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House Committee on Veterans' Affairs
Subcommittee on Oversight and Investigations

"Metrics, Measurements, and Mismanagement in the Board of Veterans's Appeals"

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Thank you for inviting me to appear before you today. My name is Kelli Kordich and I am a Senior Counsel at the Board of Veterans' Appeals in Washington, D.C. I am also an Army veteran having served in the United States Army Transportation Corps for 4 years attaining the rank of Captain. I started working at the Board in December 1999. I am here today because as a veteran I am appalled and saddened by the unchecked mismanagement, corruption, and blatant disregard for out nation's veterans that has become characteristic of Board management in the pursuit of processing appeals at breakneck speed for management's own self-preservation, rather than for the good of veterans. I am also here as the voice for the many Board employees mired in a toxic management system that uses a culture of fear and intimidation to attain its goals. The Board's management is ruthless in stifling criticism, going so far as to weaponize the Department-wide ICARE principles to label critics as anti-veteran. All of the information I give you today has been backed up with evidence based on exhaustive research by myself and other dedicated employees at the Board who are desperate for the corruption and mismanagement to end, but who justifiably were too afraid of retaliation by Board management to offer testimony today.

The "Old Case" list

On June 26, 2012, Mr. William Preston, President of AFGE Local 17, sent Secretary Shinseki a letter via email. This letter notified the Secretary that the Acting Chairman's front office staff at the Board of Veterans' Appeals (Board) was responsible for unnecessarily delaying appeals filed by veterans and their families. Mr. Preston attached a redacted list, dated May 10, 2012, which provided a snapshot illustrating some of these unconscionable delays. The list showed that the Principal Deputy Vice Chairman Laura Eskenazi (subsequently appointed to the position of Vice Chairman by Secretary Shinseki) had held five cases in her possession for well in excess of 100 days (specifically, 227 days, 198 days, 177 days, 156 days, and 120 days). The list also showed that Chief Counsel for Operations, Donnie Hachey, had held cases for over a year, specifically for 415 days, and had held other cases for more than half a year. Most of the cases involved decisions on appeals of waiting veterans that already had been prepared by Board attorneys and

were simply awaiting the signature of Ms. Eskenazi and Mr. Hachey in their capacity as Judge or Acting Judge.

When the Acting Chairman's front office became aware that the union local might have obtained data implicating its own personnel, appallingly, the Acting Chairman's staff was directed to manipulate the Board's electronic record keeping system known as Veterans Appeals Control and Locator System ("VACOLS") by shifting around the oldest languishing cases to others in the front office. This had the effect of resetting the calculation of how many days the appeal had languished in one location. For example, rather than reviewing and signing a case that had been in his possession for 60 days or more, Mr. Hachey simply accessed VACOLS and electronically charged the case to other attorneys assigned to the front office. This resulted in VACOLS closing out the calculation of days the case had languished in Mr. Hachey's possession, and beginning a new count based on the days of these other attorneys who now had possession of the cases. The cases in question had been prepared by attorneys other than those who Mr. Hachey transferred them to, and the electronic transfer was a farce designed to make it appear in future VACOLS queries that Mr. Hachey had no cases in his possession that were older than 60 days. This behavior was not limited to Mr. Hachey, but was used by other front office personnel as well.

At the same time that the front office began to electronically transfer the old cases, Ms. Eskenazi and Mr. Steven Keller (former Vice Chairman and the Acting Chairman at the time, now retired) had a member of the Board's IT staff modify the VACOLS report function that produced the list presented by Mr. Preston. As modified, the report now conspicuously excludes all members of the front office (by assigning them to the designation "D5", and removing "D5" from the categories subject to the data inquiry) although it continues to include all attorney and Judges who are not assigned to the front office. The modification ordered by Ms. Eskenazi and Mr. Keller prevents the report from showing how long appeals are being neglected in the hands of front office personnel.

At the same time that the Chairman's front office staff were holding cases for an unconscionable amount of time, attorneys writing cases on the Teams were being terrorized by management for holding cases even for 30 days being informed that they my be disciplined for holding cases a certain amount of time. Emails dated in May and June 2012 from Chief Judge Kimberly Osborne indicates possible disciplinary actions for attorneys holding cases for 30 days or longer.

