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Former Pentagon and Air Force JAG Named Head of Tully Rinckey PLLC Military and National Security Law Practice Group

Youngner brings decades of military law experience to new leadership position

December 30, 2014 – Washington, D.C. –

Tully Rinckey PLLC Partner Larry D. Youngner has been named head of the firm's coast-to-coast Military and National Security Law Practice Group. Mr. Youngner joined the firm in July 2014 after spending 31 years in the military, six as an Army line officer and 25 in the U.S. Air Force as a judge advocate and trusted legal advisor to general and flag officers. Mr. Youngner will lead a team of more than 10 attorneys that is regarded as one of the preeminent military law groups in the country.The Tully Rinckey PLLC Military and National Security Law Practice Group is nationwide in scope with offices on the east and west coasts of the United States. The group includes active duty veterans hailing from all branches of the United States Military who stand ready to assist service members with a range of military law and national security related issues to include courts-martial, Uniformed Services Employment and Reemployment Rights Act (USERRA) military leave cases, veterans benefits, Article 15 proceedings, security clearance representation, discharge upgrades and correction of military records items, among a range of others.Prior to coming to Tully Rinckey PLLC, Mr. Youngner held many distinguished and high-level military law positions around the globe, including at military installations in Bosnia-Herzegovina, Iraq, Qatar and Germany. Following a string of several staff judge advocate and director positions spanning from 1994 to 2010, Mr. Youngner served three years as the U.S. Air Force Special Operations Command Staff Judge Advocate from 2010 to 2013. In that role, he provided personal legal counsel on all aspects of military criminal law, international and operations law, including law of armed conflict, status of forces, rules of engagement, international agreements, force deployment and oversight of compartmented programs.Mr. Youngner concluded his time in uniform at the apex of his military career in 2014, while serving as Air Force JAG Corps chief of staff and director of strategic policy and requirements at the Pentagon. As such, he provided public administration for the Air Force JAG Corps' organizational structure and the legal services it provides to airmen worldwide. He also assisted with the development and implementation of efficiency-generating changes to the Air Force's legal team, which includes over 4,500 attorneys, paralegals and legal support.Mr. Youngner was truly prolific during his time as an Air Force JAG. He supervised 451 criminal courts-martial, personally prosecuted 10 trials and personally defended 47 criminal cases, to include the successful defense of a crewmember involved in the 1994 friendly fire Blackhawk helicopter shoot down tragedy over Northern Iraq, convincing the convening authority to drop all charges at the associated Article 32 hearing.Mr. Youngner serves on the Judge Advocates Association (JAA) Board of Directors and is a volunteer mentor with the Executive Transition Assistance Program (ETAP). ETAP is a unique mentorship incubator that draws upon the experience and knowledge of some of the U.S. Military's most accomplished officers to help retiring senior and noncommissioned officers jumpstart their civilian careers. ETAP allows Mr. Youngner to

pay back those who have mentored him in the past.Mr. Youngner received his juris doctorate from the University of Georgia in 1986. He received a Bachelor of Arts degree in history from the University of Georgia in in 1983. Other degrees include a Master of Science from the National Defense University in 2006 and a Master of Laws from the Judge Advocate General's Legal Center and School, Charlottesville, VA in 1998.To speak with Mr. Youngner, or for more information, please contact Shaun May at (202) 375-2238 or at smay@fedattorney.com

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Larry Youngner joins the Huffington Post for a discussion on Guantanamo Bay and the use of female guards to transport Muslim prisoners.

