON THIS SUBJECT, WE CALLED ON THE
DEPARTMENT TO CONDUCT A FOLLOW UP REVIEW
OF THE TROUBLING INCIDENTS AT THE
FAYETTEVILLE FACILITY. WE ALSO ASKED THAT
THE DEPARTMENT FINALIZE ITS LONG-AWAITED
SURVEY OF VA EMPLOYEE ATTITUDES ON SEXUAL
HARASSMENT. I AM PLEASED THAT THE
DEPARTMENT HAS COMPLETED THESE TASKS,**

**ALTHOUGH I BELIEVE EVERYONE UNDERSTANDS
THAT MUCH MORE NEEDS TO BE DONE.**

**I AM ENCOURAGED BY THE VA'S WILLINGNESS
TO CONSIDER ADOPTING SIGNIFICANT PROVISIONS
FROM H.R. 1703, THE VA EMPLOYMENT
DISCRIMINATION PREVENTION ACT. LANE EVANS
AND I WERE ORIGINAL CO-SPONSORS OF THIS BILL
BACK IN 1993 WHEN IT WAS FIRST INTRODUCED. AT
THAT TIME, THE VA TOLD US THAT CHANGES WERE
IN THE WORKS REGARDING THE EEO PROCESS AT
VA AND THROUGHOUT GOVERNMENT, AND THAT
THERE WAS NO NEED FOR THIS LEGISLATION. AS
MOST OF US KNOW BY NOW, THIS EXPECTED
GOVERNMENT-WIDE SOLUTION NEVER HAPPENED,
AND THE PROBLEMS WITH THE VA'S EEO PROCESS
HAVE CONTINUED TO FESTER.**

FIVE YEARS AFTER THE FIRST HEARINGS WERE HELD ON THIS SUBJECT, THE SAME PROBLEMS REMAIN AT VA.

IT IS A TRIBUTE TO CHAIRMAN EVERETT THAT HE HAS RECOGNIZED THE CONTINUING NEED FOR LEGISLATION TO IMPROVE THE EEO PROCESS AT VA. THIS MAY, WITH BIPARTISAN SUPPORT, TERRY INTRODUCED H.R. 1703, LEGISLATION DERIVED FROM THE BILL THAT WAS FIRST INTRODUCED IN 1993.

IT IS ALSO A TRIBUTE TO ACTING SECRETARY HERSHEL GOBER THAT HE HAS RECOGNIZED THE SERIOUS PROBLEMS WITH THE EEO PROCESS AT VA, AND THAT HE HAS PROPOSED AN ADMINISTRATIVE SOLUTION THAT DRAWS IN LARGE PART FROM THE BILL WE HAVE INTRODUCED DURING THIS CONGRESS.

**IN MY VIEW, HOWEVER, THE VA'S PROPOSALS
IN THIS AREA DO NOT GO FAR ENOUGH, AND THERE
IS STILL THE NEED FOR LEGISLATION IN THIS AREA.**

**I AM EXTREMELY INTERESTED IN HEARING THE
VA'S TESTIMONY ON THIS ISSUE THIS MORNING. I
LOOK FORWARD TO WORKING WITH THE VA AND MY
COLLEAGUES ON THIS COMMITTEE TO ENSURE
THAT WE FINALLY ADDRESS THIS CRITICAL ISSUE,
AND THAT WE RESTORE THE FAITH AND TRUST IN
THE EEO PROCESS THAT OUR VA EMPLOYEES AND
OUR VETERANS DESERVE.**

PREPARED STATEMENT OF CONGRESSMAN MASCARA

Good Morning, Mr. Chairman. As a new member of this subcommittee, I am honored to be participating in this important hearing this morning to examine H.R. 1703, the VA Employment Discrimination Prevention Act.

I am pleased the top leadership of the Department of Veterans Affairs are present to give us an update on the Department's effort to no longer tolerate and truly eliminate sexual harassment from all levels of the VA.

I understand Acting Secretary Goyer will testify that the VA opposes enactment of H.R. 1703 and would prefer to establish a stronger equal employment opportunity (EEO) process administratively.

While I know the VA's intent is honorable, I would hope you all understand and the members of this subcommittee are going to expect some firm action to see that these kind of incidents no longer occur. We are going to expect some definite, independent process that will fully investigate sexual harassment complaints and see that the appropriate disciplinary actions are taken.

My understanding is that in the past, the VA General Counsel has overturned 85 percent of the findings of sexual harassment that have been found as a result of the current administrative process. I think the most objective observer would say that clearly shows something is wrong and that the VA needs to do better. Finally, I want to also praise by colleagues, Ranking Member Lane Evans and Representative Clyburn for championing this issue over the years.

I understand you both were successful in winning House approval of legislation very similar to H.R. 1703 following an incident that occurred at an Atlanta VA facility in 1992.

I am sorry that after five years, we seem to be back at square one. However, I do have hope that with a strong commitment from Acting Secretary Goyer and Dr. Kizer, we can all work together to see that the VA truly lives up to its "zero tolerance" for sexual harassment policy.

I look forward to listening to this morning's testimony and I yield back the balance of my time.

STATEMENT OF THE HON. LANE EVANS
RANKING DEMOCRATIC MEMBER
HOUSE COMMITTEE ON VETERANS AFFAIRS

SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
HEARING ON SEXUAL HARASSMENT IN THE VA
July 17, 1997

MR. CHAIRMAN AND RANKING DEMOCRAT
CLYBURN, I WOULD LIKE TO THANK YOU FOR YOUR
CONTINUED INTEREST IN THE VERY IMPORTANT
PROBLEM OF SEXUAL HARASSMENT WITHIN THE
DEPARTMENT OF VETERANS AFFAIRS. TODAY'S
HEARING IS A CLEAR INDICATION OF YOUR
CONTINUING COMMITMENT TO SOLVING THIS
PROBLEM.

WE HEARD TESTIMONY BACK IN 1992 ON
THIS ISSUE WHEN I SERVED AS CHAIRMAN OF THIS
SUBCOMMITTEE. UNFORTUNATELY, MANY OF THE
PROBLEMS THAT WERE BROUGHT TO OUR
ATTENTION BACK THEN CONTINUE TO PERSIST AT
THE VA TODAY.

WE MUST ADDRESS THE SEXUAL HARASSMENT PROBLEM AT THE VA, AND WE MUST DO ALL WE CAN TO RE-ESTABLISH FAITH AND TRUST IN THE EEO PROCESS. WE MUST SEE TO IT THAT THERE IS NO NEED FOR THIS TYPE OF HEARING FIVE YEARS – OR EVEN ONE YEAR – FROM NOW.

I AM PLEASED WITH THE IMPORTANT FIRST STEPS THAT HAVE BEEN TAKEN BY THE VA AND ACTING SECRETARY HERSHEL GOBER TO FIX AN EEO PROCESS THAT IS CLEARLY BROKEN. I BELIEVE HERSHEL IS SERIOUS ABOUT CORRECTING THE SEXUAL HARASSMENT AND EEO PROBLEMS AT THE VA. I AM ALSO ENCOURAGED BY HERSHEL'S WILLINGNESS TO TAKE PERSONAL RESPONSIBILITY FOR SOLVING THIS FESTERING ISSUE.

I RECOGNIZE THE VA'S HONEST EFFORTS TO PROPOSE AN ADMINISTRATION FIX TO THE EEO PROCESS. UNLESS THE VA IS WILLING TO MAKE SIGNIFICANTLY GREATER CHANGES IN ITS EEO PROCEDURES, HOWEVER, I STILL BELIEVE IT WILL TAKE LEGISLATION LIKE H.R. 1703 TO GET THE JOB DONE.

I BELIEVE CHAIRMAN EVERETT AND JIM CLYBURN SHARE THIS VIEW. I AM ENCOURAGED BY HERSHEL'S WILLINGNESS TO WORK WITH US ON THIS ISSUE, AND I LOOK FORWARD TO THIS MORNING'S TESTIMONY.

**The Honorable Michael Bilirakis
Subcommittee on Oversight and Investigations
July 17, 1997**

Thank you, Mr. Chairman.

I want to commend you and Mr. Clyburn for scheduling today's follow-up hearing on sexual harassment issues and H.R. 1703, the Department of Veterans' Affairs Employment Discrimination Prevention Act. I appreciate the opportunity to participate in the hearing even though I am not a member of your Subcommittee. I also want to welcome Senator Faircloth to our Committee.

At our April hearing, several VA employees testified about their experiences with sexual harassment at the Fayetteville VA Medical Center. It took a great deal of courage for them to come forward and share their stories with us. I think most members of this Subcommittee were dismayed with the situation at the Fayetteville medical facility.

I could not help but experience a sense of deja vu at our first hearing. The stories we heard at our April hearing closely mirrored those of VA employees who testified before the

Oversight Subcommittee in 1992 when I served as the Ranking Minority Member.

Our 1992 hearing revealed that the VA process in place at the VA for investigating sexual harassment complaints was seriously flawed. Our 1997 hearing showed that the process is still flawed.

In this regard, I am pleased to be an original cosponsor of Chairman Everett's legislation, H.R. 1703, the Department of Veterans' Affairs Employment Discrimination Prevention Act. I am heartened to see that the Department is taking action to correct its EEO process. Although I have great confidence in Secretary Goyer, I am disappointed that the VA is not supporting our legislation. I am skeptical that the Department's administrative actions will adequately correct the problems within the current process.

This skepticism is based on the Department's track record on this matter. In 1993, the House approved legislation that would have provided for improved and expedited procedures for resolving complaints of employment discrimination, including sexual harassment complaints. At that time, Secretary Brown opposed H.R. 1032 because he preferred to take administrative action, and the bill was not enacted into law. The Secretary was sincere and I

believe that he truly intended to fix the problem.

But almost five years later, we are faced with a similar situation at the VA. While I believe Secretary Goyer is sincere in his efforts to address the sexual harassment problems that were documented in our April hearing, I am not convinced that Congress should defer legislative action again. I certainly do not want to find out a few years from now that the EEO process is still broken. I prefer that we work with the Secretary to see that the process is fixed once and for all.