Secretary Shinseki forwarded Mr. Preston's letter to his then Chief of Staff (Mr. Gingrich), who asked Mr. Keller and Ms. Eskenazi to look into the matter. Unsurprisingly, as Mr. Keller and Ms. Eskenazi had participated in and condoned the very behavior they were charged with investigating, no action was taken, and no person in the front office was disciplined. Apparently, Mr. Keller and Ms. Eskenazi told the Secretary that ALL the appeals at issue were old because they were being held in abeyance owing to various problems. Unfortunately, this is untrue. Longstanding Board policy calls for cases requiring abeyance to be charged to specific VACOLS locations, rather than to a specific individual, in order to avoid the problem of an appeal being charged to an individual who has no control of the case. Their explanation was also untrue for another reason, in that appeals placed in abeyance are usually done so before a decision is written, as Board attorneys are trained to avoid spending time writing a decision that may have to be redone following the end of the abeyance period.

In addition, almost all of the appeals identified in the list presented by Mr. Preston as languishing in the hands of the front office staff in fact had decisions already written by an attorney for the particular member of the front office, and were actually only awaiting review and signature. It may be that after gathering dust in the hands of the front office personnel involved, a handful of the cases eventually had information or evidence come in that then required placing the case in abeyance, but this would have been incidental to the reason those persons held onto the cases for so long, namely simple neglect. The term "abeyance" at the Board refers to postponement of an appeal in light of required administrative action; it is an abuse of the term to use it for mere untimeliness on the part of a Judge in getting around to reviewing the case. I was the Chief of Litigation Support at the time and prepared decisions in some of those cases that Mr. Hachey had held for more than 6 months, and can attest that those cases were not being held in abeyance, but were merely awaiting Mr. Hachey's signature (specifically the Cisneros decision, that languished in Mr. Hachey's possession for over 234 days and was a simple remand for a VA examination).

The front office personnel who held cases the longest were not disciplined, but rather were rewarded by bonuses at the end of the year in December 2012, and were also promoted:

Ms. Laura Eskenazi to Vice Chairman
Mr. Donnie Hachey to Judge (no application appointed by virtue of his job title)
Ms. Marti Hyland to Judge
Ms. Bethany Buck to Judge

Significance of the data from the "old case" list

Ms. Eskenazi, who in 2012 was the Principal Deputy Vice Chairman and who since has been appointed as Vice Chairman, had 4 cases on the "old case" list that were particularly egregious. From the time those cases were transferred to her control by central case storage to the time she signed the cases, the appeals languished anywhere from 6 months to a year, with most of the delay accounted for by Ms. Eskenazi herself. She began to take action on the cases closely coincident with the creation and disbursement of the "old case" list on May 10, 2012. Three of the four cases ultimately involved a simple remand or a grant of an issue along with a remand for further development. In two of the cases, Ms. Eskenazi took actions consistent with an attempt to hide the length of time the cases had been in her possession. Specifically, charging a case to an attorney, where the next person charging the case is not the attorney but rather is again the judge is a familiar pattern at the Board of fake charging to reset the VACOLS clock that monitors how long a case has been in one location.

Mr. Hachey, who in 2012 was the Board's Chief Counsel for Operations and who since has had his position modified to include the duties of a judge, had 14 cases on the "old case" list which represented a cavalier and harmful attitude toward the appeals under his care. The total

processing time involved in these cases ranged from 6 months to well over a year, with one case reaching 606 days. In every case, the ultimate disposition was either a grant of all issues, a grant of an issue with a remand of others, or a remand of all issues. In addition, the VACOLS data shows that on and after May 10, 2012, Mr. Hachey engaged in a pattern of attempting to hide the length of time he had held onto a case, even going so far as to charge the case to an attorney who had no business reason to have the case.

Ms. Buck, who in 2012 was the Executive Assistance to the Chairman, and who since has been appointed as a judge, had 6 cases on the "old case" list that are troubling. Although there is no indication that she attempted to hide how long she had allowed appeals to languish in her care, most of the cases remained unworked by her for 9 months to over a year.

