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Where Have All the Soldiers Gone? Observations on the Decline of Military Veterans in Government

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WHERE HAVE ALL THE SOLDIERS GONE?
OBSERVATIONS ON THE DECLINE OF
MILITARY VETERANS IN
GOVERNMENT

Donald N. Zillman

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WHERE HAVE ALL THE SOLDIERS GONE? OBSERVATIONS ON THE DECLINE OF MILITARY VETERANS IN GOVERNMENT

*Donald N. Zillman**

I. INTRODUCTION

This Essay examines the consequences of the growing decline in the number of military veterans in positions of leadership in the federal government, most particularly in the United States Congress. In its visible form, this issue has given rise to popular debate in the last three presidential elections. Did Dan Quayle pull strings to get a safe post in the Indiana National Guard to avoid Vietnam service? Did Bill Clinton improperly evade the draft during Vietnam? Were veterans George Bush or Bob Dole better qualified to be President because of their combat service in World War II? In its less visible, but more important, form the issue raises significant questions about civilian control of the military, one of our most fundamental, but often ignored, precepts of constitutional law.

We enter a unique period in American history. For 150 years—from approximately the adoption of the Constitution to World War II—America built its military for wartime and dismantled it when peace returned. America mobilized, during the Civil War or the World Wars, was a military power with which to be reckoned. America disarmed was a slight threat to anyone, including the American people.

All that changed with World War II and the Cold War. A brief demobilization following World War II was reversed under the pressure of the Cold War and Korea. America became the world's foremost military power, a fact which may not have been fully appreciated by the American people until the remarkable period of 1989-1991 in which America peaceably achieved its objectives in the Cold War and violently achieved domination of one of the non-Western world's major combat-tested armies in Operation Desert Storm.

The world of 1997 shows few signs that the American military can return to the small, isolated force it was for much of the first century

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and a half of the American experience. Despite the collapse of the Soviet Union, the world remains a dangerous place. More precisely, it remains a place where American public policy objectives demand a world-class military. The American force is undeniably downsizing in people and dollars. But what remains has the potential to unleash nuclear weapons on the world, to project force to any portion of the globe, and to fight and win conventional and unconventional wars. It is also a force that has the potential to be the essential power of last resort in a variety of domestic concerns—from drug control to natural disaster relief to urban riot.

What has changed markedly over the last decade is the separation of American leadership from the military. For much of the Cold War period, the leaders of American government were military veterans. Whether their service was at the highest levels (Dwight Eisenhower, George Marshall, Al Haig), small unit command or staff service (Harry Truman, Richard Nixon, John Kennedy), or enlisted service (any number of influential Congressmen), these Americans provided a bridge between civilian and military leadership.

Today, that bridge is disappearing. In another decade the senior public official with military experience will be a rarity. We will first examine the present status and evident trends in military service by high government officials. We raise the question of whether veteran status makes a difference in the decisions of government. We will suggest some of the causes of the decline in veterans' presence. The final part of the Essay will examine the implications of the change for American civil-military relations and the constitutional governance of the armed forces.

II. TRENDS IN MILITARY SERVICE AMONG MEMBERS OF CONGRESS

To assess military representation in Congress,¹ we reviewed the membership of the 102nd, 103rd, 104th, and 105th Congresses.² Within the span of four Congresses, veteran participation dropped

1. This Essay does not address military representation in the executive branch. John Wheeler, who has studied the decline in veterans' presence in the Clinton executive branch, notes the sharp decline of high executive branch officials with military experience from the Bush to the Clinton White House. In December 1992, 30% of males who were Senate confirmed executive branch appointees were veterans. In June 1994, the percentage had fallen to 21%. Even more startling was the decline in male veterans in the Executive Office of the President. In December 1992, 36% of the males in the Bush White House were veterans. In June 1994, only 4% of the males in the Clinton White House had seen military service. Fax letter from John Wheeler to Donald Zillman (Feb. 4, 1995) (on file with Author).

2. All information was drawn from the Congressional Staff Directory biographies of senators and representatives. Entries allowed a statement of military experience that typically included dates of service, branch and rank, combat experience, and military decorations. It is possible that some legislators either embellished or understated their military records. The biographies are not always precise about rank or

from fifty to thirty-three percent. The decline continued even from the 103rd (forty-two percent veterans) to the 104th (thirty-eight percent veterans) Congress, a transition that otherwise marked the shift from Democratic to Republican control and a perceived greater pro-military posture in Congress.

Tables 1 and 2 identify the number of veterans according to house of Congress. Table 3 combines the reports from the two houses. Tables 1 and 2 emphasize that the likelihood of military service varies by age. Every member of the three Congresses (ranging in age from the early thirties to the nineties) could plausibly have served in the armed services for some time in his or her life. The oldest members could have served during the near-total mobilization of World War II. All others could have served during the early Cold War and Korean mobilization, the Vietnam era, or in the post-Vietnam voluntary force era.

Legislators were classified by birth date. A birth date between 1903 and 1927 placed the legislator in the World War II era. A birth date between 1928 and 1938 placed the legislator in the Korea-Cold War era. A birth date between 1939 and 1955 identified a Vietnam era legislator. Finally, birth after 1955 placed the legislator in the "volunteer" era.

The numbers show the present, and likely indicate the future, decline in military service for legislators. Veteran status appeared virtually a requisite for men of the World War II era. About half of the Korean-Cold War group were veterans. Military service (even in the National Guard or military reserves) is a rarity among the Vietnam era legislators. Military service is almost non-existent for the legislator who came of age in the "volunteer" era starting in 1973. If present trends continue, the Congress of the twenty-first century may be largely without a veteran presence.

For historical contrast we examined the membership of the 91st Congress which served during the height of the Vietnam War in 1969-70. In that Congress sixty-nine percent of the senators and seventy-one percent of the representatives had seen military service.³

We undertook some further examination of members of the 103rd Congress (many of whose members also served in the 102nd, 104th,

branch of service. Some biographies record both enlisted and officer service for the same legislator.

The statistical information regarding congressional military representation contained in this Article reflects the Author's own compilation and analysis of the biographies in the Congressional Staff Directory.

3. Morris Janowitz reports that in the 86th Congress 62.2% of the senators and 59.9% of the House members were veterans. MORRIS JANOWITZ, *THE PROFESSIONAL SOLDIER* 358 (1960). The vast majority were former enlistees or junior officers. *See id.*

TABLE 1
MILITARY SERVICE OF SENATORS BY AGE

Birth Date	102nd Congress		103rd Congress	
	Veteran	Non-Veteran	Veteran	Non-Veteran
World War II Era (1903-27)	25 (93%)	2 (7%)	21 (91%)	2 (9%)
Korean-Cold War Era (1928-38)	24 (60%)	16 (40%)	21 (53%)	19 (47%)
Vietnam Era (1939-55)	18 (55%)	15 (45%)	15 (41%)	22 (59%)
Volunteer Era (1956-)	0	0	0	0
TOTALS	67 (67%)	33 (33%)	57 (57%)	43 (43%)
Birth Date	104th Congress		105th Congress	
	Veteran	Non-Veteran	Veteran	Non-Veteran
World War II Era (1903-27)	19 (95%)	1 (5%)	14 (93%)	1 (7%)
Korean-Cold War Era (1928-38)	18 (53%)	16 (47%)	15 (44%)	19 (56%)
Vietnam Era (1939-55)	15 (33%)	30 (67%)	17 (35%)	32 (65%)
Volunteer Era (1956-)	0	1 (100%)	0	2 (100%)
TOTALS	52 (52%)	48 (48%)	46 (46%)	54 (54%)

and 105th Congresses). The results sharpen our understanding of the meaning and consequences of military service.