I hope this hearing will give us some additional guidance on how to reform the complaint process. Hopefully, this guidance will be a step toward assuring that sexual harassment anywhere in our society, especially in our veterans' hospitals, will not be tolerated.

Once again, Mr. Chairman, I 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 matter.

**Statement of Senator Lauch Faircloth
before the
House Veterans' Affairs Subcommittee
on Oversight and Investigation
July 17, 1997**

Mr. Chairman, thank you for inviting me to appear here before your subcommittee this morning. I appreciate your allowing me to testify on this important matter.

The problem of sexual harassment within the Department of Veterans Affairs was initially brought to my attention by the scandal surrounding former Director Jerome Calhoun at the Fayetteville VA Medical Center. The details of the Fayetteville situation are well known amongst all of us and I see no reason to beat a dead horse...though I might add that to date the Fayetteville situation has not been appropriately resolved.

Today, I would like to present to the subcommittee a constructive measure that would prevent such a blatant abuse of authority from occurring again. The measure I speak of is Senate Bill 801 and House Bill 1703. This legislation establishes the Office of Employment Discrimination Complaints Resolution (OEDCR) within the Department. This office would be run by a director who would report only to the Secretary or Assistant Secretary of the VA.

This change represents a significant difference in the way the VA currently handles sexual harassment and other employment discrimination claims. Believe it or not, the current process allows for complaints to be handled within the facility where they originated. This bill would centralize the authority for handling complaints and guarantee that officials at the very highest level are held accountable for the agency's response - accountability was something sorely missed in the Jerome Calhoun case.

Further, this bill requires the Secretary of the VA to provide Congress annually with a detailed report of the progress of the OEDCR. Obviously, congressional oversight is needed within this area of the VA. Had Congress not addressed the Calhoun incident, it might have been kept under wrap.

Mr. Chairman, I have reviewed the recent report which has been issued by the VA Task Force on the EEO. And I appreciate the timeliness and attention this issue has been given by Acting Secretary Gober

The Department, upon completion of the Task Force review, has announced its intention to overhaul the EEO process; and several of the proposed changes seem very close to the legislation put forth in the House and Senate. The main difference here being that the VA is likely to recommend that changes in the process be made internally and at discretion of the Department. Let me say simply and directly that this is not a good idea.

I remember back to the sexual harassment scandal which took place at the VA Medical Facility in Atlanta. That incident was also addressed by Congress and to restore the confidence of the VA employees, this same legislation was introduced in the House.

The Department responded to Congressional pressure by saying it would adopt a absolute "zero tolerance" policy for sexual harassment. Jesse Brown himself stated that he would be personally responsible for the policy's implementation.

Well, four years later and even the VA itself states that, 'the policy of zero tolerance has been insufficient to create a culture within the

Department in which harassment and discrimination are neither tolerated nor condoned.

It seems clear to me that changes in the way claims are handled must be mandated by Congress legislatively. Only then will the employees of the VA be assured of a secure and reliable system.

Mr. Chairman, from the very beginning, the incident that took place in Fayetteville has weighed heavily on my mind. To this day, I still find it absolutely ridiculous that Jerome Calhoun was fielding the complaints that were lodged against him. Perhaps if this legislation had been in place, this situation would have never occurred....I know one thing for sure, Jerome Calhoun would not have been the person directly responsible for his own investigation.

And lastly Mr. Chairman, let me say once more, that until Jerome Calhoun is fired, officials in the VA are doing the Department's employees a disjustice. This man must go.

**STATEMENT OF
THE HONORABLE HERSHEL W. GOBER
ACTING SECRETARY
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES**

July 17, 1997

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you to testify about the very important issue of sexual harassment in the workplace. I am pleased to provide an update on the progress that has been achieved at the Fayetteville VA Medical Center since the last hearing on April 17. We have been working on other related issues and today I will share that information with you as well.

Progress at Fayetteville VAMC:

I am pleased to report that we have accomplished a great deal at Fayetteville since the last hearing. The recommendations of the various teams that studied the problems, and my own site visit has led me to the conclusion that our bottom to top approach to identify and confront the problems there has helped Fayetteville employees on the road to healing. I am disturbed that the employees at this VAMC were subjected to such a difficult situation. But I am encouraged that, with concentrated effort and the proper leadership, the healing process has begun. The Fayetteville employees are good people who are dedicated to the care of veterans even during such trying times. I am very proud of these employees and they are commended for continuing to carry out their responsibilities and honorably serving veterans who seek care at Fayetteville.

An EEO site visit was conducted at the VAMC on April 21-24, 1997, to assess the commitment of the facility in supporting the Department's Equal Opportunity Program. The format for the review included opportunities for everyone, including employees, former employees, and other interested individuals to voice their concerns. As an outgrowth of the visit, an Interim EEO Advisory Committee has been appointed for an unspecified period of time. It was established to provide guidance and recommendations to the interim management team at Fayetteville. Sixteen individuals, representing a cross-section of Fayetteville VAMC employees, are serving on this committee which is charged with helping to refocus and revitalize the medical center's EEO efforts.

As you know, Mr. Michael Phaup, Director, VAMC Durham, was assigned as the Interim Director at the Fayetteville VAMC effective May 2, 1997. Mr. Phaup has done an exemplary job in providing direction and leadership while serving as a stabilizing force during this difficult period for the medical center. Mr. Phaup has worked to reestablish communication with stakeholders, both internal and external. He has refocused the attention of the medical center on quality care and customer satisfaction and regularly tours the medical center and work sites where he informally interacts with employees, patients, and visitors. In addition, he has established and put into place a process for recruitment and selection of personnel for vacant positions.

Because concerns were raised about the integrity of the computerized EEO tracking system at Fayetteville, on May 12-15, 1997, the facility's EEO tracking program was carefully examined by an experienced EEO Investigator, who is also an expert in the EEO software tracking package used nationwide at VA facilities. Documentation of EEO complaints was cross-checked with entries in the tracking system and problems identified were immediately corrected. A follow-up visit will be scheduled in August to ensure the program has been maintained appropriately and to identify additional training needs.

To further aid the healing process at Fayetteville, I approved the detail of an Interim EEO Manager, Mr. Austin Lewis, Human Resources Management Specialist, in the Veterans Benefits Administration. Mr. Lewis is highly respected and is extremely knowledgeable in EEO matters having served the VBA southern region for some years as an EEO investigator and trainer.

Mr. Lewis, along with an EEO Specialist from VA Central Office, completed a technical review of pending EEO cases. Additionally, Mr. Lewis conducted an EEO training program for supervisors and managers to ensure that they fully understand their EEO responsibilities. During the week of July 25, Mr. Lewis will also provide EEO training to all VAMC Fayetteville employees, emphasizing discrimination complaint procedures and employee rights.

A new management team for the Fayetteville VA Medical Center will be in place very soon. We are in the final stages of selecting a Director. On May 27-28, 1997, finalists for the Chief of Staff position were interviewed at the University of North Carolina School of Medicine, the VISN 6 Office and the Fayetteville VAMC. The final selection for Chief of Staff, however, will be made by the new Medical Center Director. The vacancy announcement for the Associate Director position closed on June 27, 1997 and the selection process will be expedited.

Morale of the employees at Fayetteville has been a major concern for me and for the leadership in the Veterans Health Administration. On May 1-2, 1997, a team of skilled Chaplains provided counseling support to staff at the Fayetteville VA Medical Center. They were well received by employees who used their services. Meetings with the Chaplains were confidential and allowed many employees to express their emotions and concerns in a safe, supportive environment. Additional visits have been scheduled.

I personally visited the Fayetteville VAMC on June 5, 1997 to meet with all employees and reassure them that I am aware of the problems that exist there. I conveyed my sensitivity about the number of reviews which have been

conducted at the Fayetteville VAMC and the resultant anxiety and discord among employees and in negative publicity for the medical center. I assured them that such reviews were necessary in order to get to the very root of the problems and work toward a permanent solution. We plan to continue providing progress reports to this Committee every sixty (60) days until there is consensus that Fayetteville is solidly on the right path. I have sent a memorandum to employees of the Fayetteville VAMC thanking them for their continued professionalism and compassion toward our veterans. I further assured them that they should not fear any act of reprisal by any official.

Additional inquiries at Fayetteville:

On May 16, 1997, I commissioned a team of highly experienced professionals with legal and human resources backgrounds to determine the progress of all pending complaints and claims at the Fayetteville VAMC regardless of whether employees filed the complaints under Equal Employment Opportunity discrimination complaints procedures, the grievance procedure, or through the Office of the Inspector General. I also charged the team with determining if Fayetteville employees were improperly reassigned, transferred, demoted, or otherwise harmed by order of, or action by, management. I further gave the team broad authority to review any other issues they found to be relevant and will ensure that these issues receive the attention of the interim management team.

The team began a 10-day visit at Fayetteville VAMC on May 21, 1997, speaking with approximately 100 different employees and examining a multitude of official records and other documents. After analyzing the information they obtained, the team returned to Fayetteville on June 16, 1997, to obtain sworn statements. The findings of the team are now being reviewed at Central Office for appropriate action.

EEO process:

On May 15, 1997, I announced that an agency task force would be appointed and charged with the responsibility of examining the present EEO complaint process in VA and determining whether that process is lacking and required change. The task force reported to me on July 1 with a series of recommendations.

The task force is composed of a diverse group with representatives from VACO, field facilities, staff offices, unions and major agency components. Their charge was a formidable undertaking given the time constraints. However, the task force reported on time and produced a quality report.

With respect to the content of the report, the recommendations include putting in place an organizational structure that in large measure resembles the model set out in H.R. 1703. The report recommends that:

- A separate office of complaint resolution be established and given responsibility for complaint processing;
- Facility Directors no longer function as EEO Officers;
- The office of complaint resolution would report to the Secretary through the Assistant Secretary for Human Resources and Administration rather than through a line component;
- The majority of EEO Counselors would be full-time employees appointed and supervised by the office of complaint resolution; and
- The majority of EEO Investigators would be full-time employees appointed and supervised by the office of complaint resolution.