Ms. Hyland, who in 2012 was an attorney in the Board's Appellate Group and who since has been selected for appointment as a judge, had 4 cases on the "old case" list which were particularly egregious. The VACOLS data shows she held onto the cases for months, until the May 10, 2012 list prompted her to finally have her cases assigned.

Administrative Investigation Board (AIB)

After union President William Preston sent out his email to the Secretary about the old case list in 2012 and when it was swept under the rug, many employees at the Board were fed up with the shenanigans going on at the Board without consequences, and apparently an employee sent the former Chief of Staff (Gingrich) an anonymous letter dated in August 2012 unleashing a large amount of information. Not only about the old case list but about discrimination, abuse of power, mismanagement etc. perpetrated by management.

In January 2013 an Administrative Investigation Board (AIB) was set up by the VA General Counsel to investigate fraud, waste, abuse of power, and discrimination at the Board. It was found out when employees started being notified of dates for testimony. At first Mr. Preston and the rest of us were happy that finally someone was going to investigate management for the appalling mess they had made at the Board without consequence. However, we got suspicious when the VA Office of General Counsel attorney who was a member of this AIB panel was the attorney that was actively defending the Board of Veterans Appeals against the very same thing the Board was accused of in the anonymous letter. His name is Richard Johns.

Mr. Preston, as the union President, sent a letter to Will Gunn (the then VA General Counsel) indicating Mr. Johns should recuse himself. Mr. Gunn, through the chair of the panel, Ms. Edwards, who is no longer employed by VA, indicated this did not pose a conflict and Mr. Johns would not be removed. We also thought it was strange that this AIB started calling witnesses in alphabetical order instead of calling witnesses who may know something, or those mentioned in the anonymous letter for a start. It was not until a friend of mine, a Judge at the Board, Mark

Greenstreet (now retired) wrote his Congressman Eric Cantor that Mr. Johns was taken off the AIB. Mr. Preston also wrote a letter giving Mr. Gunn an idea as to who to call as witnesses, which included myself and Mr. Preston and a few others. I testified for approximately two and a half hours telling them about the old case list and other things I had witnessed. The AIB panel first let me read the anonymous letter then asked me to comment on what was in the letter. The AIB also asked for some documents, such as a diary I kept concerning what happened to me while in the front office and the old case list documents.

Mr. Preston also testified for many hours and so did Chief Judge Robert Sullivan. Then the AIB stopped abruptly, the rest of the witnesses that Mr. Prestion suggested the AIB call were not called and the whole thing folded up without a word. This reaffirmed our concerns that the whole thing was just a sham. We were not told why and what had happened to our testimony or the documents we provided to the AIB. We figured that either the Secretary, Mr. Gunn or the Chief of Staff or all of them realized all this information was damaging and just pulled the plug on the so called investigation. We also are fearful that the AIB panel members provided information about witnesses' testimony to Board management.

Mr. Preston and his union stewards tried to get information from Mr. Gunn and asked him to turn over the transcripts of testimony but he refused and stonewalled the union. What we do know is that they stopped this investigation when embarrassing information came out and again Board management and their fraud and mismanagement was covered up.

The "Rocket Docket" Program

Currently, the Board docket number assigned an appeal is based on the date the "substantive appeal" is received with respect to that appeal. This "substantive appeal" is typically in the form of a VA Form 9, Substantive Appeal to the Board of Veterans Appeals.

The law mandates, with few exceptions, that cases must be adjudicated by the Board in docket order. Under 38 U.S.C. section 7107(a):

(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular docket order according to its place upon the docket.

The referenced exceptions to the docket order mandate respectively include when an appeal is advanced on the Board's docket, when an appeal is delayed to accommodate a request for a hearing, and when an appeal is screened by the Board for the purpose of "determining the adequacy of the record for decisional purposes", or for "the development, or attempted development, of a record found to be inadequate for decisional purposes." There is no statutory exception to the docket order mandate to decide cases out of docket order because they are "easy" or can be granted quickly.

On or about 1995 or 1996, Charles Cragin, then Chairman of the Board of Veterans' Appeals, ordered the pre-screening of cases (a process now referred to as "Rocket Docket" screening), in response to a large backlog of cases at the Board as well as case storage concerns.

