

Rosye Blancas Cloud
On
Learning from Whistleblowers at the Department of Veterans Affairs

June 25, 2019

Chairman Pappas, Ranking Member Bergman, Distinguished Subcommittee Members:

I submit my testimony today because I believe in the rule of law, respect our branches of government and value the role of Congress. My hope is that my testimony will help you in fulfilling your role overseeing the Department of Veterans Affairs (VA) and in taking steps to address the mistreatment of public servants tackling fraud, waste, and abuse each day on behalf of our nations' veterans.

This subcommittee and I share a common goal: To ensure our country delivers on its promise of quality benefits and services to our veteran community. The ability to deliver on this national commitment has become increasingly difficult as VA is consistently placed in the middle of political battles ranging from privatization and competition for limited philanthropic funds to a rapid increase in lobbyists and private sector entities aiming to assist VA in spending its \$220 billion FY 2020 budget. Within this context, a culture of secrecy has emerged that protects the status quo instead of incentivizing effective and efficient operations.

I have spent most of my professional career serving the military, veterans and their families. I joined VA after nearly two decades inside the Department of Defense. I brought to VA the perspective and experience of a military spouse married to a combat veteran. I was a social services advocate for victims of abuse and sexual assault, a financial counselor to military families in financial distress and an Army Senior Fellow selected for assignments in the Office of Management and Budget (OMB) and the White House National Security and Domestic Policy Councils. My career has included oversight of enterprise-level contracts, performance and Lean Six Sigma training, implementation of national interagency initiatives, complex social service programs, federal agency strategic planning, and collaboration with not-for-profit and private sector organizations. As graduate of the Industrial College of the Armed Forces, I never once doubted the importance of public service and I know firsthand the dire consequences of failed programs and services. This is why, I accepted a senior advisor position at VA instead of a more

prestigious policy-related senior executive appointment when both were offered to me in July 2013.

That's my background. Now I'd like to tell you about why I am submitting testimony for this hearing.

I. Misuse of investigative powers toward whistleblowers

I was competitively selected to lead the office of Veterans Affairs/Department of Defense Program Office (VDPO) as a senior executive. I occupied the position in an acting capacity while VA said it would process my appointment paperwork. In this position, I identified and took measures to address fraud, waste, and abuse by senior Veterans Benefits Administration (VBA) officials. I disclosed to the Office of Special Counsel (OSC) misuse of funds, engagement of officials in contract steering, shadow jobs, harassment, discharge of duties, ethics violations and employee misconduct.

Because most whistleblowers are publicly willing to identify and discuss the need to correct wrongdoing, they are easily identified by management and much more likely to be retaliated against.

After I disclosed wrongdoing to OSC, the VA official responsible for the disclosed wrongdoing referred frivolous allegations against me to the Office of Inspector General for an investigation that would ultimately go on for two years before fully exonerating me.

The retaliating official openly acknowledged via email to top leaders in the VA Secretary's office that the allegations for which I was investigated were deemed false. OIG personnel later informed me that this retaliator asked Acting Inspector General Linda Halliday to deprioritize my case on more than one occasion and therefore keep it in an "open" status. By VA policy, this "open" investigation status prevented VA from processing my appointment into the Senior Executive position for which I had been selected for which I had been performing the duties in an acting capacity. **Yet, I was still required to fulfill all of the duties of the position without appropriate pay and benefits. After two years, OIG finally closed its investigation. VA then still waited months before issuing a public exoneration and to this day failed to process all the back pay and bonus funds totaling tens of thousands of dollars.**

The use of administrative and OIG investigations for leverage against whistleblowers seems to be growing. In my case, the investigation was used to stifle my career advancement and prevent me from permanent appointment to a position that allowed me to see the depth and breadth of waste, fraud, and abuse by the official who retaliated against me. Collaterally, the investigation undermined my authority and encouraged low-performing employees to act out against me in efforts to avoid accountability for their own conduct.