Few legislators could be described as professional soldiers. Only seven legislators were graduates of military colleges. West Point and Annapolis each contributed two graduates, as did the Citadel. One VMI graduate was in the Congress.

Only four members (including Senators Glenn and McCain) spent a career in the military before moving to civilian politics. The other veterans were almost all enlistees, draftees, or officers (many doubtless draft motivated) who served for less than five years on active duty and predictably rarely rose above the command of a small unit.

Combat heroism is still an attractive political credential. Twenty-one of the legislators of all generations indicated they received major combat decorations (Congressional Medal of Honor, Silver Star, Bronze Star, Distinguished Flying Cross, Purple Heart). A disproportionate number (nine of twenty-one) were senators (Dole, Heflin, Inouye, John Kerry, Robert Kerrey, McCain, Robb, Roth, and Thurmond). Ex-astronaut and combat pilot John Glenn could certainly be added to the senatorial list of those with the military "right stuff."

No woman in either the Senate or House in any Congress served in the military. This is not surprising for older female members of

TABLE 2
MILITARY SERVICE OF REPRESENTATIVES BY AGE

Birth Date	102nd Congress		103rd Congress	
	Veteran	Non-Veteran	Veteran	Non-Veteran
World War II Era (1903-27)	60 (81%)	14 (19%)	38 (86%)	6 (14%)
Korean-Cold War Era (1928-38)	82 (59%)	57 (41%)	70 (57%)	52 (43%)
Vietnam Era (1939-55)	60 (28%)	156 (72%)	58 (23%)	189 (77%)
Volunteer Era (1956-)	0	6 (100%)	1 (5%)	21 (95%)
TOTALS	202 (46%)	233 (54%)	167 (38%)	268 (62%)

Birth Date	104th Congress		105th Congress	
	Veteran	Non-Veteran	Veteran	Non-Veteran
World War II Era (1903-27)	24 (86%)	4 (14%)	17 (85%)	3 (15%)
Korean-Cold War Era (1928-38)	64 (58%)	46 (42%)	49 (52%)	46 (48%)
Vietnam Era (1939-55)	60 (24%)	193 (76%)	57 (21%)	209 (79%)
Volunteer Era (1956-)	4 (9%)	40 (91%)	3 (6%)	51 (94%)
TOTALS	152 (35%)	283 (65%)	126 (29%)	309 (71%)

TABLE 3
MILITARY SERVICE OF CONGRESS

102nd Congress		103rd Congress	
Veteran	Non-Veteran	Veteran	Non-Veteran
269 (50%)	266 (50%)	224 (42%)	311 (58%)

104th Congress		105th Congress	
Veteran	Non-Veteran	Veteran	Non-Veteran
204 (38%)	331 (62%)	172 (32%)	363 (68%)

Congress. However, in recent decades as women approach comprising twelve percent of the armed forces,⁴ when service academies produce outstanding women graduates, and when women's roles in the service are far more visible than in earlier years, it is surprising that no state or district has elected a woman whose résumé offered a period of military service. Nevertheless, it is clear that part of the reason for the decline in military representation in Congress from 1969-70 to 1993-94 is gender based; as women continue to comprise

4. See CENTER FOR DEFENSE INFORMATION, 1995 CDI MILITARY ALMANAC 12 (1995).

an increasing proportion of Congress, we have witnessed a corresponding decrease in its military representation.

The trend in military experience in Congress is shown in the membership of the Class of 1992—those legislators elected to a first term in Congress in November 1992. Twelve senators and 104 representatives joined the Congress upon election in 1992 or by mid-term appointment. Nine of the new senators had no military experience. Ninety of the 104 new representatives (eighty-six percent) had no military service.

For the freshman of the Class of 1994, the numbers were similar in the Senate, but more favorable to veterans in the House. Of twelve new senators, two were veterans. Of eighty-five new representatives, twenty-two were veterans. In the 1996 election, six of fifteen new senators were veterans. Fourteen of seventy-three new representatives were veterans.

Military service was only slightly more common among senators and representatives from the South than among those from the rest of the country. In 1992, of the four senators elected from former Confederate states, two had military service. Of thirty-four new representatives, only five had served. In 1996, two of four new senators and eight of twenty-four new House members were veterans.

More veterans were Republicans than Democrats. However, the numbers do not appear out of proportion with GOP majorities in both houses of Congress. After the 1996 election, twenty-six of the forty-six veteran senators were Republicans. In the House, there were seventy-three GOP veterans and fifty-three Democratic veterans. The veteran members of the Vietnam era (birth dates 1939-55) were slightly more likely to be Democrats than Republicans. Democratic veterans of this era include nine senators and thirty representatives in contrast to seven senators and thirty-three representatives for the majority party Republicans.

The most intriguing group to compare for partisan purposes are the "volunteer" era legislators (birth dates after 1955). This is the only generation whose members had to consciously select military service. Almost none did. But all three veterans of the volunteer era are Republicans. Obviously, no conclusions can be drawn from such fragmentary evidence. However, the matter bears watching in future Congresses. The disappearance of a veteran presence in Congress is troubling for reasons to be discussed. It would be even more troubling if that limited presence represents one political party disproportionately.

The wave of the future is clearly indicated in a comparison of the World War II class with the volunteer era class. Each World War II veteran will have turned seventy by the end of 1997. The full retirement of the class will remove thirty veterans (including thirteen sen-

ators) from Congress. By contrast, the fifty-six members of the volunteer era class include only three veterans.

The figures for the Freshman Class of 1992 were particularly significant given the recency of Operation Desert Storm—the United States' most successful military action since the Second World War. Only two new legislators of 116 elected served in the campaign. This is true despite an average age of the Desert Storm force that exceeded the minimum age for election to Congress and despite a substantial reserve presence in the force.

III. THE RELEVANCE OF VETERAN STATUS TO LEGISLATIVE DECISIONMAKING: TWO CASE STUDIES

What is the impact of veteran legislators on particular legislation?⁵ Two issues that faced the 102nd and 103rd Congresses provide case studies of the relevance of military service to defense issues. The first is the "vote to go to war" in the Persian Gulf Crisis of 1991. The second is the vote to write into statute the virtual ban on homosexual service in the military enacted as part of the Defense Authorization Act of 1993.⁶ Both issues were visible and contentious. Legislators' votes and discussion were likely the product of considerable deliberation after much lobbying from interest groups, individual constituents, and fellow legislators.