The attorneys who were selected as the screeners were responsible for identifying those cases requiring further development through the mechanism of a remand. The screening attorneys did not have permission to decide cases identified through the program as "easy" allowances or grants. Under Chairman Cragin, and for efficiency, the screening attorney was also the attorney responsible for preparing the remand to be dispatched. This program resulted in the processing of appeals out of docket order, and the program was terminated after approximately one year. According to Chief Judge Robert Sullivan, Chairman Cragin terminated the program out of fear that word would get out that the Board had been processing a large number of appeals out of docket order, leaving older-docketed appeals to languish so that the Board could use the quick remand of newly-docketed cases to inflate its production numbers.

At the beginning of Fiscal Year 2014, Vice Chairman and "Executive in Charge" Laura Eskenazi announced that she had met with Secretary Shinseki and that the Board's production goal for Fiscal Year 2014 (October 1, 2013 to September 30, 2014) would be the dispatch of 55,170 appeals decisions, which is a goal higher than any ever set for the Board, and which is higher than the Board has ever achieved since the advent of judicial review in 1988. After dismal production numbers for October 2013 which showed that the Board was not on track to achieve the FY production goal, management on or around November 7, 2013 implemented the Rocket Docket program, modeled after the 1995/1996 program, to supplement the Board's productivity. The program suffered from the same inherent unbalanced diversion of Board resources to easier and more recent appeals at the expense of older appeals as with the incarnation of the program in the mid-1990s. The new Rocket Docket program also manipulated the Board's workload to generate more remands in order to meet fiscal year productivity goals.

A December 13, 2013 email from Vincent Chiappetta, a member of Ms. Eskenazi's staff, detailed the parameters of management's new Rocket Docket Project. Unlike the 1995/1996 project, the appeals selected out of docket order would ultimately include not only remands, but allowances/grants as well. In addition, unlike the 1995/1996 project, the attorneys screening the cases did so on an overtime basis, and would not be the same attorneys who prepared the remands or grants/allowances; instead, a second group of attorneys would prepare the remands or decisions, and also did so on an overtime basis. Thus, the program as implemented inherently involved duplication of work and overtime pay, as the screening attorney could have easily prepared the remand or decision after having just reviewed the case. The December 13, 2013 email also notes that the cases selected for screening would not include box cases (meaning multi-volume cases placed in boxes), and would be limited to appeals involving only 1 or 2 issues. As implemented, the Rocket Docket program ensured that veterans with a multiple volume or issue appeal never had a chance of having their appeal screened. Instead, only the appeals of those veterans accommodating enough to have small cases or a limited number of issues would be considered for the Rocket Docket program, as those cases allowed management to cherry-pick cases in order to pad the Board's production numbers and receive a bonus at the

end of the year. In addition, approximately 100 cases were allowed/granted under the Rocket Docket program, while a large volume of appeals with older docket numbers languished.

Approximately 1,100 appeals were added to management's goal of 55,170 decided appeals through this program.

When Judges and Acting Judges hold video and travel hearings, there is a computerized docket sheet to complete after each hearing to document if the hearing was held, whether the record is being held open for evidence, whether a copy of the transcript of the hearing was requested, and for notes. After the Rocket Docket program was implemented, an additional category was added in which the Judge or Acting Judge could select "Rocket Docket"; this selection meant that the Judge or Acting Judge had decided that they will either remand or grant the appeal. Once the Rocket Docket category is marked, the Board's hearing unit sends the case file up for adjudication as soon as the transcript of the hearing is completed. Many of these Board hearings have very recent docket numbers, as the Board tends to conduct the hearings within a reasonable time after the hearing is requested. Consequently, those veterans with more recent docket numbers whose hearing was conducted after November 2013 now have an increased chance of having their case remanded or granted sooner than those veterans with older docket numbers who had a hearing prior to the advent of the option for the presiding Judge or Acting Judge to select the appeal for expedited consideration. This is yet another means through which management allows the processing of cases out of docket order at the expense of veterans with older docket numbers or who are not savvy enough to request a hearing to see if their case may be considered for the Rocket Docket Program for quicker adjudication.