I strongly urge the Committee to investigate the number of investigations initiated against whistleblowers and the length of time they take to complete with a “cycle time” analysis for each step in the process. We need to know where and how OIG investigations get held up and where resources might be better utilized to complete investigations in a timely fashion.

As a related matter, administrative investigations, unlike OIG investigations, are often initiated under the purview of the official the whistleblower reported for wrongdoing. Operating protocols should be updated to prohibit the convening authority under such circumstances from misusing taxpayer resources on retaliatory investigations. Because administrative investigations are often referred by senior officials, there is often a presumption of credibility given to management over the whistleblower.

Finally, these investigations serve a distinct retaliatory purpose by freezing the whistleblower in place. The whistleblower is ineligible for promotion and unable to receive performance awards or pay increases while under investigation. As I learned personally, you are treated as guilty from the start. As an added burden, whistleblowers incur significant legal expenses in defending against these retaliatory investigations while the primary wrongdoing they reported is suppressed.

In my case, that meant taking hundreds of thousands of dollars from savings and retirement accounts, impacting my future and that of my family. I recognize I am fortunate to be able to defend myself. Most whistleblowers represent themselves or seek affordable, low-cost representation while they remain in a “frozen” personnel status while the government spends unlimited time and taxpayer-funded resources on protecting the perpetrators.

II. Navigating the Agency Process

Navigating the agency process has also been a byzantine challenge in which I felt that I, as a whistleblower, had the deck stacked against me at each step. **I engaged 11 senior officials to address these various personnel and wrongdoing concerns prior to filing with OSC. Each official belonged to a critical office within VA that plays a key role in addressing wrongdoing and retaliation practices. I found very little collaboration or coordination between them. These offices included VBA HR, VA Central Office (VACO) HR, the Office of Resolution Management (ORM), the Office of Accountability and Whistleblower Protection (OAWP), OIG, the Office of General Counsel (OGC), the Acquisition Office, Office of the Secretary, VA security office and VA Office of Public Affairs.**

Throughout the process, I learned that modern retaliation tactics against whistleblowers include mobbing, cyber harassment, and disinformation campaigns. The lack of support for whistleblowers facing this level of retaliation is significant. In my case, key employees and high-ranking VA officials asked me repeatedly to not make attempts to publicly defend myself. They insisted that I not take proactive measures to release facts exonerating me from the false allegations even though they refused to release those facts themselves. **This included several calls from senior VACO officials to my home to praise my dedication to the agency by remaining silent.**

This pressure to not make an affirmative defense against retaliation tactics places the whistleblower at a significant disadvantage and makes us even more vulnerable to escalating retaliation.

In the last decade, a significant body of research has drawn attention to workplace mobbing, its characteristics and its long-term psychosocial impacts on whistleblowers. VA's longstanding legacy of protecting the status quo, along with resistance to change, makes it an ideal incubator for a culture that attacks and discredits those implementing change to group or business unit day-to-day operations. A culture that is prone to mobbing will not waste any time alerting the workforce that the worker they want out is a troublemaker who will be better off in another job. When this happens, even workers with unblemished reputations and stellar work records quickly find their identities and work histories revised. Management will then often share their concerns about the worker to that worker's fellow coworkers, suggesting that opportunities for advancement or improved working conditions may ensue once the "difficult" employee is gone.

It is no surprise, then, that inside the VA, whistleblowers are 10 times more likely to face disciplinary action than their peers within a year of reporting wrongdoing according to a 2018 GAO report.¹ Offices charged with personnel investigations should be trained on mobbing and other toxic indicators and strategies for addressing the severe personal and health consequences related to workplace trauma.