Tully Rinckey PLLC Partner Larry D. Youngner Named a 2014 "Leader in the Law" by Virginia Lawyers Weekly

Former USAF JAG Corps Chief of Staff at Pentagon Youngner Greatly Enhances Firm's Military Law Group

October 27, 2014 – Arlington, VA

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Tully Rinckey PLLC Partner Larry D. Youngner, Esq.' s work, leadership and outstanding reputation were recognized on Oct. 23 when Virginia Lawyers Weekly

named him to its 2014 class of "Leaders in the Law," which features attorneys who are "setting the standards for other lawyers in Virginia."In July 2014, Mr. Youngner joined Tully Rinckey PLLC as a partner. At the firm's Arlington, VA office, he is applying the same leadership skills he honed in the Air Force to his work at Tully Rinckey PLLC. In addition to representing service members worldwide in matters such as courts-martial, Article 15s, letters of reprimand, and officer/enlisted separation proceedings, Mr. Youngner has taken on the position of overseeing and mentoring other former judge advocates on the firm's military law team."It is an honor and privilege to be part of the 2014 class of Leaders in the Law," said Mr. Youngner. "When I look at the rest of the 2014 honorees I find it very humbling and I am very grateful to the committee for my selection and to be part of such an outstanding group of people."Prior to coming to Tully Rinckey PLLC, Mr. Youngner spent 31 years in the military, six as an Army line officer and 25 in the U.S. Air Force as a judge advocate. He held many distinguished and high-level positions around the globe. His last position was at the Pentagon, where he served as the JAG Corps chief of staff. Other top positions include six staff judge advocate assignments at every level of command and as the director of

international law and operations law from 2006 to 2007.

One of the highlights of Mr. Youngner' s JAG career was in 1994 when he successfully defended a Virginia resident in a high profile involuntary manslaughter case. The defendant was stationed at Langley Air Force Base in Virginia and was a crewmember aboard the Air Force airborne warning and control system (AWACS) that was involved in the 1994 friendly fire Blackhawk helicopters shoot down incident over Northern Iraq.

Mr. Youngner serves on the Judge Advocates Association (JAA) Board of Directors and he also is a volunteer mentor with the Executive Transition Assistance Program (ETAP). ETAP is a program that helps retiring senior officers and noncommissioned officers at the Pentagon, Joint Base Andrews and the National Capitol Region prepare for employment after their military careers.Mr. Youngner received his juris doctorate from the University of Georgia in 1986. He received a bachelor of arts degree in history from the University of Georgia in in 1983. Other degrees include a master of science from the National Defense University in 2006 and a master of laws from the Judge Advocate General's Legal Center and School, Charlottesville, VA in 1998.To speak with Mr. Youngner, or for more information, please contact Shaun May at (202) 375-2238 or at smay@fedattorney.com

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NOVA Legal Beat: Mathew Tully Discusses Compensation for Work-Related Travel

NOVA Legal Beat: Overtime for Driving Between Offices?

Editor's Note: This sponsored column is written by Mathew B. Tully of Tully Rinckey PLLC

, an Arlington firm that specializes in federal employment and labor law, security clearance proceedings, and military law.

Q. My job requires me to do much driving between multiple offices. Should I get paid overtime for this work-related travel?

A.

Some employers have this notion in their heads that anything done away from a desk or a work station is not work, and certainly not compensable work. But when employees must be away from their desks or work stations so they can drive between job sites, that travel time under certain circumstances can be compensable under the Fair Labor Standards Act (FLSA).The FLSA requires employers to pay employees not exempted from the law overtime at a rate of time and a half for any hours exceeding 40 hours per work week. When taking travel time into account, on top of any work performed at locations traveled to and from, employees can exceed this 40-hour threshold.Federal regulation states that "[t]ime spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked."The emphasis here is on the phrase "part of his principal activity." A "principal activity," the U.S. District Court for the Eastern District of Virginia noted in Epps v. Arise Scaffolding and Equipment, Inc.

(2011), "embraces not just the predominant or principal function of an employee but also 'all

activities which are an integral and indispensable part of the principal activities.'" Hence, time spent traveling is compensable if the employee is "required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work," according to the regulation.Generally, the time an employee spends travelling from home to a work site or vice-versa is not compensable. You'll note that the regulation does limit the definition of travel time to "travel from job site to job site." Further, under an exemption to the FLSA's travel time requirement created under the Portal-to-Portal Pay Act, "an employer need not compensate an employee for time spent traveling to the place of performance of the principal activity or for activities which are preliminary or postliminary to the principal activity," the Eastern District noted in Harder v. ARCO Welding, Inc.

