

# Revolt of the Generals: A Case Study in Professional Ethics

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“Let’s see who we’ve got here tonight. General Moseley, Air Force Chief of Staff. General Peter Pace, Chairman of the Joint Chiefs of Staff. They still support Rumsfeld. Right, you guys aren’t retired yet, right? Right, they still support Rumsfeld. Look, by the way, I’ve got a theory about how to handle these retired generals causing all this trouble: don’t let them retire! Come on, we’ve got a stop-loss program; let’s use it on these guys.”

– Comedian Stephen Colbert  
2006 White House Correspondents’ Dinner

The fact that a joke like that could be told in front of an audience including the President, Chairman of the Joint Chiefs of Staff, Air Force Chief of Staff, and many other Washington dignitaries spoke volumes for the state of relations between senior military leaders and their civilian superiors. For those recently retired general officers who chose to go public with their criticisms of then-Secretary of Defense Donald Rumsfeld (and by implication the Iraq policy), clearly the situation had reached a point where they felt it was part of their obligation to the profession of arms and the American people to dissent. Such intense criticism from military officers who previously held positions of great responsibility in implementing the Administration’s policies is something rarely seen in American history. This article will attempt to assess the ethical considerations that bear on officers contemplating such action in any future civil-military crisis.

## *Military Professionalism*

The question of the nature of military professionalism and the distinctive demands of professional obligations has received considerable analysis in recent years. By far the greatest contribution to this discussion has been from the

Army, centered on the Army Professionalism project at West Point which culminated in the publication of *The Future of the Army Profession*.<sup>1</sup> The impetus for that project and a series of related articles was a fear that Army officers were losing a sense of their profession and its obligations and risked becoming, in the words of Dr. Don Snider, the project director, “a merely obedient bureaucracy.”

In the face of that perceived risk, Snider (and the many other authors on the project) called for a renewed sense of the distinctive features of a profession, including commitment to a body of abstract knowledge that the profession is obligated to apply and improve. That knowledge, the authors argued, constitutes the unique expertise of the profession and commitment to it, the touchstone of intellectual independence required of the profession.

An implication of that line of reasoning was that the profession’s members have an ethical obligation to apply existing professional knowledge to the highest degree possible when confronted with operational challenges, while maintaining an ability to adapt that knowledge to novel requirements and operational demands. Because the project’s analysis is linked to the particular theory of professions developed by Andrew Abbott, who views professions as engaged diachronically in a struggle for professional “jurisdiction,” this aspect of the analysis highlighted the need for any profession to “adapt or die” as it evolves in competition with other claimants on the expertise relevant to its own historical area of expertise.<sup>2</sup>

On the other side of this debate, there was a perception in the administration of President Clinton that a good deal of the military disrespected the President personally and disapproved of his uses of military force, especially in the Balkans. Such interventions placed the military in a role that many within the profession considered inappropriate for a military focused on “fighting and winning America’s wars” (what then-Army Chief of Staff General Eric Shinseki referred to as “the Army’s non-negotiable contract with the American people”).

It was in that environment that a number of writers penned cautions that the essential subordination of the military to civilian leadership was in question. The most comprehensive and strident of these analyses were those of Thomas Ricks in his novel *A Soldier’s Duty*, which imagined the military’s deliberate evasion of orders from its military superiors, and of Professor Richard H. Kohn at the University of North Carolina.<sup>3</sup>

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More recently, a number of voices have been raised arguing that professional military advice was not heeded by the Bush Administration's civilian leadership.<sup>4</sup> The concern was virtually the opposite of that voiced during the Clinton years. Instead of choosing insubordination, the claim was that by deferring to the strongly held convictions regarding novel ways of war-fighting on the part of Secretary Rumsfeld and others in the hierarchy, the military's leadership accepted war plans and troop numbers at variance with their best professional judgment.<sup>5</sup>

It was in this context that several authors argued that the process of congressional oversight of military affairs was badly broken, for two reasons: Congress had largely abdicated its responsibility in recent years, and the culture of the officer corps had evolved an excessive sense of obligation to the Executive branch of government, thereby neglecting the equal if not greater responsibility to give forthright and honest military assessments to Congress.<sup>6</sup> That, these authors argued, was a venue in which it was part of a senior officer's professional obligation to give his or her unvarnished professional opinion to congressional members and hearings.