Facility Directors would no longer function as EEO officers, appoint or control collateral duty EEO counselors, nominate collateral duty investigators, or perform any complaint processing functions.

While implementation and cost details are still being addressed, I am pleased to say that I am in general agreement with the recommendations in the report and will work with EEOC regarding their implementation. I am

convinced that the will to change the complaint process exists within the Department, and I am further convinced that the task force recommendations will not only achieve the legislative intent of H.R. 1703, but assure this Committee, our employees and the veterans we serve, that VA is firmly committed to making the agency an employer of first choice and ensuring that a fair and neutral process is available to those employees who believe that they have been the victims of discrimination.

H.R. 1703:

We oppose enactment of H.R. 1703 for several reasons. Those reasons are explained in detail in our official report on the bill. I would, however, like to highlight a few of those reasons for the Committee.

First, if enacted, this bill will remove the administrative flexibility needed by the Secretary to adapt to changing needs and circumstances that might arise as a result of government-wide complaint processing changes implemented by the EEOC, or changed circumstances within the Department.

Second, the bill singles out and subjects VA and its employees to a complaint process that grants fewer rights and would be quite different from the rest of the Federal government. For example, the bill denies VA employees the right to file EEO complaints concerning the most significant personnel actions that can occur in Federal employment, such as removals and reductions in grade. Other Federal government employees would still have the right to choose between the EEO complaint process and the MSPB's appeal procedures if they wished to challenge such actions. VA employees, on the other hand, would be restricted to the MSPB's forum only. VA's employees should have the same rights as other Federal government employees to choose between the EEOC's procedures and the MSPB's procedures.

Third, the bill purports to eliminate the perception that the Department decides complaints against itself; that, in effect, "the fox is guarding the hen house." We doubt, however, that the bill would dispel this perception. The bill

would still provide for the Department to accept, investigate, and decide complaints against itself. Although VA administrative law judges, rather than VA attorneys, would issue decisions under the bill, it is unlikely that VA employees "outside the beltway" would appreciate the distinction. The latter would still be viewed by the rank and file as VA employees who are controlled by the Department.

Finally, and perhaps most significant, most of the changes in the bill can be accomplished by the administrative reorganization I discussed previously. A legislative mandate will not be required. We can reach the same result administratively, and I am committed to doing so.

Sexual Harassment Survey:

Congressional hearings concerning sexual harassment conducted by this Subcommittee in 1992 resulted in the GAO conducting a study of 12 VA medical centers to collect information regarding sexual harassment in VA. This study recommended that the Secretary of Veterans Affairs consider conducting an Agency-wide survey of employees concerning the issues surrounding sexual harassment.

The Secretary's ad hoc Working Group on Sexual Harassment that had been appointed in 1992 was reactivated by Secretary Jesse Brown in 1993. Additional members were appointed and the group was asked to re-open discussion of the issue. During a meeting in April 1993, the Working Group discussed the value of conducting a survey of all VA employees. The group could best address the issue of needed action if there were an objective, comprehensive description of sexual harassment issues, and the extent and nature of sexual harassment within the Agency. A recommendation was made to determine the feasibility of conducting a survey, and group members began to develop a preliminary instrument. At another meeting in November 1993, a new Chair was selected and the group reviewed the proposed survey instrument and subsequently, the survey process was initiated. Considerable debate occurred

over the next several months regarding the need to conduct a 100% sample survey, which would cost nearly \$1.5M. Numerous statistical experts recommended that a valid statistical sample would provide accurate information. In September 1994, it was determined that VA would survey a statistically valid sample, which was determined to be 30,000 employees. The cost was expected to be approximately \$300,000.

Negotiations were begun with the Office of Small and Disadvantaged Businesses, to locate a contractor to conduct this survey, and a contract was awarded to Klemm Analysis Group, Inc., in September 1994. The draft survey prepared by the Working Group was provided to the contractor, who indicated they would develop their own instrument. This was completed and focus group testing began in January 1995. The survey was ready for mailing to VA employees in early FY 96 and was ultimately delayed due to constraints imposed by a series of Continuing Resolutions. Mailing was actually completed in January 1996.

A preliminary draft of the survey results was provided to VA in July 1996, and the Working Group met in August 1996 to review the draft. Since that time, there has been significant communication between VA and Klemm and Associates and among members of the Working Group in order to achieve the final product that was delivered to VA on July 2, 1997.

In reviewing the results of the survey, it is important to note that it presents the perceptions of the 20,722 respondents. No definition of sexual harassment was provided in the survey instrument so what has been captured in the results reflects the perception of what VA employees believe sexual harassment is -- it reflects the respondents' opinions about the environment, and not how the respondents feel about a legal definition.

I am pleased to note that the findings indicate that 80 percent of the respondents have seen and understand VA's sexual harassment policy and they are aware of the process for filing a complaint. This can be directly attributed to

VA's mandatory sexual harassment training. Also important to note is that the respondents believe that VA top management and their own supervisors discourage sexual harassment.

We asked employees to recall their personal experiences regarding incidents of unwanted sexual attention and provide their perceptions of VA's policy, training and general work environment in order to deal with the issue proactively. The Survey results clearly demonstrates VA's actions over the last 5 years have made a positive impact. I am encouraged and I shall continue to move ahead with an aggressive reaffirmation of VA's "zero tolerance policy."

Based on VA's review of the sexual harassment the survey results we have identified areas where improvements are needed. We have organized these areas under four categories:

1. General Recommendations:

- VA should develop a Mission Goal and Operating Goals which provide the value of a positive Workplace Environment. This must become part of existing staff support offices, VBA, VHA, and NCS operational goals regarding accountability and the workplace environment. By this mechanism, Under Secretaries and all other levels of management will clearly demonstrate strong support for acknowledging and dealing with this issue.
- VA should formulate a "VALUES" statement, which is a key part of many organizations today and would be useful for VA. The following would be emphasized in such a statement: Integrity, Honesty, Trust, Empowerment, Accountability, Caring, Diversity, etc.
- VA should continue to emphasize the value of diversity in the organization by learning to respect those who are different from each of us and valuing the perspective these differences bring to our agency and society.
- Messages -- verbal and nonverbal must be consistent:
Behavioral expectations must be clearly stated for all employees and modeled by executives and managers.

2. Managing the Process, VA should:

- Establish a "consultant" list to be available when allegations of sexual harassment occur in the organization. Intervention or advice could be requested from these "consultants" by any key management official at any time to assist in developing a plan to deal with individual issues or cases.

- Identify a means to consolidate and generate information within the agency regarding other management concerns (e.g., inappropriate use of power, sexual harassment complaints). In other words develop an "early warning system."
- Look at the potential for developing a "Crisis Intervention Team" to promote healing and help facility management move forward when incidents do occur at high levels.
- Evaluate how we provide assistance and support to individuals who have been harassed. This needs to include feedback we provide to them regarding actions taken against "harassers."
- The Table of Penalties needs to be distributed to all managerial levels for use in dealing with sexual harassment.
- Expand the use of Alternative Dispute Resolution (ADR) for discussing issues.

3. *Executive Selection, Development, Placement and Accountability, VA should:*

- Evaluate the screening and selection process for executives. Utilize Core Competencies as developed by the VHA task force to evaluate current managers. Increase accountability of those who recommend individuals for executive positions and for prospective managers.
- Evaluate how VA is holding officials accountable at each level of the organization.

4. *Training:*

- Results of the survey show that employees generally felt the mandated training provided in 1993 and to all new employees has been helpful and clarified VA expectations. In addition, most employees have recently completed refresher training during 1996. The continued requirement for 2 hours of refresher EEO and Prevention of Sexual Harassment Training every 2 years is appropriate. Training materials developed for the 1998 certification of completion should specifically address:
 - ⇒ Prevention of harassment from co-workers.
 - ⇒ Dealing with harassment from individuals who are not VA employees.
 - ⇒ How to deal with the issue if you have to go outside the supervisory chain.
 - ⇒ The location of training. Training should take place in the actual work environment, instead of impersonal sessions; group discussion should be a major part of the training.
 - ⇒ Discussion of why individuals don't report, and the level of hopelessness they feel.
 - ⇒ Ensuring involvement of task force members in development of a training program.
 - ⇒ Developing constant reminders of the expectations – a series of posters, rather than the same one for four years.
 - ⇒ The results of the survey should be an agenda item for the next series of executive management meetings,

and should include discussion of the need for executives to be supportive of training regarding prevention of sexual harassment.

- ⇒ Involving National Partnership Council in developing training plans and mechanisms.
- ⇒ Measuring effectiveness of training.
- ⇒ A focus on the needs to identify this issue as a conduct, behavior and safety issue.

We intend to immediately begin developing an action plan to implement these recommendations. We will be happy to share the plan with you.

Conclusion:

As is my practice, I have used every appropriate forum at my disposal, including congressional hearings, to send the message to VA employees that sexual harassment will not be tolerated under this Administration. I shall continue to deliver this message and I expect all managers in the chain of command to do likewise. I will be holding our managers accountable for identifying sexual harassment problems and taking appropriate action to make the victim whole with appropriate discipline to the harasser. I will continue the policy of zero tolerance of sexual harassment within the Department of Veterans Affairs.

I hope that we can continue to keep the lines of communications open in the future to work in concert through any situation that may face us.

Mr. Chairman, again, thank you for this opportunity to speak more on the issue of sexual harassment. This concludes my formal statement, my colleagues and I are available to answer any questions you or the Subcommittee Members may have.

STATEMENT OF
WILLIAM T. MERRIMAN, DEPUTY INSPECTOR GENERAL
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE HOUSE VETERANS AFFAIRS COMMITTEE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

JULY 17, 1997

During the hearing before this Subcommittee in April, the Department of Veterans Affairs made a commitment to investigate outstanding and new allegations of impropriety by Jerome Calhoun, the former Director of the VA Medical Center in Fayetteville, North Carolina. In fulfilling that promise, the Department asked for assistance from the Office of Inspector General on two specific issues. This assistance was provided.

