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VA cemetery managers who pushed safety changes before deadly crash claim retaliation

Jerry Zremski

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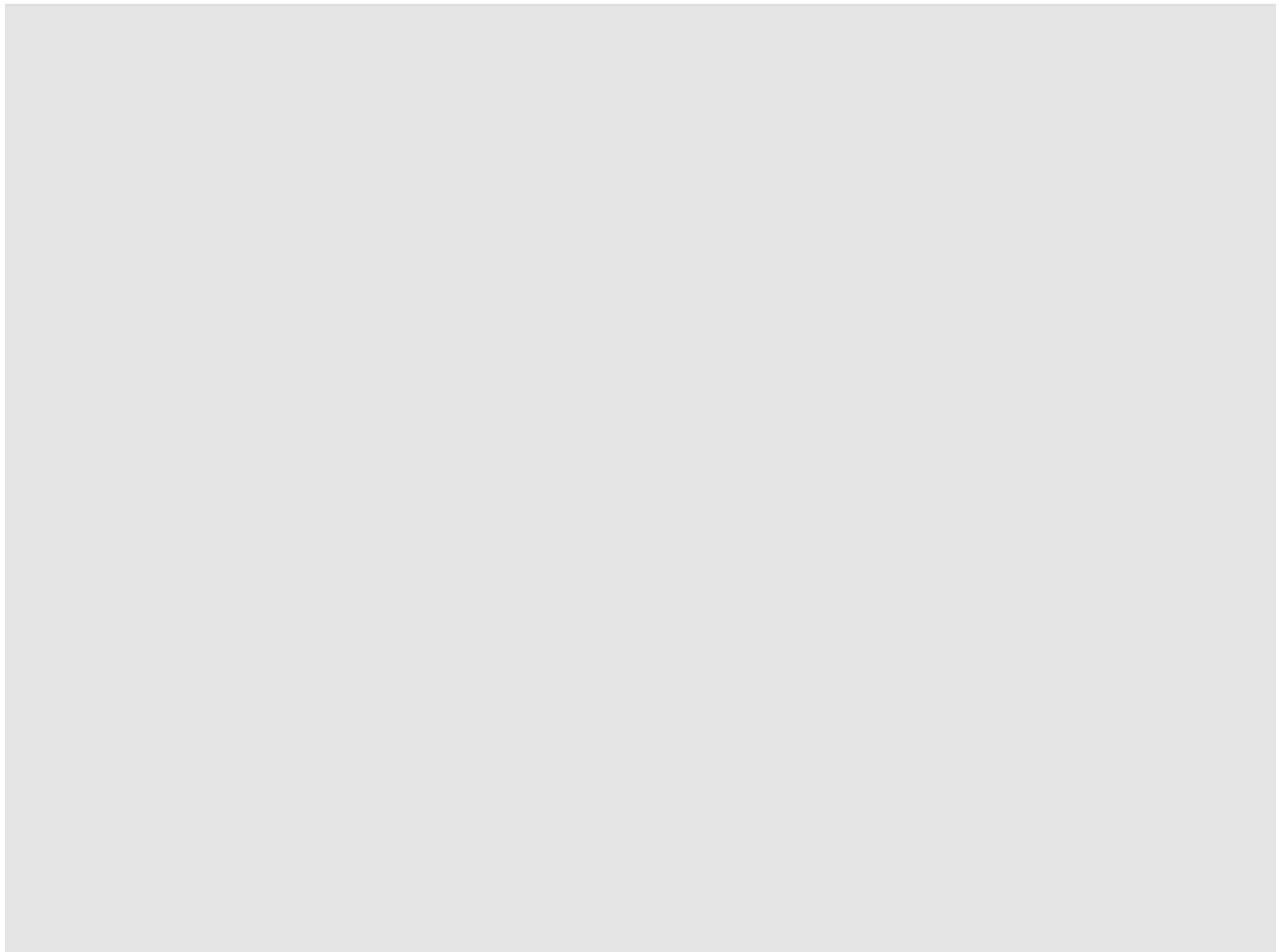
In email after email to public officials in March 2020, James R. Metcalfe II called the intersection of State Route 77 and Indian Falls Road an imminent danger that needed to be fixed.