In both cases, we examined the debate in the Congressional Record for evidence that the legislators' military experience helped structure their views or influenced their votes. We then classified the actual votes according to military experience.

A. *The Persian Gulf Crisis*

On January 14, 1991, Congress approved the Authorization for Use of Military Force Against Iraq Resolution.⁷ The authorization gave approval for President Bush's use of armed forces to enforce United Nations resolutions seeking to reverse Iraq's seizure of Kuwait in August 1990.

The congressional debate had been preceded by ample national debate about the success of sanctions and the necessity of congressional approval of war, whether by a formal declaration or its functional equivalent. During the time Congress debated from January 10-12, its decision was pressured by a January 15 United Nations' deadline for Iraqi compliance with its resolutions.

5. For a review of the scholarship on this question, see Roger Little, Senate Military Veterans Voting on Defense Issues, 1983-90 (Oct. 23, 1993) (unpublished manuscript, on file with Author). Little's cautious conclusion is that the veteran may be more likely to support a pro-defense position than the non-veteran. See *id.* at 14-16.

6. 10 U.S.C.A. § 654 (West Supp. 1997).

7. Pub. L. No. 102-1, 105 Stat. 1991.

The legislative debate gave exhaustive consideration to two issues—continued economic sanctions versus military response, and congressional versus presidential war power. Most legislators affirmed the right of Congress to make the decision for war. Few ruled out military action. The crucial question was: “When?” A sharp division arose between those favoring more time for sanctions to work and opposing present use of military force, and those favoring granting the authority to the President to begin combat activity on January 15 if Iraqi resistance to the United Nations resolutions continued.

The Senate, after voting down a proposal to continue sanctions only, voted fifty-two to forty-seven to approve the use of force.⁸ Prior military service did not seem to determine senators’ votes. Of those members of the 102nd Congress present for the vote, the supporters of the immediate use of force included nineteen senators with no military experience and thirty-three senators with military experience. Senators voting against the immediate use of force included fourteen with no military service and thirty-three veterans.

In the House, the resolution for immediate use of force was adopted by a vote of 250 to 183.⁹ The Yes voters in the 102nd Congress included 129 non-veterans and 127 veterans. The No voters included 112 non-veterans and seventy-one veterans. Here, military service seemed relevant to the votes. If only the veterans had voted, the vote would have been nearly two to one for war. If only non-veterans had voted, the decision for war would have passed by a bare majority.

The floor debate adds perspective on the relevance of military service. Senator Cohen, a non-veteran, noted “the presence of so many of our colleagues who have been touched by the winds of war in a personal or in a very violent way”¹⁰ He continued: “What is striking about this is how [the veterans] see the need for pressure or patience in the Persian Gulf in such a different way.”¹¹

On some issues there was general agreement. Nearly all of the veterans spoke of the horrors of war as they had observed it. They usually prefaced their remarks by reference to their military service, but their sacrifice and heroism were usually understated. Senator Bentsen: “I never saw people in combat that were not uptight, sweating, and worried. If they were not, they were either without imagination or they were dumb.”¹² Senator Glenn: “The glorious wars of the history books cannot erase the horrors of war up close

8. See 137 CONG. REC. S403 (daily ed. Jan. 12, 1991).

9. See *id.* at H485.

10. *Id.* at 5334 (statement of Sen. Cohen).

11. *Id.*

12. *Id.* at S223 (daily ed. Jan. 11, 1991) (statement of Sen. Bentsen).

and personal. . . . I have experienced war and combat."¹³ And most vividly, Representative Bennett:

When I first came to Congress, I wore a ribbon, the Silver Star. I did it partly as an apology for being crippled. . . . I was given that, with a citation that said "Gallantry in Action."

Friends, there is no such thing as gallantry in action. I do not want to run down anybody else's award, but action, military action, is a horrible experience. There is no gallantry in it.¹⁴

Similarly, many members seemed troubled that this was a war that few of them would experience first hand. No member declared himself ready to enlist, in contrast to numerous such declarations in World War II. Further, only a small handful had children in the combat zone or even in the armed services.

As a reaction to this, members seemed eager to find a personal connection to the decision to use force. References were made to nephews, brothers, and fathers-in-law either in the combat zone or facing deployment there.¹⁵ Other legislators spoke speculatively of their civilian children being deployed.¹⁶ They also spoke of their actual experience on Selective Service Boards during Vietnam,¹⁷ of their congressional district suffering disproportionate losses in Vietnam,¹⁸ of having lost children to illness,¹⁹ and of having been raised in the funeral home business.²⁰ The objective was to persuade the country that this was a shared sacrifice. The reality was that most members could make no claim to combat service, and no claim that their children and grandchildren would one day be doing the fighting.

Two lessons of war from Korea and Vietnam were raised by both veterans and non-veterans. The first was that half-hearted engagement was a mistake. Senator McCain: "If we must use force, we must use it quickly and decisively."²¹ Representative Blaz: "In Ko-

13. *Id.* at S241 (statement of Sen. Glenn).

14. *Id.* at H390 (daily ed. Jan. 12, 1991) (statement of Rep. Bennett).

15. *See id.* at H168 (daily ed. Jan. 10, 1991) (statement of Rep. Weldon) (referring to his nephews); *id.* at H171 (statement of Rep. Hayes) (referring to his nephews); *id.* at H217 (daily ed. Jan. 11, 1991) (statement of Rep. Vucanovich) (referring to his father and brother); *id.* at H324 (statement of Rep. Franks) (referring to his nephew and brother); *id.* at H361 (statement of Rep. Dornan) (referring to his nephew); *id.* at H375 (statement of Rep. Wheat) (referring to his father); *id.* at S282 (statement of Sen. Gorton) (referring to his son-in-law); *id.* at S364 (daily ed. Jan. 12, 1991) (statement of Sen. Coats) (referring to daughter's fiancé).

16. *See id.* at S215 (daily ed. Jan. 11, 1991) (statement of Sen. Riegle); *id.* at S245 (statement of Sen. Lautenberg); *id.* at S288 (statement of Sen. Murkowski).

17. *See id.* at H181 (daily ed. Jan. 10, 1991) (statement of Rep. Kanjorski).

18. *See id.* at H353 (daily ed. Jan. 11, 1991) (statement of Rep. Manton).

19. *See id.* at H416 (daily ed. Jan. 12, 1991) (statement of Rep. Roukema).

20. *See id.* at H428 (statement of Rep. Espy).

