

From the E Ring to the Convention Floor: Retired Flag Officers and Presidential Elections

A Monograph

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Abstract

From the E Ring to the Convention Floor: Retired Flag Officers and Presidential Elections, by COL Nicholas R. Simontis, US Army, 47 pages.

Although the concept of an apolitical professional military has widespread acceptance, active and retired general and flag officers have been involved with presidential politics throughout US history, either running as candidates for office, or endorsing candidates for office. Many observers consider such partisan endorsements by retired flag officers problematic. They view this partisan advocacy as potentially upsetting US civil-military relations and opening debates surrounding the apolitical professional ethic and its applicability after retirement. This monograph argues that partisan political activity by retired general and flag officers (GOFs) is inappropriate and is potentially detrimental to effective civil-military relations between civilian leaders and serving senior officers.

Retired senior military leaders have extensive and unique expertise with respect to many issues germane to national security strategy and policy, but partisan political endorsements fall outside that expertise, and may increase the challenges faced by currently serving GOFs charged with providing best military advice to senior political leaders. Such advice requires political awareness and political acumen, unencumbered by partisan concerns, and enabled through trust in the military as an institution. This institutional trust should be reinforced through an apolitical professional ethic. Ultimately, this monograph finds that the military's frequently cited apolitical professional ethic exists as little more than an abstract concept, without any foundational code of ethics.

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Acronyms

ADP	Army Doctrine Publication
AR	Army Regulation
CJCS	Chairman, Joint Chiefs of Staff
CNAS	Center for a New American Security (think tank)
DoD	Department of Defense
DODD	Department of Defense Directive
GCC	Geographic Combatant Commander
GEN	General (Army abbreviation, four-star rank)
GOFO	General Officer/Flag Officer (one-star rank or higher)
JCS	Joint Chiefs of Staff
LTG	Lieutenant General (Army abbreviation, three-star rank)
MG	Major General (Army abbreviation, two-star rank)
SACEUR	Supreme Allied Commander, Europe
UCMJ	Uniform Code of Military Justice

Introduction

Previously, the primary question was: what pattern of civil-military relations is most compatible with American liberal democratic values? Now this has been supplanted by the more important issue: what pattern of civil-military relations will best maintain the security of the American nation?

— Samuel Huntington, *The Soldier and the State*

The U.S. military has a long tradition of strong partnership between the civilian leadership of the Department of Defense and the uniformed services. Both have long benefited from a relationship in which the civilian leadership exercises control with the advantage of fully candid professional advice, and the military serves loyally with the understanding that its advice has been heard and valued. That tradition has frayed, and civil-military relations need to be repaired.

— *Report of the Iraq Study Group*

In advance of the first presidential debate of the 2016 election, candidate Donald Trump's campaign released an endorsement of his candidacy signed by eighty-eight retired admirals and generals. Eighteen of the signers were three-star rank or higher.¹ One day later, Hillary Clinton's campaign countered with a list of ninety-five retired flag officer endorsements.² Two weeks later, as the candidates sparred over national security issues during their first debate, Trump stated his list of retired flag officer endorsements would grow to over 200.³ Floor speeches by retired General John Allen at the Democratic National Convention and retired Lieutenant General Mike Flynn at the Republican National Convention complemented the election's escalating endorsement competition, with Flynn joining the crowd's chant of "lock her up" as he referred to

¹ Eliza Collins, "Trump gets support of 88 retired generals and admirals," *USA Today*, September 6, 2016, accessed October 17, 2018, <https://www.usatoday.com/story/news/politics/onpolitics/2016/09/06/trump-gets-support-88-retired-generals-and-admirals/89903958/>.

² Nick Gass, "Clinton Camp Fires Back: We Have 95 Retired General, Admiral Endorsements," *Politico*, September 7, 2016, accessed October 17, 2018, <https://www.politico.com/story/2016/09/retired-generals-admirals-endorse-clinton-227814>.

³ Aaron Blake, "The First Trump-Clinton Presidential Debate Transcript, Annotated," *Washington Post*, September 26, 2016, accessed December 17, 2018, https://www.washingtonpost.com/news/the-fix/wp/2016/09/26/the-first-trump-clinton-presidential-debate-transcript-annotated/?utm_term=.6d973d5f8722.

Hillary Clinton’s candidacy.⁴ Political endorsements by retired senior military leaders, while perhaps more visible during the 2016 election, are not new, and neither is political commentary by such retired leaders limited to elections.

During the 2012 presidential contest between Barack Obama and Mitt Romney, 500 retired flag officers endorsed Romney, the Republican candidate, in a full-page newspaper advertisement. The list spanned the services and senior ranks, including five former members of the Joint Chiefs of Staff.⁵ Six years prior to that election, a group of six retired Army and Marine Corps generals publicly called for the sacking of Donald Rumsfeld, criticizing the Defense Secretary’s handling of the Iraq war in a series of interviews with reporters, collectively referred to as “the revolt of the generals.”⁶ Recently, William McRaven, retired Navy Admiral and former commander of US Special Operations Command, publicly criticized President Trump in an editorial decrying the revocation of former CIA Director John Brennan’s security clearance, referring to the revocation as “McCarthy-era tactics.”⁷ While political activities and commentary by retired senior military leaders, such as the examples detailed above are not new, are they cause for concern? Each recurring presidential election cycle seems to bring with it renewed calls for an examination of the state of civil-military relations.

This monograph argues that partisan political activity by retired general and flag officers (GOFOs) is inappropriate and is potentially detrimental to effective civil-military relations

⁴ Tobin Harshaw, “Commentary: Should Retired Generals Join the Political Fray?” *Chicago Tribune*, August 9, 2016, accessed October 17, 2018, <https://www.chicagotribune.com/news/opinion/commentary/ct-michael-flynn-john-allen-military-politics-20160809-story.html>.

⁵ “We, the Undersigned, Proudly Support Governor Mitt Romney as Our Nation’s Next President and Commander-in-Chief,” *Washington Times*, November 4, 2016, accessed October 10, 2018, <https://www.washingtontimes.com/blog/inside-politics/2012/nov/4/retired-top-military-brass-push-romney/>.

⁶ David Margolick, “The Night of the Generals,” *Vanity Fair*, April 2007, accessed September 24, 2018, <https://www.vanityfair.com/news/2007/04/iraqgenerals200704>.

⁷ William H. McRaven, “Revoke My Security Clearance, Too, Mr. President,” *Washington Post*, August 16, 2018, accessed August 18, 2018, https://www.washingtonpost.com/opinions/revoke-my-security-clearance-too-mr-president/2018/08/16/8b149b02-a178-11e8-93e3-24d1703d2a7a_story.html?utm_term=.3699d58dce8.

between civilian leaders and serving senior officers. The key question underlying this argument is, does the conduct enhance or undermine national security, which is the paramount concern of civil-military relations? Such concerns regarding civil-military relations wax and wane over time, generally peaking during postwar periods or during and following periods of increased activity by retired senior military leaders, as occurred during the 2016 presidential election. This monograph further argues that although there are limited remedies available to constrain partisan political activity by retired GOFOs, a potential option to address this situation is through professional peer pressure, underwritten through the establishment of a professional code of ethics which promulgates professional guidelines regarding such activity. Indeed, many senior leaders seek to discourage partisan political activity by retired GOFOs through appeals to an apolitical professional ethic, but such an ethic is described better as a professional norm, albeit with wide acceptance.

Although the concept of an apolitical professional military has widespread acceptance, active and retired general and flag officers have been involved with presidential politics throughout US history. Several active and retired GOFOs have campaigned for the presidency, with twelve winning election and attaining the nation's highest office. Dwight Eisenhower was the most recent of these, winning the 1952 presidential election. Since Eisenhower's election, however, the nature of GOFO involvement with presidential elections has changed, with a decline in GOFO candidacy, but an appreciable increase in endorsements of presidential candidates by retired GOFOs. This is significant as many observers consider this growth in partisan endorsements problematic. They view such partisan advocacy as potentially upsetting US civil-military relations and opening debates surrounding the apolitical professional ethic and its

applicability after retirement.⁸ Furthermore, political behavior once considered inappropriate is becoming normalized.⁹

Such concerns regarding civil-military relations date to the founding of the United States.¹⁰ Moreover, the process for the formulation of national strategy rests on a forthright and reciprocal civil-military dialogue. Many observers fear that GOFO involvement in political activities compromises this necessary dialogue and is potentially damaging to civil-military relations. These concerns regarding compromise and the accompanying potential for damage to civil-military relations escalated during the 2016 presidential election, as GOFO involvement seemed more overt and more vehement than during any election in recent memory. To consider these issues in detail, it is important to define and describe the concept of civil-military relations.

Civil-Military Relations Overview

Harvard political scientist Samuel Huntington produced his foundational work on civil-military relations at the midpoint of the Cold War, with the Berlin and Cuban Missile Crises providing the historical backdrop. Huntington describes civil-military relations as the sum of relations and interactions between senior military leaders and civilian political leaders, focused on national security policy. This relationship involves a balancing between liberal democratic norms, and the requirements of military security, given the advent of nuclear states.¹¹ Huntington proposed the notion of objective control deriving from military professionalism to maintain this balance, recognizing and balancing the requirements of civilian political authority with unique

⁸ Eliot Cohen, "General Malaise," *Wall Street Journal*, August 4, 2004, accessed October 16, 2018, <https://www.wsj.com/articles/SB109157496351782215>.

⁹ Steve Corbett and Michael J. Davidson, "The Role of the Military in Presidential Politics," *Parameters, The US Army War College Quarterly* 39, no. 4 (Winter 2009-2010): 58-59.

¹⁰ Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, Bantam Classic (New York: Bantam, 1982), 32-37.

