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14. ABSTRACT Retired flag officers should refrain from public speaking and commentary on matters related to current military activities, particularly at the theater-strategic and operational levels of war. There are many legal and practical reasons that retired flag officers should restrict free-flowing public speech on matters related to ongoing operations in which they have in-depth knowledge. This monograph examines how unrestricted speech can adversely impact an operational commander's strategic communication, fall outside the bounds of military professionalism, and undermine the civil-military relationship in the United States, thus providing a basis for statutory limitations on speech by retired flag officers. From a legal and regulatory perspective, this analysis evaluates which statutes and Department of Defense directives restrict the public speech of active duty members and whether those restrictions apply to retired officers. The discussion then presents the most common argument against restricting public speech of retired officers and concludes with a recommendation suggesting Congressional legislation aimed at clarifying the expectations for free speech of retired generals and admirals.					
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**NAVAL WAR COLLEGE
Newport, R.I.**

Strategic Communication: Restricting the Free Speech of Retired Officers

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

31 October 2008

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Abstract

Retired flag officers should refrain from public speaking and commentary on matters related to current military activities, particularly at the theater-strategic and operational levels of war. There are many legal and practical reasons that retired flag officers should restrict free-flowing public speech on matters related to ongoing operations in which they have in-depth knowledge. This monograph examines how unrestricted speech can adversely impact an operational commander's strategic communication, fall outside the bounds of military professionalism, and undermine the civil-military relationship in the United States, thus providing a basis for statutory limitations on speech by retired flag officers. From a legal and regulatory perspective, this analysis evaluates which statutes and Department of Defense directives restrict the public speech of active duty members and whether those restrictions apply to retired officers. The discussion then presents the most common argument against restricting public speech of retired officers and concludes with a recommendation suggesting Congressional legislation aimed at clarifying the expectations for free speech of retired generals and admirals.

“Dribbling out mixed, unsynchronized information instead of massing the release of unequivocal messages backed by a substantial body of facts is especially destructive during times of crisis or when the government and military find themselves under enormous public or political pressure, fastidious public scrutiny, and emotional criticism.”¹

– Brigadier General M. K. Eder

INTRODUCTION

Retired flag officers should refrain from public speaking and commentary on matters related to current military activities, particularly at the theater-strategic and operational levels of war. There are many legal and practical reasons that retired flag officers should restrict free-flowing public speech on matters related to ongoing operations in which they have in-depth knowledge. This monograph will examine how unrestricted speech can adversely impact an operational commander’s strategic communication, fall outside the bounds of military professionalism, and undermine the civil-military relationship in the United States, thus providing a basis for statutory limitations on speech by retired flag officers.

From a legal and regulatory perspective, this analysis will determine which statutes and Department of Defense directives restrict the public speech of active duty members and whether those restrictions apply to retired officers. The discussion will then present the most common argument against restricting public speech of retired officers and will conclude with a recommendation suggesting Congressional legislation aimed at clarifying free speech and its obligations for retired generals and admirals.

¹ Mari K. Eder, “Toward Strategic Communication,” *Military Review* 87, no. 4 (July/August 2007): 62.

DISCUSSION / ANALYSIS

Role of Strategic Communication

The 2006 Quadrennial Defense Review Strategic Communication Execution Roadmap defined strategic communication as engaging “key audiences to create, strengthen, or preserve conditions favorable to advance national interests and objectives through the use of coordinated information...”² Key to this definition is the concept of advancing objectives, not by means of haphazard release of information, but through a planned, integrated, and coordinated strategy. This analysis will describe the link connecting public speech by retired flag officers and its undermining effect on an operation’s strategic communication plan.

The connection between the operational level of war and public speech by retired flag officers is the role of an operational commander’s strategic communication in accomplishing his objectives. Admiral James Stavridis, Commander, U.S. Southern Command asserted that strategic communication plans should be developed at the operational level of war.³ He emphasized that strategic communication is used to *influence* support of an operational commander’s objectives—an “enabling capability for our policy and planning decisions and actions.”⁴ Further, Army Field Manual 3-24 states that “the information environment is a critical dimension of such internal wars and insurgents attempt to shape it to their advantage.”⁵ In essence, strategic communications are information operations designed to favorably modify the information battle space.

² Frank Thorp, IV, “Strategic Communication in the Department of Defense: A Continuous Process,” *Joint Forces Quarterly* 45 (2nd Quarter 2007): 2.

