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May 31, 2007

The Honorable Jim Marshall
Congress of the United States
House of Representatives
Washington, DC 20515-1008

VIA HAND DELIVERY TO
MACON GEORGIA OFFICE STAFF

RE: SSgt Leigh E. Wise, USAFR/ The Feres Doctrine Mandate & Uniform Code Of Military Justice (UCMJ) Article 138 Grievance

Dear Congressman Marshall:

I am sorry for not responding sooner and showing my appreciation with regard to your letter of April 30, 2007. As you are now aware both SSgt Wise and I did meet with your staff at the Macon office on or about May 11, 2007, upon receipt of your letter and your suggestion to do so. Unfortunately, since that time we have been working non-stop to meet critical deadlines to preserve SSgt Wise's rights under the Air Forces Disability Evaluation System ("DES") or otherwise known as the "Medical and Physical Evaluation Board (MEB/PEB)" processes; in addition to addressing continued reprisals arising from Dobbins ARB officials that gives rise to the above-cited and attached "UCMJ Article 138 Grievance."

In the wake of your letter, I was planning to send you a separate thank you letter in response to your April 30, 2007 letter that responded to our inquiry "*about the Feres Doctrine and SSgt Leigh Wise's experience under the Military Whistleblower Protection Act*" or "*MWP Act.*" Once again, over the past month both SSgt Wise and I have been extremely busy trying to head off continued and newly developing unfavorable personnel actions (UPAs) and the withholding of favorable personnel actions (WFPAs) in direct violation of Title 10 U.S.C. § 1034 which for we reasonably believe, now makes the SSgt Wise's matter "ripe" for congressional intervention and oversight.¹

¹ For the record, SSgt Wise first engaged the Inspector General (IG) Act in or about February 2001, in the wake of her genuine belief that she was not being properly trained in her reserve billet at Dobbins ARB. As the 10 USC 1034 intra-military administrative record shows—the Department of Defense (DOD) IG in its investigation into SSgt Wise's "failure to train" grievance confirmed that said claim was "legitimate." Furthermore, SSgt Wise's claim of 10 USC 1034 illegal reprisal arising from her "failure to train" grievance and the lowering of her February 2001 Enlisted Performance Report ("EPR") was "substantiated" by the Air Force Reserve Command (AFRC) IG and "concurred" by the Secretary of the Air Force (SECAF) IG in or about September 2004. These undisputed facts are the primary reasons why VERPA took this case on as a "case study" to

After reviewing your letter, I greatly appreciate your comment with respect to my pro bono work on behalf of SSgt Wise as her case is a V'ERPA "case study" in support of grassroots proposed legislation that we believe can both reform or abolish the Feres doctrine subject matter without "disrupting good order and discipline" in the U.S. Armed Forces and/or leading to a flood of lawsuits arising out of the military – if the Congress should decide to remedy the Feres doctrine subject matter via this V'ERPA case study.²

On the subject of the Feres doctrine reform or abolishment V'ERPA initiative; I wish to sincerely thank you for your kind words of encouragement wherein you commented, *"Your argument was forceful and well presented. Take that as a compliment from a former Law Professor and lawyer who rarely saw better presentations when he practiced in that profession."* I feel it is important to mention your comment because it is the position of SSgt Wise and V'ERPA that the Feres doctrine's "incident to service" holding is the direct and proximate cause as to why she has been denied justice over the past six (6) years and four (4) months under the provisions of the IG Act/MWP Act statutory processes based upon these undisputed facts in the 10 USC 1034 record:

1. that, although the DODIG affirmed that SSgt Wise's Feb 01 "failure to train" grievance was "legitimate" but did not take any corrective action to address the "confirmed" EPR reprisal via the downgrading of SSgt Wise's Feb 01

advance positive reforms under the provisions of the IG and MWP Acts to prevent future servicemembers from experiencing similar injustices—for which SSgt Wise has faced in her career for simply making an effort to be properly trained for the good of the Country, the Air Force Mission and her own career advancement rights. Also, since we received your letter, SSgt Wise was compelled to take personal leave to deal with the continued abuses of her rights and protections under the IG and MWP Acts occurring during her DES processing. Although, I can and will provide you more precise reform measures—the fact that SSgt Wise was forced to take leave arising from "incident to service" reprisal issues, we feel this is a primary issue calling for reform of the laws to provide "on duty status" rights for 10 USC 1034 service members who invoke their rights under the IG and MWP Acts to be afford ample time to construct and prosecute their grievances. Clearly, SSgt Wise was forced to take leave by Dobbins ARB officials once they realized her temporary command supervisors at AFRC/CE—were totally supportive of her quest in the DES recovery phase and 10 USC 1034 processes—and said Dobbins officials and namely Col Nuckolls "unduly" and wantonly have attempted to "obstruct" SSgt Wise rights to due process and equal protection under the IG and MWP Acts, especially, upon their being placed on notice about this honorable Congressman's interested in this case.