¹¹ Samuel P. Huntington, *The Soldier and the State; the Theory and Politics of Civil-Military Relations* (Cambridge, MA: Harvard University Press, 1957), 1-3.

military expertise, all with the goal to “maximize military security at the least sacrifice of other social values.”¹² Huntington’s concept of objective control relies on apolitical military professionals who can then exercise broad unfettered influence over military matters. Johns Hopkins political scientist, Eliot Cohen, referred to Huntington’s concept as the “normal” theory of civil-military relations.¹³ This definition, widely accepted for over fifty years, emphasized an officer corps isolated from politics through the mechanism of an apolitical professional ethic, coupled with the concept of civilian control of the military. This concept of civil-military relations derives its importance from its critical role in the development of strategy and the formulation of policy focused on promoting national security.

University of Chicago sociologist and political scientist, Morris Janowitz, published his influential work on civil-military relations in 1960, three years after Huntington. While Janowitz shares Huntington’s view of military professionalism as inhibiting involvement in politics, his view of civil-military relations is much more flexible than the exclusive spheres of political and military expertise described by Huntington.¹⁴ Janowitz presciently anticipates a wide range of potential military actions which may, on occasion require minimizing the use of force. He describes this broad role as a “constabulary concept” that requires leaders “sensitive to the political and social impact of the military establishment on international security affairs.”¹⁵ According to Janowitz’ more sophisticated description, military action in support of national security policy cannot be bifurcated into peacetime or wartime options. Potential military actions are likely to fall somewhere on a continuum that runs from peace to war.¹⁶

¹² Huntington, *The Soldier and the State*, 1-3.

¹³ Eliot A. Cohen, *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime* (New York: Free Press, 2002), 4-7.

¹⁴ Morris Janowitz, *The Professional Soldier: A Social and Political Portrait* (New York: Free Press, 1960), 388-390, 420.

¹⁵ *Ibid.*, 420.

¹⁶ *Ibid.*, 419.

The concept of civil-military relations has received a good bit of contemporary analysis. US Army War College Professor, Dr. Marybeth Ullrich, provides a useful definition of civil-military relations: “Civil-military relations describes a field of study as well as an arena of participation in the political life of the state.... As an arena of political participation, civil-military relations link the political and military components of strategy.” By extension, then, “the civilian leadership and its generals are collaborators in the arena through which state interests are advanced, especially when violence or the threat of violence is employed.”¹⁷ While this definition is useful, some additional details and definitions aid understanding.

While Ullrich defines civil-military relations as a field of study and an arena of participation in the political life of a state, Loyola University political science professor, Sam Sarkesian, expands the idea of participation by listing four key interactions in civil-military relations. He describes the four as: (a) between the military leadership and the military system, (b) between the military leadership and civilian elites, (c) between the military leadership and the socio-political system in general, and (d) between the military system as a whole and the American socio-political system.¹⁸ Sarkesian goes on to observe that, the agglomeration of these interconnections complicate civil-military relationships and make it extremely difficult to “fix a clear civil-military demarcation.”¹⁹ Thus while Huntington calls for a clear demarcation, Sarkesian argues that due to the varied audiences and the overlapping interactions, there is no distinct boundary between the strictly civilian and the strictly military responsibilities in civil-military relations, which is more in keeping with Janowitz’s description of the relationship.

¹⁷ Marybeth P. Ullrich, “A Primer On Civil-Military Relations for Senior Leaders,” *U.S. Army War College Guide to National Security Issues, Vol. 1: Theory of War and Strategy, 5th Edition* (June 22, 2012): 306-316, accessed November 13, 2018, <http://strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1109>, 306.

¹⁸ Sam C. Sarkesian, “The U.S. Military Must Find Its Voice,” *Orbis* 42, no. 3 (Summer 1998), accessed November 14, 2018, <http://lumen.cgsccarl.com/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=poh&AN=885338&site=ehost-live&scope=site>.

¹⁹ *Ibid.*

Accordingly, three other terms warrant explanation to arrive at a full and complete definition. Dr. Mackubin Thomas Owens, Senior Fellow at the Foreign Policy Research Institute, provides three useful definitions. The first term for consideration is political. Owens describes the term as having three distinct meanings in the context of civil-military relations. “The first definition is seeking power at the expense of other government institutions.... The term’s second meaning is participation in the policy-making process...and the third meaning of political is involvement in partisan politics.”²⁰ The second term for consideration is policy. Owens explains policy as pertaining to broad national goals, defined as interests and objectives. Although civilians should dominate this arena, these areas must involve the military as well.²¹ The third and final necessary term is strategy. Although defining strategy is beyond the scope of this paper, Owens provides a definition that has utility in the context of civil-military relations:

Strategy, properly understood, is a complex phenomenon comprising a number of elements—among the most important of which are geography; history; the nature of the political regime, including such elements as religion, ideology, culture, and political and military institutions; and economic and technological factors. Accordingly, strategy consists of a continual dialogue between policy and these other factors. However, it is an interactive and iterative process that must involve both civilians and the uniformed military.²²

Owens hits upon an important theme in his last sentence describing strategy, emphasizing that ultimately this is an iterative process that must involve both elite civilians and senior military leaders. Discussions of civil-military relations tend to focus within the executive branch on the President, the National Security Council, the Secretary of Defense, and the Joint Chiefs of Staff. The Report of the Iraq Study Group is illustrative of this focus on the executive branch, recommending that the Secretary of Defense foster healthy civil-military relations “by creating an environment in which the senior military feel free to offer independent advice not only to the

²⁰ Mackubin Thomas Owens, “Military Officers: Political Without Partisanship,” *Strategic Studies Quarterly* 9, no. 3 (Fall 2015): 89, accessed November 14, 2018, <https://www.jstor.org/stable/26271520>.

²¹ *Ibid.*, 99.

²² *Ibid.*, 92.

civilian leadership in the Pentagon but also to the President and the National Security Council.”²³

Notably, the recommendation does not mention advice to Congress, although over half of the Report’s ten listed authors were active or former members of Congress. The Congress has important responsibilities and roles with respect to the military that necessitates inclusion in this iterative dialogue.

Under the US Constitution, power is shared among the executive and legislative branches. This shared power arrangement is common to most democracies, particularly concerning the use of military force. The US Congress has a constitutionally-specified responsibility pertaining to the use of military force, as well as to raise and support the Army and Navy, and appropriate funding for these activities. Accordingly, Congress has as much right as the executive branch to hear military advice.²⁴ Congress also wields significant power through its budgetary authorities. This power sharing arrangement, dividing control over military affairs between the executive and legislative branches necessarily leads to tension. The additional factors of individuals and personalities with varying experiences and agendas adds to the systemic tension. Ideally this tension leads to thorough analysis and debate, fostering informed decisions producing effective strategy and policy.²⁵

Taking the above definitions and descriptions of into consideration, this monograph uses the following as a definition for civil-military relations: civil-military relations link the political and military components of strategy; civilian political elites and senior military leaders

²³ James A. Baker, Lee H. Hamilton, Lawrence S. Eagleburger, Vernon E. Jordan, Jr., Edwin Meese III, Sandra Day O’Connor, Leon E. Panetta, William J. Perry, Charles S. Robb, and Alan K. Simpson, “The Iraq Study Group Report,” Rice University’s Baker Institute for Public Policy, December 5, 2006, accessed October 28, 2018, <https://www.bakerinstitute.org/research/the-iraq-study-group-report/>, Recommendation 46.

²⁴ Jim Golby, Kyle Dropp, and Peter Feaver, *Listening to the Generals: How Military Advice Affects Public Support for the Use of Force* (Washington, DC: Center for a New American Security, 2013), accessed November 16, 2018, <https://www.jstor.org/stable/resrep06380>, 5.

²⁵ Matthew Moten, “Out of Order: Strengthening the Political-Military Relationship,” *Foreign Affairs* 89, no. 5 (September/October 2010): 3-4, accessed November 13, 2018, <https://www.foreignaffairs.com/articles/united-states/2010-09-01/out-order>.

collaborate through the framework of civil-military relations to advance the security interests of the state. This collaborative process harnesses the inherent tension of this relationship with a focus on optimizing security policy outcomes, reconciling both sides' respective military and political competencies. As this relationship harnesses the creative tensions that emerge through the reconciliation of political and economic considerations, military capabilities, and policy objectives, it becomes clear that trust necessarily undergirds the relationship. Civilian leaders along with the public must trust the military to provide best military advice within the confines of military expertise. Conversely, senior military leaders must trust that civilian leadership receives and values that military expertise, giving it due consideration. The question, then, is how partisan political activity by retired GOFOs affects that trust.

The core of this collaboration is the inherent acceptance of civilian supremacy by an obedient military.²⁶ The final arbiter of this collaborative relationship is the American people. Political scientist Mackubin Thomas Owens describes civil-military relations as a process of bargaining to allocate prerogatives and responsibilities among three parties: the government, the military, and the American people. Owens observes that, "periodically, these parties must renegotiate the civil-military bargain to take account of political, social, technological, or geopolitical changes."²⁷ Put another way, civil-military relations should necessarily evolve as society evolves. The importance of this topic is clear, but when the issue of civil-military relations concerns the activities of retired senior officers, as it does in this paper, the issue becomes somewhat hazy.

²⁶ Ullrich, "A Primer On Civil-Military Relations," 306-307.

²⁷ Owens, "Military Officers: Political Without Partisanship," 95-96.

The Unique Status of Retirees

Retired military members occupy a distinctive status.²⁸ They are not equivalent to active duty personnel, but they are not quite civilians, either. Nevertheless, Article 2 of the Uniform Code of Military Justice (UCMJ) extends jurisdiction of the UCMJ to “Retired members of a regular component of the armed forces who are entitled to pay.”²⁹ The Army’s implementing regulation, Army Regulation (AR) 27-10, recognizes this jurisdiction, but also simultaneously limits prosecution stating, “Army policy provides that retired Soldiers subject to the UCMJ will not be tried for any offense by any courts-martial *unless extraordinary circumstances are present* [italics added].”³⁰ The regulation leaves open the definition of extraordinary circumstances. Given this limitation, it is highly unlikely that any political speech by retired officers, even remarks personally offensive to named office holders would be subject to referral or prosecution under UCMJ statutes or Department of Defense (DoD) regulations governing political activities that apply to active duty members. Thus, while there are clearly no legal limitations to political activity by retired GOFOs, the appropriateness of such actions and their effects on civil-military relations are still open to question.³¹ If such political activity undermines public trust in the military as an institution, or causes civilian elites to question perceived potential political motivations by serving senior officers, then partisan activity by retired GOFOs could undermine effective civil-military relations.