Ultimately, over a thousand appeals were identified as requiring quick remands, and were then immediately processed regardless of docket order and dispatched from the Board under the auspices of the Rocket Docket program. Although the statute allowing for screening of such cases only allows processing of the appeals for the purposes of development, about 100 of the appeals screened were in fact then decided as part of the program, and many of those were decided out of docket order because they were considered easy allowances. Management had full access to the report in VACOLS which showed that cases in the program were being decided when they should not have. Management allowed the program to continue until it was suspended by management in June 2014.

Secretary Shinseki resigned on Friday, May 30, 2014. On Monday June 2, 2014, in an email, Chief Judge Cheryl Mason notified the Board that the Rocket Docket Project had been suspended immediately. Apparently, Ms. Eskenazi, realized that once Secretary Shinseki was gone, there might be resistance from fresh eyes to her policy of adjudicating veterans' cases out of docket order, and in allowing older cases to gather dust while easier cases were decided first in the name of achieving her production goals and securing another bonus.

In a subsequent email sent later the same day, Chief Mason clarified that the Rocket Docket program was only temporarily suspended due to low participation, and to a low number of cases meeting the criteria for screening. Unfortunately, a review of the record of attorney volunteers does not support Ms. Mason's explanation as to low attorney participation. That records shows that although there were fluctuations in attorney participation during holiday periods, the level of

attorney participation in the few months prior to the suspension of the program was stable, and did not evidence a lower than usual participation rate in the program. As for the low number of cases meeting the criteria, management could have altered their screening requirements to allow for box cases and cases with more than two issues to broaden the pool of cases.

On June 13, 2014, Ms. Eskenazi sent a Board-wide email seeking to justify the Rocket Docket Program, indicating that cases could be taken out of docket order in order to develop cases under 38 U.S.C. section 7107(f). However, conveniently she did not mention that many cases dispatched in the Rocket Docket Program were allowed/granted, thus adjudicating cases out of docket order, which is not sanctioned by 38 U.S.C. section 7107(f).

Although trainee cases (those cases used for new Board attorney hires) are not part of the Rocket Docket program, it is worth noting that trainee cases are frequently decided out of docket order, and there is no exception which covers those cases. Trainee cases are those case storage believes are suitable for new hires.

Perverse Incentives

By March 2014, management realized that the Rocket Docket program alone could not hope to generate enough decided appeals to meet her goal of 55,170 cases decided. Management does not have the option of squeezing more cases out of the attorneys, because their production goals were negotiated by a union. Attorneys are required to submit and have signed 3 credits a week to their Judges. A case, or appeal, is worth either 1 or 1.5 "credits". With increasingly complicated cases and multiple issue cases this requirement can be a challenge during the best weeks. Even when attorneys are on leave they are responsible for having 3 credits signed during the week, and thus must be ahead in production before leave is taken, or face discipline; no exception to this policy is given for brief illness or medical appointments.

In order to meet the lofty production goal, and as Board Judges are not protected by a union, management in March 2014 (halfway through the fiscal year) decided to change the production goals for the Judges in two ways. The old production goal for a Judge was 752 signed credits for fiscal year 2014. Management first determined that the Judge goal would now be based on cases, and not credits (although attorney goals are still based on credits); that is, each appeal decided by a Judge now counts only one toward his or her goal for the year. Management then changed the goal from 752 to 834 cases to be successful, and inexplicably made the change retroactive to October 1, 2013. For an "outstanding" rating, management indicated that a judge would need to sign 1,002 cases by September 30, 2014 (this information was conveyed in an email from Ms. Eskenazi with attached letter sent to Ms. Eskenazi from the Judges' Professional Association). Immediately prior to this mid-year change in Judge goals, most Judges were at goal or above goal. Once the change was implemented, many judges were below the minimal goal. Unsurprisingly, Judges complained that this sudden, dramatic and retroactive increase in production requirements meant that they could not review case submissions by attorneys for correctness, and instead were forced to just turn to the last page and sign their name to the decision. Management's sudden and draconian change in the Judge production requirements is

resulting in a huge disservice to veterans, as most veterans presumably would prefer their case to be decided by a Judge with the time to decide their case correctly.