The first issue was whether there were any sexual harassment complaints against Mr. Calhoun during his tenure as the Associate Director at the VA Medical Center in Buffalo, New York or during the time he was the Acting Director at the VA Medical Center in Batavia, New York. These were Mr. Calhoun's assignments prior to his appointment as the Director in Fayetteville.

To review the allegation, the Assistant Inspector General for Departmental Reviews and Management Support and a Supervisory Program Analyst with the Special Inquiries Division conducted a site visit at these VA medical centers. At our request, prior to the site visit, the Director of the Medical Centers notified the employees of the visit by distributing a letter to the medical center staff at both facilities and by announcing the visit on e-mail. Employees were invited to meet with, or otherwise contact, the OIG team if they wanted to discuss their experiences with Mr. Calhoun. More than 20 employees were interviewed by my staff during the review. No current or former female employees came forward with an allegation that they were sexually harassed by Mr. Calhoun.

The employees interviewed included a number of employees who were involved in and familiar with the EEO programs during the time Mr. Calhoun was employed at the two New York VA medical centers. No

one had any recollection of a formal or informal complaint of sexual harassment against Mr. Calhoun. We reviewed the EEO files for both facilities and found no documentation of a formal complaint of sexual harassment against Mr. Calhoun. Because centralized records of informal complaints are not routinely maintained, we were unable to review records relating to informal complaints filed during the relevant time period.

Based on our review, we concluded that there was no evidence that complaints of sexual harassment were filed against Mr. Calhoun while he was the Associate Director of the VA Medical Center in Buffalo or the Acting Director at the VA Medical Center in Batavia. During the review, current and former employees did bring issues to our attention that were unrelated to the issue of sexual harassment. Because the issues were similar to and within the scope of the review being conducted by the Department at the VA Medical Center in Fayetteville, we forwarded the information to the Department for follow-up and action, if deemed appropriate. If the Department needs assistance in following-up on these, or any other issues, the Office of Inspector General will provide the necessary assistance.

With respect to the second issue referred to us by the Department, we are in the process of obtaining, reviewing and analyzing records and other relevant information. We expect to refer the results of our investigation to the Department in the near future for whatever action the Department deems appropriate. Because the review is ongoing and the information is maintained in a Privacy Act System of Records, I do not believe it would be appropriate to provide further detail on this issue in a public forum at this time.

Thank you Mr. Chairman for the opportunity to provide you with an update on the work conducted by the Office of Inspector General since April relating to the Department's commitment to follow-up on allegations of impropriety by the former Director of the VA Medical Center in Fayetteville, North Carolina.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

OCT 1 1997

The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Evans:

This is a follow-up to post-hearing question #6, which was posed in connection with the July 17, 1997, hearing on sexual harassment in the Department of Veterans Affairs (VA) and H.R. 1703, Department of Veterans Affairs Employment Discrimination Act.

As I indicated to you by letter dated September 10, 1997, the VA is continuing to assess the survey to determine what additional types of data might be developed from it. Unfortunately, we will not have the additional data analysis for you by the first week of October, as expected. The data analysis is delayed due to technical difficulties in reading the data. We will continue to provide you with the status of our additional data analysis every thirty days until we have the information you have requested.

We appreciate the opportunity to submit this information for the record.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hershel W. Gober".

Hershel W. Gober
Secretary-Designate

HG/sab



Putting Veterans First



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

SEP 10 1997

The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Evans:

Enclosed are the answers to post-hearing questions posed in connection with the July 17, 1997, hearing on sexual harassment in the Department of Veterans Affairs and H.R. 1703, Department of Veterans Affairs Employment Discrimination Act.

We appreciate the opportunity to submit this information for the record.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hershel W. Gober".

Hershel W. Gober
Secretary-Designate

Enclosure
HG/trh



**POST-HEARING QUESTIONS
 CONCERNING THE JULY 17, 1997
 HEARING ON SEXUAL HARASSMENT IN THE VA AND
 H.R. 1703, DEPARTMENT OF VETERANS AFFAIRS
 EMPLOYMENT DISCRIMINATION ACT**

**FROM THE HONORABLE LANE EVANS
 RANKING DEMOCRATIC MEMBER
 COMMITTEE ON VETERANS' AFFAIRS
 U.S. HOUSE OF REPRESENTATIVES**

Question 1: Mr. Gober, under the VA's current EEO process, the Office of General Counsel makes the final agency decision on the merits of an employee's discrimination charge against the Department. Over 85% of the time since 1981, the General Counsel's office has overturned a finding of discrimination that was made at the next lower level in the EEO decision making chain within VA. This pattern has continued to the present day. Since 1992, the General Counsel's Office has overturned lower findings of discrimination on 51 out of 63 occasions. Given such a clear pattern of decisions against the employee, how can you support the view that the General Counsel's office should retain the ultimate decision making authority within the VA? Don't these numbers give VA employees every reason to question whether employees will receive an impartial hearing if they choose to pursue a discrimination claim at the VA?

Answer: Although the rejection figures you cite are correct it should be noted that they are generally consistent with, and in some instances lower, than those of other agencies. (See Attachment I, table showing modification and rejection rates at several large agencies.) Furthermore, since 1988, the EEOC has affirmed the VA's rejection decisions in approximately 70% of the cases. Each EEO complaint in VA is and always has been decided on a case-by-case basis after a thorough and impartial analysis of the evidence in the record and the legal issues raised in the complaint. However, because it is essential that employees have confidence in the EEO complaint system, I have directed the VA's EEO Complaint Processing Task Force to reexamine this issue and determine if there might be an alternative solution to this perceived problem which would be more acceptable to our employees.

Question 2: You have mentioned in your testimony, Mr. Gober, that you don't believe employee morale would significantly improve if the legislation we introduced in the House were enacted. How do you believe morale would be improved under your plan, and - perhaps more importantly - do you have any additional suggestions on how to improve employee attitude toward the EEO process at VA?

Answer: I am convinced that an internal reorganization initiated and carried out by VA rather than a legislatively mandated program will demonstrate to our employees that management cares about the program and recognizes a commitment to reform a process that many employees believe to be impaired. I believe that the VA workforce will view the exhaustive administrative reorganization as a positive improvement in the EEO complaint process, resulting from a collective effort by both management and the rank and file through their union representatives on the task force. The participatory cooperative effort in developing the new process will give both management and the workforce a stake and proprietary interest in the new EEO complaint process. As such, I believe there will be an inherent credibility in the new procedure which will enhance employee morale. The administrative reorganization represents a shared commitment between management and the VA workforce to a process, which will permit the resolution of workplace disputes in a fair and objective manner.

Question 3: One of the biggest problems many people see with the current EEOC process at VA and throughout the public and private sectors is the tremendous amount of time it takes for an employee to take his or her complaint through the administrative process and ultimately to the federal courts. In most cases, the significant delays work in favor of the employer and against the employee who is seeking some form of relief. Do you believe it would be helpful to use sanctions to force counselors and investigators to strictly comply with timetables, instead of allowing these charges to drag on unnecessarily for years at a time?

Answer: VA is also concerned about timeliness of complaints processing, and will be addressing this issue through the administrative changes being developed by the Resolution Management Implementation Team, as well as through continued efforts to manage the current system efficiently until it is revised. It should be noted that the latest EEOC Report on Federal Complaint Processing for FY 1995 shows VA processing time to be in the upper third for timeliness, as compared with other agencies. Although we are strongly committed to improving timeliness of complaints processing, we do not favor sanctions against EEO counselors and investigators. Current data indicates that EEO counselors and investigators are complying with their timetables. EEO counselors are normally completing counseling sessions within 30 days, and EEO investigators are normally completing investigations within 45 days. The concept of sanctions as it would apply in this case does not take into consideration fluctuation in resource levels and workload. At any stage of the complaint process, resource levels and workload influence the timeliness and effectiveness of the service rendered. While a particular feature of the process such as counselors or investigators may perform effectively today, future changes in workload or resources may cause a decrease (or increase) in that level of efficiency tomorrow. Since there is no guaranty that resource allocation and workload will not fluctuate, it is certainly a possibility that untimely performance could occur through no fault of the responsible employees. Consequently, the notion of sanctions as a prod for timely processing of EEO complaints does not appear to be an appropriate response, especially in a period of uncertainty as to available resources and rising complaint workload.

Question 4: The sexual harassment survey that VA conducted among VA employees was done in December 1995 and January 1996, but the analysis was not completed until just recently. Are you comfortable with the accuracy of the survey? How well do you believe the survey reflects current VA employee attitudes on the issue of harassment?

Answer: The survey was conducted to give VA baseline data on the extent and nature of unwanted sexual behavior in the workplace. This information is essential for VA to deal effectively with the sexual harassment issue, and has now been received. Since the time that survey data was collected, the Department has maintained its focus on this issue, and has continued to emphasize prevention of sexual harassment through ongoing training, policy changes, Secretary letters to all employees, and other communications. It is possible that some shifts have taken place since the survey responses were originally submitted. We would hope that, if anything, the changes would be positive. For example, informal feedback from throughout the system indicates the 1995-1996 training was more interactive in nature than the initial round, and was well received by employees; this type of activity could have some impact if the survey were repeated today. Nonetheless, the general outlines of the survey results will still be extremely helpful to VA in developing sound strategies for the prevention of sexual harassment. The survey helps move the issue into the discussion and action forum, as we assess the results throughout the organization. We believe one of the great values of the survey is to highlight areas which VA could focus on more closely, such as harassment by co-workers. This type of information will assist the Department in refining future training and in developing programs and policies that will target areas of greatest need.

Question 5: Our Committee staff was briefed this week on VA's recently completed sexual harassment survey. Apparently the survey has indicated that a significant portion of sexual harassment occurs between co-workers instead of by supervisory employees against lower level employees. Even if such a finding were accepted as true, don't supervisors and managers ultimately have to take responsibility for making sure their employees understand and abide by the VA's zero tolerance policy?