For nearly a decade, H. R. McMaster's book *Dereliction of Duty* has deeply informed the ethos and self-understanding of the officer corps.<sup>7</sup> McMaster's demonstration of the complicity of the Joint Chiefs of Staff in the formulation and continuance of misguided policies in Vietnam has served as a cautionary tale in many thoughtful officers' minds. According to General Anthony Zinni, former commander of US Central Command, "[then-Chairman of the Joint Chiefs of Staff] General Hugh Shelton sent copies of McMaster's book to every four-star general in the US military.

The message to us, after we heard this from Hugh Shelton, is that will never happen here. And the message to us from Secretary [William S.] Cohen at that time, too, is that the door is always open, and your obligation to the Congress, which is an obligation to the American people to tell them what you think, still stands strong. And that's the expectation that we have. They did not ever want to hear that we had a problem, something sticking in our craw, that we didn't bring up to them, that we didn't honestly express if we felt it had to be expressed.<sup>8</sup>

As Richard Kohn summarized the "lesson learned" from McMaster's analysis, "There was a deep bitterness over Vietnam and the way the [service] chiefs had been co-opted. . . . [Army officers] said, 'We're never going to put up with this again, we're not going to be put in that position again by civilians.'"<sup>9</sup>

A new dimension to this debate emerged two years ago with the public criticism of Administration policy and of Secretary Rumsfeld in particular by a number of recently retired flag officers. In almost every case these officers had been in the inner circle of policy formation or execution of the Administration.<sup>10</sup>

This level of public criticism and dissent from such a large number of highly placed military leaders immediately following their service is without precedent. Never in American history have so many senior military leaders, apparently devoid of partisan political motive, felt the need or obligation to speak out publicly regarding policy and leadership during an ongoing conflict.

The novelty of this event in the midst of the extended debate about the obligations and nature of military professionalism cries out for normative analysis. Is such criticism, at least on some understandings of the circumstances and motives of the critics, indeed a manifestation of the highest standards of military professionalism? Or is it, on the contrary, a kind of reprehensible and unprofessional insubordination to duly elected political leaders and their appointees?<sup>11</sup>

It is important to set aside a number of potentially distracting related questions before launching into a normative analysis of this issue. First, there is no question whatsoever of the legal right *de facto* of such officers to say anything they wish.<sup>12</sup> *De facto* because, as Richard Swain has recently argued, retired officers, since they are still technically part of the military and receiving military pay, might arguably be bound by exactly the same rules as serving officers. But there has never been any inclination to take that view of the matter from the legal community. As retired officers, they regain full First Amendment liberties that are necessarily somewhat curtailed while they are in uniform. Second, retired flag officers using their moral and political weight to attempt to influence political matters have already become a routine event. Every presidential candidate in recent years has organized retired senior officers to offer endorsements. Surely, one might argue, if it is acceptable for retired officers to use their status in this way for generalized partisan political endorsement, it should be orders of magnitude more appropriate for them to offer criticisms of political leaders and policies narrowly focused on areas of their specific military expertise.<sup>13</sup>

Many observers have roundly criticized those retired officers on a number of counts. Dr. Don Snider, in an unpublished talk at West Point, argued that such criticism undermines the confidence of young officers, who might think “Did he really feel this way when I was fighting for him in Operation Iraqi Freedom, and if he did why did he not resign right then?”<sup>14</sup>

Even more scathingly, Dr. Snider cited Samuel Huntington’s classic statement that military people should stay out of political matters entirely, and asserted that the revolt of the generals “. . . casts the Army profession, and its current strategic leadership (too timid to speak out like us) in a very negative light.”<sup>15</sup> In this assessment, the retired general officer critics are crossing a line demarcating political judgment from proper military expertise that ought, in Snider’s assessment, to be a sharp and clear distinction.

Lastly, before turning to a normative analysis of the problem, it is important to acknowledge and then try to set aside the specific political judg-

ments regarding the war in Iraq. Now that the United States is five years into it, clearly almost all the assumptions on which it was based (both in terms of the justifying causes and the predictions of how it would play out) have been shown to be incorrect, leaving to future historians the task of determining what proportions were a result of self-delusion, duplicity, or honest mistakes.