²⁸ Rick Houghton, “The Law of Retired Military Officers and Political Endorsements: A Primer,” *Lawfare (blog)*, October 3rd, 2016, accessed October 16, 2018, <https://www.lawfareblog.com/law-retired-military-officers-and-political-endorsements-primer>.

²⁹ Cornell University Law School Legal Information Institute, “10 U.S. Code § 802 - Art. 2. Persons Subject to This Chapter,” 10 U.S. Code Chapter 47 - UNIFORM CODE OF MILITARY JUSTICE, accessed October 18, 2018, <https://www.law.cornell.edu/uscode/text/10/subtitle-A/part-II/chapter-47>.

³⁰ US Department of the Army, *Army Regulation (AR) 27-10, Military Justice* (Washington, DC: Government Printing Office, 2016), 13.

³¹ Houghton, “The Law of Retired Military Officers.”

Research Overview

The concerns regarding retired GOFO participation in political elections surround two issues viewed as challenges to effective civil-military relations. The first issue pertains to the public perceptions that such political involvement elicits. With such a small percentage of the population serving in the military, and given the high level of trust the military institution enjoys, many Americans are likely to view retired GOFOs as representing military forces generally, and in so doing, ascribe partisan attitudes to the military. Accordingly, presidential campaigns can develop into a contest of which candidate can line up the bigger team of retired flag endorsements. More troubling, perhaps, is that the growth of political endorsements by retired senior officers could provide unintended implicit sanction for partisan political activity among active-duty personnel. Some research surveyed in this monograph supports these contentions.³²

A second issue pertaining to public perceptions is concern that retired GOFO political endorsements could lead to public perception of the military as a special interest group. Such a perception calls into question the military's time-honored support to the constitution, and the vital strategic role of providing best military advice dispassionately. Instead, the military becomes another special interest group advancing its own interests, currying political favor and access. Such a perception invites questions among political leaders regarding the possible vitiation of proffered military advice by partisan or institutional concerns, thereby undercutting the trust critical to effective civil-military strategic dialogue.

This monograph examines how GOFO involvement in presidential elections has changed over time, and the implications for civil military relations. On initial consideration, it seems that

³² Dr. Heidi Urben expresses such concerns regarding increased partisan activity in the ranks elicited through her research: Heidi A. Urben, *Like, Comment, Retweet: The State of the Military's Nonpartisan Ethic in the World of Social Media* (Washington, DC: NDU Press, 2017), accessed January 10, 2019, https://ndupress.ndu.edu/Portals/68/Documents/casestudies/cco_casestudy-1.pdf?ver=2017-05-22-090156-523, 1-3, 39-42.

GOFO involvement in presidential elections has waxed and waned over time; the 2016 election is an example of a cyclical growth in that involvement. As GOFO political involvement grows, there is a corresponding increase in concern over potential damage to civil-military relations. Although such concerns are valid, the underlying assumption is there are adequate mechanisms in place to prevent escalation to a civil-military crisis. If true, it seems likely these mechanisms can facilitate the exploration of modifications to accepted norms of civil-military relations.

Accordingly, this monograph considers whether retired GOFO involvement in presidential elections should be reevaluated. Given the growth of social media, the proliferation of unsubstantiated assertions (more popularly known as fake news), and despite the significant concerns described above, there is a counter-argument that the military should increase open and transparent constructive political engagement beyond mandated testimony regarding budget and posture. Put another way, as society evolves should the accepted norms of civil-military relations evolve?

To develop these topics, this monograph will consider four areas of inquiry. First, the paper will examine historical practices in civil-military relations to ascertain if commonly held beliefs, such as the concept of an apolitical military ethic, for example, bear out. This paper will next examine more recent incidents of political activities by retired GOFOs to compare recent practice with historical practice to determine if and how the practice has evolved. From there, the paper moves to a deeper look into the laws, regulations, and policy guidance that govern political activities by active duty members and, where applicable, retirees. This look will investigate which activities are specifically proscribed, to better understand which activities are permissible for active duty members, and for retirees. Finally, the monograph will survey four recent studies conducted by scholars that analyze the effects and perceptions of political activities by active and retired military members. With that established, the paper will wrap the research into a reexamination of civil-military relations featuring a deeper exploration of the components of civil-military relations, and tracing the evolution of civil-military relations practices to today's

current security environment and political culture, to determine whether partisan political activity by retired GOFs is potentially detrimental to effective civil-military relations between civilian leaders and serving senior officers, potentially undermining national security thereby. A critical question underlying this concern is whether the appeal to a profession ethic as described by Huntington, Janowitz, and others is germane sixty years later. If not, then what is an appropriate remedy to these concerns that reflects the current security and information environment, as well as today's political culture and societal norms? The paper will then finish with conclusions and recommendations for further study.

Historical Civil-Military Relations Practices

The apolitical military ethic has such broad acceptance, that many accept it as an article of faith. In accordance with this ethic, General George C. Marshall famously abstained from voting, as did General Dwight D. Eisenhower, and General David Petraeus, after his promotion to Major General.³³ Political scientist Richard Kohn observes:

Historically, one of the chief bulwarks of civilian control has been the American military establishment itself. Its small size in peacetime, the professionalism of the officers, their political neutrality, their willing subordination, and their acceptance of a set of unwritten but largely understood rules of behavior in the civil-military relationship—all had made civilian control succeed, messy as it sometimes was and situational as it must always be.³⁴

Huntington traced current concepts of military professionalism and the “divorce of the military from politics” that Kohn describes above, to General William Tecumseh Sherman’s tenure as Commanding General of the Army, 1869-1883.³⁵ Although Sherman’s views held sway during his fifteen-year tenure and doubtlessly influenced a generation of officers, this “divorce of

³³ Charles G. Kels, “The Nonpartisan Military,” *Armed Forces Journal* (August 8, 2008) accessed October 10, 2018, <http://armedforcesjournal.com/the-nonpartisan-military/>.

³⁴ Kohn, Richard H. “The Erosion of Civilian Control of the Military in the United States Today.” *Naval War College Review* 55, no. 3 (Summer 2002): 7-59, accessed October 16, 2018, <https://digital-commons.usnwc.edu/nwc-review/vol55/iss3/2>.

³⁵ Huntington, *The Soldier and the State*, 230-231.

the military from politics” was most certainly not the case before him, and did not last long after him. Despite the window of apolitical professionalism that Sherman sought to instill, senior military leaders were deeply involved in political activities before and after his tenure. Still, the Civil War provides a useful break point for historical analysis.

Pre-Civil War Patterns

The United States was in its infancy when the first confrontation in civil-military relations manifested in the 1783 Newburgh Conspiracy. This incident occurred on May 15th when a group of disgruntled army officers gathered in Newburgh, New York to protest Congress’ failure to settle significant arrearages in back pay, despite repeated promises to the officers. The assembled officers made a thinly-veiled threat to revolt, but the direct intervention of George Washington placated the group and prevented the situation from escalating to a crisis.³⁶ This incident remains the sole military threat to civilian supremacy in US history, and it is important to note that the military stepped back from the confrontation and willingly subordinated itself to civilian authority.³⁷

Throughout early US history, there was considerable overlap between military and political spheres. Military service was often a path to a political career, and twenty-one of the first twenty-five men to serve as President had served in the military prior to their political careers.³⁸ John Adams and Thomas Jefferson both weighed political party affiliation heavily in officer appointments; Adams favored Federalists. Jefferson, on taking office, ordered a survey of officers

³⁶ Douglas Johnson and Steven Metz, “American Civil-Military Relations: New Issues, Enduring Problems” (Strategic Studies Institute paper prepared for a conference on Civil-Military Relations in the fall, 1994, Carlisle Barracks, PA, April 24, 1995), accessed September 5, 2018, <https://ssi.armywarcollege.edu/pubs/display.cfm?pubID=287>.

³⁷ Peter D. Feaver, “The Irony of American Civil-Military Relations,” in “CMR Special Edition,” *Strategic Studies Quarterly* 9, no. 3 (Fall, 2015): 3.

³⁸ George Washington, Andrew Jackson, William Henry Harrison, and Zachary Taylor are some early examples of former generals who transitioned to the presidency.

assessing their competence and political leanings. He then purged Federalist officers, replacing them with Republicans.³⁹ During the Mexican-American War, President Polk had contentious relations with generals Zachary Taylor and Winfield Scott, his two field commanders, largely due to their affiliation with the opposition Whig party, and their frequent vocal criticism of his leadership and policies.⁴⁰ In many ways, Polk's relationship with Taylor and Scott mirrors that between Lincoln and McClelland. These various incidents suggest that during the first seventy years of US history there were significant connections between the military and political spheres, and these connections were known and accepted.

Civil War and Reconstruction

These connections continued into the Civil War and Reconstruction, although civil-military relations were at times contentious. Senior Union officers, such as George McClellan mentioned above, routinely and vociferously criticized Lincoln, his strategy, and policies.⁴¹ Such criticism notwithstanding, this period saw greater intermingling between the civilian and military spheres than any other in US history.⁴² Five presidents after the war were former Union officers, and four of the five were generals.⁴³ Perhaps more surprising is that nearly a third of the 42nd Congress (1871-1873) were Civil War veterans, though this may be more of an indicator of the war's pervasiveness in American society.⁴⁴ Major General Winfield Scott Hancock unsuccessfully ran for the Democratic presidential nomination three times from 1868 to 1880,

³⁹ Phillip S. Meilinger, "Soldiers and Politics: Exposing Some Myths," *Parameters, The US Army War College Quarterly* 40, no. 2 (Summer 2010): 75-76.

