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ROA Access to Reserve Centers and Other Military Installations

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

9.0—Miscellaneous

Q: I am the President of an ROA department (state organization). We take seriously the assignment from the National ROA leadership (Brigadier General Michael J. Silva, the National President, and Major General Andrew B. Davis, the Executive Director) that we should reach out to serving junior officers and noncommissioned officers³ to provide them with information about what ROA does on their behalf. To reach the majority of currently serving members, being afforded the privilege of visiting with them in their reserve centers during drill weekends is valuable to both parties.

Recently, I contacted the Commanding Officer (CO) of the reserve center here in my home town—the CO is himself a member of ROA. The CO told me that he would like to let ROA in to

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

³At the ROA national convention in August 2013, the members amended the ROA Constitution. Noncommissioned officers are now eligible for full membership in ROA.

share information, but “the JAG won’t let me.” What gives? I have been under the impression that we have the right to visit a reserve center.

A: First, let me say that we do not have the *right* (enforceable by lawsuit) to gain access to reserve centers and other Department of Defense (DOD) facilities for the purpose of soliciting Reserve Component (RC) members to join ROA. We need to deal with center and unit COs tactfully and respectfully, and please do not criticize the opinions that may be rendered by their staff judge advocates.

Making any request for access confrontational gains ROA nothing. In fact, it hurts the Association’s professional image as the preeminent advocate for Reserve members and their families. A relationship built upon mutual respect and cooperation is what ROA seeks to maintain with each of the reserve components⁴ and their commanders.

ROA needs you to approach reserve center POC and reserve unit COs tactfully and respectfully. Asking them for access is consistent with current DOD Instructions and is not only lawful but is also helpful to RC members training at those centers. COs and judge advocates are certainly welcome to contact me with their questions. I am available at my e-mail is SWright@roa.org.

The pertinent Department of Defense (DOD) Instruction is DOD Instruction 1000.15 dated October 24, 2008 and available at this link:

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100015p.pdf>. Paragraph 4 of the Instruction summarizes the DOD policy as follows:

4. POLICY. It is DoD policy, consistent with Reference (a), that procedures be established for the operation of non-Federal entities on DoD installations to prevent official sanction, endorsement, or support by the DoD Components except as authorized in DoD 5500.7-R (Reference (e)) and applicable law. The Department recognizes that non-Federal entity support of Service members and their families can be important to their welfare. Non-Federal entities are not entitled to sovereign immunity and privileges accorded to Federal agencies and instrumentalities. The DoD Components shall take action to preclude unauthorized expenditures of appropriated funds, commissary surcharge, or nonappropriated funds (NAF) in support of these organizations.

Please note especially the following sentence: “The Department [DOD] recognizes that non-Federal entity⁵ support of Service members and their families can be important to their welfare.” Allowing ROA access to reserve centers and other facilities is lawful and is to be encouraged, provided the other concerns raised in the Instruction are addressed.

Enclosure (2) to DOD Instruction 1000.15 sets forth the procedures required for non-federal entities (including ROA) to access DOD installations. Paragraph 1(b)(3) requires the non-federal

⁴The reserve components are the Army Reserve, Army National Guard, Air Force Reserve, Air National Guard, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve.

⁵Paragraph 3(a) defines the term “non-Federal entity” and it is clear that ROA falls within this definition.

entity to post the following notice: "THIS IS A NON-FEDERAL ENTITY. IT IS NOT PART OF THE DEPARTMENT OF DEFENSE OR ANY OF ITS COMPONENTS AND IT HAS NO GOVERNMENTAL STATUS." (ALL CAPS IN ORIGINAL).

This notice may seem so obvious (in the case of a recruiting table at a reserve center) that the notice is unnecessary, but just post the notice. Frankly, it is easier to post the notice than it is to argue about it being unnecessary.⁶

With the appropriate notice posted and other required procedures followed, we (ROA) should be able to demonstrate that our access (like a recruiting table) in no way implies DOD endorsement and will not involve any additional expenditure of DOD resources and will not detract from the critical training that RC members receive during their drill weekend. Indeed, the information that our ROA members provide about the Service Members Law Center and other ROA programs and initiatives will support and enhance the official training activities.

If ROA is to survive and thrive in the next generation, we need to act *today* to welcome on board a new generation of members and leaders. I salute you for getting your ROA department to engage in this most necessary activity, and I want to support you in any way that I can. Call me at 800-809-9448, extension 730, or e-mail me at SWright@roa.org.

Please join or support ROA

This article is one of 1800-plus "Law Review" articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their

⁶In recent decades, lawyers have drafted a lot of "no-BS" disclaimers. I recall that when my sister and I signed off on the arrangements for our mother's funeral we were required to acknowledge in writing that we had been informed and that we fully understood that "cremation is irreversible."

dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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