In addition to mobbing, the use of social and digital platforms provides anonymity and opportunity to threaten, harass, and verbally assault whistleblowers. In my case, I had no recourse to the release of personal information online (“doxing”) and harassment which led to threats to myself and my family. Even when evidence identified employees and senior leaders in my organization who I had reported for misconduct as openly collaborating with entities targeting me online, the agency took months for the office of security to review and subsequently inform me that they could not investigate or engage on matters related to cyber harassment. **Such false allegations made through social media eventually led to physical threats to my safety by men who had read the online statements and felt emboldened to do something about it. This harassment included sharing my personal home address as well as that of my family members.**

I did not have a positive experience with the OAWP. My attempt to discuss my disclosures of wrongdoing were met with resistance and little follow through. There existed a clear lack of coordination or information sharing between OAWP, ORM, and the OIG. Parallel investigations related to my disclosures of wrongdoing were confusing and no clear process seemed to exist for gathering evidence. To my knowledge, the lack of coordination and collaboration between these internal entities and OSC, meant that I was never interviewed, and my direct evidence was never requested. Furthermore, the head of OAWP, Mr. Peter O’Roark and his deputy had recently worked for the company I had referred to OSC for wrongdoing. I am submitting for the record an email by Mr. O’Roark where he engaged with the deciding official in my case, replacing the VA Office of General Counsel.

III. The Office of Special Counsel (OSC)

¹ <https://www.gao.gov/products/GAO-18-137>

Since OSC plays a significant role in investigation and supporting whistleblowers facing retaliation, it is important to note that OSC does not itself investigate disclosures of waste, fraud, and abuse. Instead, OSC reviews those disclosures and refers them to the subject agencies for investigation. The nature of what should be a simple process is what made my initial OSC experience so distressing.

I first disclosed VA wrongdoing to OSC on March 17, 2016. One year later, in March 2017, OSC sent me a letter containing confidential details about an unrelated individual and his own OSC disclosure, to reject my disclosure. It was apparent that no one had reviewed OSC's letter before an OSC Disclosure Unit attorney signed it and sent it to me. It therefore appeared that the Disclosure Unit itself was unsupervised and rejecting whistleblower disclosures without appropriate review. I have enclosed a redacted copy of this OSC correspondence for the record.

Fortunately, I had the assistance of attorneys to convince OSC to reconsider my March 2016 disclosure, and they reopened my case, likely out of embarrassment after my attorneys pointed out the errors contained in the March 2017 letter they sent to me. But not every whistleblower has the resources to retain an attorney. More importantly, no whistleblower should need an attorney to navigate OSC's disclosure and referral process.

The current OSC disclosure process places the burden of proof onto the untrained whistleblower to develop evidence (without the necessary authority or access) prior to OSC even referring disclosures for investigation. This posture forces whistleblowers to take undue risks in discovery activities and escalates friction between management and the whistleblower.

Then, when agency officials retaliate and take adverse actions against whistleblowers for their protected disclosures, whistleblowers must choose between seeking OSC's assistance and being able to challenge the merits of action before the Merit Systems Protection Board. In my case, because of my doubts about OSC's competence to investigate VA's retaliatory adverse action against me, I chose to appeal to the MSPB where my case has stalled for over a year waiting for the MSPB to rule on its jurisdiction to adjudicate all of the retaliatory acts VA took against me.

I am fortunate to be able to retain legal counsel. It would be impossible to navigate an affirmative defense without the support and advocacy of legal expertise. It is unfortunate that

most cases by my peers are handled in that way. With whistleblowers representing themselves, more needs to be done to educate federal employees about the availability of low-cost professional insurance and the critical role it can play in supporting whistleblowers so they feel empowered to fight for the health and safety of veterans against those who would otherwise abuse the system for personal gain.

I believe VA is essential to our national security. The mission is noble and righteous. Most VA employees dedicate themselves to the mission and strive to provide the highest quality of service. Many of these employees are veterans or a proud survivor or family member of a veteran. It is essential, then, that VA adopt a culture that is open to change and committed to excellence. Unfortunately, retaliation against whistleblowers undermines the ability to make badly needed, fundamental changes to the culture. In my view, VA will never be able to attract and retain top talent unless it ensures senior leaders are held accountable for retaliation when it occurs. Retaliation against public servants only emboldens corruption and deters employees from addressing problems proactively. Congressional oversight of VA is a key component to enacting that change. Thank you.

Ms. Rosye B Cloud