Others, of course, have and will judge these matters differently. While it is important to acknowledge that these judgments and the feelings surrounding them are deeply divisive to American society, the purpose of this article is not criticism or defense of specific judgments. Rather, the task at hand is to try, even in the midst of political passions, to extend the normative thinking regarding military professionalism that has been so helpfully advanced in recent years.

### ***Toward a Normative Analysis***

One way to try to approach a problem in principle is to frame it as a hypothetical situation. It is important, of course, that the hypothetical be plausible in real-world terms and further, since this discussion arises from specific events, that it be at least one possible interpretation of those events. On the other hand, the advantage of the hypothetical framing of the issue is that it allows us to state the issue as a matter of in-principle terms rather than be bogged down with every detail of specific personalities and events.

Suppose you're a general officer who has given frequent and repeated advice to political leadership regarding the military feasibility of operational and strategic goals. Suppose your advice is firm that the goals sought cannot be attained by the military means the civilian leaders are willing to commit, or not attainable (in your judgment) by military means at all. Of course, one can deploy forces in pursuit of those goals. It's just that, in your opinion, all efforts will be expended in a futile end. In particular, your advice about the size and composition of the force required to have any hope of achieving the stated goals is completely disregarded in favor of an employment you believe is doomed to fail.

Once it became clear that the political leadership thought otherwise, you saluted smartly and did your best to carry out the administration's bidding. Now, you find yourself a couple of years into that deployment and having a severe case of "I told you so." You believe even more strongly now than when you gave the advice at the beginning, that your initial opinions were correct.

At the outset, you told yourself, "I could be mistaken," and "Perhaps the political leadership knows something I don't know." By now it's apparent you were initially correct and the political leadership did not in fact know anything that would have changed your judgment.

So in your judgment the continuance of current policy will never achieve political goals and will result in continually mounting casualties and degradation of your service's equipment, readiness, etc. Furthermore, you're

aware that there are other threats that, because you're deployed on this one, you couldn't possibly find the resources to deal with militarily if you had to.

In such a circumstance, what do you do? Are you exactly where McMaster put the Joint Chiefs of Staff in Vietnam? What are your options? You can continue to go along, digging deeper into what you consider an impossible situation. You can't overtly criticize policy in uniform except, perhaps, by using your congressional testimony opportunities to give your unvarnished opinions. Needless to say, if the issue at stake is a mere garden-variety disagreement regarding policy, no deep moral dilemma is involved. But if the policy is, in your carefully examined opinion, over a matter of extreme importance and threatens significant and long-term costs to the military, national interest, and health of the body politic, a genuine dilemma arises.

If you retire, might it not in fact be part of your continuing professional obligation and your responsibility to your friends and troops still serving to try to extricate them from this situation? Might it not also be important for the future credibility of the military and its leadership to show independent professional judgment in such a situation rather than appear to be going along, only to have the historians document that the military leadership was yet again complicit concerning the realities it faced?

These are difficult questions. Furthermore, one is rightly hesitant to make an argument that insubordination is the correct choice, because the risk is large that doing so will be construed as permission for military leaders to routinely and publicly dissent from the policies of elected political leaders. So if one is to make a case for public dissent of any sort, it has to be hedged with qualifiers and cautions. Any such argument pertains only to the most extreme situations where, in the conscientious judgment of the senior leader, what is at stake is the fundamental security of the United States and the constitutional processes.

As was mentioned earlier, at one extreme of the debate is the position articulated by Richard Swain. Swain argues strongly (and cites law) to make the point that retired officers are in every sense still members of the armed forces. He correctly points out that they are subject to recall to active duty, take pay as retirees, and still hold commissions. Therefore, he argues they are subject to exactly the same restrictions as active-duty personnel. Swain writes:

[I]t is at least a false proposition that upon retirement officers revert to full civilian status in so far as the obligations they undertook at their commissioning. Retirement is not resignation. It is a matter of fact, not interpretation, that retired officers remain members of the armed forces by law and regulation. . . . [U]nless like George Washington they lay down their commissions by resignation, it is reasonable to assume that they remain at least ethically obliged to observe the limitations imposed by commissioned service, accepted by the oath they made and commission they still hold.<sup>16</sup>

While Swain makes a strong legal case, actual practice clearly tolerates much wider latitude in conduct by retired officers than the standard he articulates. Further, properly used, the expertise of retired officers who are freer to speak on policy than they were in uniform appears on balance a valuable national resource for informing public debate regarding those policies. Deprived of such input, the nation would have only the government's position and the comparatively non-expert opinion of nonmilitary commentators. Any attempt to make Swain's standard the reality would almost certainly be used selectively by civilian superiors eager to silence retired-officer critics, while encouraging their supporters to continue as advocates.