(2013).Examples of travel not covered by the FLSA identified by the court in Epps

include "bridge workers' boat ride to job site" and "well drilling crews' mandatory ride to well site." In these situations, the travel precedes the start of the principal activity. But any travel that occurs "after the beginning of the employee's first principal activity and before the end of the employee's last principal activity is…covered by the FLSA," the court added.Employees who believe they have been wrongly denied overtime for work-related travel should consult with an experienced employment law attorney, who can prepare for them an FLSA lawsuit. Employers, too, should consult with an experienced employment law attorney, who could help them determine whether an employee's travel time is compensable.Mathew B. Tully is the founding partner of Tully Rinckey PLLC. Located in Arlington, Va. and Washington, D.C., Tully Rinckey PLLC's attorneys practice federal employment law, military law, and security clearance representation. To speak with an attorney, call 703-525-4700 or to learn more visit fedattorney.com

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Tully Rinckey PLLC Prepares SCOTUS Amicus Curiae Brief on DHS v. MacLean

Firm Helps BIG, ESFLEA and FLEOA Fight Agency Efforts to Weaken Whistleblower Protections

October 17, 2014 – Washington, D.C. –

Aiming to bolster whistleblower protections in the federal sector, Tully Rinckey PLLC has prepared, on the behalf of three reputable organizations, an amicus curiae

("friend of the court") brief on DHS v MacLean

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– Blacks in Government (BIG), the Emerald Society of the Federal Law Enforcement Associations (ESFLEA), and the Federal Law Enforcement Officers Association (FLEOA) –

filed the brief filed before the U.S. Supreme Court “to thwart what could be a dangerous and irresponsible attempt by the Petitioner, DHS, to erode and eviscerate the sound policies that gave rise to the Whistleblower Protection Act.” Tully Rinckey PLLC Founding Partner Mathew B. Tully

is identified in the brief as “counsel of record.”The amicus

curiae

brief mostly focuses on statutory interpretation and the legislative history of the Whistleblower Protection Act and its predecessor, the Civil Service Reform Act. In preparing the brief, attorneys at Tully Rinckey PLLC – one of the nation’s largest federal employment law firms – conducted extensive legal research and combed through thousands of pages of congressional records, hearings, mark-ups, and other documents to develop persuasive arguments in support of the respondent, Robert J. MacLean.“DHS v. MacLean is the first case the Supreme Court will hear on federal whistleblowing, so it is of significant importance to not just Mr. MacLean, but to all federal employees,” said Mr. Tully. “A ruling in favor of DHS would put a chill on any federal employees desire to disclose waste and abuse, and provide agencies with a greater ability to retaliate.”In the brief, the amici

make the following arguments:The whistleblower protection act is clear on its face and any doubt is erased by the legislative history which supports the contention that the “specifically prohibited by law” proviso does not encompass regulations;

DHS’ contentions place at risk the prospective whistleblower’s right to notice of whether his or her disclosures will be protected;

Mr. MacLean was justified in going to the press immediately, but voluntarily complied with the internal complaint process even though he was not obligated to do so under the WPA; and

DHS is wrong to assume that Congress did not consider any perceived harm or potential impact of disclosures.

Mr. MacLean was serving as a Federal Air Marshal (FAM) with the Department of Homeland Security when he received a text message indicating the department’s decision to reduce FAM assignments to certain flights, just days following a security alert indicating a heightened threat of terrorism. After exhausting all internal agency avenues to address his concerns regarding the department’s decision to reduce security coverage for the travelling public at such a critical juncture, Mr. MacLean exercised his right to report the matter to the media. In retaliation for Mr. MacLean’s blowing the whistle, the department removed him from federal service and in doing so, ex post facto

designated the matter disclosed as sensitive security Information. DHS v MacLean

is set for argument before the U.S. Supreme Court on Tuesday, November 4, 2014.Click the below image to view the amicus curiae

brief.

