

**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 out-

side 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.