Another unfortunate and veteran-unfriendly result of management's haphazard changing of production goals is that there is now a disincentive for Judges to make use of a development tool specifically authorized by Congress. Under 38 U.S.C. section 7109, the Board may seek out an independent medical opinion (IME) in certain cases. The Board may also seek out an internal medical opinion through the Veterans Health Administration (VHA). The advantage to the veteran in having the Board use the IME/VHA process instead of a remand is beyond debate, as the IME/VHA process shortens the time it takes to obtain an opinion by months to years in virtually each case.

Traditionally, the Board awarded credit to an attorney who prepares either type of request (IME opinion or VHA opinion) and credit to the Judge who signed either type of request. In tying Judge goals to cases, rather than to credits, management has now created a disincentive for a Judge to sign such a request. Although the attorney would still get credit for the request, the Judge would not, because it is not a decision on an appeal for the Board's reporting purposes. Consequently most judges, when faced with an appeal well-suited for an IME opinion or VHA opinion request, will nevertheless now remand the case in order to have the case count for their yearly goal. As a direct result of management's changing the Judge production goals in a manner that is not neutral to veterans, many veterans will now have to wait years for their appeals to return to the Board for a decision.

Research shows that with the advent of the new production standard in March 2014, the Board has seen a 47 percent decrease in the monthly number of IME and VHA opinions requested.

As a result of management's sudden and draconian change in production standards, and in order to protect themselves from further unattainable requirements levied upon them, the Judges began the process of unionizing, and filed a petition with the Federal Labor Relations Authority. Prior to management's actions, the Judges were not considering taking any such action.

Confusion in Case Management

In a June 2, 2014 email sent at 4:16 p.m., a case storage supervisor noted that based on guidance from Ms. Eskenazi, those cases with June 2011 docket dates and earlier would be automatically sent to the work groups in the Office of Veterans Law Judges. (The Office of the Veterans Law Judges is separate from the front office at the Board, and consists of 10 Chief Judges, each of whom supervises a work group comprised of approximately 5 Judges and approximately 40 attorneys). This represented a complete change in the procedure for ordering cases from case storage, and was driven by management's fear that the Board's adjudication of cherry-picked cases outside of docket order would be discovered. Management is now scrambling to get cases out of case storage that had an old docket number by forcing them into the hands of Judges to transfer responsibility in the case inquiries are made concerning the languishing of those case.

On Wednesday, June 4, 2014, Ms. Eskenazi had her usual Executive-in-Charge meeting at 9:00 a.m. with Board supervisors. At the meeting she voiced her concern that due to the scandal with VHA, the Board may be soon investigated by Congress, and that Board management must now portray integrity and transparency.

On June 27, 2014, Chief Mason sent out an email to her judges and attorneys noting that there were still a large number of old docket number cases that had been at the Board for a long period of time. She asked that all Judges and attorneys run reports and give her an update on the status of their oldest docket cases immediately.

In addition to cases with old docket numbers lingering in central case storage (the numerical designation in VACOLS for central case storage is 81, and cases in central case storage are ones which have not yet been assigned to an attorney to process), there are cases that have been in case storage for over 400 days. Management apparently is not providing much in the way of oversight of their case storage staff, which includes two GS-15s and a now-vacant SES Chief of Management Planning and Analysis (MPA) (the prior occupant of that position now serves as the Principal Deputy Vice Chairman SES). The system is clearly broken, and does not have anyone competent in charge to organize proper case flow. Prior to management's re-organization of the Board in December 2012 and the Rocket Docket campaign of processing cases out of docket order, there were no case flow problems. Now, management has ordered the forced movement of hundreds of cases into Judges' hands, regardless of whether those cases can be worked. Moreover, according to Chief Mason's email dated June 27, 2014, it is now the job of the Judges and attorneys to run case storage reports to track the age of their cases instead of the MPA staff headed by top level management who apparently cannot do their jobs.

For several years, the Board's top management has progressively either added high-level positions to the front office staff, or reclassified positions into a higher paying grade. The Board is now top heavy with SES, SLS, and GS-15s in the front office and management level. For such a small staff office within the Department of Veterans Affairs, the Board has 5 SES positions, 2 SLS positions, and 5 GS-15s positions (with 2 more having recently been created by management in the front office) in the front office alone. Despite large numbers of high level staff the Vice Chairman now commands, management nevertheless was unable or unwilling to pay attention to the cases languishing in case storage until it became a potential source of embarrassment to them with the recent Congressional and media attention to unconscionable delays in veterans' cases.