Sharon Cantillon/ News file photo

Jerry Zremski

WASHINGTON – The two federal employees who pushed for a safe redesign of the intersection near Western New York's new veterans cemetery are now in what one supporter described as "professional purgatory."

The cemetery director, James R. Metcalfe II, was not only reprimanded for pushing those safety changes, but also barred from the cemetery's dedication. And the program manager bringing the sprawling cemetery to fruition, Peter C. Rizzo, was transferred away from the project nearly two years ago, meaning the U.S. Department of Veterans Affairs' local planning guru no longer has any role in the agency's largest local construction project.



'It could have been avoided': VA Cemetery planners' warnings went unheeded before crash killed two vets

The two men see themselves as victims of retaliation, according to complaints filed long ago with internal VA investigators, the agency created to protect wronged federal employees and Senate Majority Leader Charles E. Schumer – but those complaints linger in the shadow of tragedy. On Sept. 22, two veterans from Lockport, **Christopher Rowell and Arnold Herdendorf, were killed at the intersection that Metcalfe and Rizzo were trying to get fixed.**

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The VA won't comment on what happened to Metcalfe and Rizzo, saying the agency won't discuss personnel matters. But advocates for veterans and federal employees, as well as New York's two U.S. senators, see Metcalfe and Rizzo as lesser victims of the same larger tragedy that claimed the lives of those two vets in the fall: that the VA ignored safety concerns at an intersection that vets are still driving through every day.

"I think both of these guys have been unjustly punished," said Marlene Roll, the national and state legislative chairperson for Veterans of Foreign Wars. "They were proven right, unfortunately. There shouldn't have been loss of life if what they said had been heeded."

Metcalfe: Silenced

Metcalfe, a Western New York native and member of the Seneca Nation of Indians who returned home to manage the new Western New York National Cemetery, started pressing for safety improvements at the intersection of Route 77 and Indian Falls Road in March 2020.

Cars and trucks rushed down Route 77 at 55 mph or more, meaning it would be difficult for vets leaving the cemetery to cross or turn onto the highway, Metcalfe told a number of public officials who largely agreed with his assessment.

But on June 19, 2020, Metcalfe got a call from Willie Clyde Marsh, executive director of the National Cemetery Administration's North Atlantic District.

Reiterating what he told Metcalfe in that phone call in a July 20, 2020 memo, Marsh reprimanded Metcalfe for "inappropriate routing of email" and left him with some orders.

"You are directed not to engage with County Officials or DOT about changing traffic patterns or stop signs or speed limits without approval of NAD (North Atlantic District) leadership," the memo said.

[James Metcalfe directed by Department of Veterans Affairs to stop talking about traffic changes with state or county officials \(p. 31\)](#)

- b. You are directed to not engage with County Officials or DOT about changing traffic patterns or stops signs or speed limits without approval of NAD Leadership.

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In addition, "you are not to discuss budget issues or potential contract scope changes" with contractors, congressional representatives or others without approval from above, Marsh wrote.

VA officials in Washington have barred Metcalfe from speaking publicly about what happened, but his wife, Darcy, has had plenty to say.

"In subsequent events, James was reprimanded for responding directly to a reporter (even though he did not); received repeated verbal and written admonishments for actions beyond his control; and was unfairly assigned an annual performance rating two points lower than the score he had earned every year for the previous 14 years," she said in a Jan. 23 email to Veterans Secretary Denis R. McDonough. "All of this took place at the hands of Mr. Marsh."

Later, in a written statement to The Buffalo News, Darcy Metcalfe said:

"Imagine Jamie's embarrassment in November 2020 when he was told by his executive leadership that he could not attend the dedication ceremony" for the cemetery. "Every new national cemetery director is front-and-center at their facility's dedication ceremony, but not Jamie."

Metcalfe showed up at the ceremony anyway and sat in the back, said sources who attended.

"A day does not go by that Jamie doesn't visualize the horrific scene outside the cemetery on September 22nd, a scene that could have and should have been prevented," she told The News.