21. *Id.* at S230 (daily ed. Jan. 11, 1991) (statement of Sen. McCain).

rea we failed. We ended with a draw. I was there. I could not believe that I always had to seek permission to turn right or turn left."²² The second related point was that war should only be fought with the full support of the country. Senator Kerry found war justifiable only "when the Nation as a whole has decided that there is a real threat There is no consensus in America for war"²³ Representative Peterson, a Vietnam POW: "I vowed when I sat in Hanoi that I would never allow anyone to persuade me to send troops into battle without the backing of the American people"²⁴

Military experience should have been useful in answering the most relevant questions of early January 1991: (1) What would be the likely result of an immediate resort to force? (2) What would be the consequences to coalition military readiness of a delay of another six months to a year to allow economic sanctions to work?

In hindsight, the most useful information that a legislator could have had on January 12 was that the War could be brought to a successful conclusion within two months and with an American battlefield fatality rate of 148.²⁵ All legislators expressed confidence in eventual coalition success. No one wanted to appear to be bluffed down by Saddam Hussein. But projections varied widely as to the intensity of the combat and the degree of eventual success. Senator Wellstone, a non-veteran and opponent of the war, spoke of a "nightmare in the Persian Gulf . . . [that will tear] the country apart."²⁶ Senator Dixon, a combat veteran who supported the continued use of sanctions rather than war, urged President Bush to avoid ground conflict and attempt to win from the air alone if war were nevertheless declared. He spoke of the Iraqi Republican Guard as "excellent soldiers and battle-hardened people who fought for 9 years in that region."²⁷ Senator Robb, a combat veteran and supporter of the war, also sought to avoid ground confrontation "where our losses could quickly become unacceptable under almost any definition."²⁸

Veterans were able to offer useful cautions on the dangers of waiting for sanctions to work. Representative Murtha, a decorated Marine veteran of Vietnam, spoke of the harsh Middle Eastern environment and the danger of sustaining a force for too long. "You put your hand on metal and you get a third-degree burn. It is so hot they have to train at nighttime and sleep in the daytime."²⁹ Combat

22. *Id.* at H394 (daily ed. Jan. 12, 1991) (statement of Rep. Blaz).

23. *Id.* at S396 (daily ed. Jan. 13, 1991) (statement of Sen. Kerry).

24. *Id.* at H421 (daily ed. Jan. 12, 1991) (statement of Rep. Peterson).

25. *See* THE WORLD ALMANAC AND BOOK OF FACTS 184 (1997).

26. 137 CONG. REC. S396 (daily ed. Jan. 12, 1991) (statement of Sen. Wellstone).

27. *Id.* at S373 (statement of Sen. Dixon).

28. *Id.* at S378 (statement of Sen. Robb).

29. *Id.* at H407 (statement of Rep. Murtha).

veteran Representative Montgomery emphasized that a rotation of troops would weaken our combat force, which he felt had just reached peak efficiency.³⁰

Many legislators emphasized that they recognized their words were being heard by our troops, by Saddam Hussein, and by the American public, as well as their fellow legislators. That fact obviously discouraged some comments on the floor that might have been expressed privately to colleagues.

Nonetheless, the veterans' input to the Gulf War discussion seemed of limited value. Comments on the horrors of war were predictable in the wake of Vietnam. Comments on the consequences of a delay for sanctions to work were of greater use. Maintaining a force of half a million troops in a hostile environment for an indefinite period is not a costless exercise. On this point veterans, particularly combat veterans, had useful comments to offer both as to matters of supply and troop rotation and as to the impact on morale of individual soldiers forced to maintain combat readiness for an indefinite period of time in the face of what would probably be a diminishing national support for the mission. Most crucial, however, would have been a veteran consensus on the likely results of combat. With the benefit of hindsight, historians will probably regard the Gulf War results as utterly predictable given a satisfactory fighting spirit among the coalition forces. Yet, few legislators were ready to offer that scenario to their colleagues. Veterans, particularly officers familiar with air-land battle concepts, could have asserted their expertise as to "what would happen." The decision as to "whether it should happen" could then be left to the non-military factors that might have influenced an individual legislator's vote.

B. Statutory Restrictions on Gays in the Military

The "gays in the military" controversy will probably become a case study of poor military-civilian and legislative-executive relations. President-elect Clinton's promises of support for gay and lesbian rights inspired a January 1993 presidential promise to end discrimination against gays and lesbians in the military. Immediate legislative and military opposition surfaced. The opposition reflected both the merits of gays in service and the degree of deference that a new and non-veteran president should give to the leadership of the armed forces.

A face-saving compromise put the issue out for study for six months. During that time the military leadership and the President reached a compromise that slightly improved the position of gays in the military.

30. See *id.* at H451 (statement of Rep. Montgomery).

However, some legislators were not satisfied. They sought to write the policy concerning homosexuals in the military into statute rather than leaving it the subject of presidential order. The proposed statute was as anti-gay as the pre-Clinton policy. The legislation asserted that homosexuality is incompatible with military service and that the issue was one on which Congress should speak as the final authority.³¹ The statute was proposed as part of the 1993 Defense Authorization Act.

Opponents of either the anti-gay policy or the attempt to set policy by statute sought an amendment that would leave the policy on gays in service to be set by the President and the armed forces. In effect, they sought to save the compromise reached between the President and the armed forces between January and July of 1993. The form of the amendment also removed the need for a Yes or No vote on a politically volatile issue: "Are gays entitled to serve in the armed forces?"

The debate in both houses, however, centered on the proper military policy towards homosexuals. Most legislators who spoke seemed comfortable talking about the issue rather than only talking about whether the President or Congress should set personnel qualification standards.

There was some common ground. Virtually all legislators contended that Congress, in its role of setting policy for the military, had full power to set performance and conduct standards to preserve military efficiency and morale. Virtually all legislators claimed they did not want to stigmatize homosexuals or to encourage discrimination against them.

Beyond that, however, there was a sharp divide. Supporters of the "leave it to the President" amendment argued: (1) Gays have in fact served capably, often heroically, throughout history in the United States' military and other armed forces. (2) Conduct, not status, should be the key factor in judging military service. Heterosexual misconduct, notably the recent Tailhook scandal, could pose just as serious a harm to military discipline and morale as homosexual misconduct. Both should be controlled. (3) At bottom, arguments against gay service were no different from those heard in other times against service by racial minorities or women. (4) A Rand Corporation study and other studies indicated that integration by sexual orientation would do no harm to the military; other armed forces and police departments have accepted gays.³²

Opponents of the "leave it to the President" amendment (who were almost always supporters of the final statutory gay ban) approached the issue as a matter of military policy, not discrimination. They argued: (1) Our primary responsibility is to provide for an

31. See 10 U.S.C. § 654(a) (1994).

32. See 139 CONG. REC. H7069 (daily ed. Sept. 28, 1993) (discussing Rand study).

armed force whose training, discipline, and supply wins wars. Other factors are secondary. (2) The acceptance of homosexuals in other parts of society should not control military policy because of the intimate and extensive demands of military life. (3) The military leadership and the military ranks were substantially opposed to the addition of known homosexuals to the ranks.