To speak with Mathew B. Tully, or for more information, please contact Shaun May at (202) 375-2238 or at smay@fedattorney.com

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Director of Legal Services Neil A.G. McPhie, Esq.'s

Federal Times Staff Blog on Historical Revisionism

MSPB blocks agencies' attempts at historical revisionism

By Neil A.G. McPhie
October 20, 2014

Neil A.G. McPhie, Esq.Partner and Director of Legal Services

Historical revisionism can be dangerous. Revisers often gloss over or skew facts to create a narrative that justifies their agenda. And lately, the Merit Systems Protection Board (MSPB) has been catching federal agencies engaging in historical revisionism when attempting to justify different penalties imposed on similarly situated employees.Take, for example, the recently decided case of Ellis v. U.S. Postal Service (2014). In this case the MSPB blocked the agency's attempt to justify the removal of the appellant, a customer service supervisor, by exaggerating the differences between the appellant's misconduct and the similar misconduct of another employee.In Ellis, the agency demoted and reassigned the appellant, who had been charged with unacceptable conduct – misrepresentation of mail volume reports. This charge was based on the appellant's inflation of mail volumes on certain routes over two months. Although the Board upheld an MSPB judge's initial decision that the appellant intentionally misrepresented mail volumes, it mitigated the demotion/reassignment penalty because of a lighter penalty imposed on a similarly situated supervisor.In challenging his penalty, the appellant in Ellis pointed to a similarly situated supervisor who had been punished with a letter of warning and a geographic reassignment for his misrepresentation of employee work records. The Board said this other supervisor's offense was "essentially the same offense" as the misrepresentation of mail volume records.During the hearing for Ellis, the agency's witnesses tried to paint the appellant's misconduct as far more serious than that of the similarly situated supervisor, who

inadvertently imputed the incorrect information into a database. One witness, according to the MSPB, "likened the difference between the misconduct by those supervisors and the appellant's misconduct as akin to the difference between manslaughter and murder." The Board, however, rejected the agency's "post hoc re-characterization," noting that the similarly situated supervisor had intentionally falsified official records and neither acknowledged nor expressed remorse for his actions. Consequently, the Board ordered the agency to reinstate the appellant to his EAS-17 position and to issue him a letter of warning rather than reduce his grade.Although it was not mentioned in Ellis, this case reminded me of a decision the U.S. Court of Appeals for the Federal Circuit had delivered while I was chairman of the Board. In Williams v. Social Security Administration (2009). Unlike Ellis, the revisionist in this case was actually the appellant, who had participated in a tax fraud and challenged his removal by pointing out the agency had actually re-employed the perpetrator of the crime. The Federal Circuit said that if the agency did in fact re-employ the more culpable employee and removed the employee, "that could have shifted the balance." But during oral arguments before the court, a government attorney explained that the agency removed the perpetrator when his fraud was discovered. When he was criminally charged, the agency rescinded the removal and indefinitely suspended him, though he was removed again after he was convicted. This information, however, was not included in the record before the MSPB, prompting the court to remand the case so the Board could "develop, as fully as possible, the facts" necessary to properly analyze the disparate penalty claim.Last year, Williams's requirement for a fully developed record for disparate penalty analyses ended up saving the job of the appellant in Broccolo v. Department of the Treasury (2013). The agency had removed the appellant because she inappropriately claimed unemployment compensation for seven weeks. An MSPB judge affirmed the agency's removal decision, stating, "none of the comparators involved multiple, repeated applications for unemployment compensation over several weeks."However, on appeal, the appellant in Broccolo identified two more comparators. One of them had inappropriately claimed unemployment benefits on two occasions for a total of three weeks. This comparator was suspended for two weeks for the first offense and 60 days for the second, though the latter offense initially attracted a removal proposal. After reviewing the more fully developed

record, the Board rejected the agency deciding official's assertion that the appellant was the "only repeat offender with multiple weeks of unemployment compensation claimed to which she was not entitled." Finding the employee with the lighter penalty to be similarly situated and that the agency "failed to prove a legitimate reason for the difference in treatment," the Board mitigated the appellant's removal to a 60-day suspension.The truth is out there, and to find it federal employees may need the assistance of an experienced federal employment law attorney. Federal employees should not let agencies end their careers by revising history.Neil McPhie is the Director of Legal Services for Tully Rinckey PLLC and the former chairman of the U.S. Merit Systems Protection Board. He concentrates his practice in federal sector employment and labor law and can be reached at info@fedattorney.com