⁴⁰ Corbett and Davidson, "The Role of the Military in Presidential Politics," 59-61.

⁴¹ Kohn, "The Erosion of Control of the Military," 13.

⁴² Meilinger, "Soldiers and Politics: Exposing Some Myths," 79-82, 86.

⁴³ Ulysses S. Grant, Rutherford B. Hayes, James A. Garfield, Benjamin Harrison, and William McKinley; Hayes and Harrison were Brevet Generals, while McKinley was a Major.

⁴⁴ Meilinger, "Soldiers and Politics: Exposing Some Myths," 86.

while still serving as a general officer, and subordinate to General Sherman.⁴⁵ Still, this was the state of civil-military relations in which Sherman sought to promulgate an apolitical professional ethic among the officer corps. Indeed, Sherman's actions may have been a response to the ongoing civil-military intermingling coupled with an effort to break away from perceived civilian interference, as evidenced by his move of the Army's headquarters to St. Louis, Missouri.⁴⁶ Despite his best efforts, the political-military connections remained, although Sherman worked diligently to eliminate them.

Post-Civil War Patterns

Civil-military relations seemed relatively quiet during the period following the Civil War and Reconstruction as the nation began to heal. From 1880 until the election of Dwight Eisenhower, no military officer succeeded in winning either party's nomination for the presidency, and Huntington assesses this period as one of "heightened professionalism" in the military.⁴⁷ Moreover, Huntington views this period as "sharpening the line between the military and politics."⁴⁸ The glaring exception was Major General Leonard Wood. Although he lost the Republican nomination for President in 1920, he actively campaigned for the nomination while in uniform—an unthinkable occurrence today.⁴⁹

While professionalism did improve throughout this period, it seemingly did not provide the objective control to which Huntington ascribed. In addition to the incidents described above, there were several other notable breaches of civil-military norms. One such breach came with the relief of General Douglas MacArthur in 1951 after MacArthur made repeated critical and public

⁴⁵ Corbett and Davidson, "The Role of the Military in Presidential Politics," 61.

⁴⁶ Kohn, "The Erosion of Control of the Military," 13.

⁴⁷ Huntington, *The Soldier and the State*, 161-162.

⁴⁸ Ibid.

⁴⁹ Owens, "Military Officers: Political Without Partisanship," 98.

comments regarding Truman's strategy and policies.⁵⁰ Less well known, but more significant is that MacArthur sent Lieutenant General George Kenney to Washington in early 1943 to attend the Pacific Military Conference to map out future strategy in the Pacific Theater. During the conference, Kenney attended a meeting with Republican leaders during which they proposed recruiting General MacArthur for a potential bid for the presidency. Ostensibly, Lieutenant General Richard Sutherland, MacArthur's Chief of Staff, and Major General Charles Willoughby, MacArthur's Intelligence Officer, were heavily involved in the move to recruit MacArthur. While MacArthur initially indicated he would not resist efforts to nominate him as a candidate, he subsequently reversed his position and disavowed any interest in candidacy.⁵¹ Eight years after MacArthur dispatched Kenney, and two years after MacArthur's relief, General Dwight Eisenhower, while still serving as Supreme Allied Commander, Europe (SACEUR), planned and organized his presidential campaign from his office outside Paris.⁵² Eisenhower was subsequently elected and inaugurated as President in 1953. In so doing, Eisenhower became the most senior general officer in US history to ascend to the presidency.

Despite his long military career and personal knowledge of most senior GOFOs, Eisenhower as President soon found himself confronted with civil-military challenges. As Eisenhower began his administration, he envisioned a transformed military, reduced in conventional strength, but reliant on an expanded and upgraded nuclear capability. The Army would be the bill payer for these changes, known as the "New Look," while the Air Force would see considerable expansion. Army senior leaders, particularly Chief of Staff Matthew Ridgway strongly opposed this transformation, yet Eisenhower publicly and inexplicably asserted that the

⁵⁰ Moten, "Out of Order," 2-8.

⁵¹ Thomas E. Griffith Jr, *MacArthur's Airman: General George C. Kenney and the War in the Southwest Pacific* (Lawrence: University Press of Kansas, 1998), 112-114.

⁵² William B. Pickett, *Eisenhower Decides to Run: Presidential Politics and Cold War Strategy* (Chicago: Ivan R. Dee, Publisher, 2008), 112-117.

Joint Chiefs were unanimous in their support of his proposals.⁵³ Ridgway dissented loudly and often, particularly during congressional budget hearings, but to no avail.⁵⁴ He retired from the Army in 1955 but continued his opposition to administration defense policies in a series of articles published by the *Saturday Evening Post*.⁵⁵ Lieutenant General James Gavin, Director of Army Research, retired in 1958 after similarly voicing opposition to Eisenhower's "New Look" policies, often in congressional testimony, as did General Maxwell Taylor in 1959. Like Ridgway, Taylor continued his opposition to administration policies after his retirement, publishing a "scathing critique of New Look proposals in *The Uncertain Trumpet*, published in 1959.⁵⁶

Recent Patterns

The broad overview of historical practices of civil-military relations laid out above provides a useful context to more recent examples. The current environment seems to be one of cautious optimism, with specific areas of concern. Writing in 2010, Army Colonel and historian Matthew Moten described the state of civil-military relations as "quite good."⁵⁷ But five years later, political scientist Peter Feaver noted recurring concerns among civilian leaders that senior military leaders often enjoy an advantage in policy debates, observing that "nearly every secretary of defense since Richard Cheney in 1989 evinced a belief that civil-military relations were out of

⁵³ Donald Alan Carter, "Eisenhower Versus the Generals," *The Journal of Military History* 71, no. 4 (October, 2007), 1170-1180.

⁵⁴ Ridgeway felt that the emphasis on a nuclear arsenal accompanied by reductions in land forces limited options short of nuclear war; there was limited capability to prosecute more limited conflicts. Gavin and Taylor expressed similar concerns.

⁵⁵ Carter, "Eisenhower Versus the Generals," 1181-1186.

⁵⁶ Carter, "Eisenhower Versus the Generals," 1187-1195.

⁵⁷ Moten, "Out of Order," 2.

balance; a high priority for each of has been tilting the balance back toward one favoring civilian supremacy.”⁵⁸

A recent trend evoking concern from journalists and political scientists alike is the increasing involvement of retired GOFOs in elections. University of North Carolina Political Scientist Richard Kohn identifies the 1988 presidential election as the inception of this modern phenomenon with the endorsement of President George H.W. Bush in the Republican primary by retired Marine Corps Commandant, P.X. Kelley. The trend gained momentum four years later when retired Admiral William Crowe, former Chairman of the Joint Chiefs of Staff (CJCS) under Bush, along with twenty-one additional retired GOFOs, endorsed the Democratic candidate, Bill Clinton, Bush’s opponent in the election. Journalists seized on this seeming about face, and the Bush campaign responded with a series of retired senior military endorsements of the incumbent President. Since that time, this cycle of endorsements and counter endorsements by retired senior military leaders has gathered strength.⁵⁹ Although stating that he felt Clinton was the better candidate, Crowe justified his endorsement of Clinton as an attempt to counter both the “conventional wisdom that nobody in the American military was a Democrat,” and the stereotype that “senior uniformed leaders are Republicans.”⁶⁰ His comments are especially striking, given that he retired as the senior ranking officer in the US military.

Retired General Colin Powell followed in Admiral Crowe’s footsteps four years later, albeit on the Republican side. Powell, another former CJCS, endorsed Senator Robert Dole’s

⁵⁸ Feaver, “The Irony of American Civil-Military Relations,” 3.

⁵⁹ James Golby, Kyle Dropp, and Peter Feaver, *Military Campaigns: Veterans’ Endorsements and Presidential Elections* (Washington, DC: Center for a New American Security, 2012), accessed November 16, 2018, <https://www.jstor.org/stable/resrep06441>, 6.

⁶⁰ William J. Crowe and Jr. with David Chanoff, *The Line of Fire: From Washington to the Gulf, the Politics and Battles of the New Military* (New York: Simon & Schuster, 1993), 342, 343.

candidacy for president.⁶¹ Powell provides a unique example, as he was politically active even while on active duty, as well as in retirement. While in uniform and serving as CJCS, Powell challenged President Clinton's proposals on gays in the military, reductions in military spending, and strategy in Bosnia.⁶² In addition to his endorsement of Robert Dole, Powell served as Secretary of State to President George W. Bush, then crossed party lines to endorse Senator Barack Obama's presidential candidacy in 2008.⁶³

The 2004 presidential campaign marked a significant spike in political activity by retired GOFOs. Retired General Wesley Clark, who ran unsuccessfully for the Democratic nomination, gave a speech on the floor of the Democratic convention. Twelve retired GOFOs joined Clark over the course of the evening. The group of twelve included former CJCS John Shalikashvili, who also addressed the gathered delegates in a floor speech, William Crowe, participating in another democratic campaign, and retired Air Force General Merrill McPeak, who crossed party lines after endorsing George Bush in the 2000 election.⁶⁴ A month later the former commander of US Central Command, retired General Tommy Franks, endorsed President George Bush during an address on the floor of the Republican convention. At the time Franks was "perhaps the most famous general in the country" and his recently published *American Soldier* was a bestseller.⁶⁵ Both presidential elections since this time indicate that retired GOFO involvement in political campaigns is an accepted practice, at least within the political sphere, as candidates strive to

⁶¹ Katharine Q. Seelye, "Powell Gives Dole Campaign a Lift in Ohio," *New York Times*, October 11, 1996, accessed October 17, 2018, <https://www.nytimes.com/1996/10/11/us/powell-gives-dole-campaign-a-lift-in-ohio.html>.

⁶² Douglas T. Stuart, ed., *Organizing for National Security* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2000), 225. Also see Colin L. Powell, "Why Generals Get Nervous," *New York Times*, 8 October 1992.