Answer: We believe that supervisors and managers are for the most part abiding by VA's zero tolerance policy when they are made aware of sexual harassment complaints. Since the survey has indicated that a significant portion of sexual harassment occurs between co-workers instead of by supervisors to lower level employees, a supervisor or manager must be made aware of the alleged sexual harassment in order to take action. Once such information has been provided or such conduct observed, the supervisor or manager certainly has a responsibility to address the situation quickly and decisively. The supervisor or manager also has a responsibility to set a tone within the organization which fosters respect for all employees and which discourages sexual harassment and

discrimination. VA has conducted sexual harassment prevention training for all employees, and future training will focus on issues like co-worker harassment that have been highlighted by the survey. VA will ensure in its continuing review of these matters that supervisory roles and responsibilities are well articulated and communicated in agency policy.

Question 6: Our staff has been told that the VA's sexual harassment survey did not break down the results by classification level of the employee. For example, the survey does not provide a means to compare the attitudes of lower level, perhaps bargaining unit employees, with the attitudes of management employees. Can this information still be broken down, and, if so, do you think it would be useful to conduct such an additional analysis of the survey results? Can this information be broken down by VISN or facility? If so, will the Department provide the Subcommittee with this information?

Answer: I have directed that the survey data be further analyzed to determine if we can look at responses by grade of employee. Although respondents were not asked for their grade, the staff is continuing to assess the survey to determine what additional types of data might be developed. Preliminary information should be available by late September and will be provided to the Committee at that time. When the survey was conducted, both VA and the contractor promised employees who participated in the survey anonymity. VA feels strongly that, as a government, we need to honor that promise. As such, any personal information regarding applicants or their duty assignment has been excluded from the data. In addition, the contractor was asked to ensure that personal information would not be retrievable. VA will provide the Committee with the additional information that might be obtained from the survey. It will not be able to be broken down by facility.

Question 7: Mr. Gober, can you or someone else on the panel tell us what has happened to the five women who testified before our committee in April. Has the VA attempted to find out more about their individual charges of discrimination. What follow-up has VA done in this regard?

Answer: The VA has followed up on the charges made by the five women. Due to the constraints of the Privacy Act, and the public nature of these responses, attached is detailed information concerning the status of the charges by the five women who testified before your committee in April. Attachment II is provided to the Committee for oversight purposes and should not be printed in the public record.

Question 8: Can you explain to the members of the Committee how the EEOC Task Force members were chosen? Can you also briefly explain how the Task Force reached consensus on its recommendations?

Answer: Task Force members were chosen to reflect a variety of viewpoints within the VA work force. An attempt was made to not only diversify membership, but to assure that major VA organizational components were represented from both a field and VACO perspective. Additionally, major staff offices and union participation were believed necessary to provide a true cross-section of interests within the VA community. By seeking a composition from such varying backgrounds, it was believed that a true spectrum of views would be available to consider reform of the EEO process. With regard to consensus, the Task Force members agreed at their initial meeting that it might be impossible to reach total agreement on some issues, so it was decided that if 75% of the group agreed on a specific issue that level of agreement would be considered "consensus." It should be noted that a vote was never necessary because the final report, addressed everyone's concerns. During the preparation of the report individual disagreements were raised, considered, and resolved to member satisfaction. There were no dissents or disagreement by members with the final report.

Question 9: Mr. Gober, most everyone in this room expects that soon you will be the Secretary – rather than the Acting Secretary – of the VA. I also think most everyone would agree you would be an excellent choice for the job. As the Secretary of Veterans Affairs, where would you place "fixing the VA's EEO process" on your list of priorities? What other issues would be on that list?

Answer: Making the EEO process is very high on my list of priorities for the Department, since this is clearly a key to having a highly motivated and productive work force, and since there are matters of justice and equity involved that should be important to every American. Other issues of the greatest importance include transformation of the Veterans Benefits Administration with particular emphasis on the claims process, and continuing provision of high quality health care to veterans.

Recommended Findings*

Agency	FY 93		% Modified or Rejected	FY 94		% Modified or Rejected	FY 95		% Modified or Rejected
	Total* Modify* Reject	Total* Modify* Reject		Total* Modify* Reject	Total* Modify* Reject				
Dept. of Treasury	23	3	95.6	7	1	100	20	1	90
Dept. of Justice	11	6	72.7	12	6	83	10	8	90
Dept. of the Navy	20	2	70	16	3	43.8	24	5	51.1
Veterans Affairs	27	0	81.5	26	0	73.1	3	0	66.7
US Postal Service	135	3	66.4	102	5	69.6	87	10	69
Dept. of Defense	72	4	59.8	71	6	32.4	93	14	51.7
Dept. of the Army	30	0	56	46	0	58	15	0	0
Defense Logistics	8	0	75	5	2	60	4	0	0
Army & Air Force Ex.	5	0	40	7	4	71.4	5	1	60
Dept. of Air Force	6	2	66.6	9	0	11.1	15	0	46.7
Dept. of Agriculture	6	5	100	5	5	100	10	4	40

* Statistics taken from EEOC Annual Reports

** It is not clear what the term "modify" may entail. A modification could be revision of a point of fact or rejection of major issues that EEOC found discrimination with regard to.



**DEPARTMENT OF VETERANS AFFAIRS
INSPECTOR GENERAL
WASHINGTON DC 20420**

SEP 17 1997

**The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
House of Representatives
Washington, DC 20515**

Dear Congressman Evans:

I am pleased to reply to your letter, dated August 13, 1997, regarding the Subcommittee on Oversight and Investigations hearing on sexual harassment issues within the Department of Veterans Affairs.

My responses to your questions are provided in the enclosure. Thank you for giving me the opportunity to respond on these issues.

Sincerely,

A handwritten signature in cursive script that reads "William T. Merriman".

**WILLIAM T. MERRIMAN
Deputy Inspector General**

Enclosure

1. Mr. Merriman, your office has had a chance to go back to Fayetteville and take another look at the possibility of additional EEO allegations against Mr. Calhoun at those locations. I understand that the Chairman and Members of this Committee do not want to get into the details of your findings on this issue during our hearing this morning. After having had the chance to review EEO files, and to interview EEO counselors, investigators, and officers, what can you tell us about how the EEO process works – or doesn't work – at the VA? Do you think the EEO process needs improving? What recommendations would you make to improve the process?

The EEO process within the VA has been plagued with continuing perceptions that the process lacks independence from local management. The concern regarding independence is particularly apparent when EEO allegations involve top level managers at a facility, as was the case at the VA Medical Center Fayetteville.

In July 1997, the Acting Secretary issued a decision paper endorsing the recommendations of a VA Task Force on the Equal Employment Opportunity Complaint Process and directed that a detailed implementation plan be presented to him by October 1, 1997. The Task Force recommended:

- removing facility directors and heads of Central Office administrations from serving as EEO Officers,
- establishing a complaint resolution structure linked to the highest management level,
- providing for a staff of experienced, professional EEO careerists to serve the Department, and
- using alternative dispute resolution programs to the maximum extent possible.

Draft legislation regarding the VA EEO process also proposes to eliminate the current practice of assigning the facility Director to act as EEO Officer.

I wholeheartedly support the concept in both of these proposals to remove facility managers from the position as EEO Officer. Infusing the process with an additional level of independence and professionalism, as recommended in the Task Force proposal, should encourage staff to use the EEO process when circumstances warrant and should foster renewed confidence in the process as a whole. Copies of the Decision Paper and the Task Force report are enclosed.

2. How many outstanding allegations of sexual harassment is the Inspector General's office presently investigating throughout the VA system. Can you give us an update on the status of those investigations? Have there been any new allegations raised at the Fayetteville location or elsewhere in the system since our hearings in April and July?

The OIG is presently reviewing three allegations of sexual harassment. Two reviews were ongoing at the time of the prior hearings, and one review has been initiated, in part, as a result of contacts made during those hearings. No new allegations of sexual harassment have been received from VAMC Fayetteville.

The review at Department of Veterans Affairs Medical Center (VAMC) Grand Island, Nebraska, was reported as ongoing in my April 10, 1997 letter to you. This review included a complaint against a senior manager for his failure to properly address the allegations of sexual harassment. The on-site review has been completed, and a draft report was issued to the Chief Network Officer and other Veterans Health Administration

(VHA) officials on August 13, 1997. We anticipate completion of the review by mid-October.

An inquiry is underway on alleged sexual harassment and creation of a hostile work environment by a senior manager at VA Central Office. The report is being drafted, but no completion date can be projected at this time.

At the recent hearings, a representative of the National Association of Government Employees, Local R3-74, stated that there was widespread sexual harassment at VAMC Butler, Pennsylvania. Although initial contacts with this representative failed to provide any basis for a review, she later contacted us and requested that an investigator be made available on-site regarding alleged sexual harassment and other EEO issues. We visited VAMC Butler and interviewed over 20 employees both at the Medical Center and at an off-site location. We have since conducted additional telephone interviews. The review is ongoing, and it is too early to project a completion date.



Report of the Equal Employment Opportunity Complaint Process Review Task Force

Hershel W. Gober, Acting Secretary of Veterans Affairs
Eugene A. Brickhouse, Chair
Neal C. Lawson, Co-Chair
July 1997



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

Decision Paper
Report of the Equal Employment Opportunity Complaint Process Review Task Force

July 1997

In 1993 the Department of Veterans Affairs (VA) established a policy of "zero tolerance" for sexual harassment and discrimination. However, concerns continue to be raised regarding the structure of VA's current Equal Opportunity Complaints process, and its effectiveness in furthering the goals of "zero tolerance." There is a perception that the process does not function independently enough of local VA management, and that this can result in a conflict of interest, especially when allegations concern the facility director or top staff.

I am committed to quick, strong action to correct this situation, and in May of this year convened a Task Force to identify solutions. The charge to the Task Force was a challenging one – within 60 days to assess VA's current discrimination complaint process, benchmark the practices of other agencies, and submit recommendations to me on system improvements. The Task Force committed themselves wholeheartedly to this assignment. Their deliberations were clearly taken with the best interests of employees in mind, and in a spirit of improving the workforce environment and encouraging a culture of equity within VA.