What impact did veteran status have on the debate and the vote? Both the House and the Senate rejected the "leave it to the President" amendment by considerable majorities. The amendment failed in the Senate by thirty-three to sixty-three;³³ in the House by 169 to 264.³⁴ Similar or larger margins supported the approval of the statutory anti-gay policy and the eventual passage of the entire Defense Authorization Act.

In the Senate, military service did not appear to predict a pro or anti-gay position. Nineteen veterans joined fourteen non-veterans in voting Yes on the "leave it to the President" amendment. The nineteen veterans included four combat heroes—Inouye, Kerrey, Kerry, and Robb. They were defeated by a coalition of thirty-seven veterans and twenty-six non-veterans. Five veterans with combat heroism—Heflin, McCain, Roth, Dole, and Thurmond—were among the thirty-seven.

In the House, military service was more predictive of attitudes on gay service. Supporters of the "leave it to the President" position included 117 non-veterans and forty-five veterans (including five combat heroes). Opponents included 139 non-veterans and 123 veterans (including seven combat heroes). If only non-veterans had voted, the anti-gay position would have won, but by a fairly close margin. Had the issue been left only to veterans, a nearly three-to-one vote would have opposed gay service.

Military service seemed less predictive of the vote than two other factors. Women legislators (all non-veterans) would have approved the "leave it to the President" amendment by a vote of thirty-two to eighteen. Southerners (representing one of the old Confederate states) opposed the "leave it to the President" amendment by an overwhelming 117 to twenty-six.

The floor debate provided very little useful comment by veterans that was drawn from their military experience. Unlike the Gulf War debate, no security or foreign policy concerns restrained speech.

Opponents of military service for gays were willing to mention their military record and to suggest that non-veterans in Congress and elsewhere did not understand the issue. Representative Cunningham: "Those Members that supported the total lifting of the ban on homosexuals, that have never fired a shot in anger, that have

33. See *id.* S11228 (daily ed. Sept. 9, 1993).

34. See *id.* at H7083 (daily ed. Sept. 23, 1993).

never been in combat. I would ask them to stick to the areas that they are knowledgeable about."³⁵ Senator Coats: "The President's policy of homosexuals in the military would have undermined morale and prevented commanders from dealing with problems in their units."³⁶ Representative Dornan:

We have had a long string of people, with no military experience whatsoever . . . comment on this issue today. To have this House lectured about well-behaved homosexuals, by some Members with, shall we say, behavioral problems of their own is too much. . . . In my military experience, I served on active duty at 10 bases across the country. On eight of those bases there were instances of homosexual activity, each with dishonorable conduct and dishonorable discharges.³⁷

Supporters of military service for gays were similarly unhelpful. Congressman Dellums spoke of the "cruel myth" that gays destroy unit morale. He observed: "All my experiences—as a marine . . . lead me to believe that we could [allow full service by gays]."³⁸

The lack of military expertise in the debate is disappointing. Unlike the Gulf War debate (where former generals would have a better sense of crucial military issues than captains, sergeants, or privates), key evidence in the "gays in the military" debate could have been provided by experienced junior officers and enlisted people. Were gays in fact prevalent, albeit undercover, in the forces? Was the gay presence disruptive of the military mission? What degrees of tolerance of gays in the service exist? Accepting discrete off-base homosexual relations is one thing; having mandatory sensitivity training to appreciate the gay lifestyle is another. Little in the actual floor debate provided helpful guidance to the legislator seeking to balance an opposition to discrimination against gays and a fear of actual harm to the functioning of the armed forces.

IV. VETERAN STATUS AMONG MEMBERS OF THE FEDERAL JUDICIARY

The United States Supreme Court has recognized that "judges are not given the task of running the Army."³⁹ However, that observation was made in a case in which the Court had the ability to review a military personnel action. The Supreme Court regularly stands as reviewer of last resort for a variety of military personnel issues. Judicial standards govern or strongly influence the laws administered by the military (for example, military criminal procedure standards).

35. 139 CONG. REC. H6071 (daily ed. Aug. 4, 1993) (statement of Rep. Cunningham).

36. 139 CONG. REC. S11158 (daily ed. Sept. 9, 1993) (statement of Sen. Coats).

37. *Id.* at H7070 (daily ed. Sept. 28, 1993) (statement of Rep. Dornan).

38. *Id.* at H7066 (statement of Rep. Dellums).

39. *Orloff v. Willoughby*, 345 U.S. 83, 93 (1953).

Finally, issues of large consequence for the military may be decided by the United States Supreme Court. Both of the legislative issues discussed in Part III illustrate the point. One lower federal court decision helped shape the question of Congress's power to limit the president's commitment of troops to combat at the time Congress approved the Iraqi use of force resolution.⁴⁰ The congressional approval mooted the issue of congressional versus presidential power. A contrary vote by Congress (and recall the Senate margin of fifty-two to forty-seven) might have forced a landmark Supreme Court decision. Likewise, the ultimate resolution of the "gays in the military" issue may turn on a ruling from the Supreme Court.

We examined the status of veterans in the present federal judiciary.⁴¹ Table 4 shows the results. The judiciary has a slightly greater veterans' presence than the Congress. Otherwise, it shows the same pattern as Congress. Veteran status is virtually a requisite for the World War II cohort; more likely than not for the Korea-Cold War vets; and unusual for the Vietnam cohort.

TABLE 4
MILITARY SERVICE BY FEDERAL JUDGES BY AGE

Birth Date	District Court		Court of Appeals	
	Veteran	Non-Veteran	Veteran	Non-Veteran
World War II Era (1903-27)	39 (85%)	7 (15%)	14 (67%)	7 (33%)
Korean Cold War Era (1928-38)	146 (61%)	93 (39%)	40 (53%)	35 (47%)
Vietnam Era (1956-)	79 (28%)	204 (72%)	13 (20%)	52 (80%)
TOTALS	264 (47%)	304 (53%)	67 (42%)	94 (58%)
Total District and Circuit Judges:	Veteran 45%		Non-Veterans 55%	

It is also not surprising that the most law-oriented of the three branches of government draws a percentage of its members from judge advocate service, the military legal branches. Of 331 district or circuit judges with military experience, we found thirty-three with

40. See *Dellums v. Bush*, 752 F. Supp. 1141 (D.D.C. 1990). John Hart Ely, however, reports:

At a joint Georgetown/Center for National Security Studies conference on September 19, 1992, Nicholas Rostow, General Counsel for the National Security Council, indicated that there was a "100% certainty" that Bush would have invaded even had Congress voted the Desert Storm Resolution down. Let us pray this was hyperbole.

JOHN HART ELY, *WAR AND RESPONSIBILITY* 174 (1993).

41. Statistics for military experience in the federal judiciary were compiled using *THE AMERICAN BENCH: JUDGES OF THE NATION* (Marie T. Finn ed., 8th ed. 1995-96) and the American Federal Judiciary database in WESTLAW.

some judge advocate service. Officers with only judge advocate service (and many judge advocates over the years have been commissioned as officers directly out of law school) may well have experienced a rather unique slice of the military—a professional staff position with limited exposure to the fighting forces.