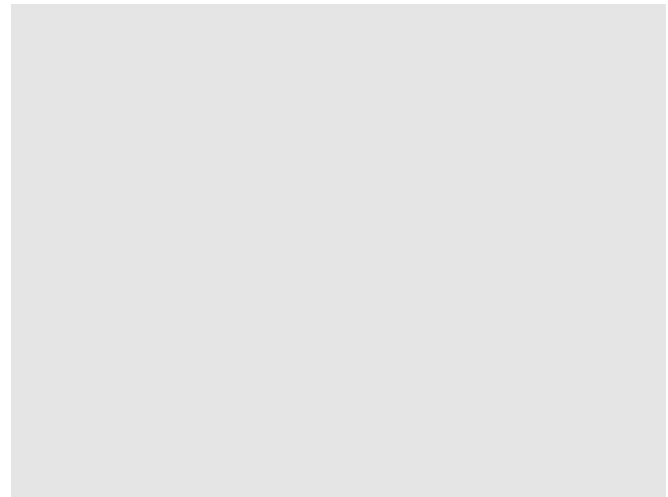
Darcy Metcalfe also spelled out her concerns in a Jan. 26 email to 75 congressional offices.

"Is there anything you can do to urge VA to pursue needed safety improvements at the intersection ... and hold VA and Mr. Marsh accountable for their wrongdoing?" she asked.

Rizzo: Transferred

Amid his work to get the cemetery built, Rizzo received a shocking email on June 22, 2020.

"Thank you for your efforts and professionalism while serving on detail at WNY National Cemetery. You have served this project well from the start of construction in September 2019," wrote Ann Marie Sweet-Abshire, a construction director at VA headquarters. "Regrettably, for reasons beyond my control, your detail is terminated effective immediately."



Peter C. Rizzo, right, speaks at a December 2019 meeting with other officials at the U.S. Department of Veterans Affairs. Also pictured is W. Clyde Marsh, the VA official in Washington who reprimanded cemetery manager James R. Metcalfe II for pressing for traffic safety changes near the new Western New York National Cemetery.

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[Peter Rizzo's assignment to the National Veterans Cemetery project is terminated by the Department of Veterans Affairs \(p. 1\).](#)

Peter,

Thank you for your efforts and professionalism while serving on detail at WNY Nation Cemetery. You have served this project well from the start of construction in September 2019.

Regrettably, for reasons beyond my control, your detail is terminated effective immediately. This direction was handed down last Thursday from Michael Brennan, through Ed Gully. At that time, I was also directed not to communicate this detail termination to any other party until today.

Rizzo responded that he was "heartbroken," and then asked Sweet-Abshire why he was being transferred. She said a VA official named Ed Gully had asked her to remove Rizzo upon instructions from Michael Brennan, executive director of the VA Office of Construction and Facilities Management.

"When I asked Ed why Dr. Brennan had requested your removal, he did not appear to know himself," Sweet-Abshire replied. "However, he did ask me if I thought you had been the person who leaked information to Sen. Schumer's office, based on a recent letter being very detailed in its inquiries."

Rizzo's removal came only three days after Sweet-Abshire received an email from Alan V. Trow, director of quality assurance service at VA's Office of Construction and Facilities Management, praising Rizzo's performance and offering to extend his work at the cemetery through its opening in late 2020.

"The overall mission of VA has been and will continue to be best served by his continuing on-site role at WNY Cemetery," Trow wrote in a note that also included compliments for Rizzo from Metcalfe and an engineer on the cemetery project.

Hearing praise from all around, Rizzo felt especially stung by his sudden transfer.