⁶³ Corbett and Davidson, "The Role of the Military in Presidential Politics," 58.

⁶⁴ Charles Babington, "Generals and Admirals Battle Perceptions of Kerry," *The Washington Post*, July 30, 2004, accessed September 22, 2018, <http://www.washingtonpost.com/wp-dyn/articles/A25812-2004Jul29.html>

⁶⁵ Dale Russakoff, "Retired General Endorses President," *Washington Post*, September 2, 2004, accessed September 20, 2018, <http://www.washingtonpost.com/wp-dyn/articles/A54462-2004Sep1.html>.

organize longer, more impressive lists of retired GOFO endorsements. The issue, however, remains a contentious topic among military professionals and academics.

This historical overview of civil-military relations puts several assumptions to rest. To begin with, the concept of an apolitical military ethic exists more as an ideal type, rather than in actual practice. Huntington asserts that there was no professional officer corps prior to 1800, and that Sherman was critical to the development of a professional officer corps divorced from political concerns.⁶⁶ The cases described above suggest that there has always been some level of political activity among active and retired officer ranks, and a political awareness at the very least. There have been periods of significant political activity and periods of relatively little political activity. Huntington acknowledges that much of civil-military relations is challenging and ever changing. He describes any system of civil-military relations as a “complex equilibrium between the authority, influence, and ideology of military groups, on the one hand, and the authority, influence, and ideology of nonmilitary groups, on the other.”⁶⁷

Eisenhower provides a useful case in point. Despite being one of the most experienced senior military officers in history, and having long-standing personal relationships with senior leaders throughout the services, Eisenhower struggled with vexing civil-military issues during his Presidency, reflecting the “complex equilibrium” about which Huntington wrote. Opposition to his New Look policies led to acrimonious and public opposition, prior to and after the retirement of several well-known and popular senior officers. Nonetheless, it is important to note that at no time did any of these senior officers, though opposed to Eisenhower’s policies, fail to acknowledge civilian supremacy. What Eisenhower learned, and as historian and retired Army Colonel Andrew Bacevich shrewdly observes, “The dirty little secret of American civil-military relations, by no means unique to this [the Clinton] administration, is that the commander in chief

⁶⁶ Huntington, *The Soldier and the State*, 19, 230-231.

⁶⁷ *Ibid.*, vii.

does not command the military establishment; he cajoles it, negotiates with it, and, as necessary, appeases it.”⁶⁸

Given these points and the many historical examples cited above, the concerns regarding potential imbalance in civil-military relations may simply be a response to periods of greater or lesser political activity. Alternatively, the concern may reflect apprehension over the significant disparity between the trust enjoyed by the military, and the lack of trust shown government institutions. A Gallup poll assessing Americans’ confidence in fifteen societal institutions found that the military remains the most trusted institution in American society. In contrast, only thirty-seven percent of Americans trust the presidency “a great deal/quite a lot,” and a mere eleven percent trust Congress “a great deal/quite a lot.”⁶⁹

Military Law, Regulations, and Guidance Regarding Political Activity

The preceding historical overview of civil-military relations practices provides useful context to the issue and its implications. Retired GOFOs occupy a unique status with respect to military law and regulations, as described in the introductory section. Bearing that in mind, this section examines the provisions of military law and policy directives, as they apply to political activity. Specifically, this section delves into permitted activities, proscribed activities, and actions that fall between the two.

Title 10, Chapter 49 – Miscellaneous Prohibitions and Penalties

Section 973, Title 10 US Code, applies to the performance of civil governmental functions by military members. Put simply, this statute bars active duty officers from holding

⁶⁸ Andrew Bacevich, “Discord Still: Clinton and the Military,” *Washington Post*, January 3, 1999, accessed November 21, 2018, https://www.washingtonpost.com/archive/opinions/1999/01/03/discord-still-clinton-and-the-military/f7f64313-f284-45c7-b000-40b1828d8436/?utm_term=.9637f07da808.

⁶⁹ Niall McCarthy, “The Institutions Americans Trust Most and Least in 2018,” *Forbes*, June 29, 2018. accessed November 21, 2018, <https://www.forbes.com/sites/niallmccarthy/2018/06/29/the-institutions-americans-trust-most-and-least-in-2018-infographic/#4d182e2f2fc8>.

elective office at the federal or state level.⁷⁰ The statute also applies to retired officers recalled or ordered to active duty for a period exceeding 270 days. Interestingly, this section does permit active duty officers to hold “nonpartisan civil office on an independent school board that is located exclusively on a military reservation.”⁷¹ This statute is narrow, specific, and the implications are clear. Active duty officers and retirees recalled to active duty cannot hold elective office. But what of other political activities?

Department of Defense Directive (DODD) 1344.10

The most current Defense Directive pertaining to political activities by active duty military members is DODD 1344.10, published in 2008. The directive provides a thorough delineation of permissible and impermissible political activities. The directive states that it is DoD policy:

to encourage members of the Armed Forces ... (including... retired members) to carry out the obligations of citizenship. In keeping with the traditional concept that members on active duty should not engage in partisan political activity, and that members not on active duty should avoid inferences that their political activities imply or appear to imply *official* sponsorship, approval, or endorsement... [italics added].⁷²

In brief, the policy as stated encourages military members to exercise their rights as citizens, while avoiding any appearance or implication that their actions represent official endorsement, sanction, or approval. Permissible activities largely pertain to voting and freedom of speech. Active duty members may vote, express political opinions on candidates and issues, encourage others to vote, sign petitions, and make financial contributions to a candidate or

⁷⁰ Cornell University Law School Legal Information Institute, “10 U.S. Code § 973 - Duties: Officers On Active Duty; Performance of Civil Functions Restricted,” U.S. Code › Title 10 › Subtitle A › Part II › Chapter 49 › § 973, accessed November 15, 2018, <https://www.law.cornell.edu/uscode/text/10/973>.

⁷¹ Ibid.

⁷² US Department of Defense, Undersecretary of Defense, Personnel & Readiness, *DoD Directive 1344.10, Political Activities by Members of the Armed Forces* (Washington, DC: Government Printing Office, 2008), 2.

candidates, so long as they take these actions as private citizens, not as an official representative of the armed forces. Moreover, service members can attend partisan and nonpartisan meetings, rallies, debates, and conventions, again, so long as they do so as a spectator, and in civilian attire.⁷³ Interestingly, service members can display a political bumper sticker on privately owned vehicles. The phrase “a bumper sticker” implies only one bumper sticker, and the directive does not address the issue of driving a vehicle with such a bumper sticker while in uniform.

The list of impermissible activities pertains to political activities and speech that could imply official endorsement of a candidate, or involve actual participation in partisan activities, as opposed to mere attendance, whether in uniform or not. The prohibited activities include participation in partisan fundraising activities, rallies, conventions, and debates. The most notable point in this section is that these prohibitions are, “without respect to uniform or inference or appearance of official sponsorship, approval, or endorsement.”⁷⁴ Put another way, the mere act of participation alone suffices to make the activity impermissible. The key distinction between permissible and impermissible activities hinges on actual participation in partisan political activities, as opposed to merely observing such activities as a spectator.

Other proscribed activities pertain to speech, and speech-related activities. This list includes soliciting votes or contributions on behalf of a candidate or issue, speaking before partisan political gatherings, or participating in radio, television, or other broadcast program as an advocate for or against any partisan political party, candidate, issue, or cause. The directive does not permit service members to march or ride in partisan political parades, or display large political signs, banners, or posters on private vehicles. Finally, service members are not to publish

⁷³ US Department of Defense, DOD Directive 1344.10, 3-4.

⁷⁴ Ibid. Note: the directive distinguishes these writings from permitted activities such as writing an editorial, or letter to the editor of a newspaper as a private citizen (which is permitted in accordance with paragraph 4.1.6 of the directive).

any partisan political articles, letters, or endorsements, signed or written by the member soliciting votes for or against a partisan political party, candidate, or cause.⁷⁵

Paragraph 4.4 of DODD 1344.10 details limitations on nomination for civil office, candidacy, and campaigning for civil office. This section refers to “members not on active duty” and thus applies to retired officers.⁷⁶ The portions relevant to retired officers largely address the use of military rank, service affiliation, and images. Retired officers who are candidates for civil office can use their military rank or grade and military service affiliation with the limitation that the use must clearly indicate their retired status. The rules concerning graphic images are a bit more complicated. In any campaign literature, candidates may not use photographs of themselves in uniform as the primary graphic in the literature, which includes websites, videos, print media, and the like. Similarly, if a candidate does use an image in uniform, he or she may not allow a depiction of themselves that does not accurately portray their actual performance of duty.⁷⁷ For example, a retired logistics officer cannot use a picture of himself or herself at the controls of a helicopter.

To sum up the various restrictions on retired candidates, any use of military rank, grade, and service affiliation must clearly indicate the individual is in a retired status. Use of pictures or any depiction in uniform is permissible if the depiction is not the primary graphic, and accurately reflects the individual’s service. The use of any military information and/or images must include a prominent disclaimer that, “neither the military information nor photographs imply endorsement by the Department of Defense or their particular Military Department.”⁷⁸ The important distinction for retirees involved in partisan political activity is the assurance that their

⁷⁵ US Department of Defense, DOD Directive 1344.10, 6.

⁷⁶ Ibid.

⁷⁷ Ibid., 6-7.

⁷⁸ Ibid.

actions do not imply any official endorsement by the Department of Defense, or any of the Military Departments.

The Uniform Code of Military Justice

As previously stated, retired officers are subject to the UCMJ under article 2, although prosecution is unlikely as a matter of policy. Nevertheless, the most applicable restriction of the UCMJ pertaining to political activity by retired military members pertains to contemptuous speech. Article 88 of the UCMJ criminalizes “contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State”⁷⁹

In theory, a retired GOFO running for high office who publicly criticizes the President in a contemptuous manner would be liable to prosecution under this statute. However, prosecution pursuant to this article is unlikely.⁸⁰ The sole reported court martial of a retiree for contemptuous speech occurred in 1918. The case ended in an acquittal.⁸¹

The preceding overview of laws pertaining to the political activity of GOFOs, makes clear that current political activity by retired GOFOs is lawful. Nevertheless, several recent Chairmen of the Joint Chiefs of staff have strong opinions on the matter.