In addition, although Ms. Eskenazi now tries to rally the Board by wrapping herself in the American Flag and stressing that her goal is to help veterans, this exuberance and patriotism was well hidden and did not surface until she was faced with having the Board achieve the goal of dispatching 55,170 cases. In fact, neither Ms. Eskenazi nor a single member of her front office management (Principal Deputy Vice Chairman, Chief Counsel for Operations, or Chief Counsel for Policy and Procedure) is a veteran. None of Ms. Eskenazi's 10 Chief Judges are veterans, and none of Ms. Eskenazi's last 11 Judge recommendations in September 2013 and May 2014 included veterans. In fact, there has not been a veteran selected as Judge since 2010.

In addition, Board Management is ruthless in shifting criticism, going so far as to weaponize the Department-wide ICARE principles to label critics as anti-veteran. The Board's management style is that of fear and intimidation which has been the norm for years.

Morale is not helped by mixed signals management sends to the employees. Board management let an employee go during her first year (last week of August 2014) by indicating she had problems with the quality of her work. Yet at the beginning of August 2014 she received an incentive award for producing a certain amount of cases within a defined time period which included a monetary award. Board management gave this employee an award for production and turned around and let her go for her quality, yet cases were signed regardless of quality in order to squeeze cases out of this attorney.

Morale has never been this bad since I have been at the Board. Many attorneys are forced to work unpaid overtime to meet these lofty goals. Because of the culture of fear and intimidation cultivated by management, employees find it difficult to express themselves because any form of criticism is met with swift retaliation. When management had a poster contest to promote the 55,170 goal, attorneys were so angered by management's cavalier attitude toward those who actually do work on the cases that they responded with a poster of their own in the form of gag poster. Management responded to the gag poster with an email from Ms. Eskenazi accusing the creator of the poster as being anti-veteran.

In addition, due to employees fear of retaliation, employees have sent anonymous letters to Secretary Shinseki concerning management however he would ask the Vice Chairman to inform employees that they should file complaints instead of realizing there might be a problem at the Board. Also, one employee notified VA IG of the Rocket Docket problem, but was never contacted by the IG.

Counting Cases Multiple Times

In a March 26, 2014 email, Sonnet Bush, now Gorham, noted that there had been a settlement agreement reached in the case of *National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs*, 725 F.3d 1312 (Fed. Cir. 2013), which implemented VA's plan to remedy any harm to potentially affected appellants that may have been caused by the Board's failure to adhere to *Bryant v. Shinseki*, 23 Vet. App. 488 (2010) and 38 C.F.R. section 3.103 after the Government conceded that the 2011 rule abrogating Bryant was invalid. The Board decisions involved were known at the Board as "*Bryant*" cases. Potentially affected appellants included all claimants who received a hearing before the Board, and who received a final Board decision at any time from August 23, 2011 through June 18, 2012, in which the Board cited to the invalid 2011 rule, to *Bryant*, or to 38 C.F.R. section 3.103.

Ms. Gorham indicated in the email that the Board offered 1,025 potentially affected appellants the opportunity to vacate a prior Board decision, with the option to appear for a new hearing. Approximately 400 appellants elected to have their Board decisions vacated. Deputy Vice

Chairmen David Spickler and Joaquin Aguayo-Pereles and two attorneys from the front office completed the orders to vacate noted in this email.

In reporting its productivity, the Board not only counted the dispatch of the original decisions that had violated *Bryant*, but also counted the vacaturs of those decisions, as well as the reissuance of the new decisions after correction of the *Bryant* violations. In other words, the Board has counted the same underlying case three times when reporting its production, thereby manipulating the production numbers reported to VA and to Congress. This manipulation has also given a boost to management's efforts to achieve the goal of dispatching 55,170 cases, as at least the vacaturs and re-issued decisions each counted twice during the current production year.

I hope I can further illuminate for this Committee the increasingly toxic and veteran-unfriendly actions that Board management has adopted in pursuit of their own agenda.