The veteran's credential does appear more frequently among judges from the South than among those from the country as a whole. In the Fourth, Fifth, and Eleventh Circuits veterans outnumber non-veterans by ninety-five to eighty-four. Even in the Vietnam generation the non-veterans outnumber the veterans by only sixty-three to forty-three. In the Eleventh Circuit the majority of judges in the Vietnam generation are veterans.

V. THE IMPORTANCE OF VETERAN STATUS AMONG HIGH GOVERNMENT OFFICIALS

Should we be concerned about the military experience of our high government officials? We spend little time worrying whether elected officials individually or collectively have served in the Bureau of Land Management, the Department of Health and Human Services, or the Postal Service. However, a variety of factors make the issue of officials' military service relevant:

(1) Like it or not, the military still embodies national virtues in ways that other government service does not. The combat hero, the stoic prisoner of war, or even the desk-bound military short-timer promises to bring such virtues as courage, fortitude, selflessness, or respect for discipline to his or her new position in government.

(2) Military service remains the significant "school of the nation." Neither law practice, work in the civilian government bureaucracy, nor experience as a business owner is as likely to expose the elected official to the contact with men (and increasingly women) from all races, religions, social classes, and geographic locations. No other profession has a dedication to national service above self as its primary ethic. People from such a background may be useful in the national government.

(3) In the rare cases where civilian leadership follows high-level military leadership, the ex-officer has genuine expertise on military matters. High-level experience in foreign relations is also likely to be present. An Eisenhower, MacArthur, Haig, Schwartzkopf, Crowe, or Powell would *know* the military better than any civilian leader could. Such military leaders could also begin handling sophisticated foreign relations issues (often with intimate acquaintance with major foreign leaders) on the first day of their civilian service.

(4) The more typical military veteran, the short-term officer or enlisted person, brings a perspective on military matters not open to a public official who has never served. Parts of the military experi-

ence are shared by all those who have served but are difficult to explain to those who have not. Some of this has shown up in the debate over gays in the military. Even the most learned academic without military experience lacked credibility when theorizing on unit cohesion or threats to discipline or the burdens of confined living.

The Gulf War and gays-in-the-military votes demonstrate that veteran status does not predict votes. The veteran may side with the military position. But the veteran may offer the needed perspective to an excessively optimistic Pentagon prediction. Comments of veteran legislators in the Desert Storm debate were useful reminders that what may appear foolproof and antiseptic on the general's briefing chart is rarely so to the troops in the field.

(5) Prior military experience may help justify a federal elected official's decision to commit American forces to combat—probably *the* most solemn decision our elected officials can make. As the Gulf War debate showed, legislators and presidents referred to their military service in the course of debate. They sought to evoke a shared sacrifice. Also, a John Kerry, Bob Dole, or George Bush can bring a moral authority to talk of life's unfairness or the enormity of the decision to commit American lives to combat that a Bill Clinton, Newt Gingrich, or Pat Buchanan cannot.

VI. THE IMPLICATIONS FOR CIVILIAN CONTROL OF THE MILITARY

These concerns about the military service of high government officials are a part of the continuing evolution of American civil-military relations or the more ominous sounding "civilian control of the military." The earlier sections of this Essay indicate that the America of the twenty-first century will wield enormous military power and it will be wielded by government officers with very little direct exposure to the armed services.

The drafters of the Constitution gave ample attention to military issues. Only a decade earlier the signers of the Declaration of Independence had excoriated King George III for keeping "among us, in times of peace, Standing Armies without the Consent of our legislature," and for rendering "the Military independent of and superior to the Civil power."⁴²

Although the terms "civilian control" and "civil-military relations" do not appear in the Constitution, the framers were keenly alert to the concepts.

The Constitution establishes civilian control over the uniformed military and divides civilian authority among the branches of government. The president is commander in chief. By his veto power

42. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

and the power to "recommend [to Congress] such Measures as he shall judge necessary and expedient,"⁴³ the president plays a role in the legislative process.

Congress has the power to declare war, to raise and support armies, to provide and maintain a navy, and to make rules for the land and naval forces, and has certain powers to govern and use the militia (state military forces).

The Supreme Court and lower federal courts have judicial power over all cases arising under the Constitution and laws of the United States. This includes the interpretation of the military powers granted to the president and Congress, and interpretation of provisions of the Bill of Rights protecting individuals against governmental powers.

The Constitution imposes no requirement, preference, or prohibition for *prior* military service by either elected or appointed federal officials. Additional government service by *present* military personnel is addressed in the "Incompatibility Clause" of Article I, Section 6, discussed later. By implication, the Constitution forbids further statutory or regulatory qualifications for the president or members of Congress than those imposed by the Constitution. The existing qualifications relate solely to age, place of birth, and residence.

The drafters of the Constitution expressed no view of their attitude toward military veterans in positions of governmental leadership. However, a significant number of the drafters had seen military service in the Revolution or earlier wars. Those who had not fought were usually closely involved with military issues in their work in the states and the Continental Congress. Further, their military experience (whether in uniform or civilian leadership) had been close to home. Few counties in the colonies had been more than a day's march from some military activity during the six years of war from Lexington to Yorktown. Lastly, most participants in the Constitutional Convention assumed George Washington, the new nation's preeminent veteran, would be the first president.

The First Congress, which convened in March 1789, reflected the Revolutionary War experience of America's leadership. Half of the twenty-six senators and forty-one of sixty-seven House members had military experience of one kind or another.⁴⁴ The new commander in chief was America's most celebrated soldier. When this Congress adopted the Bill of Rights, it excluded the military from the application of the grand jury provision of the Fifth Amendment.⁴⁵ It also rejected proposed amendments that condemned

43. U.S. CONST. art. II, § 3.

44. Biographical information is drawn from *BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS: 1774-1989* (Kathryn Allamong Jacob & Bruce A. Ragsdale eds., 1989).

45. See U.S. CONST. amend. V.

standing armies and required the subordination of the military to the civilian power.⁴⁶ The initial Congresses also adopted the laws that would create a permanent federal military and naval establishment.⁴⁷

The constitutional provision most directly addressing the military status of federal officials is the "dual office" or "incompatibility" provision applicable to legislators. The provision of Article I, Section 6 provides "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."⁴⁸

During the Vietnam War, opponents of the war brought suit against members of Congress to prevent them from holding military reserve commissions.⁴⁹ The evidence showed that over 100 members of recent Congresses held some form of reserve commission.⁵⁰ The plaintiffs argued that the dual offices placed the legislator-reservists in jeopardy of being coerced by the commander in chief (for example, by a call to active duty or a discharge from the reserves) and subject to bias in carrying out their duties as legislators.⁵¹ More directly, the plaintiffs contended that the legislator-reservists constituted a substantial part of the support for continuing the Vietnam War.⁵²

Both the trial and appellate courts agreed that the plaintiffs' claims could be heard by the court.⁵³ On the merits of the case, they agreed with the plaintiffs.⁵⁴ A reserve commission was held to be a federal "office."⁵⁵ Accordingly, the Incompatibility Clause made a member of Congress ineligible to hold a reserve commission.⁵⁶

The United States Supreme Court decided the case as a matter of standing. The Court ruled that neither as citizens nor as taxpayers did the plaintiffs have a legal basis to ask the Court to rule on the incompatibility issue.⁵⁷ That ruling barred the plaintiffs from court and ended the case without a Supreme Court ruling interpreting the

46. See 1 ANNALS OF CONG. 780-81 (1790); 1 DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS OF THE UNITED STATES OF AMERICA (Linda Grant DePauw ed., 1972).