⁷⁹ Cornell University Law School, “10 u.s. Code § 888 - art. 88. Contempt Toward Officials,” Legal Information Institute, accessed September 22, 2018, <https://www.law.cornell.edu/uscode/text/10/888>.

⁸⁰ Houghton, “The Law of Retired Military Officers.”

⁸¹ Corbett and Davidson, “The Role of the Military in Presidential Politics,” 69-70. Although there are few details available, the case involved a retired Army musician, charged for calling President Wilson and the government “subservient to capitalists and ‘fools to think they can make a soldier out of a man in three months and an officer in six.” The Court Martial Authority acquitted the retiree of the charge. This case remains the sole case involving the attempted prosecution of a retiree under Article 88 of the UCMJ.

CJCS Comments Regarding Political Activity by Retired GOFOs

While not binding in any legal sense, the opinion of current and former Chairmen carries weight as they are, by statute, the senior ranking officer in the military during their tenure. Current CJCS, Marine General Joseph Dunford has not specifically addressed political activity by retired GOFOs.⁸² He did address the military generally, stating, “Importantly, as an institution, the American people cannot be looking at us [military members] as a special-interest group or a partisan organization, They have to look at us as an apolitical organization that swears an oath to the Constitution of the United States — not an individual, not a party, not a branch of government — the Constitution of the United States.”⁸³ The growing involvement of retired GOFOs in presidential campaigns has drawn the attention of two recent Chairmen of the Joint Chiefs. Retired Army General Martin Dempsey, General Dunford’s predecessor as Chairman, criticized the participation of retired General John Allen and LTG Mike Flynn during the 2016 election in a *Washington Post* editorial, stating, “The military is not a political prize. Politicians should take the advice of senior military leaders but keep them off the stage.”⁸⁴ He also addressed a key concern of many observers, continuing, “...our nation’s soldiers, sailors, airmen and Marines should not wonder about the political leanings and motivations of their leaders.”⁸⁵ General Dempsey’s predecessor, retired Navy Admiral Michael Mullen echoed the same sentiment in his own letter to the *Washington Post* during the 2016 election. Mullen opined, “for

⁸² Dan Lamothe, “Generals have waded into presidential elections for decades. Their colleagues still hate it,” *Washington Post*, August 2, 2016, accessed September 5, 2018, https://www.washingtonpost.com/news/checkpoint/wp/2016/08/02/generals-waded-into-presidential-elections-decades-ago-their-colleagues-still-hate-it/?utm_term=.5e709efddb9e.

⁸³ Ibid.

⁸⁴ Martin E. Dempsey, “Military Leaders Do Not Belong at Political Conventions,” *Washington Post*, accessed December 22, 2018, https://www.washingtonpost.com/opinions/military-leaders-do-not-belong-at-political-conventions/2016/07/30/0e06fc16-568b-11e6-b652-315ae5d4d4dd_story.html?noredirect=on&utm_term=.3872d52a0b20.

⁸⁵ Ibid.

retired senior officers to take leading and vocal roles as clearly partisan figures is a violation of the ethos and professionalism of apolitical military service.”⁸⁶

As former Chairmen, Mullen and Dempsey’s comments provide a useful contrast to the political activities of previous chairmen mentioned above, such as William Crowe, Colin Powell, and John Shalikashvili. Although General Dempsey and Admiral Mullen both mention the ethos and professionalism of apolitical military service, clearly Crowe, Powell, and Shalikashvili did not share the same understanding of the ethos, or did not feel constrained by it as retired officers.⁸⁷

Research Studies

With historical and legal overviews to provide background and a frame of reference, this paper considers three published studies and a survey that together examine various facets of civil-military relations.

Study 1: Public Attitudes and Elite Credibility

The first study, published in a Stanford University Doctoral Dissertation, addresses the credibility of retired military officers, seeking to establish if and how partisan political activity affects public perceptions of that credibility.⁸⁸ The study provided differing versions of a short biography about a retired senior military officer to 1,000 respondents. According to the

⁸⁶ Dana Priest and Greg Miller, “He was one of the most respected intel officers of his generation. Now he’s leading ‘lock her up’ chants,” *Washington Post*, August 15, 2016, accessed November 2, 2018, https://www.washingtonpost.com/world/national-security/nearly-the-entire-national-security-establishment-has-rejected-trumpexcept-for-this-man/2016/08/15/d5072d96-5e4b-11e6-8e45-477372e89d78_story.html?utm_term=.cdd2518d2f0b.

⁸⁷ David Jackson, “Military Chief: Anti-Obama Film 'not Useful',” *USA Today*, August 22, 2012, accessed December 22, 2018, <http://content.usatoday.com/communities/theoval/post/2012/08/pentagon-chief-anti-obama-film-not-helpful/1#.XB6VdlxKg2z>. Dempsey specifically addresses professionalism during a 2102 interview.

⁸⁸ Michael A. Robinson, “Danger Close: Military Politicization and Elite Credibility” (PhD diss., Stanford University, 2018), accessed October 23, 2018, https://stacks.stanford.edu/file/druid:xf819jg4312/Robinson_Danger%20Close-augmented.pdf, 2.

biographies provided, the senior officer, after retirement, either worked in non-partisan research or a had history of candidate endorsements and commentary on partisan cable networks. The results of the study are surprisingly counterintuitive in how perceived partisan and non-partisan retired GOFOs fared against one another. Respondents found politically activist generals less credible, but the findings depended on how the general's politics aligned with the political views of the individual respondents. The study determined that "co-partisans—those on the same political side as the activist general actually found political generals to be slightly more credible."⁸⁹ Conversely, "generals who endorsed the other side [of the political spectrum from the respondent] scored considerably lower than the non-partisan in terms of credibility, even if both had identical qualifications [according to the biographies provided to respondents]."⁹⁰ Participants in the study judged credibility by the degree of congruence between the participant's political views and the political views of the general, at least when the study participant could discern where on the political spectrum the viewpoints of the general fell. This result, on its face, is unsurprising. Study participants found partisan political viewpoints that reinforced their own partisan political viewpoints credible.

Taking this finding a step further, however, has important implications to the topic of GOFO political endorsements. Critically, the study determined that "exposure to a partisan general from across the aisle also damaged individual impressions of the military's trustworthiness and expertise."⁹¹ Thus a general or flag officer demonstrating a partisan political inclination risks a perception of unreliability or untrustworthiness by those whose political leanings differ. Consequently, a retired GOFO taking a partisan stance through a partisan political

⁸⁹ Michael A. Robinson, "Danger Close: Military Politicization and Elite Credibility," *War on the Rocks*, August 21, 2018, accessed November 15, 2018, <https://warontherocks.com/2018/08/danger-close-military-politicization-and-elite-credibility/>. Note: This article is a synopsis of Robinson's Stanford Dissertation referenced in footnote 88.

⁹⁰ Ibid.

⁹¹ Ibid.

endorsement, puts the perception of his professional credibility at risk with those whose political viewpoints differ. The larger question then becomes, do partisan stands by retired GOFs put at risk perceptions of credibility for all retired senior officers? The next study confirms some of these findings and nuance.

Study 2: Military Advice and Public Support

The second study for consideration also analyzes military endorsements, but with a slightly different slant from Study 1. Study 2, published by the Center for a New American Security (CNAS) “examines whether public statements from senior military officers help persuade the American public to support or oppose a proposed use of force.”⁹² To do so, the study conducted a controlled, randomized survey of 5,500 adult Americans during the summer of 2012. The study’s goal was to test whether statements by elite military leaders affected public policy views. The study provided participants with a variety of scenarios calling for the potential use of the military in either contested or permissive environments. Participants then received additional information on a random basis, with varying accounts as to whether the Chairman of the Joint Chiefs of Staff (CJCS) and the regional Geographic Combatant Commander (GCC) endorsed or opposed the use of the military in the proposed scenarios. The study then evaluated the participants to assess if and how the endorsements of the CJCS or GCC affected the participants’ views.

Like Study 1 above, study 2 had mixed and nuanced results. The authors of the study found that “military opposition reduces public support for use of force abroad by 7 percentage points, whereas military support increases overall public support by 3 percentage points.”⁹³

⁹² Golby, Dropp, and Feaver, *Listening to the Generals*, 5.

⁹³ *Ibid.*, 20.

Although this study proposed endorsements by active duty officers instead of retired officers as in Study 1, this study has important implications for military professionalism.

To begin with, the study's results suggest that when it comes to developing public support for a proposed policy, supportive military endorsements are a powerful aid, while opposing military endorsements can be an even more powerful hindrance to public support. The results suggest there is a "larger incentive for opponents of a particular military scenario to court generals and admirals to speak out against an administration's proposed policy, particularly through Congressional testimony."⁹⁴

Consequently, the study's results also serve as a cautionary tale, as the findings suggest the potential of entangling senior military officers in bruising political contests over policy, as politicians seek military endorsements supportive of or opposing certain policy positions, pulling the military into the partisan arena.

Study 3: Retired Officer Endorsements and Presidential Elections

This study differs from the previous two studies above in one important respect. Study 3, also conducted by CNAS, analyzed how endorsements by retired senior officers may affect perceptions of the military as a nonpartisan institution. This study, conducted in 2012, administered a controlled, randomized survey of a nationally representative sample of 2,517 registered voters during the 2012 presidential campaign.⁹⁵

The results of the survey, when analyzed in the aggregate, suggest that the "effects of military endorsements, if any, are quite modest."⁹⁶ The study does note that these effects resulted

⁹⁴ Golby, Dropp, and Feaver, *Listening to the Generals*, 20.

