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Celebrate Whistleblowers, Don't Attack Them

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Congress and the veterans' service organizations (including ROA) are increasingly impatient with the Department of Veterans Affairs (VA) because of the growing backlog in processing claims by former service members. Although the VA budget has increased dramatically at a time of great budget stringency for the Department of Defense and other agencies, the glut of unprocessed claims approaches 1 million, and 630,000 of those claims have been pending for more than 125 days (up from 164,000 pending that long in 2009).

The VA is literally drowning in paper. The sheer weight of all these paper files threatens the structural integrity of many VA buildings. In this glut, records are misplaced, which causes still further delays in both claim processing and medical care. The solution clearly is to digitize these paper records, but the records cannot be digitized until they are found and organized.

Leon Davis III, Cathleen Manna, Tracy Harrison, and Pamela Hess-Wellspeak are medical record technicians at the VA's Western New York Healthcare System (WNYHS) in Buffalo. They complained to the Director of the WNYHS that medical files (including cardiac and dental records, Agent Orange Registry records, etc.) were being randomly thrown into boxes rather than kept in any order, that many Social Security numbers were not properly attributed to the correct veteran names, and that mold-infested files were not handled properly to prevent further contamination and to ensure their restoration. As a result, veterans' medical records were often deemed unavailable.

The WNYHS Director told the facility's Associate Medical Director (AMD) to review these allegations, and the AMD reported back the same day, asserting that these complaints were without merit. It appears that the AMD did not investigate the allegations in good faith but simply denied them and attacked the whistleblowers.

Having found no satisfaction within their own agency, these four courageous whistleblowers then contacted the United States Office of Special Counsel (OSC).¹ OSC directed the VA to conduct a proper investigation, which substantiated most of the whistleblowers' complaints. The VA has put an improvement plan into effect.

OSC is an independent federal investigative and prosecutorial agency that was created by the Civil Service Reform Act of 1978. OSC also has authorities and responsibilities under the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the

¹ I am both a fan of OSC and an alumnus, having worked there as an attorney in 2007-08. In addition to my service as an OSC attorney in 2007-08, I also served as the Director of the Hotline Investigations Division of the Office of the Naval Inspector General, as an active duty Navy Captain in 1996-97. I made a mantra of the statement that "We investigate complaints. We do not investigate complainants." When a complaint is made, we should immediately try to ascertain if it is true, and we should take timely and effective action to correct any problems that are found. We should not waste one minute investigating the motive of the person making the complaint.

merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC's Disclosure Unit serves as a safe channel for federal employees and others to make allegations of wrongdoing. For more information about OSC, see the agency's website at www.osc.gov.

OSC is headed by the Special Counsel of the United States, who is appointed by the President with Senate confirmation, for a five-year term. The Honorable Carolyn Lerner has been Special Counsel since June 2011. In announcing this VA situation and its resolution, Ms. Lerner said: "All patients should have access to their medical records. These four employees should be commended for their persistence in resolving this problem."

If the VA is to get a handle on its many problems, it needs a constant flow of information from VA employees in the field. When there are problems, top management officials need to be informed, so that they can take timely and effective corrective action. Top level management officials will never learn of these problems if mid-level officials succeed in cutting off the flow of information by threatening and reprimanding against whistleblowers. If the VA is to improve, it needs to defeat the culture of reprisal against those who bring problems to the attention of top management. The VA needs to learn to honor whistleblowers, not attack them.