³ James G. Stavridis, “Strategic Communication and National Security,” *Joint Forces Quarterly* 46 (3rd Quarter 2007): 6.

⁴ Stavridis, “Strategic Communication and National Security,” 4.

⁵ U.S. Army, *Counterinsurgency*, Field Manual (FM) 3-24 (Washington, DC: Headquarters Department of the Army, 15 December 2006), 1-3.

The importance of an operational commander's strategic communication effort cannot be overstated. The Department of Defense embraced the necessity to actively employ information operations when it organized the Office of Strategic Influence in 2001.⁶ This office was chartered "to design and facilitate whenever possible strategic communication policies and plans to effectively advance U.S. national security" by driving public opinion toward support of the war on terrorism.⁷ Strategic communication, an enabling capability for an operational commander, must be properly and cohesively implemented to produce the desired effect.

Army Brigadier General Mari Eder described strategic communication as "massing information" in a cohesive and synchronized manner to support operational objectives. She strongly emphasized the key to strategic communication is that it "avoids the destructive effects of mixed messages."⁸ Strategic communication, distinguished from other forms of information operations, targets specific audiences, utilizes a range of communication mechanisms, and most importantly, offers a unified message across the communication spectrum to accomplish the commander's objectives.⁹ Uncoordinated, independent positions, offered by credible sources in the military establishment, can serve to dilute or undercut an operational commander's targeted strategic communication campaign.

Frustrated by the mixed messages communicated to the media by retired flag officers prior to the start of Operation Iraqi Freedom, Navy Staff director Rear Admiral John Stufflebeem said, "There are retirees who can offer their opinions about how they might see it, which isn't necessarily how General Franks [Commander, U.S. Central Command] has

⁶ Carnes Lord, "On the Nature of Strategic Communications," *Joint Forces Quarterly* 46 (3rd Quarter 2007): 83.

⁷ Stew Magnuson, "War of Words," *National Defense* 92, no. 644 (July 2007): 17.

⁸ Eder, "Toward Strategic Communication," 62.

⁹ Eder, "Toward Strategic Communication," 63.

articulated it to our national command authorities.”¹⁰ Although retired flag officers are removed from the daily operations of an operational commander’s staff, the public perceives them as knowledgeable, credible sources of information.

Retired general officers, consulting for the national media, often second guess active duty operational commanders. Major General Perry Smith, USAF retired, critiquing the air component commander’s bombing strategy over Afghanistan in Operation Enduring Freedom told NBC News, “If I were running the air campaign I would have a more robust one.”¹¹ By publicly criticizing a fellow flag officer’s chosen course of action, General Smith’s retrospective analysis for the public served to weaken support for the operational commander’s plan. If an adversary had observed General Smith’s public contradiction on NBC, it would likely have provided moral encouragement to learn that the American effort was not united.

In a similar manner during Spring 2006, a group of six retired Army and Marine general officers spoke out publicly in newspaper opinion pages across the country against Secretary of Defense Rumsfeld’s role in planning the invasion of Iraq and its subsequent occupation. This outspokenness, unusual not only for its pointed criticism, but that it occurred during a time of war, became known as “The Revolt of the Generals” in the national media.¹² West Point cadets, recognizing the potentially damaging impact of this public revolt, were interviewed for a story by Newsday: “Even those who saw merit in the substance of the generals’ outcry tore into them for speaking out publicly fearful that their words could

¹⁰ Alessandra Stanley, “A Nation Challenged: The Media; Retired Officers Raise Awareness on Television and Hackles at the Pentagon,” *New York Times*, 3 November 2001, <http://query.nytimes.com/gst/fullpage.html?res=9B02E0D91639F930A35752C1A9679C8B63&sec=&spon=&pagewanted=1> (accessed 12 October 2008).

¹¹ Stanley, “A Nation Challenged”.

¹² Michael Duffy, “The Revolt of the Generals,” *Time*, 16 April 2006, <http://www.time.com/time/printout/0,8816,1184048,00.html> (accessed 13 October 2008).

damage morale in Iraq.”¹³ Key to the cadets’ concern was the potential damage this conflicting message could have on one vital source of our soldiers’ strength: the support of the American public.

The previous examples of unrestricted free speech by flag officers have emphasized their potentially undermining effect on commanders’ unified strategic communication efforts. Public statements by flag officers carry significant weight based on society’s view of their professionalism and the civil-military relationship. Let us examine the interaction between retired flag officers, professionalism, and the hierarchy between civilian leadership and senior military officers.