The Task Force has submitted numerous findings and recommendations, including the following:

- VA facility directors and heads of VA Central Office administrations and offices must be outside the EEO complaint process. These officials should no longer serve as EEO Officers for their organizations.
- The EEO Officer responsibilities should rest with a regional complaint resolution manager. This position should report directly to a newly established Deputy Assistant Secretary for Resolution Management, within the office of the Assistant Secretary for Human Resources and Administration.
- A new complaint resolution management structure linked directly to the agency's highest level is required, staffed by a cadre of experienced, professional EEO careerists in strategically located regional offices serving all departmental facilities.
- Facility directors and other senior managers must maintain responsibility for ensuring a vigorous affirmative action program and a "zero tolerance" culture within their organizations.
- Alternative Dispute Resolution programs should be used, to the maximum extent possible.



Putting Veterans First

Decision Memorandum
Page 2

I accept the recommendations of the Task Force report, with the single exception noted below. The report is attached, and is hereby made a part of this decision paper.

Exception: The Task Force report recommends that an additional Deputy Assistant Secretary position be created to oversee the work of the new Resolution Management office. This would result in two Deputy Assistant Secretaries having responsibility for EEO matters in VA – one for complaints activities and another for affirmative action functions. I favor a more streamlined approach to the headquarters staff, with a single, high level official responsible for VA's EEO program. This will provide for more cohesive leadership, and will eliminate the cost, additional support staff and overhead which another Deputy Assistant Secretary position would entail. A simpler structure will also be more understandable for employees and more functional in terms of program integration.

The process changes which the Task Force recommends, and which I endorse, are one very important aspect of improving VA's EEO program. Their report provides a solid framework for making the new system a reality. An implementation team will be established, with membership from various disciplines and parts of VA as needed. This team will be charged to develop a detailed implementation plan for the new EEO complaints process, including specifics of the new organizational structure.

I am also charging representatives of the Task Force to serve as an advisory body regarding implementation matters. The broader issues such as complaint prevention and workplace environment, which are referenced in the Task Force report and which formed an integral part of their deliberations, are critical to our overall effort to build a model EEO program, and will be an important part of our planning effort.

Work on implementation is to begin immediately, with completion of the detailed plan on the new complaints processing system due to me by October 1, 1997.



Hershel W. Gober
Acting Secretary

JUL 11 1997

Date

Attachment

Report and Appendices

	Location
Executive Summary	Page i
Report of the EEO Complaint Process Review Task Force	Page 1
Members of the Task Force	Appendix 1
Proposed organizational chart under the new system	Appendix 2
"Parking Lot" issues identified by the committee	Appendix 3

Contents of the Report

	Page
Executive Summary	i
Preamble	1
Task Force Approach	2
Current Process	2
Benchmarking with Other Agencies	4
Findings	5
Sexual Harassment	6
Additional Considerations	7
Recommendations	7
Implementation	10
Conclusion	10

EXECUTIVE SUMMARY

The Department of Veterans Affairs' (VA) policy of "zero tolerance" for sexual harassment and discrimination, established in 1983, has been insufficient to create a culture within the Department in which those activities are neither tolerated nor condoned. Recognizing this, VA convened a task force of senior level employees to review VA's sexual harassment and discrimination complaints system and make recommendations for change.

The task force thoroughly reviewed VA's current Equal Employment Opportunity Complaint process; benchmarked against other federal agencies; considered alternative models for a new complaints resolution process; achieved consensus on a process they believed would be effective for VA; and discussed a timetable and framework for implementing this process.

The task force has made numerous recommendations. Among them are:

- VA facility directors and heads of VA Central Office administrations and offices must be outside the EEO Complaint process. These officials should no longer serve as EEO Officers for their organizations;
- The EEO Officer responsibilities should rest with a regional complaint resolution manager. This position should report directly to a newly established Deputy Assistant Secretary for Resolution Management, within the office of the Assistant Secretary for Human Resources;
- A new complaint resolution management structure linked directly to the agency's highest level is required, staffed by a cadre of experienced, professional EEO careerists in strategically located regional offices serving all departmental facilities;
- Facility directors and other senior managers must maintain responsibility for affirmative programs designed to eradicate barriers to employment and achieve a representative workforce; and
- Alternative Dispute Resolution programs should be used, to the maximum extent possible, to resolve complaints at the beginning of the Complaint process.

Another recommendation is that an implementation committee be formed immediately by VA to accomplish these changes. Among other responsibilities, the task force will be asked to plan and formulate strategies to accomplish this task; look at innovative methods of organizing a new field structure; provide a timetable for creating a new organization; and make recommendations on staffing, location and costs. With regard to costs, the task force has recommended that the implementation committee be directed not to recommend any system under which costs are greater than under either the existing system, or a system currently being proposed by Congress. The committee's work should be completed by October 1, 1997, and the field structure and system it develops should be operational by October 1, 1998.

In addition, the task force identified a number of issues not within its purview, which members believe must be addressed. These include changing the culture of the Department and addressing the issue of disciplinary actions for offenders. They have recommended that the implementation committee develop plans and time frames for addressing these issues.

Preamble

The goal of the Department of Veterans Affairs' (VA) is to create a culture within our organization in which diversity is valued, and sexual harassment and discrimination are neither tolerated nor condoned at any level, under any circumstance.

In furtherance of this goal, the Secretary of Veterans Affairs in 1993 instituted a "zero tolerance" policy with respect to sexual harassment and discrimination. Subsequent events, however, have demonstrated that that further action is needed to achieve the cultural change that is required.

The Department has acknowledged the need to substantively examine its workplace culture and environment to ensure that they are supportive of the zero tolerance policy. One aspect of this effort is a thorough review of the processes available to employees who believe they have experienced harassing or discriminating behavior, and management's ability to effectively respond.

Recognizing this important next step, VA's Acting Secretary Hershel W. Gober convened a task force of senior level employees – labor and management representatives – and charged that task force to make certain VA's sexual harassment and discrimination complaints system provides each VA employee access to a fair, efficient Equal Employment Opportunity (EEO) complaint process, answerable directly to the department's highest executive level.

In establishing the task force, the Acting Secretary reiterated VA's commitment to using the most effective and efficient management techniques, including reinvention and reengineering processes; using modern technologies; maximizing employee input; and creating output measures which will accurately describe VA's progress, and set targets for continuous improvement. VA will work in full partnership with union representatives in this area, using partnership agreements which have been negotiated both nationally and locally as a framework for discussions.

Task Force Approach

The task force conducted a thorough review of the current VA EEO complaint process; benchmarked against other federal agencies; considered alternative models of a new complaints resolution process; achieved consensus on a process they believe would be effective for VA; and discussed a timetable and framework for implementation.

The deliberations of the task force were vigorous. Traditional views were challenged, and new ideas were welcome. Every effort was made to foster "out of the box" thinking. Given constrained timeframes for its initial effort, the task force has had to report its philosophy and its process remedies without their full development. More specifics will be developed as part of our implementation efforts.

In addition, the task force identified several "parking lot" issues—issues which need to be dealt with relating to perceptions and fairness, not directly related to reforming the complaint process *per se*. (A list of these issues is provided as Appendix 3 to this report.)

The task force believes that VA must bear the responsibility for making required changes. True resolution of employee perceptions of a weak and biased complaint process can occur only when changes needed to earn employee confidence and trust are initiated internally by the Department.

The Current Process

The VA EEO complaint process is governed by pertinent federal regulations and Equal Employment Opportunity Commission (EEOC) directives applicable to all federal agencies. The EEO program at VA is under the direction of the Deputy Assistant Secretary for Equal Opportunity who reports to the Assistant Secretary for Human Resources and Administration who, in turn, reports to the Secretary of Veterans Affairs.

The complaint process begins when a VA employee contacts a facility EEO Counselor. That Counselor is appointed by the facility director who is the EEO Officer for the facility and the custodian of the complaint process.

EEO counseling is required by VA as an essential first step in the federal complaint process. Such counseling allows an opportunity for informal resolution of a complaint at the local level. The Counselor should be an impartial third party trained to serve as a mediator who attempts to help the parties to informally resolve the complaint issue. The complainant may remain anonymous at this stage.

Another role of the Counselor is to assist potential complainants in defining their allegations and giving the Department notice of potential claims.

The EEO Counselor interviews witnesses and obtains documents pertaining to the allegations, but may release the complainant's name only if he or she agrees. The facility's full time EEO Manager may assist the Counselor, depending on the Counselor's experience and the complexity of the issues involved.

Counseling must conclude within 30 days of the initial contact. If it continues longer, the Counselor must inform the complainant that he or she has the right to file a formal complaint. If an agreement is not reached during the 30-day counseling period, the EEO Counselor must give the complainant written notice of the right to file a formal EEO complaint within 15 calendar days. However, the time limit for informal counseling may be extended with the written agreement of the complainant. On receipt of a formal complaint, the Department must advise the complainant that it is required to conduct a complete and fair investigation within 180 days. The notice also advises the complainant of the right to appeal the final decision to the Equal Employment Opportunity Commission (EEOC). The facility EEO Manager typically prepares these documents, and they are signed by the facility director as EEO Officer.

The EEO Officer accepts formal complaints and refers those believed to be procedurally defective (about 25 percent a year) to the Office of General Counsel (GC) for legal review. That office may accept or dismiss the complaint, in whole or in part. If any part of the complaint is accepted, the GC advises the facility and requests that the Office of Equal Opportunity (OEO) Discrimination Complaints Service appoint an EEO investigator to the case.

The formal complaint is investigated by a trained EEO investigator from a facility outside the location of the complaint. VA EEO investigators are either part-time collateral duty assignees or retired annuitants who take sworn testimony from witnesses and collect pertinent statistical and historical data bearing on a complaint. The investigator analyzes all the information that has been gathered and provides a Report of Investigation to both the complainant and the EEO Officer.

The agency and complainant may settle the complaint at any point in the EEO complaint process. If a settlement is not reached after the Report of Investigation has been received, the complainant may request either a final agency decision from the head of the agency or designee (in VA, the Office of General Counsel) without a hearing; or a hearing by an EEOC Administrative Judge and then a final agency decision. An EEOC Administrative Judge would hold a formal hearing including cross examination of witnesses, and issue a recommended decision with transcript and files to the Office of General Counsel which has 60 days to make a final decision.

