

EXHIBIT 2



GOVERNMENT ACCOUNTABILITY PROJECT

1612 K Street, NW, Suite #1100  
Washington, DC 20006  
(202) 457-0034 | info@whistleblower.org

April 9, 2021

Honorable Henry Kerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036  
Attn: Shoshana Elon and Elizabeth McMurray

Re: Special Counsel File DI-19-4715

Dear Mr. Kerner:

Mr. Brandon Coleman submits this verified comment on the Department of Veterans Affairs (VA) December 9, 2020 report responding to your July 20, 2020 referral for investigation pursuant to 5 USC 1213(g). Mr. Coleman alleged that there is inadequate independence between the Office of General Counsel (OGC) and the agency's Office of Accountability and Whistleblower Protection. (OAWP) More specifically, among other concerns he charged –

Violation of law, abuse of authority, and gross mismanagement by violating the statutory requirement for independence of the Department of Veterans Affairs (DVA) Office of Accountability and Whistleblower Protection from the agency's Office of General Counsel. (OGC) By statutory law, OAWP must operate independently from the OGC, whose structural mission inherently regularly includes adversarial proceedings with whistleblowers. On a routine basis, OAWP illegally does not act without prior OGC approval. On a personnel detail, OGC's Deputy General Counsel is functionally operating as OAWP chief of staff as its Acting Deputy Executive Director.

Although Mr. Coleman has not seen the Office of Special Counsel (OSC) referral letter, the agency characterized the issue as follows: "OAWP's internal and external operations are so heavily dependent on OGC involvement as to render OAWP effectively an element of OGC." While consistent, that summary fails to cover all merit system categories that the Secretary should have addressed, including abuse of authority and gross mismanagement.

The agency found no misconduct and recommended no corrective action. As will be detailed below, this was a bad faith response to the Special Counsel referral: 1) The report simply has no credibility, because it contains numerous false statements on witness cooperation and failed to recognize the existence of material evidence. 2) It is based on unsupported rebuttals of straw man

attacks irrelevant to Mr. Coleman's concerns. 3) The record is incomplete to support the report's conclusions.

I. Lack of credibility, because of an imbalanced record due to numerous false statements on witness cooperation and failure to recognize the existence of material evidence. The report primarily reflects and agrees with the explanations of OAWP's Chief, Dr. Bonzanto, and its Executive Director, Hansel Cordeiro, the former Associate Chief Counsel for the agency. They are the targets of the investigation.

The report did not refer to any evidence from Mr. Coleman that was forwarded by OSC, relying entirely on paraphrasing portions of his interview. The only supporting witnesses referenced for Mr. Coleman's position are two among those that he referred. The investigators explained that while they reached out to all the witnesses Mr. Coleman had proffered, but it was impossible to make former federal employees cooperate. The investigators only discussed testimony from two supporting witness, including one who allegedly initially agreed to cooperate in exposing censorship, then stopped responding to communications and ultimately declined to cooperate after the initial interview. (Report, at 1-2, 8)

This is partially misleading, and partially false. Mr. Coleman proffered five witnesses to the investigators.<sup>1</sup> Two have reported to counsel that they have no record or memory of being contacted. Two more of the five reported that they not only had participated but had contributed extensively. As will be discussed below, their evidence is invisible in the record. The fifth stated that the report grossly misrepresents his/her unsuccessful attempts to provide evidence. Any inference that the record is unbalanced due to lack of cooperation simply is false. The investigators ran away from the evidence.

Text on the allegedly uncooperative witness is illustrative. Counsel spoke with this witness, whose extensive initial testimony is not included in the report. *For example, the witness did not just complain of alleged censorship; the allegation was that OGC instructed him to remove evidence on obstruction of justice by the General Counsel.* Further, the witness offered to provide extensive additional evidence. The OAWP investigators did send an email that they would accept the evidence but failed to provide any notice of their seven-day deadline to receive it. Nor did they make repeated efforts to communicate that were ignored. The witness became ill, but upon recovery after three weeks offered to provide the supporting evidence. The investigators said it was too late. In short, the witness did not decline to provide supporting evidence to the investigators. They declined to receive it.

The report contends there only were two examples of OGC interference – Mr. Cordeiro's reassignment and his role at an all hands training meeting. That simply is false. Mr. Coleman explained extensively how his in-depth training program was rejected due to OGC objections, because OGC felt it was too "pro employee." Another witness, whom the investigators did not contact, would have testified (and still will) that OAWP rejected an internally-developed training proposal that complied with legal requirements for contractors, and substituted the version Mr. Cordeiro had prepared at OGC. The results at a September 2019 training program were a disaster, and the subject of other whistleblowing.

For Mr. Coleman, the most striking credibility breakdown occurred with Dr. Bonzanto's and Mr. Cordeiro's denials on lack of independence. Their position on the record directly contradicts their

---

<sup>1</sup> If the witnesses' confidentiality can be protected, their supporting materials and correspondence is available for OSC review.

statements to Mr. Coleman. Late last year he had extensive discussions with both, and both agreed that OAWP does not have adequate independence from the agency's Office of General Counsel. Officials who have one position in private and another position in public do not have credibility for either.