At the other extreme is the view derived from some interpretations of McMaster's book. In that view, senior leaders who have strong dissenting perspectives from an administration's policy have an obligation to speak out or resign in protest. Determined not ever again to be the moral equivalents to President Lyndon Johnson's "five silent men" (as the JCS were called), defenders of this view hark back to General Harold K. Johnson's retrospective reflections on his own silence:

I remember the day I was ready to go over to the Oval Office and give my four stars to the President and tell him, "You have refused to tell the country they cannot fight a war without mobilization; you have required me to send men into battle with little hope of their ultimate victory; and you have forced us in the military to violate almost every one of the principles of war in Vietnam. Therefore, I resign and will hold a press conference after I walk out of your door."<sup>17</sup>

Of course neither General Johnson nor any other senior leader did any such thing during the Vietnam conflict. For many readers, the lesson they at least think they learn from McMaster is that, should equivalent events occur on their watch, they should be prepared to submit their resignations. Chairman Shelton's comments, quoted from General Zinni previously, certainly seem to imply a readiness on his part to take precisely that course of action, should the occasion have arisen.

Retired Navy chaplain (Captain) George M. Clifford III attempts to provide the kind of fine-grained ethical analysis this particular situation requires. He distinguishes four categories of issues which might raise the dissent issue in increasing levels of severity:

- An assigned responsibility the officer can perform with minimal moral discomfort.
- An assigned responsibility the officer can perform only with substantial moral discomfort.
- An assigned responsibility the officer can perform only at the cost of significantly compromising his or her moral standards.

- An assigned responsibility the officer cannot perform.<sup>18</sup>

The easy cases (at least theoretically) are the first and last categories. The first is easy because the officer's objection is not morally significant; the last is easy because it rises to the category of "illegal orders" which officers are expected to disobey.<sup>19</sup>

The difficult categories are the second and third. Obviously, there is no way to sharply demarcate between these categories, and individual officers will draw the line in their own lives and conduct differently. As Clifford writes, "No officer, of any grade, who has a strong sense of morality will likely serve for very long without being assigned a responsibility to which he or she morally objects. Yet unless the situation involves grave consequences for others or the nation, the nation rightly expects military officers to do their duty"—i.e., obey.<sup>20</sup> In other words, if the moral difficulty remains in the "category two" level for given officers, they should subordinate their own moral judgment to the necessities of obedience and good order.

The dilemma posed by the third category cannot be so blithely dismissed. While there is no bright line indicating when an issue is moving to this level of discomfort, as Clifford notes, it deals mostly with "the degree and amount of harm or other evil caused by complying with an assigned responsibility."<sup>21</sup> Minimally, an officer confronting a very high degree of harm which he or she perceives to be the consequence of a policy from which the officer strongly dissents has the obligation to make every effort to be heard. Of course, an officer owes loyalty to civilian superiors, but there are other competing loyalties at work too: to military subordinates, to the health of the military services themselves, and to the long-term health of the perception of the moral integrity of the military services by their fellow citizens.

Of course, the "obligation to make every effort to be heard" should, in almost every case, be in unambiguously appropriate venues. What are those? Behind closed doors with other senior leaders one would expect and hope for candid discussion by participants. Obviously (although in practice more difficult to accomplish well), candor is appropriate before appropriate bodies of Congress, where senior leaders are expected and required to give honest military assessments.<sup>22</sup> In the ideal situation, all participants would emerge from these discussions feeling that they had expressed their opinions, they had been "heard" at the appropriate level, and were satisfied that even if the decision were not in their favor, they could understand and accept the rationale.