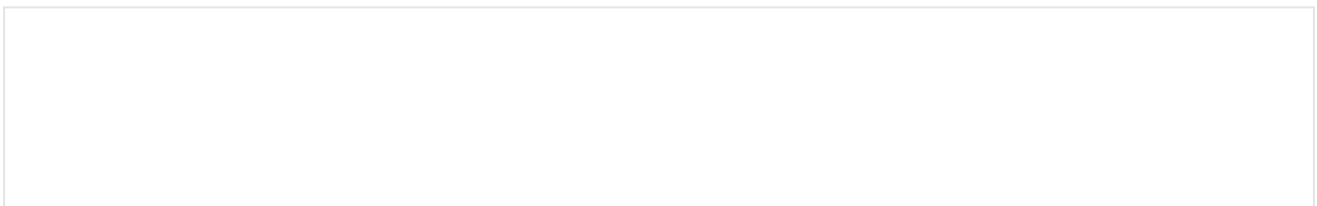
"This retaliation has affected me personally by causing injury to my reputation, public humiliation and mental anguish," Rizzo wrote on July 10, 2020, in a complaint filed with the Office of Special Counsel, the federal agency entrusted with protecting federal employees from wrongdoing, and shared with Schumer's office.

Schumer – who acknowledged that Rizzo had been in touch with his office before Rizzo was removed from the cemetery – wasn't happy, either.

"It would be outrageous for Mr. Rizzo to be removed for making protected disclosures to Congress and would violate the longstanding legal protections prohibiting retaliation against federal employees who come forward to expose evidence of waste, fraud or abuse," Schumer, a New York Democrat, wrote to the Office of Special Counsel on July 17, 2020.

Rizzo's burden grew far heavier, though, after the crash that claimed the lives of Rowell and Herdendorf.

"Words cannot describe how troubled I am over this deadly car crash, especially because I know it very likely would not have occurred if Mr. Metcalfe and I had been able to continue our work" on safety issues at the cemetery, Rizzo wrote in a follow-up complaint to the Office of Special Counsel last fall.



VA, DOT to do new traffic study of intersection where vets died

The reaction

Both Metcalfe and Rizzo detailed their allegations in complaints to the Office of Special Counsel and the VA inspector general. And separately, Metcalfe filed a complaint to the Equal Employment Opportunity Commission, while Rizzo took up his case with Schumer.

Asked about Metcalfe and Rizzo and their allegations of retaliation, National Cemetery Administration spokesman Les' Melnyk said: "VA protects the privacy of its employees and respects the administrative processes in place to address employee concerns by not commenting on personnel matters."

But veterans advocates, a defender of wronged federal employees and New York's two U.S. senators had plenty to say.

Roll, of the Veterans of Foreign Wars, said Metcalfe and Rizzo had been "shunted aside" for doing the right thing.

"Both of these guys are in professional purgatory, basically," said Roll, whose organization has called on McDonough, the VA secretary, to investigate the traffic safety issue at the cemetery.

Worse yet, the VA's treatment of the two men violates the law, said Jeff Ruch, a lawyer for Public Employees for Environmental Responsibility, who is representing the two men.

A century-old federal law, the Lloyd-La Follette Act, gives federal employees the right to communicate with members of Congress and their staffs. Ruch said the VA broke that law by punishing Rizzo for his contacts with Schumer's staff and by barring Metcalfe from communicating with lawmakers.

The trouble is, that federal law includes no enforcement mechanism, leaving Metcalfe and Rizzo to fight bureaucratic battles for both highway safety and their own reputations, Ruch said.

"They're certainly not being driven by the idea of career advancement," Ruch said. "I mean, they're conscience-stricken. They're horrified that their actions to prevent this sort of thing didn't bear fruit and almost are morally compelled to come forward at the cost of their career."

Sen. Kirsten E. Gillibrand, also a New York Democrat, and Schumer are horrified, too.

"The fact that Rizzo was transferred away from the project, the fact that Metcalfe's efforts were denied and pushed aside, is deeply, deeply disturbing," Gillibrand said.

Schumer, meanwhile, has written three letters to federal authorities on behalf of Metcalfe and Rizzo.

"It is important to the highest standards of good government that the VA accept responsibility for the totality of any and all retaliation injuries suffered by Mr. Rizzo and Mr. Metcalfe by reversing the adverse personnel actions taken against them, accounting for inflicted reputational harm and by holding accountable those who are found to have violated the law," Schumer said in a letter to the VA secretary last year.

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