47. See An Act to Provide a Naval Armament, 1 Stat. 350-51 (1794); An Act More Effectually to Provide for the National Defense by Establishing a Uniform Militia Throughout the United States, 1 Stat. 271 (1792).

48. U.S. CONST. art. 1, § 6.

49. See *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208 (1974).

50. See *id.* at 210 n.2.

51. See *id.* at 212.

52. See *id.* at 211.

53. See *id.* at 212-14.

54. See *id.*

55. See *id.* at 214.

56. See *id.*

57. See *id.* at 222, 228.

Incompatibility Clause.⁵⁸ The dissenting opinions of Justices Douglas and Marshall suggested that they would have reached the same conclusions as the lower courts—Congresspersons could not be reserve officers.⁵⁹

The marked decline in congressional reservists over a quarter-century substantially mooted the issue. Although the available congressional biographies do not positively identify all present reserve officers, the number presently appears to be fewer than a dozen.

Could Congress by law require (or forbid) some or all of its members from having military experience? Aside from the Incompatibility Clause discussed but not resolved in *Schlesinger*, the Constitution is silent on the issue. However, the Supreme Court in other contexts has made clear that Congress lacks power to add to the constitutional qualifications for membership.⁶⁰

The issue of military experience in the Congress also calls to mind the Supreme Court's observations in *Greer v. Spock*.⁶¹ The narrow holding of this 1976 opinion was that the military was entitled to forbid partisan political campaign activity (specifically, the third-party presidential campaign of Dr. Benjamin Spock) from a military installation.⁶²

The Supreme Court sustained the military action on several grounds. First, it rejected the claim that military installations should be treated as public fora, like public parks, in which every variety of First Amendment activity could take place.⁶³ The Court tartly observed: "[I]t is consequently the business of a military installation like Fort Dix to train soldiers, not to provide a public forum."⁶⁴

Second, the case recognized the considerable power of the military commander over his installation. Citing the earlier case of *Caf-*

58. *See id.* at 216.

59. *See id.* at 232, 235.

60. The pertinent recent case is Representative Adam Clayton Powell's action against the House of Representatives. *See Powell v. McCormack*, 395 U.S. 486 (1969). The House voted to "exclude" Powell from membership based on his allegedly corrupt behavior as a Congressman. *See id.* at 493. Powell challenged the exclusion as beyond congressional powers. *See id.* The Supreme Court agreed with Powell. It held that the action of the House did not fall within Article I, Section 5, Clause 2 of the Constitution, which gave Congress the power to "expel" members by a two-thirds vote. *See id.* at 550. The action of exclusion for conduct in effect added an additional qualification to those spelled out in the Constitution. The Court observed: "[I]n judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution." *Id.* This would strongly suggest that the military experience, if any, of the members of Congress is left to the electoral choices of the voters in the 50 states. *See also United States Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995).

61. 424 U.S. 828 (1976).

62. *See id.* at 839.

63. *See id.* at 836.

64. *Id.* at 838.

eteria & Restaurant Union, Local 473 Workers v. McElroy,⁶⁵ the Court referred to the "historically unquestioned power of [a] commanding officer summarily to exclude civilians from the area of his command."⁶⁶

Third, and of most pertinence to our topic, the Court spoke of the value of:

keeping official military activities . . . wholly free of entanglement with partisan political campaigns of any kind. . . . [T]he military as such is insulated from both the reality and the appearance of acting as a handmaiden for partisan political causes or candidates.

Such a policy is wholly consistent with the American constitutional tradition of a politically neutral military establishment under civilian control. It is a policy that has been reflected in numerous laws and military regulations throughout our history.⁶⁷

Scholars of American civil-military relations have emphasized that the subject is far more sophisticated than the simple inquiry: "Has the military avoided seizing power from the civilian authorities?"⁶⁸ Healthy civil-military relations and a sensible "civilian control of the military" require mutual respect and understanding between the civilian leadership and the military. The military must be respectful of ultimate civilian authority and the non-military factors that drive national security decisions. The civilian authorities must be respectful of the military's professionalism and its need for non-partisanship. The civilian leadership must also give considerable deference to military expertise in military matters. The micro-managing president or Congress may be a less visible threat than the overreaching general or admiral. But they both harm the goal of an effective and professional military under civilian authority.

The United States Supreme Court has maintained that balance in its military decisions in the half-century since World War II. In broad outline, two themes have guided the decisions. The first has been caution over the intrusion of the military (whether acting on its own or acting under the orders of civilian leadership) into the civilian world. One memorable illustration was the Court's rejection of President Truman's seizure of the steel industry in order to maintain Korean wartime production in *Youngstown Sheet & Tube v. Sawyer*.⁶⁹ To affirm the President's action—which three justices were

65. 367 U.S. 886 (1961).

66. *Greer v. Spock*, 424 U.S. at 838 (quoting *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 367 U.S. at 893).

67. *Id.* at 839.

68. The classic works remain SAMUEL P. HUNTINGTON, *THE SOLDIER AND THE STATE, THE THEORY AND POLITICS OF CIVIL-MILITARY RELATIONS* (1957), and JANOWITZ, *supra* note 3.

69. 343 U.S. 579 (1952).

ready to do⁷⁰—would have assuredly given a broad scope to presidential powers as commander in chief in non-military contexts.

A second set of cases involve the rejection of military criminal jurisdiction over a variety of defendants connected to, but not actually members of, the military. Justice Black's language in *United States ex rel. Toth v. Quarles*⁷¹ speaks for the entire line of decisions: "Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service."⁷² It should be recalled that this line of decisions restricting military court-martial authority overturned an express grant of jurisdiction from Congress.

The second theme apparent in Supreme Court cases recognizes that within the military realm, the military, as directed by the Congress and the president, has wide discretion in setting standards that may not accord with civilian constitutional standards. In the realm of military criminal justice, the Court has recognized that military status alone is sufficient to authorize court-martial jurisdiction.⁷³ Other cases have upheld criminal statutes that would probably fall afoul of vagueness standards in civilian criminal jurisprudence⁷⁴ and sustained some of the uniquely military aspects of the composition of court-martial.⁷⁵ Likewise, the recognition of the military as a "separate society" has sustained uniform regulations against challenges that they violate the Free Exercise Clause,⁷⁶ controls on soldier speech and petition,⁷⁷ and the single sex military draft.⁷⁸ A related line of cases has given the military control over access to

70. *See id.* at 710 (Vinson, C.J., Reed & Minton, J.J., dissenting).