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WNY Jury Finds Jamestown PD Willfully violated Employment Rights of Iraq and Afghanistan Veteran

After 7 years of litigation over vacation pay, employer slapped with more than $50K in liquidated damages

October 3, 2014

– Buffalo, N.Y. –

A Chautauqua Supreme Court jury on Thursday found the City of Jamestown Police Department willfully violated the employment rights of a detective by improperly pro-rating his vacation pay while he repeatedly served as a member of the Air National Guard between 2002 and 2011. The jury's decision ends Lt. Col. Timothy H. Wright's nearly seven-year legal battle against the city, which will have to pay liquidated damages, also known as "double back pay," for willfully violating his rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Tully Rinckey PLLC, which represented Lt. Col. Wright, believes he will receive liquidated damages in excess of $50,000. It has not been determined whether the city will be ordered to pay attorney's fees.Lt. Col. Wright began working at the Jamestown Police Department in 1987. He was deployed to Afghanistan in 2002 and Iraq in 2004. Upon returning to his civilian job, he received little to no vacation time for his periods of his military service. The city based the amount of vacation and leave to which Lt. Col. Wright was entitled on the number of days worked the previous year. However, this method of calculating vacation pay violated USERRA, which states qualified service members should be provided with the same amount of seniority and other rights and benefits they had when they went on military leave "plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.""The jury sent a clear message to employers: Employers should not trample the employment rights of service members, and there is a high price to pay for employers who

willfully violate USERRA. I commend Mr. Wright for his courage in waging this legal fight, which will bolster the employment rights of other service members," said Tully Rinckey PLLC Senior Associate Michael W. Macomber, who represented Mr. Wright.Lt. Col. Wright filed his USERRA lawsuit in 2007, after again being called to active duty. The jury's decision came two and a half years after the Chautauqua Supreme Court in Mayville, N.Y. on March 23, 2012 granted Lt. Col. Wright's cross motion for summary judgment and said he is "entitled to receive his vacation and leave time as if he had been continuously employed." The city appealed this decision and last June the Appellate Division of the Supreme Court of New York, Fourth Department remanded the case for trial.For more information, please contact James Schlett at (716) 439-4700 or at jschlett@fedattorney.com

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Tully Rinckey PLLC Opens First West Coast Office in San Diego

California Office Gives Firm Presence in State with Most Federal Employees and Service Members

September 2, 2014 – San Diego, CA –

Strengthening its position as one of the nation's largest federal employment and military law firms, Tully Rinckey PLLC today opened its first West Coast law office in California. From its new office at 501 West Broadway in San Diego, the firm will offer federal labor and employment law, military law and security clearance representation services. The expertise of the distinguished members of Tully Rinckey PLLC's federal sector law team will be directly available through this new office, with on-site consults provided by firm Partner & Consult Attorney Steven L. Herrick, Esq.Tully Rinckey PLLC's federal sector law team is headed by several former government attorneys with decades of experience in their respective areas of legal focus. The team includes Partners Neil A.G. McPhie, Esq.

, a former Merit Systems Protection Board chairman, Cheri L. Cannon, Esq.

, a former panel member of the Air Force Board for Correction of Military Records and a deputy general counsel at the Pentagon, and Larry D. Youngner, Esq.

, a former Air Force Judge Advocate's General Corps (JAG) chief of staff and director. The team also includes Founding Partner Mathew B. Tully, Esq.

, a retired federal employee, retired lieutenant colonel in the New York Army National Guard and Purple Heart recipient who served in Iraq and Afghanistan, and Managing Partner Greg T. Rinckey, Esq.