If the complainant is dissatisfied with the agency's final decision, he or she may appeal it to the EEOC Office of Federal Operations. On receipt of the EEOC appellate decision, the complainant, if not satisfied, may petition the EEOC for reconsideration, though the bases for such reconsideration are quite narrow.

The final step in the complaint process is civil action in Federal district court. The complainant has the right to file a civil action against the agency any time after 180 days have passed since the filing of a formal complaint. Once in Federal court, the complaint leaves the EEO administrative complaint system. However, EEO Counselors or Managers may be asked to testify or provide information to federal lawyers representing the agency.

As of September 30, 1996, there were 882 VA EEO Counselors. The cost of maintaining the entire complaint resolution system – decentralized complaint processing and centralized final decision making – was estimated by VA's Office of Equal Opportunity to be just over \$21 million in FY 1996. \$16.4 million of that amount was spent on personnel compensation; an additional \$1.7 million was expended on travel.

During FY 1996, VA employees initiated 6,299 informal Counselor contacts; 2,191 formal complaints were filed, and there were 1,576 investigative assignments. The average processing time for a complaint in FY 1996 was 380 days instead of the regulatory 180 days. By comparison, the Government-wide average for FY 1995 was 305 days.

Benchmarking With Other Agencies

In conducting its analysis, the task force considered comparative information about the EEO process in other agencies of the government. While differences were noted in a number of areas, there was no clear "one best process." Therefore, the information gathered was used as "benchmarks" for discussion among task force members.

By most statistical measures listed in the EEOC's annual Federal Sector Report on EEO Complaints Processing and Appeals, VA has an effective and efficient program. Despite our lengthy average processing time for complaints, VA ranks among the top third of agencies in timeliness.

Using the Federal Sector Report on EEO complaints, the task force identified ten agencies for a benchmarking review. Agencies were selected for their size, organizational complexity, or program performance. They included the U.S. Air Force; the U.S. Army; the Departments of Justice, Health and Human Services, Treasury, Commerce, and Labor; the Social Security Administration; and the National Institutes of Health.

The factors identified for this benchmarking review were developed to learn how other agencies had structured their programs in the following areas:

- The designation of EEO Officers;
- The use of collateral duty counselors and investigators;
- The role of General Counsel in the decision-making process;
- The effectiveness of actions taken to address allegations of sexual harassment.

In contrast to most of the other Federal agencies studied, VA's discrimination complaint process is largely decentralized to field facilities and individual work units. The EEO Officer designation in most of the other Federal agencies studied is made at a higher organizational level outside operational lines of authority.

While other agencies utilize collateral duty, part-time positions to carry out EEO Counselor and investigator roles, in almost all instances those positions report through a complaint management structure outside operational management lines of authority. For example, every bureau in the Department of the Treasury has its own EEO Officer. The Assistant Secretary for Management and Chief Financial Officer serves as the EEO Officer for the Department. The authority to manage the complaint process has been delegated to the Director, Office of Equal Opportunity Program.

An additional difference that was noted is the involvement of VA's Office of General Counsel in the process. This was not found to be the case in most agencies reviewed.

All agencies reported interest in and success with alternative dispute resolution (ADR) programs to resolve complaints locally at the earliest phase of the resolution process. Large organizations, such as the Postal Service, the Department of the Army and the Department of Labor, noted the success of their respective ADR programs in resolving complaints early and informally. The Merit System Protection Board (MSPB) voiced strong support for ADR, noting that half of its appeal cases are settled informally before going to hearings.

In addition to benchmarking with other federal agencies, the task force solicited the views of representatives of the EEOC and the MSPB. In the views of those representatives, the major problem of VA's program is the perception of its employees and others on the way it works. EEOC's representative agreed that removing EEO complaint processing activities from line management control could begin to change this perception.

MSPB noted the importance of employees believing that someone has listened to their complaints and that a climate of objectivity exists. Their representative also noted the importance of quickly and forcefully dealing with individuals who violate VA's EEO standards and practices. The organization also strongly supported alternative dispute resolution procedures.

Findings

In the course of preparing this report, the task force conducted a thorough analysis of past studies, current practices and criticism of the current VA EEO complaints process. Information developed in benchmarking with other federal agencies was also discussed. From this information and analysis, the task force developed the following findings:

- **A complaint process without credibility cannot succeed. Employee perceptions about the complaint process are critical to its success. To address the perception issue, structural changes in complaint processes must be accompanied by actions which communicate to employees that cultural changes will also occur.**
- **Time must be a driving force. Building new systems and structures takes time, but the problems these changes are designed to solve are current. Implementation must be swift and sure and communicated clearly to employees. Immediate steps must be taken to communicate VA's commitment and intent to change a process, and to support that process with the leadership, policy and management action signaling a new attitude and culture within the department.**
- **Alternative dispute resolution programs have proven their value in resolving conflict quickly at lower levels of responsibility. They can be effectively integrated into the VA EEO complaint program, and a pilot program now being tested should be considered for wider implementation.**
- **The designation of heads of operational field units as EEO Officer has been perceived by some employees as skewing what should be a fair and impartial process in favor of local management.**
- **The initial workplace contact point in the process, the EEO Counselor, is crucial to the effectiveness and credibility of the process. The sensitivity and level of training of EEO Counselors, the time available to them for this task and the support of their supervisors in large part determine the program's effectiveness and the level of employee confidence in the process.**
- **A heavy reliance on collateral, part-time positions to handle EEO Counselor, specialist and investigator roles hurts the process because of the conflict it causes in time and work priorities and the resulting high turnover.**
- **Cost is a crucial factor. Any changes must be thoroughly costed and considered in light of limited department resources.**
- **The VA Office of General Counsel has developed subject matter expertise as VA's decision making authority and demonstrated consistently high quality in its decisions.**

Sexual Harassment

The task force further understands that organizational changes alone will not solve the problem of sexual harassment within the department. It is clear that unique management responsibilities exist regarding incidents of sexual harassment that are not present in other discrimination claims, for example in protection of potential victims.

A federal employee who alleges sexual harassment is entitled by law to a prompt and effective response by management officials, regardless of whether the employee chooses to use the EEO complaint process. Management's responsibility is

to respond immediately and effectively to allegations of sexual harassment. VA should continue its efforts to ensure that the laws regarding sexual harassment in the VA workplace are properly enforced.

Additional Considerations

The task force noted that several policies and practices instituted by the Department since 1993 should improve existing remedies for sexual harassment and discrimination in the VA workplace. These include establishing a toll-free hotline for EEO complaints, and further publicizing information on the existing toll-free hotline for the Office of the Inspector General; and the continued use of a Central Office Rapid Response Team, a group of well-trained management officials sent to review allegations of sexual misconduct by senior level officials.

In addition, the task force was advised of considerable advances and successes in VA in effectively using ADR techniques. These techniques can provide significant assistance in speeding up the resolution of many cases, and reducing the workload of EEO Counselors. ADR has been used successfully by a number of other federal agencies, and the use of ADR in resolving disputes is among VA's specific performance goals in its strategic plan.

Recommendations

Overview

The task force concluded that VA must create a process perceived as objective, fair and effective by employees, managers, and external stakeholders. In doing so, it is necessary that system impediments (real or perceived) that result in management manipulation of the process be removed.

Further, the processes and the general environment should encourage resolution of concerns and complaints as early as possible and at the lowest level of the organization, appropriate to the particular employee matter.

To do all of these things, the task force acknowledged the critical importance of seeking ways to instill, as a cultural value, a work environment free of harassing and discriminatory behavior; a work environment that encourages employee respect of each other, and of the diversity represented in VA's culturally rich workforce.

Communications

The Task Force found that increased communication is needed with employees – at all levels – with respect to all aspects of departmental policies and practices associated with efforts to ensure the workplace is free of harassing and discriminating behaviors. Necessary and appropriate action can be taken during the implementation phase to improve communications.

Rapid Response Team

— Since a repeated concern on the part of all stakeholders is the ability of the department to respond quickly, efficiently, and appropriately (in all respects) to allegations against senior officials, the task force strongly supported the Rapid Response Team concept.

Use of a Central Office Rapid Response Team should be taken to the next level, in that it would be designed to ensure rapidity and would include all types of representatives who would be prepared to address all aspects of the allegation, including those not directly associated with the EEO complaint process.

Facility Director and EEO Manager

The vast majority of line managers in VA are individuals of integrity, high standards and commitment to the mission of the Department. However, in order to ensure the fullest possible level of employee trust in the EEO complaints system, the task force believes that VA facility directors and heads of VA Central Office administrations and offices must be outside the EEO complaint process. VA needs a new complaint resolution management structure linked directly to the agency's highest executive level. The heart of this new structure will be a cadre of experienced, professional EEO managers and careerists staffing strategically located regional offices which serve all departmental facilities.

Line managers must maintain responsibility for a comprehensive and continuing affirmative program designed to eradicate barriers to employment, and to achieve a representative workforce with special emphasis on women, minorities, people with disabilities and disabled veterans.

Line managers are responsible for "setting the tone" of zero tolerance for sexual harassment at their facility. A new complaint process will not relieve them of their continuing EEO obligations, which are still a part of their performance agreements and standards. Those obligations include vigorous implementation of affirmative action and special emphasis programs and EEO reporting. The facility directors will continue to have the ability to settle most local complaints, other than those in which their personal behavior is at issue.

— The task force recommends that current EEO managers be retained, under a new position description and a new title, to assist the director in fulfilling these obligations. In addition, the need for them to provide support to EEO Counselors, investigators, EEOC Administrative Judges, and Department of Justice and Regional Counsels in litigation matters—and training and affirmative employment program duties—should be sufficient to warrant retention of these as full-time positions.

Clear guidance and open communications with line officials and others must be provided as roles and responsibilities are more fully defined in the implementation process.

Regional Offices of Resolution Management

The EEO Officer designation and its incumbent complaint management and supervisory responsibilities will rest with a regional complaint resolution manager. This position will report directly to a newly established Deputy Assistant Secretary for Resolution Management, within the office of the Assistant Secretary for Human Resources and Administration. (A proposed organization chart is attached as Appendix 2.)

