

OSC Honors Three VA Whistleblowers with “Public Servant of the Year Award”

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

11.0—Veterans’ Claims

It was my honor to be invited and to attend the Office of Special Counsel (OSC)³ “Public Servant of the Year” (PSOY) award meeting on December 3, 2014. This is an annual event that I have attended before. As I explained in Law Review 1266⁴ (July 2012), I attended the 2012 PSOY

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 (VRRRA—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 VRRRA 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 VRRRA 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.

³OSC is an independent federal investigative and prosecutorial agency. Its basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment and Reemployment Rights Act. OSC’s primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, see the OSC website at www.osc.gov.

⁴I invite the reader’s attention to www.servicemembers-lawcenter.org. You will find approximately 1,300 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. ROA initiated this column in 1997, and we add new articles each week.

ceremony on June 28, 2012. That event honored three Air Force civilian employees⁵ who took the courageous step of reporting serious wrongdoing at the U.S. Port Mortuary at Dover Air Force Base in Delaware.

This year's PSKY awards ceremony honored three civilian Department of Veterans Affairs (VA) physicians for their courageous whistleblowing. Dr. Katherine Mitchell disclosed critical understaffing and inadequate triage training in the emergency room of the VA Medical Center in Phoenix, Arizona, along with other problems. Dr. Phyllis Hollenbeck blew the whistle on chronic understaffing, problems with the supervision of nurse practitioners, and other issues at the VA Medical Center in Jackson, Mississippi. Dr. Charles Sherwood brought forward concerns about improper practices in the radiology department of the Jackson VA Medical Center.⁶

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 served as Special Counsel since June 2011. In her prepared remarks at the ceremony, Ms. Lerner said:

By speaking up, Katherine Mitchell, Charles Sherwood, and Phyllis Hollenbeck turned the public spotlight on serious threats to patient health and safety at the Phoenix and Jackson VA Medical Centers. Because of their efforts, veterans are now far more likely to receive the treatment they deserve. They are part of a much larger group of whistleblowers who have contributed to much-needed reforms at the Veterans Health Administration. Although there is still work to be done, the new leadership at the VA has swiftly taken corrective actions to improve access to care and to hold individuals accountable. The VA has also renewed its commitment to listen to employees who speak out.

At this December 3 event, I enjoyed listening to the informative and moving remarks of Special Counsel Lerner, Representative Jeff Miller (Chairman of the House Veterans Affairs Committee or HVAC), and the Honorable Sloan Gibson, the Deputy Secretary of the VA, as well as the honorees themselves. The honorees gave credit to Special Counsel Lerner and the OSC staff, as well as Representative Miller and the HVAC staff, for listening to and heeding the reports of whistleblowers and taking action on the reports.

I know that many people (especially those who are in authority in federal agencies) consider whistleblowers to be a nuisance or worse. I have exactly the opposite opinion of them. From my own military and civilian service, I am well aware that it is only through disclosures by federal insiders (military and civilian) that fraud, waste, and abuse in federal agencies can be brought to the attention of inspectors general so that these abuses can be

⁵James Parsons, Mary Ellen Spera, and William Zwicharowski.

⁶I reported on the disclosures of VA whistleblowers in three 2013 "Law Review" articles. Please see Law Review 13040 (March 2013), Law Review 13055 (April 2013), and Law Review 13123 (September 2013).

corrected. Whistleblowers often show great courage in disregarding the risks to their own careers in order to bring to light serious abuses.

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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 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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