What about the case when all does not go so well? In an article, retired General Richard Myers and Dick Kohn argue that "there was no 'truce' between the military and civilians after 9/11 because there had never been a war. There was just the friction and distrust (never open but exacerbated by



Rumsfeld's approach and style) inherent in US civil-military relations."<sup>23</sup> In other words, in their analysis, the situation was not a crisis in civil-military relations, but only a somewhat extreme position on the normal scale of tension inherent in the American system.

Clearly, the senior officers who publicly dissented did not view the situation in that way. One of them, in a private conversation, called it a "constitutional crisis" and argued that only such a grave situation could possibly have motivated him to breach the normal self-restraint of self-expression by officers. What kind of disagreement might warrant the conclusion that the situation was so extreme and placed the decision firmly in Clifford's third category of moral objection?

The first such case is so extreme that one might argue it falls into the illegal order category—although not according to the common definition of illegal orders, to violate the *jus in bello* rules of just war. The Nuremberg Trials distinguished three distinct categories of war crimes. The more familiar are violations of the law of war and crimes against humanity. The third, crimes against peace, is defined as "(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i)."<sup>24</sup>

Although it is hard to know precisely what retired Lieutenant General Greg Newbold, one of the critics, meant when he described Iraq as "an unnecessary war," it is reasonable to interpret him as saying that his continued participation in planning the war would mean he was taking part in a war crime of this type. For the purposes of moral analysis, the analyst does not have to determine whether he or she agrees with that assessment, but only that (if this is the correct interpretation) General Newbold sincerely believes it to be the case. That no one in the US government is likely to be prosecuted for such a crime in the current geopolitical environment is also irrelevant. One can certainly see why an officer who believes the situation approaches this level would be, at a minimum, in Clifford's category three of moral distress.

Another area where public dissent should at least be entertained when appropriate is the case where an officer is as cognizant as possible of the details of the war plan and, in the full exercise of his or her professional military judgment, honestly believes the plan will have disastrous consequences for the nation and the forces about to be committed. This is not a matter of the plan having simple flaws or weaknesses. Rather, the case has to appear as much as possible (for a matter which is inherently a matter of professional judgment) to being a recipe for disaster according to every principle of professional military judgment available to the officer. Here, surely, if the standard for officers is to exercise professional judgment rather than lapse into the

role of merely obedient bureaucrats, this is the moment where they are expected to not willingly participate in executing the plan.

Officers' sincere belief (even if objectively mistaken) that they are in such a situation justifies their taking advantage of the opportunity to leave their positions (if permissible by law). At the senior level, it is apparent that retirements requested for such reasons will normally be granted—if only for the practical reason that no one would want a plan executed by an officer who has no faith in it.

What about the last step: publicly criticizing leaders and plans from the newly acquired position of the retired officer? Any rationale supporting this should, of course, be developed grudgingly for all the excellent reasons the critics of the “revolt of the generals” cite. An absolute rule against such proclamation, however, flies in the face of any notion of fundamental moral responsibility and loyalty to the nation and Constitution. There can be no algorithmic rule, of course, to determine the proper threshold for such extraordinary dissent. Chaplain Clifford, in fact, moves to an analysis of the virtues of prudence, courage, and temperance in an attempt to guide such choices, in the end, concurring with Aristotle's claims about such virtues remaining valid: There is no rule for them, except “we know virtue when we see it.”

It is on this point that Clifford faults General Newbold. He writes, “General Newbold's decision to retire in 2002 exemplifies the inadequacy of [the option of just retiring]. His departure caused no waves and apparently did not prompt a reexamination of the policies and plans with which he so vehemently disagreed.”<sup>25</sup>

Instead, Clifford argues:

If [Newbold] could have made a persuasive case against the policies and plans he found morally objectionable without revealing classified information, then, given the magnitude of the issues at stake, he should have [resigned and spoken out] instead of [merely retiring]. That failure points to deficiencies in one or more of these three virtues: prudence (lacked wisdom to see the full importance of the issues at the time he resigned), courage (too timid), or temperance (too concerned about his position on the team or future influence).<sup>26</sup>

Although seemingly a harsh judgment, everything in the argument developed to this point suggests it is correct. To approve such a position is to run great risk of appearing to countenance insubordination whenever there is dissent regarding policy. Clearly, that is not intended, and the author has argued elsewhere against such dissent.<sup>27</sup>

In any profession, there are situations where the clearly foreseeable negative consequences of playing by the professional rules are so great that prudence expects those rules to be set aside. For example, a court case in Cali-

fornia ruled that, although psychiatrists have a near absolute requirement of confidentiality toward their patients, that requirement must be set aside when warning potential victims of violence can save lives, adding a “duty to warn” to the moral requirements of the profession.<sup>28</sup>

Similarly, if the intellectual component of military professionalism means anything, it encompasses rare cases of unambiguous bad military judgments that promise to have disastrous consequences. In such cases the obligations of military professionals, precisely because they are professionals and not merely obedient bureaucrats, need to exceed the conduct governed by rules derived from more routine contexts.