On balance, there is no excuse not to recognize the existence of these issues and supporting evidence. Witnesses provided extensive testimony, supporting affidavits and documentary evidence for Mr. Coleman's concerns on lack of independence. That information simply is invisible in the record submitted to OSC.

2. Unsupported rebuttals of straw man attacks irrelevant to Mr. Coleman's concerns. The investigators found no problem with Mr. Cordeiro while at OGC leading an all hands OAWP training program, because the power point slides were merely a description of "what's on the horizon." (*Id.*, at 12), which the investigators found to be an innocent phrase. The point is not whether the power point's text was innocuous. The problem is that the OGC with a hostile mission developed and presented the vision for what's on the horizon.

Having avoided the point, the investigators then ignored relevant, material evidence. For example, one witness testified and presented a statement explaining how the OAWP audience perceived from Mr. Cordeiro's power point presentation that OGC controlled the agency. The evidence is invisible in the report.

The report concludes that there is no problem with Mr. Cordeiro's reassignment from OGC to OAWP, because all formal requirements were complied with. (*Id.*) Again, that never was the point. The concern is that in practice Mr. Cordeiro enforced OGC policies through his new role. There was a consensus among witnesses that he served as made the authoritative recommendations to OAWP's chief Dr. Bonzanto. They canceled OAWP-based training. They canceled OAWP's counseling program. They canceled OAWP's mentoring Alternate Dispute Resolution program, the subject of other whistleblowing allegations due to their consequences – gross mismanagement and abuse of authority.

The investigators observed that OGC and OAWP's cooperation is responsible and necessary for consultation, is authorized by statute, and there is no procedure giving OGC authoritative control. (*Id.*) That is not in dispute, but the whistleblowers contended that cooperation meant control *in practice*. Whether or not technically illegal, the OGC expatriate Mr. Cordeiro's arrival led to abuse of authority that gutted OAWP's mission and made it the subject of congressional hearings and media scrutiny. The purpose of section 1213 cannot be achieved if an agency can disregard abuse of authority and gross mismanagement with impunity.

Perhaps most curious, the report, at 11, has a finding that Mr. Coleman was unable to rebut the Office of Inspector General. (OIG) It is curious, because Mr. Coleman was not trying to. The OIG recommended responsible consultation and coordination. Mr. Coleman was blowing the whistle on control.

3. Incomplete record to support the report's conclusions. The report contains sweeping self-exonerations without asserted support in the record. For example, the investigators observed favorably that OAWP rejected OGC recommendations 50% of the time and did not always accept them in their "entirety." (*Id.*, at 9-10)

However, gross mismanagement and abuse of authority in individual cases cannot be resolved through macro data. There is no analysis of which cases or recommendations were accepted or rejected, and why. Even if a minority percentage, it is abuse authority to obstruct the record in politically sensitive cases or those where there is conflict of interest. To illustrate, it was not a discretionary recommendation to remove the General Counsel from an OAWP investigator's summary of evidence.

In short, the agency response did not respect the purpose of referrals under section 1213. It is a shoddy coverup whose credibility and reasoning cannot withstand the most basic scrutiny. The referral under section 1213 accomplished nothing.

OAWP's lack of structural independence deserves serious review. The issue cannot be dismissed. It reflects a record of abuse not only documented by Mr. Coleman, but by witnesses at multiple hearings of the House Veterans Affairs Subcommittee on Oversight and Investigations. <https://pappas.house.gov/media/press-releases/two-days-hearings-congressman-pappas-presses-va-efforts-change-culture>. That also is why on December 3, 2020 Chairman Pappas introduced HR 8860, the Strengthening VA Whistleblower Protection Act, to better enforce the boundary that Congress intended and that the VA has violated. <https://www.congress.gov/bill/116th-congress/house-bill/8860/text>. The Committee's summary of the need for and substance of further legislation on this issue is as follows:

Establish Independent Legal Reviews by creating a general counsel for OAWP independent of the VA Office of General Counsel (GC). The bill would prevent the VA GC from providing any recommendation, advisory opinion, or authoritative decision for any matter relevant to a whistleblower case under OAWP. The VA GC handles defense of the Department against legal and administration actions by employees, including whistleblowers. Therefore, review of complaints and investigations of whistleblower complaints currently places the VA GC in conflict.

The rule of law cannot be grounded in conflict of interest. But OGC is counsel for the defense with respect to OAWP findings of illegal retaliation. It should not be necessary for Congress to pass a law for the VA to provide an internal watchdog that is genuinely independent from an inherent conflict of interest with the Agency's Office of General Counsel.

In light of the agency's bad faith response, the OSC should require that it investigate and report on this issue pursuant 5 USC section 1213 (b). The agency's embarrassingly crude effort to avoid the witnesses and evidence is more than sufficient to upgrade the referral from one based on a "reasonable belief" to a "substantial likelihood." The record under section 1213(b) could be the foundation to make a difference. If the new Administration responds in good faith, the whistleblowing disclosure channel could help obviate the need for legislation. If not, the agency's continued avoidance will be a significant part of the record for congressional action.

Respectfully submitted,

s/Tom Devine/s

---

Tom Devine  
Counsel for Mr. Coleman

