

## LAW REVIEW<sup>1</sup> 26021

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### Minesweeping in the U.S. Navy. Everything Old Is New Again.

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

#### 1.1.3.1—USERRA applies to voluntary military service.

Toward the end of the 1980-88 Iran-Iraq War, Iran effectively closed the Strait of Hormuz by attacking or threatening to attack Kuwaiti oil tankers. President Ronald Reagan responded by directing that the Kuwaiti oil tankers be reflagged as American-flag vessels and by ordering the U.S. Navy to escort those tankers through the Strait of Hormuz. This mission was called Operation Earnest Will (OEW).

Near the beginning of OEW, one of the tankers, while being escorted by U.S. Navy ships, struck an Iranian undersea mine and was badly

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,000 "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 Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

<sup>2</sup> 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. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 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](mailto:SWright@roa.org).

damaged. The Navy realized that it needed vessels specifically designed for and personnel specifically trained for minesweeping. The U.S. Navy had not greatly emphasized minesweeping because in the North Atlantic Treaty Organization (NATO) war plans some of our European allies were expected to perform the minesweeping function. In 1987, as in 2026, our European allies were reluctant to participate in a necessary military operation ordered by the President of the United States.

In 1987, the U.S. Navy had three elderly minesweepers that were homeported at Naval Amphibious Base Little Creek in Norfolk, Virginia. I am familiar with those small ships because during that timeframe I drilled, as a Naval Reserve<sup>3</sup> Lieutenant Commander and judge advocate, in a unit that drilled at the Naval Reserve Center on the Little Creek base. I gave my speech about reemployment rights and mobilization readiness on each of those three minesweepers in 1986.<sup>4</sup>

The Navy needed to deploy these three minesweepers to participate in OEW. The problem was that these vessels were Naval Reserve Force (NRF) ships, and more than half of each crew consisted of Naval Reserve part-timers. Rear Admiral Francis N. Smith, the Chief of Naval Reserve (CNR), sought to ask President Reagan to exercise the involuntary call-up authority to obtain the Naval Reserve part-timers, so that these ships could deploy with the crews that had trained on them.

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<sup>3</sup> The Reserve Component of the Navy was known as the “Naval Reserve” until Congress changed the name to the “Navy Reserve” in 2005.

<sup>4</sup> The Uniformed Services Employment and Reemployment Rights Act (USERRA) was not enacted until 10/13/1994. At the time, the federal reemployment statute was called the Veterans Reemployment Rights Act (VRRRA), and that law was enacted in 1940.

Secretary of Defense Frank Carlucci vetoed the idea of asking the President to exercise the involuntary call-up authority. His idea, and the idea of most of the Department of Defense at the time, is that the Reserve Components were reserved for World War III, which thankfully never happened.<sup>5</sup> As it happened, the three minesweepers were deployed with makeshift crews consisting of Naval Reserve volunteers and Regular Navy sailors who had served on minesweepers earlier in their careers.

Rear Admiral Smith, the CNR, made a speech at a Reserve Officers Association (ROA) meeting that I attended. He argued that the involuntary call-up authority should be utilized. He said: “We cannot rely on volunteers because if reservists volunteer for active duty they will not get their civilian jobs back.”

I immediately rose to my feet, furiously waved my right arm, and said: “Excuse me, Sir. I am Lieutenant Commander Wright. I work for the United States Department of Labor as an attorney. I work with the federal reemployment statute every day, and I am very familiar with that law. Contrary to urban mythology, the reemployment statute applies to voluntary as well as involuntary active duty. Please do not say that those who volunteer will not get their jobs back.” He responded: “Okay, I get it” and continued with his speech.

A month later, Admiral Smith spoke to a Naval Reserve Association (NRA)<sup>6</sup> meeting, and I was again in attendance. He made the same

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<sup>5</sup> That attitude persisted until August 1990, when President George H.W. Bush responded appropriately and forcefully to Iraq’s invasion of Kuwait and utilized the involuntary call-up authority as part of Operation Desert Shield, which became Operation Desert Storm on 1/15/1991.

<sup>6</sup> In 2009, the Naval Reserve Association changed its name to the Association of the United States Navy.

statement about volunteers not getting their jobs back. I did not try to correct him the second time.

The Navy commissioned 14 *Avenger*-class mine countermeasures ships between 1987 and 1994. Those ships were replaced by Littoral Combat Ships (LCS) of the *Freedom* and *Independence* classes.<sup>7</sup> The LCS ships have encountered major problems, and some have already been decommissioned after only a few years of service.<sup>8</sup> LCS ships will be utilized in the mine countermeasures role in Operation Epic Fury (the current Iran operation). I hope that the LCS ships will prove to be suitable for the mine countermeasures role.

On 10/13/1994, President Bill Clinton signed the Uniformed Services Employment and Reemployment Rights Act (USERRA).<sup>9</sup> Like the 1940 reemployment statute that USERRA replaced, the 1994 law applies equally to voluntary and involuntary military service and training. Section 4303 of USERRA defines 17 terms that are used in this law. The definition of “service in the uniformed services” is as follows:

The term “service in the uniformed services” means the performance of duty **on a voluntary or involuntary basis** in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, State active duty for a period of 14 days or more, State active duty in response to a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.), State active

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<sup>7</sup> See [https://en.wikipedia.org/wiki/Avenger-class\\_mine\\_countermeasures\\_ship](https://en.wikipedia.org/wiki/Avenger-class_mine_countermeasures_ship).

<sup>8</sup> See [https://en.wikipedia.org/wiki/Littoral\\_combat\\_ship](https://en.wikipedia.org/wiki/Littoral_combat_ship).

<sup>9</sup> Public Law 103-353, 108 Stat. 3150. USERRA has been amended several times since 1994, and all of the amendments have been improvements that ROA has suggested and advocated for. USERRA is codified in title 38 of the United States Code, at sections 4301 through 4335.

duty in response to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5170), a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Assistance Act, a period for which a person is absent from a position of employment due to an appointment into service in the Federal Emergency Management Agency as intermittent personnel under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5149(b)((1))), and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.<sup>10</sup>

**Do not let anyone tell you that your civilian job is not protected if you volunteer for military service.** Of course, in today's military all service is essentially voluntary because 53 years ago, in 1973, Congress abolished the draft and established the All-Volunteer Military.<sup>11</sup>

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<sup>10</sup> 38 U.S.C. § 4303(13) (emphasis supplied).

<sup>11</sup> USERRA is one of several essential laws that Congress has enacted to give qualified young people the incentive to enlist in our nation's armed forces. See Law Review 24049 (October 2024).

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