Professionalism

Military officers, both active duty and retired, view themselves not just as part of society at large, but answerable to a higher standard as members of a profession.¹⁴ Three essential attributes, according to Samuel P. Huntington, set apart professions from other occupations: expertise, corporateness, and responsibility.¹⁵ Key to this discussion on restricting speech is the characteristic of corporateness. In essence, corporateness is the unifying identity and code of conduct that constituents of a profession enforce upon their fellow members.

Throughout the American officer corps, and even more evident among the ranks of flag officers, its colleagues adhere to established standards of performance which demand loyalty to all members of the profession of arms. Corporate loyalty to the profession,

¹³ Craig Gordon, “An Army of Dissent: Cadets Wrestle With Handling of Iraq War,” *Newsday*, 30 April 2006, <http://newsday.com/entertainment/tv/ny-uswest304723871apr30,0,3189531.story> (accessed 13 October 2008).

¹⁴ Anthony E. Hartle, *Moral Issues In Military Decision Making* (Lawrence, KS: University Press of Kansas, 2004), 22.

¹⁵ Samuel P. Huntington, *The Soldier and the State* (Cambridge, MA: Belknap Press, 1957), 8.

therefore, demands restraint on the part of retired flag officers when their public discourse could be viewed as disunified, divisive, or unsupportive of an operational commander's objectives. The catastrophic effects resulting from a commander's failure to achieve objectives goes against the military profession's obligation to society.¹⁶ Retired flag officers are therefore professionally bound to support or, at a minimum, refrain from undermining their active duty counterparts. In addition to corporateness, moral and ethical standards of conduct within the military separate its officers as professionals.

Members of the military profession have matured a body of ethics which bounds the conduct of its members.¹⁷ Professional ethics, in the context of unrestricted speech by members of the military, specifically pertains to conflicts of interest in trading military prestige for personal gain. Flag officers, upon confirmation, are given the authority to command elements of the armed forces and are entrusted with the stewardship of American personnel and resources. In return for this trust and elevated social status, society expects from its flag officers a selfless commitment to national objectives without the motivation for personal profit.

Retired generals and admirals, based on their rank and successes during distinguished careers, have proven to be in demand as highly paid consultants in the national news media. In 2001, the New York Times counted 17 retired military officers working as commentators for cable news programs.¹⁸ Those retired officers earned significant compensation, between \$500 and \$1,000, for each television appearance.¹⁹ An ethical breach occurs when retired

¹⁶ Hartle, *Moral Issues*, 17.

¹⁷ Hartle, *Moral Issues*, 27.

¹⁸ Stanley, "A Nation Challenged".

¹⁹ David Barstow, "Behind TV Analysts, Pentagon's Hidden Hand," *New York Times*, 20 April 2008, http://www.nytimes.com/2008/04/20/washington/20generals.html?pagewanted=1&_r=1 (accessed 12 October 2008).

flags exchange their credibility and insider access for financial benefit as members of the military profession. Another central component of the ethical code among military professionals is the concept of accountability.

From an operational perspective, accountability defines a commander's responsibility, up and down the chain of command, to answer for his actions and decisions. Accountability fundamentally rests with the active commander and is not assigned to peripheral commentators, such as retired flag officers. Whereas, retirees may suggest courses of action without consequence, in an operational situation, the commander in theater is accountable for the outcome of his decisions. The following example highlights how an agenda, advocated by a retired flag officer, subverted the military chain of command.

Washington Post writer Bob Woodward documented a conversation in summer 2007 between retired General Jack Keane and Army Chief of Staff, General George Casey. Prior to their conversation, General Keane had, on his own initiative, established a "back-channel" relationship with the White House.²⁰ He had independently met with the Vice President five times in the preceding six months to offer advice supporting the U.S. Central Command (CENTCOM) plan for a 30,000-troop surge in Iraq. General Keane's position directly conflicted with General Casey's push to reject the surge.