, a former active duty Army officer and JAG attorney who also served as an assistant U.S. attorney for the Eastern District of Virginia.Tully Rinckey PLLC's move into the California legal market means the firm will not only have a coast-to-coast reach, but also a physical presence in the state that leads the nation in housing both federal employees and military personnel. The San Diego location is the firm's seventh law office. In the D.C. metropolitan area, Tully Rinckey PLLC has locations in Washington, D.C. and Arlington, Va., and in upstate New York, the firm has locations in Albany, Syracuse, Rochester and Buffalo."We are going where we are needed the most." said Tully Rinckey PLLC Founding Partner Mathew B. Tully. "For

years, Tully Rinckey PLLC has been representing federal sector and military clients on the West Coast, and our new San Diego office is intended to accommodate the huge population of federal employees and service members in California and beyond.”The San Diego office will be headed by Tully Rinckey PLLC Partner and Consult Attorney Steven L. Herrick who, for four consecutive years, has been recognized as a “Super Lawyer” by the Thomson Reuters attorney ranking service of the same name. It was Mr. Herrick who in 2008 spearheaded Tully Rinckey PLLC’s entrance in the District of Columbia’s legal market by serving as the managing partner of the firm’s K Street office. Owing to Mr. Herrick’s leadership and the success of Tully Rinckey PLLC’s federal labor and employment and military law practices, the firm last April relocated its K Street office in Washington, D.C. to a 6,140-square-foot, seventh-floor suite in a recently redeveloped building at 815 Connecticut Ave., NW, a block away from the White House.“Federal employees and service members across the country are hurting as the federal government struggles with ever-tightening budget constraints,” said Mr. Herrick, who in 1976 received his juris doctorate at the prestigious University of California, Berkeley, School of Law. “Due to the high concentration of these individuals in California, the pain is especially acute in the state. Their rights are under attack, and Tully Rinckey PLLC is stepping in to defend them.”The San Diego office opening is the latest step in a long line of Tully Rinckey PLLC office openings and expansions – and plans are in place to open an additional strategically located office in New York State over the next year. Since August 2012, the firm has opened four offices and relocated or expanded two. Just last month, the firm held the grand opening for its relocated 5,090-square-foot Buffalo office at 5488 Sheridan Dr., which is five times larger than the space previously occupied by the firm in the city. Additionally, Inc.

magazine last month recognized Tully Rinckey PLLC as one of the nation’s fastest-growing, privately owned companies for a sixth consecutive year. The firm ranked No. 4,178 on the 2014 Inc. 5000 list.To speak with Mathew B. Tully or Steven L. Herrick, or for more information, please contact Stephen Felano at (619) 357-7600 or at sfelano@fedattorney.com

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Tully Rinckey PLLC Ranked on Inc. 5000 for Sixth Consecutive Year

Strong Demand for Federal Employment and Military Law Services Keeps Firm among Nation’s Fastest-Growing Companies

August 25, 2014 – Washington, D.C. –

Strong demand for Tully Rinckey PLLC’s legal services provided by attorneys in its D.C. Metro Area operations, which earlier in spring underwent a substantial expansion, have helped the law firm land on the Inc. 5000 list of America’s fastest-growing, privately owned companies for a sixth consecutive year

. Inc.

magazine recently revealed that Tully Rinckey PLLC ranked No. 4,178 on the list. The ranking was based on the firm’s 69 percent revenue growth between 2010 and 2013.“The fact that

Tully Rinckey PLLC has managed to consistently rank among the nation's fastest growing companies – despite a recession, my deployment to Afghanistan and the shutdown of the federal government – illustrates the innovative nature and ambition of the firm, as well as the momentum to match it," said Tully Rinckey PLLC Founding Partner Mathew B. Tully, Esq. "We long ago took note that federal employees and military personnel around the globe have recognized that Tully Rinckey PLLC consistently provides personalized, professional and affordable legal services. Now that we have expanded our D.C. office, we're going to be able to help even more federal employees and service members."Tully Rinckey PLLC has appeared on the Inc. 5000 every year since 2009 – one year after the Albany-based law firm opened its Washington, D.C. office on K Street. And just last April, the firm relocated its K. Street office to a 6,140-square-foot, seventh-floor suite in a recently redeveloped building at 815 Connecticut Ave., NW, where attorneys primarily practice federal labor and employment law, military law and security clearance representation. This suite is in a recently redeveloped, 12-story, LEED (Leadership in Energy and Environmental Design) Platinum-certified building that features a rooftop terrace with stunning views of the White House front lawn. In addition to driving this office expansion, strong demand for the firm's federal employment and military law services had also prompted Tully Rinckey PLLC to open a law office in Arlington, Va. in May 2011. See below chart for firm growth highlights