⁹⁵ James Golby, Kyle Dropp, and Peter Feaver, *Military Campaigns: Veterans' Endorsements and Presidential Elections* (Washington, DC: Center for a New American Security, 2012), accessed November 16, 2018, <https://www.jstor.org/stable/resrep06441>, 9.

⁹⁶ *Ibid.*, 17.

from single endorsements, thus the study leaves open the question of the effect of repeated endorsement cues, or cues from endorsements by groups of retired GOFOs. Interestingly, the majority of survey participants believed that most military members affiliate with a political party, although the respondents split in their assessments regarding which party held greater sway with military members.⁹⁷ Digging deeper into the results, combined with a cross analysis of the participants yielded the finding that “the perception that the military has a partisan tilt reinforces Republican trust in the military while undermining Democratic trust; *both effects could intensify any perception of the military as a partisan institution* [italics added].” For this reason, there is a danger that continued endorsements and politicization over the long term may undermine confidence in the military as an institution.⁹⁸ In other words, the results of the study suggest there are potential negative implications for civil-military relations. Perceptions of the military as a partisan institution could well attenuate trust in the military on the part of civilian elites and/or the public, thereby undermining effective civil-military relations. Further analysis is necessary to tease out these negative implications in more detail. The study concludes optimistically, that while endorsements by retired senior military leaders are just attractive enough for campaigns to use, they are not so attractive that it is “impossible to think that they would ever stop.”⁹⁹ Such endorsements appear likely to remain, at least for the near term. Considering these findings, the perspectives of senior active duty officers provide a useful contrast. How do senior active duty officers view GOFO political endorsements?

⁹⁷ Golby, Dropp, and Feaver, *Military Campaigns: Veterans' Endorsements and Presidential Elections*, 18.

⁹⁸ *Ibid.*, 15, 16.

⁹⁹ *Ibid.*, 18.

Study 4: Military Attitudes on GOFO Endorsements

In 2001, the US Army War College conducted a survey of 760 officers across the services to determine attitudes in the force regarding retired general officer participation in partisan politics. The study's administrators conducted a trial of the survey questions using US Army War College students and faculty to proof and validate the survey questions.¹⁰⁰ The responses from that cohort provide a useful senior field grade officer slice for comparison to general officer responses.¹⁰¹ One third of Army War College students and faculty thought retired general officers should refrain from endorsing political parties, and nearly one-half thought there should be some minimum period of time after retirement before retired GOFOs endorse political parties similar to the waiting time before government employment after retirement, indicating there was no clear consensus within this cohort regarding retired GOFO partisan endorsements. Finally, a third of War College students and faculty felt that retired GOFO endorsements damage or impair the image of the military profession.¹⁰² This finding could indicate that the objective control Huntington described is not effective. Moreover, if one-third of respondents feel retired GOFO endorsements may harm the profession, what should the profession do, and is the profession concerned?

The overall results of the general officer survey showed that twenty-one percent of general officer respondents felt retired GOFOs should refrain from endorsing political parties, and thirty-two percent believed there should be some minimum period before retired GOFOs endorse political parties.¹⁰³ Despite those responses, thirty-four percent of general officer

¹⁰⁰ William R. Becker, "Retired Generals and Partisan Politics: Is a Time Out Required" (US Army War College Strategy Research Project, US Army War College, 2001), accessed October 27, 2018, https://www.researchgate.net/publication/235105716_Retired_Generals_and_Partisan_Politics_Is_a_Time_Out_Required, 17.

¹⁰¹ Field grade officers include Majors, Lieutenant Colonels and Colonels, pay grades O4-O6.

¹⁰² Becker, "Retired Generals and Partisan Politics," 19-21.

¹⁰³ *Ibid.*, 47-48.

participants overall believe that political endorsements by retired GOFOs may adversely affect the profession.¹⁰⁴ These results seem to suggest there is concern with the issue across the ranks, but not a great deal of concern.

Remarkably, the least support for retired GOFO endorsements came from four-star general officer respondents. When considered separately from the group of general officer respondents, thirty-three percent of four-star general officers thought retired GOFOs should refrain from political endorsements, and fifty-three percent believed there should be some minimum period after retirement before retired GOFOs make political endorsements.¹⁰⁵ These percentages were larger than those of the one-star to three-star respondents. The study made no analysis or recommendations as to why there was slightly more opposition to retired GOFO endorsements, and more support for a minimum waiting time prior to partisan endorsements among the four-star participants.

Analysis

As stated in the introduction, the major concerns regarding retired GOFO involvement in partisan presidential elections largely center around perceptions of the military as an institution and how those perceptions affect civil-military relations. Elliot Cohen makes this point emphatically, referring to the use of retired GOFOs for political endorsements as “bad business.” He continues, “By serving as props for presidential candidates the retired generals put at risk the confidence that citizens and officials alike place in the political neutrality of the armed forces.”¹⁰⁶

The issue with perceptions of retired GOFO political endorsements involves three distinct audiences: the public, military members, particularly those still in uniform, and political leaders. Beginning with public perception, Kohn proposes that partisan political activities weaken the

¹⁰⁴ Becker, “Retired Generals and Partisan Politics,” 49.

¹⁰⁵ *Ibid.*, 43-45.

¹⁰⁶ Cohen, “General Malaise.”

links of the military to the American people, and risks a perception of the military as “just another interest group.”¹⁰⁷ Candidates seek retired GOFOs for endorsements largely due to the weight of their experience, having reached the pinnacle of authority and power while serving the defense of the nation. The public expects these senior men and women to speak with unbiased patriotism. When they endorse a candidate and, particularly, when they denounce another candidate, they create the impression that the military writ large is a separate constituency.¹⁰⁸ Former CJCS Martin Dempsey speaks to this very issue as the “danger of perception of the military as a special interest group.”¹⁰⁹ The apprehension over public perceptions has some merit. Study 3 did find evidence suggesting that the public believes that the military is politicized. The study also concluded that continued endorsements may, over the long term, reduce public confidence in the military as an institution.

Compounding the risk of perceptions of the military as a special interest group, are concerns over the effect that retired GOFO endorsements have politicizing serving military members in the ranks. Eliot Cohen proposes that lower ranking commissioned and noncommissioned officers observing retired senior leader endorsements over time gain the impression that articulating partisan political views is acceptable.¹¹⁰ Retired Army Colonel Steve Corbett, along with retired Army Attorney Michael Davidson, echo this sentiment and the dangers of a “ripple effect,” stating, “When high-level retired military officers lend their title, rank, and prestige to a political candidate or party, a ripple effect may occur in the active-duty ranks, an effect that potentially encourages partisan politics within the armed forces and further erodes the traditional professional military ethic.”¹¹¹ President Trump’s recent visit to the troops

¹⁰⁷ Kohn, “The Erosion of Control of the Military,” 28.

¹⁰⁸ Cohen, “General Malaise.”

¹⁰⁹ Jackson, “Military Chief: Anti-Obama Film 'not Useful'.”

¹¹⁰ Cohen, “General Malaise.”

¹¹¹ Corbett and Davidson, “The Role of the Military in Presidential Politics,” 68-69.

provides evidence that these concerns have a foundation. During a recent visit to Al Asad Air Base in Iraq, many Airmen brought “Make America Great Again” (MAGA) hats, popularized during Trump’s campaign, for autographs from the president, which he did. While the hats can be thought of as merely souvenirs or mementos, similar to having books or photographs autographed, the distinctive red MAGA hats were emblematic of Trump’s campaign for the presidency, and are commonly worn by Trump supporters at partisan political events, prompting several media outlets and retired Lieutenant General Mark Hertling to criticize the troops and the president for politicizing the visit.¹¹² Retired Army General Stanley McChrystal also criticized the visit during an interview with *ABC*, stating, the President’s visit and the autographing of the MAGA hats “violated the spirit” of the military code and that “the military’s apolitical status should be preserved.” During the interview, McChrystal went so far as to describe the president as “dishonest and immoral.”¹¹³

While the troops are permitted to have personal items autographed by the President, wire service photos of groups of military members in uniform holding up MAGA caps popularized by the Trump presidential campaign does give one pause. At the very least, such activities and the accompanying images and implications certainly warrant further discussion and analysis.

The third audience of concern respecting perceptions of retired GOFO partisan political activity is senior political leadership. Retired GOFO political activity puts the trust of senior

¹¹² Paul Sonne and Philip Rucker, “Trump’s Visit to Troops Prompts Concerns About Politicization of Military,” *Washington Post*, December 27, 2018, accessed December 29, 2018, https://www.washingtonpost.com/world/national-security/trumps-visit-to-iraq-prompts-concerns-about-politicization-of-military/2018/12/27/42aa20fe-0a13-11e9-892d-3373d7422f60_story.html?utm_term=.8e2e4b4890fd. See also: Annie Karni, “Trump Iraq Visit Is Called a Political Rally,” *New York Times*, December 27, 2018, accessed December 29, 2018, <https://www.nytimes.com/2018/12/27/us/politics/trump-troops-iraq-germany.html>. Finally, it should be noted that retired US Army Lieutenant General Hertling, who works as a commentator on *CNN*, is a frequent critic of President Trump.