Not only had retired General Keane voiced his opinions at the White House, but on multiple occasions had independently traveled to Iraq to communicate messages from the President to the operational commander in Iraq, General David Petraeus. This direct line of communication, which avoided both the Joint Chiefs and CENTCOM commander, clearly contravened the established military chain of command. General Casey understandably

²⁰ Bob Woodward, "You're Not Accountable, Jack: How a Retired Officer Gained Influence at the White House and in Baghdad," *Washington Post*, 9 September 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/08/AR2008090802839.html> (accessed 9 September 2008).

resented retired General Keane's forceful sponsorship of his own agenda and his breach of the chain of command. He said, "We feel--the chiefs feel--that you are way too out front in advocating a policy for which you're not accountable. We're accountable. You're not accountable, Jack. And that's a problem. It's not appropriate for a retired general to be so far forward advocating a policy that he is not responsible or accountable for."²¹

Finally, from a professional standpoint, retired flag officers should refrain from public discourse related to ongoing military activities about which they have expertise and insider knowledge to avoid the potentially dangerous possibility of revealing classified or operationally sensitive details. Obviously, even inadvertent circulation of operationally relevant information could jeopardize American military personnel by providing intelligence to the enemy. Air Force Chief of Staff, General Michael Dugan was fired by the Secretary of Defense in 1990 during Operation Desert Shield for speaking "in considerable detail about classified operational plans, including the use of Saudi bases for B-52 flights in wartime and training routes for the supersecret F-117A stealth fighters."²²

Although generals may not intend to reveal military intelligence or feel that the security risk is small, as in General Dugan's situation,²³ the potential for endangering Americans always exists, especially for retired officers less intimately familiar with the details of ongoing operations. As shown, public dissent by flag officers can undermine the unified objectives and strategic communication of commanders, and should be avoided not

²¹ Woodward, "You're Not Accountable, Jack".

²² Bruce van Voorst, "Ready, Aim, Fired," *Time*, 1 October 1990, <http://www.time.com/time/printout/0,8816,971272,00.html> (accessed 13 October 2008).

²³ R.W. Apple, Jr., "Confrontation in the Gulf: The General's Error," *New York Times*, 19 September 1990, <http://query.nytimes.com/gst/fullpage.html?res=9C0CE6DD123BF93AA2575AC0A966958260> (accessed 12 October 2008).

only on the basis of professionalism, but also to preserve the proper balance between civilian and military authority in this country.

Civil-Military Relationship

In addition to upholding standards of professionalism, another underlying argument against public dissent by military officers is its corrosive effect on the Constitutional balance between military and civilian authority.²⁴ Civilian control of the military is a fundamental element of our democracy. In principle, uniformed officers are expected to advise their civilian leaders on military matters, and following a decision, to obey the lawful orders given by those civilian leaders.

The Goldwater-Nichols Act spelled out the “civil-military bargain” linking four-star combatant commanders and the Secretary of Defense. Under this construct, military commanders are obligated to “communicate inconvenient, objective assessments” while acknowledging that final decision making authority rests in the hands of governing civilians.²⁵ On several occasions throughout American history, the national command authority has actively enforced the subordinate relationship between military officers and their civilian leaders.

One notable example was President Truman’s firing of General Douglas MacArthur in April 1951. MacArthur had served brilliantly throughout the Pacific Campaign in World War II and had engineered the successful U.S. invasion at Inchon during the Korean War. However, as Supreme Commander Allied Powers in Japan, General MacArthur publicly (in

²⁴ Mackubin T. Owens, “Our Generals Almost Cost Us Iraq,” *Wall Street Journal*, 24 September 2008, <http://online.wsj.com/article/SB122221472541069353.html> (accessed 26 September 2008).

²⁵ Damon Coletta, “Courage in the Service of Virtue: The Case of General Shinseki’s Testimony Before the Iraq War,” *Armed Forces and Society* 34, no. 1 (October 2007): 110.

the national media) advocated a plan to invade mainland China with United Nations forces. This was in direct opposition to President Truman's strategy to simply stop the Communists in Korea and avoid escalation.²⁶ Truman promptly relieved General MacArthur to reassert the President's dominance within the civil-military relationship as commander in chief of the armed forces.

More recently, CENTCOM commander Admiral William Fallon was replaced and forced into early retirement after publicly contradicting presidential policy. Admiral Fallon had openly advocated, most notably in an interview with *Esquire Magazine*, a conciliatory approach toward Iran and a renewed focus on the operation in Afghanistan which directly conflicted with the Bush Administration's strategy. Admiral Fallon said his early retirement was precipitated by "a disconnect between my views and the president's policy objectives."²⁷ Again, a military leader's role is to advise, then obey lawful orders.