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High resolution version of timeline available upon request

Tully Rinckey PLLC is one of the nation's largest federal employment and military law firms. Its growth has not been limited to the D.C. Metro Area. Over the past two years, its footprint in upstate New York has expanded significantly through the opening of law offices in Syracuse, Buffalo and Rochester. Just 18 months after opening a Buffalo location in January 2013, the firm last June relocated that office to a newly constructed building's 5,090-square-foot suite that is five times larger than what the firm had occupied in the city. The firm is currently investigating opportunities to open additional, strategically placed offices in New York State and will be opening one on the West Coast early next month that will expand the reach of the firm's federal sector practice areas.

Attorneys in the firm's New York State offices practice law in a variety of areas, including family and matrimonial law, criminal defense, employment law, civil litigation, bankruptcy, Social Security law, estate planning, real estate law, and business law.Tully Rinckey PLLC's achievements in 2013 came while Founding Partner Mathew B. Tully, Esq. was on military leave from the firm. In April 2012, Mr. Tully, then a lieutenant colonel in the New York Army National Guard, was deployed to Afghanistan. Four months later he was injured in a suicide car bomb attack. Tully Rinckey PLLC Managing Partner Greg T. Rinckey headed the firm while Mr. Tully was deployed and as he recovered from his injuries. Mr. Tully was awarded the Purple Heart and Bronze Star for his service in Afghanistan. He returned to his civilian job at the firm last May after being medically retired from the Army, ending a nearly two-decade career in the military.To speak with Mathew B. Tully or Greg T. Rinckey, or for more information, please contact Shaun May at (202) 375-2238 or at smay@fedattorney.com

. A high-resolution version of the above timeline can be provided upon request

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Tully Rinckey Client Exposes VA Hospital: Stolen

Drugs, Tortured Veterans

Nurse exposes VA hospital: Stolen drugs, tortured veterans

By Valerie Riviello

July 12, 2014Registered nurse Valerie Riviello has worked 28 years at the Albany Stratton VA Medical Center, most recently in the psychiatric unit. She teaches at two local nursing schools,and has received many honors for patient care and safety, including the Florence Nightingale Award. Last fall, Riviello challenged the treatment of a female veteran strapped to her bed for hours on end, in violation of VA rules. As a result, she was stripped of her nursing duties. Now she's one of 37 whistleblowers nationwide whose allegations of retaliation are under investigation by the US Office of Special Counsel. Riviello told her story to The Post's Susan Edelman.

On November 5 of last year, I started my shift on the psychiatric ward at about 6:30 a.m.A female Navy veteran, a victim of sexual assault in the military, was locked in a two-point restraint — her right arm and left leg were strapped to the bedposts. She also had a belt tied around her waist to restrict her movement.She had been restrained that morning because she was "disruptive and agitated."By 9 a.m., the veteran pleaded to be freed from the shackles. The nursing team and I made an assessment. We felt that she was ready to come out. She was calm and cooperative and taking her medication.We reported our assessment to the attending physician, who did not agree. The doctor felt the patient was "unpredictable." But we concluded she had no intent to harm herself or anyone else. She was in pain and wanted to use the bathroom — to bathe, wash her hair, brush her teeth.We kept advocating for her release, which was met with resistance from the physician. At 1 p.m., the patient had wet herself, was sweating and aching from being in the same position for so long.I called my supervisor, saying we planned to remove the patient's restraints to let her shower and use the bathroom. He said, "It sounds like a plan."So, after a total of seven hours, we took off the restraints. The patient was very appreciative. She was trying to hug us, she was so happy.But 30 minutes later, the attending physician learned about the release and was furious, demanding that we tie the patient down again. We refused, because there was no justification.She was not imminently a danger to herself or others. Under VA policy, we're supposed to place patients in the "least restrictive environment" and use restraints only as a last resort. In a case like this, where a woman had a history of sexual trauma and multiple medical problems, restraints would not help — and could even be harmful. It could bring up memories of her trauma, which could range from rape to sexual assault and leave her very vulnerable.I learned from my nursing staff that the same female veteran was readmitted in February and was kept in restraints for 49 consecutive hours over Presidents Day weekend. They said the doctors didn't want to come in to evaluate the patient, as required, if she was released and had to be put back on restraints. Can you imagine being tied down for that many hours? Every minute that someone is restrained seems like an eternity.

