

New VA Secretary Needs To Crack down on Supervisors who Reprise against Whistleblowers

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9.0—Miscellaneous

I am very pleased that my friend and former boss Robert Wilkie was recently confirmed by the Senate and has taken office as the Secretary of the Department of Veterans Affairs (VA). I worked for Mr. Wilkie for 18 months in 2006-07, when he was the Assistant Secretary of Defense for Legislative Affairs and I was a civilian attorney in that office.

In Law Reviews 13040 (March 2013), 13055 (April 2013), 13123 (September 2013), 14097 (December 2014), 16108 (October 2016), 16109 (October 2016), and 17065 (June 2017), I have reported and lamented that VA whistleblowers who have brought to light dirty and dangerous

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1600 "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 very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1400 of the articles.

² BA 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 42 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.

conditions at VA medical facilities and other abuses have been reprised against, instead of honored for their courage in bringing these abuses to light. In Law Review 16108, I wrote:

A very serious problem at the VA is that supervisors try to “kill the messenger.” Instead of taking whistleblowers seriously and acting expeditiously to correct the problems that whistleblowers have brought to light, VA supervisors all too often try to retaliate against the whistleblower, even trying to get the whistleblower fired. There will not be significant improvements at the VA until supervisors learn to control the retaliatory instinct.

In Law Review 16109, I wrote:

Insiders (military personnel and federal civilian employees) have information about fraud, waste, and abuse in federal agencies. It is only when those insiders have the courage to bring this information to the attention of proper authorities (the Office of Special Counsel, the agency’s Inspector General, or a Member of Congress, for example) that action can be taken to mitigate the fraud, waste and abuse and to hold the wrongdoers accountable.

Federal supervisors (especially at the VA) need to be taught and retaught that the proper response to the whistleblower’s disclosure is to thank the whistleblower for his or her courage in coming forward and then to act promptly to investigate the disclosure and to correct any substantiated problems. Federal supervisors must not be permitted to reprise against the brave men and women who risk their own careers to blow the whistle on wrongdoing.

Based on my own military and civilian experience,³ I am firmly convinced that protecting and encouraging whistleblowers is vital in federal agencies. I urge Secretary Wilkie to establish a firm policy of *zero tolerance of reprisal against whistleblowers*.

³ For 19 months in 1996-97, I served on active duty, as a Navy Reserve Captain and judge advocate, at the Office of the Naval Inspector General, and for 14 of those months I was the Acting Director of the Hotline Investigation Division. Later, in 2007-08, I worked as an attorney in the United States Office of Special Counsel.