71. 350 U.S. 11 (1955) (rejecting court-martial jurisdiction over former servicemen for crimes committed while in the military).

72. *Id.* at 22. *See Kinsella v. United States ex rel. Singleton*, 361 U.S. 234 (1960) (rejecting court-martial jurisdiction over civilian spouse of service member for non-capital offense); *McElroy v. United States ex rel. Guagliardo*, 361 U.S. 281 (1960) (rejecting court-martial jurisdiction over civilian employee of overseas military force).

73. *See, e.g., Solorio v. United States*, 483 U.S. 435, 450-51 (1987) (affirming the conviction of a serviceman for criminal conduct committed while a member of Armed Services).

74. *See, e.g., Parker v. Levy*, 417 U.S. 733, 755-56, 761 (1974) (upholding conviction for violating Articles 90, 133, and 134 of the Uniform Code of Military Justice).

75. *See, e.g., Weiss v. United States*, 510 U.S. 163, 165 (1994) (holding that the current method of appointing military judges does not violate the Appointments Clause and that the lack of a fixed term of office for military judges does not violate the Due Process Clause). *But see Ryder v. United States*, 115 S. Ct. 2031, 2038 (1995) (reversing a conviction by court-martial because judges not appointed according to dictates of Appointments Clause).

76. *See, e.g., Goldman v. Weinberger*, 475 U.S. 503, 507-10 (1986) (upholding military's authority to prohibit the wearing of a yarmulke by officer while on duty).

77. *See, e.g., Brown v. Glines*, 444 U.S. 348, 354-58 (1980) (allowing military to prohibit the distribution of petitions on Air Force buses).

78. *See Rostker v. Goldberg*, 453 U.S. 57 (1981).

military installations in the face of challenges to the lack of due process⁷⁹ and the deprivation of First Amendment rights.⁸⁰

The Court understands that many of these decisions are either made by the civilian leadership or subject to civilian review. However, the reality is that Congress may be quite content to take the lead of the uniformed military on many of these matters. Quite possibly, the further removed civilian leaders are from first-hand experience with the military, the more likely they are to defer to military expertise.

VII. CONCLUSION

Is America's military force fated to be run by citizens without military service? The evidence would suggest such a conclusion.

In theory, the recently retired career soldier may be an attractive political candidate. Witness Colin Powell. But the professional soldier also brings some disadvantages, as General Al ("I'm in charge here") Haig discovered in an aborted 1988 presidential campaign that rarely saw his poll ratings rise above low single digits. Or witness the defeat of retired Brigadier General Peter Dawkins in the New Jersey Senate race of 1992. Dawkins seemingly offered everything: West Point football All-American, Rhodes Scholar, combat experience, fast track promotions to general, and then private sector business experience before looking to politics. Yet he lost to an incumbent who almost certainly will make no one's list of influential statesmen of the century. As scholars have observed, it is the rare military careerist who achieves marked political success.⁸¹

What of the short-time soldier (the one-term officer or enlisted person)? These veterans have been the core of the connection between military and civilian leadership for the past half-century. Now their numbers are becoming scarce.

The record to date of the volunteer era legislators suggests that military service has ceased to be an essential part of the political résumé. In theory, military service is still attractive. In the modern practice of politics, however, it is open to question whether veterans are likely to get nominated or elected. Aspects of military service cut against building a political résumé. Consider what ten (or even five) years in the military is likely to do for the potential candidate. Active military service will almost invariably take the future candidate away from his or her home district, pay only modestly, limit political activity while in service, and significantly constrain the op-

79. See, e.g., *Cafeteria Restaurant Workers Union, Local 473 v. McElroy*, 367 U.S. 886 (1961).

80. See, e.g., *Greer v. Spock*, 424 U.S. 828 (1976).

81. Morris Janowitz observed in 1960: "To be a professional officer is an almost insurmountable barrier against election to the national legislature, whereas a war-time veteran's status is a useful political asset." JANOWITZ, *supra* note 3, at 358.

portunities for even regional visibility. How many thirty-five-year-old people whose career has been in the military can realistically play in congressional elective politics? No money, few contacts, no name recognition, and no political base don't describe many contemporary winning candidates.

The veteran must also recognize that prior military service may raise some political disadvantages with important constituents. No modern veteran can claim the politically appealing status of the draftee or forced volunteer. The decision to elect military service over other career options reflects political attitudes. The military service itself may raise red flags from women's groups (recall that we have no women veterans in Congress), gay and lesbian groups, pacifists, environmental groups, anti-federal government folk, and others. These factors may be insignificant in some districts or states. They may be outweighed by the benefits of military service in others. Nevertheless, the veteran does carry some baggage.

Similar factors may discourage judicial appointments of military veterans. The classic wisdom that a federal judge is a lawyer who knew a senator remains accurate. Political connections (and, increasingly, money) are useful. The military career offers few of either.

What may preserve the veteran presence in government are the reserves and National Guard. Here, active duty service is short. An initial training assignment is followed by weeknight, weekend, and two-week summer refreshers, and the possibility of mobilization for wartime. The reservist or guardsman can continue the civilian career, keep a home base, and engage in some political activity.

The seemingly inevitable decline of a veteran presence also suggests the need for active steps to recruit and support veteran candidates, executive branch appointees, and judicial nominees. Two centuries ago similar thoughts gave rise to the Order of the Cincinnati, a organization of Revolutionary War veterans.⁸² The more extreme among its sponsors envisioned a military aristocracy to rule the new nation.⁸³ George Washington and others steered the organization away from such tendencies to the benefit of the Republic.⁸⁴

Today, the necessity of encouraging veterans to participate in civilian government services stems not from a desire for dominance, but from a desire to avoid losing a military perspective altogether. The political factors discussed earlier also suggest these efforts may only slightly improve veterans' presence in government. They also suggest that the candidates likely to be successful are those with attractive political attributes and a military record, not someone whose main credential is prior military service.

82. See FRANK DONOVAN, *THE GEORGE WASHINGTON PAPERS 190-91* (1964).

83. See *id.*

84. See *id.*

The larger concern involves how to acquaint the non-veteran government officials with the military and military issues. The military itself may be happy to perform this mission, especially when budget dollars hang in the balance. And the military can do public relations brilliantly. Few day-care center tours or mine reclamation projects can compete with a carrier visit or an A-10 flyover.

Such show and tell is useful, but hardly ideal. What is needed is a more balanced and sustained exposure to the strengths and shortcomings of the military. That will not assure flawless decision-making. But it will offer the best chance for preserving healthy military-civilian relations in the twenty-first century.