#### NOTES

This article is based on the author’s presentations to the Interuniversity Seminar on the Armed Forces and Society on 27 October 2007 and the International Symposium on Military Ethics at the University of San Diego on 25 January 2008.

1. Don M. Snider and Lloyd J. Matthews, eds., *The Future of the Army Profession* (2d ed.; Boston: McGraw-Hill Custom Publishing, 2005).

2. Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: Univ. of Chicago Press, 1988).

3. Richard H. Kohn, “Out of Control: The Crisis in Civil-Military Relations,” *The National Interest*, 35 (Spring 1994), 3-17. See also Marybeth Peterson Ulrich, “Infusing Normative Civil-Military Relations Principles in the Officer Corps,” in *The Future of the Army Profession*, 655-82. Martin L. Cook, “The Proper Role of Professional Military Advice in Contemporary Uses of Force,” *Parameters*, 32 (Winter 2002-03), 21-33.

4. The most extensive discussion of this question can be found in Michael C. Desch, “Bush and the Generals,” *Foreign Affairs*, 86 (May/June 2007) and in the articles critiquing Desch’s piece in the “Salute and Disobey?” section of the September/October 2007 issue of *Foreign Affairs* which has separate pieces from Richard B. Myers and Richard Kohn (who reject most of Desch’s claims as overstated), Mackubin Thomas Owens (who asserts the military’s willing complicity in most of the flawed assumptions of the war plan for Iraq), and Lawrence Korb (who argues the deeper problem is the Bush Administration’s tendency to use the military as a stage prop for its policies, specifically criticizing General David Petraeus for publishing an op-ed piece in *The Washington Post* supporting President Bush’s policies in Iraq on the eve of the 2004 election). Korb and Desch are correct that the deeper issue is the military being manipulated in a fashion where “support the troops” seemed for much of this period to mean “don’t criticize the policy.” It’s hard to know how this can be controlled when the Commander-in-Chief requests backdrops of uniformed soldiers at speaking event after speaking event.

5. It is important to note that General Myers and Richard Kohn, in their critique of Desch’s *Foreign Affairs* piece, strongly deny this claim. At most, they argue, “. . . the combatant commander often found the probing and questioning of plans by Secretary of Defense Donald Rumsfeld and the Joint Chiefs of Staff distasteful. But in the end, all involved supported the final plan regardless of the disagreements along the way.” “The Military’s Place,” *Foreign Affairs*, 86 (September/October 2007), 147.

6. Marybeth Ulrich and Martin L. Cook, “US Civil Military Relations Since 9/11: Issues in Ethics and Policy Development,” *The Journal of Military Ethics* (forthcoming).

7. H. R. McMaster, *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies that Led to Vietnam* (New York: Harper Collins, 1997).

8. “Gen. Anthony Zinni, USMC, (Ret.) Remarks at CDI Board of Directors Dinner, May 12, 2004,” Center for Defense Information, 22 May 2004, <http://www.cdi.org/program/document.cfm?DocumentID=2208>. It is striking how central McMaster’s book has become to all sides of this debate. Owens, in particular, places much of the blame for the current confusion in civil-military relations on what he considers a misreading of the book, which leads (he claims) to “a widespread belief that officers should be advocates of particular policies rather than simply serving in their traditional advisory roles.” “Failure’s Many Fathers,” *Foreign Affairs*, 86 (September/October 2007), 150.