¹¹³ Roey Hadar, “Retired Army Gen. Stanley McChrystal: President Donald Trump Immoral, Doesn’t Tell the Truth,” *ABC News*, December 30, 2018, accessed December 30, 2018, <https://abcnews.go.com/beta-story-container/Politics/retired-army-gen-stanley-mechrystal-president-donald-trump/story?id=60065642>.

political leaders at risk, and this can affect the relationships between serving senior flag officers and senior political leadership. Kohn addresses this potential consequence stating,

If senior retired officers make a practice of endorsing presidential contenders, will the politicians trust the generals and admirals on active duty, in particular those who serve at the top, to have the loyalty and discretion not to retire and use their inside knowledge to try to overturn policies or elect opponents? Will not presidents begin to vet candidates for the top jobs for their pliability or (equally deleteriously) their party or political views, rather than for excellence, achievement, character, and candor?¹¹⁴

Given these points then, retired GOFO political endorsements have three potential outcomes as described above. The only outcome supported by research is the perception by the public of the politicization of military members. While public trust of the military as an institution remains high, as it has for years, the risk to that trust and to eroding the trust of senior civil leaders are important considerations. Unfortunately, there are no easy answers. As retired British General Sir John Hackett shrewdly observed, “The essential basis of the military life is the ordered application of force under an unlimited liability. It is the unlimited liability which sets the man who embraces this life somewhat apart. He will be (or should be) always a citizen. So long as he serves he will never be a civilian.”¹¹⁵ According to Hackett’s proposition, the crux of the problem is whether retired flag officers are still serving. Retired CJCS Martin Dempsey counters, stating that retired generals and admirals “are generals and admirals for life,” and therefore it is “nearly impossible for them to speak exclusively for themselves when speaking publicly.”¹¹⁶

Conclusion

Civil-military relations are an important and timely topic, particularly now as the war in Afghanistan potentially draws to a close after a nearly nineteen-year involvement by US forces. Each postwar period since the end of World War II has seen a “societal-wide debate over the

¹¹⁴ Kohn, “The Erosion of Control of the Military,” 28.

¹¹⁵ John Hackett, *The Profession of Arms* (New York: Macmillan, 1983), 202.

¹¹⁶ Harshaw, “Commentary: Should Retired Generals Join the Political Fray?”

proper relationship between the military and civilian society.”¹¹⁷ This topic is likely to again come to the fore as academics, political elites, and military leaders assess accomplishments in Afghanistan as they consider options to conclude combat operations, and write and evaluate the history of the conflict there. Given the increasing involvement of retired GOFOs and the increasingly polarized nature of US politics, civil-military relations will likely receive considerable attention.

This monograph has examined how GOFO involvement in presidential elections has changed over time to discern the implications for civil military relations. To develop these topics, this monograph considered four areas of inquiry. The paper examined historical precedents in civil-military relations, to ascertain if commonly held beliefs, such as the concept of an apolitical military ethic for example, bear out. This paper then examined more recent incidents of political activities by retired GOFOs to compare recent practice with historical practice to determine if and how the practice has evolved. From there, the paper moved to a deeper look into the laws, regulations, and policy guidance that govern political activities by active duty members and, where applicable, retirees. The monograph then investigated which activities are specifically proscribed, to better understand which activities are permissible for active duty members, and by retirees.

After treating these topics, several salient points are apparent. To begin with, concern over civil-military relations has waxed and waned over time throughout US history, generally peaking during postwar periods or during and following periods of increased activity by retired senior military leaders, as occurred during the 2016 presidential election. The topic received frequent attention from journalists and academics during the first two years of Trump’s presidency as the President selected a number of retired senior military leaders to key administration positions. If anything, while political endorsements by retired GOFOs tended to be

¹¹⁷ Feaver, “The Irony of American Civil-Military Relations,” 3.

isolated events going back thirty years until the Bush and Clintons campaigns, they seem to be increasing in sheer numbers on both sides of the aisle, as well as increasing in frequency.

According to applicable regulations, the retired senior officers are well within their rights both as retired officers and as citizens. The question instead becomes one of appropriateness, and what is in the better interest of the country and the profession.

Another salient point that bears emphasis is that the apolitical ethic of the military profession is a myth. Like unwritten rules in baseball, the apolitical ethic of the military, though written about by such scholars as Huntington, Janowitz, and Cohen, widely discussed and accepted as reality, does not in fact exist. In his seminal work *The Soldier and the State*, Huntington compares the military profession with its unique expertise in the management of violence, to other professions such as doctors, lawyers, engineers, or members of the clergy. All these professions share certain qualities such as expertise in niche areas, unique professional educational requirements, and contributing to public good. A point often overlooked is that the military, unlike the other professions that Huntington uses as comparative examples, does not have a published code of ethics. The American Medical Association has a professional code of ethics.¹¹⁸ The American Bar Association has a code of ethics, published as its Model Rules of Professional Conduct.¹¹⁹ The National Society of Professional Engineers (NSPE) has a code of ethics.¹²⁰ Despite the fact that numerous senior leaders, academics, and journalists decry the political activities of retired senior military leaders under the auspices of an apolitical military ethic, there is no published military code of ethics. General Dempsey, who has referred to the

¹¹⁸ “Code of Medical Ethics Overview,” American Medical Association, accessed November 30, 2018, <https://www.ama-assn.org/about/publications-newsletters/code-medical-ethics-overview>.

¹¹⁹ “Model Rules of Professional Conduct,” American Bar Association, October 25, 2018, accessed October 31, 2018, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/.

¹²⁰ “Code of Ethics,” National Society of Professional Engineers, accessed December 31, 2018, <https://www.nspe.org/resources/ethics/code-ethics>.

apolitical ethic on numerous occasions, commissioned a Profession of Arms White Paper on this very topic while serving as CJCS. The DoD and Joint Staff have not adopted the document to date. The document itself confirms this myth of the apolitical professional ethic, ironically stating on the cover over Chairman Dempsey's signature, "We're not a profession simply because we say we're a profession."¹²¹ Consequently retired GOFOs are not accountable to a professional standard when the profession has no published standard.

Accordingly, this paper this paper considers whether retired GOFO involvement in presidential elections should be reevaluated. Given the growth of social media, the proliferation of unsubstantiated assertions and despite the significant concerns described above, there is a counter-argument that the military should increase open and transparent constructive political engagement beyond mandated testimony regarding budget and posture. As society evolves, should the accepted norms of civil-military relations evolve? More specifically, how does GOFO involvement in partisan elections fit into the larger motif of civil-military relations if, indeed, it fits at all?

Put simply, retired GOFO involvement in partisan elections does not fit into the overall scheme of civil-military relations, nor should it. Retired senior military leaders have extensive and unique expertise with respect to many issues germane to national security strategy and policy. Their expert opinions within that narrow realm should be as welcome as expert opinion from leading doctors on medical issues and health policy. Partisan political endorsements fall outside that realm. Such endorsements do not help the profession and may, in fact, increase the challenges faced by currently serving GOFOs charged with providing best military advice to senior political leaders. That best military advice should balance desired objectives with political realities, provides a thoroughly staffed range of options that meet legal and constitutional requirements and constraints, and provides for the security and defense of the United States while

¹²¹ Joint Chiefs of Staff, "America's Military - a Profession of Arms White Paper," accessed October 31, 2018, <http://www.jcs.mil/Portals/36/Documents/Publications/aprofessionofarms.pdf>.

achieving policy goals. Such advice requires political awareness and political acumen, unencumbered by partisan concerns, and enabled through trust in the military as an institution.

Retired GOFOS can serve as a useful and reliable resource for commentary on defense, and national security policy and strategy issues. However, partisan activist retired GOFOS put both the perception of credibility and trust in the military institution at risk when they participate in brawling partisan politics. The question is how to establish such boundaries on constitutionally-permissible free speech, albeit for the good of the military profession and in the interest of optimizing civil-military relations.

This monograph has substantiated that partisan political speech by retired GOFOS is permissible under current regulations and directives. More restrictive regulations or directives are not acceptable solutions – free speech is free speech. The matter, at its heart, comes down to questions of appropriateness, what is in the better interest of the profession, and how to set useful boundaries. These questions suggest that the profession, if it truly is a profession, has an obligation to police its own. A useful starting point would be the adoption of a professional code of ethics that addresses topics such as partisan political activities by retirees. Other topics relevant to the profession, and touched on in this paper, include setting parameters for expanded political engagement that enhances civil-military dialogue through candid and forthright professional military advice to civilian political elites in the executive and legislative branches. Only such dialogue will foster the effective civil-military relations necessary to meet the obligations of the profession to the Constitution and to the American people.

Appendix 1: Key Definitions

Active Duty. Full-time duty in the active military service of the United States regardless of duration or purpose. Active duty includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary concerned. For purposes of this Directive only, active duty also includes fulltime National Guard duty.

Call or Order to Active Duty for More Than 270 Days. Any prohibitions or limitations this Directive triggers by a call or order to active duty for more than 270 days begins on the first day of the active duty.

Civil Office. A non-military office involving the exercise of the powers or authority of civil government, to include elective and appointed office in the U.S. Government, a U.S. territory or possession, State, county, municipality, or official subdivision thereof. This term does not include a non-elective position as a regular or reserve member of civilian law enforcement, fire, or rescue squad.

Nonpartisan Political Activity. Activity supporting or relating to candidates not representing, or issues not specifically identified with, national or State political parties and associated or ancillary organizations or clubs. Issues relating to State constitutional amendments or referendums, approval of municipal ordinances, and others of similar character are not considered under this Instruction as specifically identified with national or State political parties.

Partisan Political Activity. Activity supporting or relating to candidates representing, or issues specifically identified with, national or State political parties and associated or ancillary organizations or clubs.

Appendix 2: Legal References Applicable to Political Activities

DODD 1344.10, Political Activities by Members of the Armed Forces.

2 U.S.C. § 441a, Federal election campaigns: limitation on contributions and expenditures.

10 U.S.C. § 973: Duties of officers on active duty; performance of civil functions restricted.

18 U.S.C. Chapter 29, Elections and Political Activities; 18 U.S.C. § 1913.

DoD 5500.7-R, Joint Ethics Regulation, Chapters 2, 3, 5 & 6.

18, U.S.C. Section 607. Place of solicitation.

5 CFR Sections 2635.301-2635.304. Gifts, Donations, Solicitation, and Exceptions.

DoDD 5200.2, DoD Personnel Security Program.

DoD Directive 1325.6, Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces.

Title 5 U.S.C. Sections 5312-5317, Government Organization and Employees.

Article 88, UCMJ: Any *commissioned* officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

Article 92, UCMJ: Violations of the various regulations and laws by active or reserve/National Guard soldiers and officers are generally prosecuted under this article as an orders violation [e.g. the provisions of DODD 1344.10 are binding as a lawful order].

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