² Our grassroots proposed legislation is entitled: "The Military & Veterans Equal Rights Protection Act" or "V'ERPA Act" and we hope to seek sponsorship of the Bill in or about January 2008. In addition to SSgt Wise's case, V'ERPA will present one case that covers all decades the Feres doctrine has been the law of the land since its birth on December 4, 1950. The primary goal of the V'ERPA Act will afford servicemembers or their surviving loved ones the right to protection of the "FTCA" arising from "gross" or "criminal" acts or omissions of federal employees that that result in injury or death and our propose legislation will not touch the "FTCA's" "incident to combat" exemption under the law to prevent disruption of good order and discipline in a combat or national emergency situation. As a matter of fact—we Veterans and loved ones who are proposing the V'ERPA Bill—to ensure no disruption in military commander's ability to carry out and fight wars—the issue of "negligence" per se or gross or criminal acts arising in combat will be exclusive remedied under the provisions of the UCMJ.

EPR, this has ultimately led to her being processed out of the Air Force under the Disability Evaluation System (DES) and grounds for her legitimate "abuse of government property" argument as set forth in the Article 138;³ and

2. that, a major concern of injustice SSgt Wise feels has taken place during the IG/10 USC 1034 investigative process is the fact that primary-party 10 USC 1034 official (Colonel Daniel Korancki) – who was responsible for ensuring SSgt Wise was properly training and who "downgraded" her EPR performance marks and recommendations for advancement resulting in her not being advanced in rank since Feb 01 – was shockingly promoted from Lieutenant Colonel (LTC) to Colonel during the IG/10 USC 1034 processes which is clearly unjust and unsatisfactory and another areas of reform that must be addressed by the Congress.

Clearly, the above "undisputed" facts under the "reasonable person" theory would lead such a person to conclude—the IG and MWP Acts are in need of genuine reforms based upon the above stated issues and events in the Wise matter.

Newly Developing Unfavorable Personnel Actions Giving Rise To SSgt Wise's UCMJ Article 138 Grievance

Congressman, since your letter and in conjunction with your comment "I see nothing that can be done about SSgt Wise's particular case since, as you note, present law provides no further appeal or other remedy" – We affirmatively assert that "newly developing UPAs and WFPAs" continue in this case and thus under the "relation back" doctrine to toll statute of limitations in the federal court system—also applies in this case and thus the good news from our end to you is that SSgt Wise's case is once again "ripe" for congressional intervention and investigation by the Armed Services Committee and to "illustrate that the current system is badly flawed" as you have pointed out in your letter.

³ Clearly, in a time where we will be at war for decades to come in fighting terrorist and the grave concerns of our citizens surrounding military recruiting and augmentation of active forces by reserve units and personnel shortfalls—clearly our national security demands that "volunteers" willing to fight the war on terror who seek to be "trained" are not ran out of the military because of their reprisal (crime) status and resulting mental and physical injuries as said crime victims. As a matter of fact—in addition to the above SECAF and AFRC IG confirmation that SSgt Wise is a 10 USC 1034 reprisal victim—that conclusion was unquestionably determined by the undisputed fact that Colonel Korancki admitted in a January 2001 email that he and SSgt Wise's immediate supervisor TSGT Christian and both members who are still serving in the AF, were indeed "derelect" in training her. Thus, the ultimate question that needs to be asked is why has the SECAF since his IG confirmed "reprisal" in this case—not acted and prevented the destruction of SSgt Wise's career and to prevent the AF DES process from having to be invoked to begin with. Clearly, these facts should raise serious concerns as Americans such as SSgt Wise who are "voluntarily" serving in our military should not and cannot be lost to criminal reprisal due to the Feres doctrine. For lack of better words—this entire DES processing is simply outrageous.