9. Peter Spiegel and Paul Richter, “Anti-Rumsfeld Chorus Grows,” *The Los Angeles Times*, 13 April 2006.

10. These officers include Major General Charles Swannack, recently retired from commanding the 82d Airborne Division; Major General John Batiste, former commander of the 1st Infantry Division in Iraq and for-

mer adviser to then-Deputy Defense Secretary Paul Wolfowitz in the buildup to the war; former general and former Secretary of State Colin Powell; Lieutenant General Greg Newbold, retired Director of Operations for the Joint Staff who retired early largely because of his opposition to the war; and Major General Paul Eaton, in charge of training the new Iraqi military force. In addition, former Central Command commander General Anthony Zinni has been a harsh critic of the war from its inception, as has Lieutenant General William Odom, former head of the National Security Agency, and former CENTCOM commander General Joseph Hoare. All told, several retired general officers specifically called for Secretary of Defense Rumsfeld's resignation. Greg Jaffe, "The Two Star Rebel," *The Wall Street Journal*, 13 May 2006, A1.

11. Obviously, since all the officers in question are retired, they are not technically insubordinate since they are no longer in a chain of command. The professional status of retired general officers (perhaps especially recently retired ones coming from pivotal positions from which to have observed policy and implementation intimately) is an important professional ethical question. Clearly, the force of their criticisms and the weight it carries with the public, the media, and the Congress result from their former military status.

12. Even this is debatable. Title 10 of the United States Code clearly includes retired members of the active-duty force as full members of the force. They have not resigned their commissions, and they are still under the jurisdiction of the Uniform Code of Military Justice. Despite this, however, there is no precedent I could locate for disciplining or charging a retired officer who criticized politicians, policies, or practices in ways that would clearly not be acceptable if they were still in uniform. Further, it would be very difficult to do so for any single individual without the clear appearance of selective enforcement, given the prevalence of retired officers serving as "media consultants" for the 24-hour news cycle and, perhaps more alarmingly, using their status as retired officers as a platform from which to endorse political candidates.

13. On the other hand, one might really question the wisdom of officers' trading on their military prestige to weigh in on one side of a bimodal political divide involving mostly issues on which they have no expertise whatsoever. Snider, in an unpublished West Point talk, comments as follows: "Unless the services can self-police their retired ranks through moral suasion, the risks of such increased erosion of civilian-military norms (a nonpartisan military) is likely, at some point, to be corrected by legislation that the military, retired and active, will not welcome."

14. Don Snider, e-mail message to author.

15. Ibid.

16. Swain, 19.

17. Cited in George M. Clifford III, "Duty at All Costs," *Naval War College Review*, 60 (Winter 2007), 103.

18. Ibid., 106.

19. I stress that the illegal category is "easy" only theoretically. In actual practice, militaries do a mediocre job at preparing officers and enlisted personnel to recognize illegal orders, and even less to create structures to encourage disobedience. Mark Osiel's book, *Obeying Orders: Atrocity, Military Discipline, and the Law of War* (New Brunswick, N.J.: Transaction Publishers, 1999) is a superb attempt to spell out ways in which this could be substantially improved, while retaining due deference to the necessities of good order and discipline.

20. Clifford, 108.

21. Ibid.

22. A perfect example of the complexity of this problem in practice occurred in September 2007 when General Petraeus, testifying before the Senate Armed Services Committee, was asked by Senator John Warner whether invading Iraq had made America safer. General Petraeus's careful answer confined itself to how best handle the immediate issue before him in trying to manage Iraq. He clearly evaded the question Senator Warner was asking him: whether the strategic justifications for going to Iraq were valid in the first place. In my opinion, he was correct to do so, since it invited a wholly retrospective judgment about decisions made years before the responsibility was his. It is an interesting question whether a regional combatant commander, confronted with a similar question from Congress on the eve of a military operation, would be within the scope of his or her professional competence to offer a strategic assessment of the wisdom of the administration's contemplated and imminent military engagement. In this author's opinion, it would be.

23. Myers and Kohn, 147.

24. International Committee of the Red Cross, "Principles of International Law Recognized in the Charter of the Nuremberg Trial and in the Judgment of the Tribunal, 1950," <http://www.icrc.org/ihl.nsf/FULL/390?OpenDocument>.

25. Clifford, 120.

26. Ibid., 124.

27. Martin L. Cook, "The Moral Role of Professional Military Advice," in *The Moral Warrior: Ethics and Service in the U.S. Military* (Albany: SUNY Press, 2004).

28. *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425 (1976).