I started my nursing career at Albany Medical Center across the street from the VA as a candy striper at age 15. I looked up to the student nurses and dreamed of becoming one. I won the hospital auxiliary scholarship to attend nursing school with my essay "Why I want to become a nurse." I wanted to take care of people and make a difference in their lives when they were feeling their worst.Many of our veterans are returning from combat with lost limbs, shattered bones, brain injuries and sexual assaults. Others who served years ago are aging

and face health complications. I have a passion for psychiatric nursing because I want to take care of “invisible wounds,” or psychological suffering.In recent years, it’s been very discouraging to watch the level of care given to veterans deteriorate. Their ability to make choices and be involved in their treatment is disregarded. There’s no oversight of the local leadership and no accountability for how they treat employees and veterans. That has harmed patient care and staff morale.The Albany VA hospital is now part of a national scandal involving veterans who have died while waiting for care, the falsification of appointment schedules, and retaliation against whistleblowers. My case is one of dozens under investigation.Since my removal, other nurse managers have told me what is going on in the hospice and geriatric units.Last month, they found that a nurse had been diverting morphine. He was withdrawing the drug from vials and replacing it with water or some other unknown substance.Over the past year, this had occurred more than 5,000 times.This means our hospice patients were not getting their pain medication. The veterans were dying in pain. That’s appalling.The medicine comes out of a machine that records what is removed and put back. Someone should have spotted the pattern and asked, “What is this traffic going in and out, in and out?”Finally, a new night nurse reported that her colleague seemed under the influence of something. The nurse taking the morphine admitted that he had an addiction problem and was fired. The VA’s inspector general is investigating.Other co-workers throughout the hospital have asked me to spread the word about a variety of problems:A kitchen employee complained the kitchen is skimping on patient meals. If a tray comes back with an unopened milk carton, the patient will no longer be served milk with his or her meal. Special diets are frequently not adhered to, and staff is instructed to give less food to patients.The pharmacy often runs out of medications and gives patients an IOU note stapled to an empty bag. The pharmacy is falling behind and has many undelivered prescriptions.Nurses have complained about brown tap water on the seventh floor. The bathrooms are filthy, and often have no toilet paper, particularly in the Veterans Service Center.In March, my supervisor served me with a reprimand for the incident with the female veteran, citing a “failure to follow the patient’s plan of care.”I turned to a private law firm that works with federal employees, Tully Rinckey, to fight the disciplinary action.Two weeks later, I was served with a 30-day suspension without pay because I had given my lawyer patient information to defend my actions. But the hospital had already turned over 250 pages of this patient’s records. There was no breach of privacy.They gave me a desk job to develop a nurse residency program all by myself. At other VA hospitals, it took a team of nurse-educators and leaders to create such a program.When veterans I’ve known for years visited my office or stopped me in the lobby to chat, they were later questioned by my supervisors as to why they were talking to me. One veteran became irate at the grilling. It’s an example of the hostile environment and bullying I have endured.I have been proud to serve the veterans and their families. I have also adopted and raised two boys who are now successful in the Marines and Army. I care for all of my veteran patients the exact way I would want my two sons cared for if needed some day.I feel betrayed and humiliated the way the VA has tried to silence me, tarnish my career and hide what happened. Since I have come forward, data on the use of restraints, which we are required to keep, has gone missing from the electronic files. I’ve worked really hard for 28 years and don’t want to end my career this way.I want to make sure veterans get the care they deserve with respect and dignity. I also want to leave a legacy for future nurses to feel free to speak out without retaliation.