As you state with regard to modification of the MWP Act—“*It won't be modified without a showing that it is being abused with, as you say, cover ups*”—at this time we are attaching hereto SSgt Wise's UCMJ Article 138 Grievance against her Commander, Colonel Heath Nuckolls that we believe “ripens” the case once again and we respectfully request that you forward the “138” to Commander Nuckolls' superior officer, General Bradley and Commander of the AFRC to get the ball rolling in this process. We believe, if afforded the right to testify before the Armed Services Committee SSgt Wise will prove to all members that Colonel Nuckolls has chosen to allow her discharge via the DES instead of upholding his duty to her to hold his former Vice-Commander, Colonel Kornacki, accountable under the MWP Act and Article 92 of the UCMJ—as mandated by the law—she will prove without a shadow of a doubt that she was subjected to continued UPAs and WFPAs under the direction of Colonel Nuckolls to shield his Vice-Commander from accountability for breaking both military and federal law in the wake of his illegal conduct and reprisals taken against SSgt Wise in the wake of her protected communications under the IG Act and 10 USC 1034—against Colonel Korancki.

We are of the opinion as you said if you—“*move [your] staff to see if we are headed towards that sort of confrontation with DOD, in which SSgt Wise's experiences might be something we should produce as evidence*”—we too firmly believe that the attached Article 138 Grievance if properly and fully investigated by the SECAF and Assistant SECAF for Manpower and Reserve Affairs—that ultimately; the DODIG's “cover up” via their arbitrary and capricious final review under 10 USC 1034 will finally come to light.

In all, SSgt Wise's 10 USC 1034 and DES grievances are “ripe” under the MWP Act and via the filing of her Article 138 Grievance and if congressional intervention can be instituted at this time—this case can bring forth positive reforms within the military's IG and DES systems and ultimately—provide critical evidence and arguments for the reform or abolishment of the Feres doctrine. Without question, this case is the best we have found that proves the “doctrine” affords wrongful acts and omissions within our military's command, legal and medical systems to go “unchecked” in our military. Thus, to close this letter, I wish to incorporate hereinafter the dissenting opinion of Justice Scalia in the 1987 matter of United States v. Johnson (citation omitted) wherein his words speak volumes as to the abuse of power in the SSgt Wise matter:

“Feres was wrongly decided and heartily deserves the widespread, almost universal criticism it has received.” Furthermore, “Congress's inaction regarding this doctrine and its doing little, if anything in the way of modifying it to prevent Constitutional claims is clearly unjust and irrational. Again, allowing such power to military leaders can and does result in abuse therefore, where are the checks and balances on the military.”

Clearly, if the systems were not “flawed” in this case and were working properly—this case would have been properly resolved as far back as September 2004, when the AFRC and SECAF IG's substantiated that SSgt Wise was reprimed against for

engaging in protected communications under the IG Act and reporting reprisal under the provisions of the MWP Act and under Article 92 of the UCMJ.

Now, SSgt Wise and V'ERPA are of the firm belief that the attached Article 138 Grievance if properly investigated will conclude—the final decision of the DODIG to deny SSgt Wise protection of the statute was arbitrary and capricious and ultimately has led Dobbins ARB officials and Commander Nuckolls' to use said DODIG final decision to continue to take UPA's and the WFPAs which continue to injure SSgt Wise's statutory rights under the Air Force DES and which ultimately gives rise to the attached Article 138 Grievance.

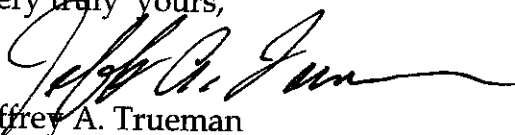
Conclusion

As the Article 138 will show—SSgt Wise's IG/MWP Act subject matters and issues are "ripe" as the last unfavorable personnel action taken against SSgt Wise under 10 USC 1034 arises on or about May 13, 2007—when Colonel Nuckolls knowing and intentionally falsified SSgt Wise's "back injury" LOD. Thus, if congressional oversight is provided in this case—it can only benefit the honorable men and women in our military who in the future who stand tall to fraud, waste and abuse in our military from becoming victims of criminal reprisal for attempting to remedy fraud, waste and abuse in our military.

I hope you had an enjoyable Memorial Day weekend with your family and friends and I thank you for your service to our country during the Vietnam War and during your congressional career. Without any question—it is the Vietnam Veteran (my Uncle and others—now deceased) are the Americans who have had the greatest impact on my life and reasons for joining the Navy, and subsequently, the driving factor in my formation of V'ERPA.

Finally, would you be so kind Congressman to forward SSgt Wise's Article 138 grievance to Colonel Nuckolls' superior officer—General Bradley and personally monitor this grievance; as we do believe that critical reforms within the DOD and military IG and MWP Acts processes to include the Feres Doctrine can be achieved by Congress without disrupting good order and discipline in our military.

Very truly yours,



Jeffrey A. Trueman

Founder, V'ERPA LLC

Encl—SSgt Wise's UCMJ Article 138

cc: SSgt Wise