The staff of each regional office will consist of EEO Counselors, investigators, EEO specialists and support personnel. They will handle the EEO complaint process independent of facility management lines of authority. They will not be part of or linked with any facility or office other than their own Central Office superstructure. They will be directly accessible by any VA employee within their region. This emphasizes the "one VA" aspect of this program.

To maintain maximum efficiency, regional offices would have the flexibility to use a variety of employment options – full time, part time, or out-based. Staffing for these organizations would be based on multi-functional teams of employees trained to perform in more than one functional area.

Employee access would be maintained by locating regional offices in areas of highest EEO activity, using "circuit riding" Counselors, and applying communications technology. In appropriate circumstances, regional offices may use alternatives such as teleconferencing to ensure access to counseling.

In addition, collateral duty EEO Counselors could be used to enhance employee access at some facilities. The EEO work of these facility staff members would be directly supervised by the Regional Office of Resolution Management. The facility director may nominate employees for these positions; however, selection will be made by regional EEO managers.

The headquarters component of the process would be managed in the new office of the Deputy Assistant Secretary for Resolution Management, reporting to the Assistant Secretary for Human Resources and Administration.

Summary

The process model described above was selected after careful study of five possible structures. Only this approach addresses all the findings identified by the task force. Specifically:

- It meets the requirement for cost accountability, by requiring that costs are no more than under the present system.
- It replaces heavy reliance on collateral duty EEO Counselors appointed and managed under the supervision of the facility director with a cadre of permanently employed professionals whose background, training and career motivation are based on efficient and quality processing of discrimination complaints.

- The key position of EEO Officer, responsible for unbiased management and stewardship of the complaint process, is moved from line management to an independent regional office manager responsible to the DAS for Resolution Management.
- It ensures management of the complaint process at a top executive level and isolates that single function within the Secretary's headquarters management staff.

Implementation

In order to accomplish the process changes outlined above, an implementation committee will be formed by VA to:

- plan and formulate strategies to accomplish this task;
- look at innovative methods of organizing this new field structure;
- make recommendations on staffing, location and costs, ensuring that costs of the proposed resolution management process not exceed those of the current system;
- identify the funding mechanism;
- consider how productivity will be measured in the new organization (using guidelines developed under the Government Performance and Results Act);
- provide a timetable for creating this new organization;
- incorporate use of Alternative Dispute Resolution programs to resolve complaints at the beginning of the complaint process;
- assure a comprehensive training program supporting these recommendations is planned covering all VA employees – top officials, senior managers, new full-time EEO Counselors and other resolution management employees – down through the VA workforce; and
- develop plans and time frames for addressing the culture change issues identified in the "parking lot."

The task force believes that the committee should complete its work by October 1, 1997. It further believes that the timetable established by the committee should insure that the field structure and system it develops should be operational by October 1, 1998. The committee should ensure that its cost estimates for operations of the new organization do not exceed the amount expended in the previous fiscal year for maintaining the existing complaint resolution system.

Conclusion

The task force views this report as a living document that will change in response to the needs of VA's dynamic and diverse workforce. VA is committed to continually improving its performance in reducing the incidence of sexual harassment and discrimination among its employees, and in ensuring that complaints are resolved quickly and efficiently, with a full recognition of the rights of all involved. VA's own administrative changes, carefully monitored by Congress and other stakeholders, provide the flexibility needed to changing needs. Continued analysis and adjustment will be part of the new system.

Appendix 1

Members of the Task Force

EEO Complaint Process Review

Task Force Members

Eugene A. Brickhouse
Assistant Secretary for Human
Resources and Administration (008)
Task Force Chair

Neal C. Lawson
Assistant General Counsel (024)
Task Force Co-Chair

Linda Belton
Network Director, VISN 11
Veterans Health Administration

Shirley Carozza
Deputy Assistant Secretary for Budget (041)
Office of Management

Caren Eirkson
Chief, Personnel Division (402D1)
National Cemetery System

Joyce E. Felder
Associate Deputy Assistant Secretary for
Human Resources Management (05)
Office of Human Resources and Administration

Arthur Goff
Chief, EEO/Civil Rights Policy Team (163A)
Veterans Health Administration

Patricia Grysavage
Director, Executive Management and Communications (20A1)
Veterans Benefits Administration

Task Force Members (Continued)

Gerald K. Hinch
Deputy Assistant Secretary for Equal Opportunity (06)
Office of Human Resources and Administration

Alma Lee
President, National Veterans Affairs Council, AFGE

C. Fay Norred
Director, VARO Washington
Veterans Benefits Administration

Patricia Novak
Director, Quantico National Cemetery
National Cemetery System

Patricia J. O'Neil
Special Assistant
Office of Policy and Planning (008)

Beatrice Pacheco
Staff Attorney (024)
Office of General Counsel

Lorraine Payton
President, VA Council, NFFE

Joseph H. Schumacher
Executive Assistant, IRM (0451)
Office of Management

Support Team

Dana L. Moore (053)
Facilitator
Office of Human Resources Management

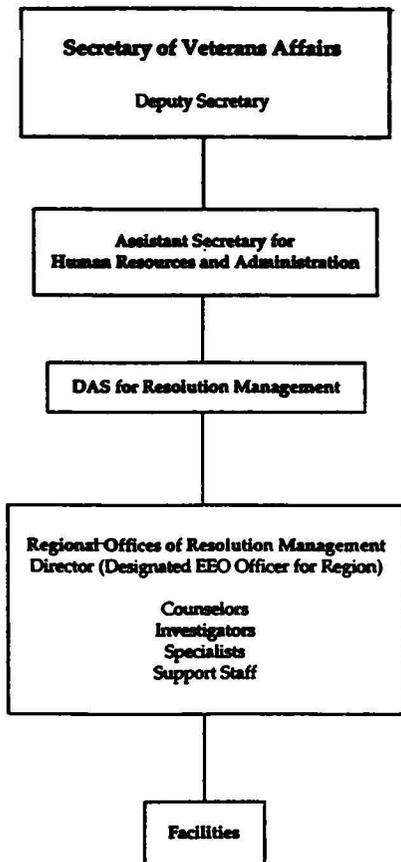
Everett Chasen (03)
Recorder/Writer
Office of Administration

Christopher J. Scheer (80D)
Recorder/Writer
Office of Public Affairs

Suzanne L. Campbell (03)
Administrative Support
Office of Administration

Appendix 2

**Proposed organizational chart
under the new system**



Appendix 3

**"Parking Lot" issues identified
by the committee**

"Parking Lot" Issues

Throughout our investigation and deliberations, the Task Force encountered a number of issues which were not strictly within the purview of reforming the EEO complaint process, but which needed to be addressed if VA's system were to change sufficiently. A subcommittee of the proposed Implementation Group or some subsequent group must be tasked with developing these further. They may be summarized as follows:

- **Investigator ability to recommend action beyond EEO complaint**
Presently EEO Counselors have no ability to recommend any action beyond an EEO complaint. Too often the "ball has been dropped" between initial indicators of a problem and senior management efforts to deal with it. If EEO investigators were able to propose or recommend other actions, perhaps this process could be made more timely and effective.
- **Disciplinary actions for offenders**
The issue of consequences for offenders is perhaps the single most important issue which should be addressed outside reforming the EEO complaint processing system itself. A number of individuals felt that the "old boy system" so frequently referred to was not so much one which protected males who engaged in sexual harassment as it was one of not being able or willing to discipline senior management officials, whatever the nature of their offense. In fact, there are times when VA appears to be engaging in consequences which amount to "move and park." That is, moving disciplinary problems and parking them somewhere, rather than actively dealing with them. There was anecdotal discussion of this in management disciplinary problems beyond that of sexual harassment.

Behavior can be shaped by positive reinforcers and by negative consequences; both of these need to be swift and sure in order to be effective.
- **Culture**
VA does not need merely to change a bureaucratic process, we need to change our culture. VA has made great strides in teaching all our employees about what is, and is not, sexual harassment. VA needs to do a better job in communicating to senior management officials and those who are on career tracks to become such officials what the behavioral expectations are in their roles. There will certainly be a major part in this for the new VA Learning University, but the senior most cadre of officials today, as well as political appointees, must be active. VA needs to share expectations about what behaviors are undesirable and specify what behaviors are exemplary. The department must demonstrate an ability to "take care of the troops" – because it is those employees who care for veterans.

- **Making complainant feel whole**
This relates to the issue of consequences for offenders. Even if a complainant receives an assignment, promotion, or some action designed to make them whole, they frequently do not feel whole when they observe that the "offender" has suffered no consequence.
- **Frivolous complaints**
The system must permit employees who have been harassed or aggrieved to file their complaint without cost or fear of retribution. Yet methods must be developed which would put some degree of responsibility on employees who file frivolous complaints, especially if they are frequent. If the system were less burdened by such complaints, more time and energy could be expended on those which deal with serious problems.
- **Dealing with increase in complaint activity**
Any changes in the EEO complaint processing system must be a two-pronged attack: (1) the current system must be re-engineered to be more effective and efficient and (2) methods, such as ADR and mediation, must be pursued in an effort to prevent complaint activity. Such prevention is not an effort to forestall employees' filing a complaint if they feel the need; rather, it would have the aim of preventing the need to file.
- **Marketing the new process**
In addition to working with the administrations and staff offices to market the new EEO complaint process, VA must inform employees about the process that will be coming on board and what its impact will be. VA needs to focus not on the negative aspects that led the department to develop such a system, but the positive outcome that has resulted, that is, a more fair and objective system for all employees.
- **Alternate pathways for people who may not trust the process**
No matter how effective a job the EEO Complaint Process Reform Task Force does, there will be employees who do not trust the process. VA needs to continue the use of alternate pathways. To date, such pathways include use of the IG Hotline, the EEO Information Hotline, filing complaints with VHA Network Directors, etc. Many employees today are unaware of the alternate pathways that are already open to them. VA's Office of Public Affairs should be asked to assist in marketing currently existing alternate pathways to all employees.



ISBN 0-16-056267-8



90000



9 780160 562679