While active duty senior officers have generally remained publicly in step with the decisions and policies of their civilian leaders, notwithstanding the examples of MacArthur and Fallon, retired officers have increasingly not felt compelled to abide by this same policy. In recent instances, such as the "Revolt of the Generals" noted previously, retired senior military officers have begun voicing their opinions regarding ongoing military operations with increasing frequency.²⁸ Undoubtedly, as retirees, these officers view themselves as private citizens, free to express their opinions. Even if outside the formal chain of command, retired generals and admirals continue to maintain a respected status within the military

²⁶ Jon Guttman, "President Harry Truman's Decision to Fire Douglas MacArthur was a Courageous Act of Political Suicide," *Military History* 18, no. 1 (April 2001): 6.

²⁷ Thom Shankar, "Mideast Commander Retires After Irking Bosses," *New York Times*, 12 March 2008, <http://www.nytimes.com/2008/03/12/washington/12military.html> (accessed 13 October 2008).

²⁸ Martin L. Cook, "Revolt of the Generals: A Case Study in Professional Ethics," *Parameters* (Spring 2008): 7.

establishment. Therefore, when publicly articulated by retired flag officers, opinions contrary to national policy or operational objectives erode the civil-military relationship.

At the operational level, public dissent by retired flag officers can undermine the unified objectives and strategic communication of commanders in the same manner as public dissent by active duty officers. Therefore, retired flag officers should consider this potential, and sometimes unforeseen, adverse effect of their comments before expressing their opinions publicly. In addition to self-restraint, officers are legally inhibited from engaging in unrestricted public speech on matters pertaining to military operations. Based on the arguments regarding professionalism and the civil-military relationship, the legislative branch has enacted laws and the Department of Defense has issued policy restricting speech which could undermine a commander's ability to achieve his operational objectives.

Legal Restrictions on Speech

From a statutory perspective, both Title 18 and Title 10 United States Code (USC) are relevant when considering the legality of unrestricted speech in matters pertaining to current military operations. Title 18 USC, the government's set of federal criminal laws, Section 2388, *Activities Affecting Armed Forces During Time of War*, forbids citizens from attempting to cause insubordination or disloyalty in the military.²⁹ Similarly, Title 10 USC, which lays out the legal structure for our nation's armed forces, expressly prohibits providing intelligence, either through direct or indirect communication, to an enemy without proper authority.³⁰ Although the Uniform Code of Military Justice (UCMJ), whose authority derives from Title 10 USC, does not explicitly prohibit public commentary regarding

²⁹ *Crimes and Criminal Procedure, U.S. Code*, Title 18, sec. 2388 (3 January 2006).

³⁰ *Armed Forces, U.S. Code*, Title 10, sec. 904 (3 January 2006).

ongoing military operations, two of its articles provide the legal framework to enforce restrictions on speech.

Article 134, *Disloyal Statements*, forbids discourse which could be classified as disloyal to the United States or prejudicial to the good order and discipline of the armed forces.³¹ Similarly, Article 106a, *Espionage*, prohibits speech which communicates “information relating to the national defense...used to the injury of the United States.”³² Therefore, the UCMJ supports restricting military members’ speech deemed harmful to the nation and its ability to conduct war. Clearly, information thrust into the public domain by officers with access to ongoing theater-strategic military operations could be used by adversaries to develop counterstrategies and inflict harm on American forces.

Furthermore, Department of Defense (DoD) policy, outlined in Department of Defense Directive 1325.6, states that while the department will attempt to preserve its members’ First Amendment rights; commanders must not tolerate conduct that would “destroy the effectiveness of his or her unit.”³³ Although they must balance individual rights versus unit effectiveness, DoD clearly expects its commanders to give priority to mission objectives and ultimately the security of the United States.

The fact that active duty officers are restricted by the UCMJ and DoD policy is widely recognized. However, the legal status of retirees regarding free speech about ongoing military operations is not as widely understood. It might be surprising that on the same basis which underpins limitations to free speech by active duty officers, the UCMJ applies equally to retired officers.

³¹ Joint Service Committee on Military Justice, *Manual for Courts-Martial United States* (Washington, DC: US Government Printing Office, 2008), IV-121-IV-122.

³² *Manual for Courts-Martial*, IV-45.

³³ Department of Defense, *Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces*, Department of Defense Directive (DODD) 1325.6 (Washington, DC: DoD, 1 October 1996), 2.

Applicability to Retirees

The Uniform Code of Military Justice Article 2(a)(4) explicitly designates “retired members of a regular component of the armed forces who are entitled to pay” as subject to the provisions of the code and enforcement by court martial.³⁴ Therefore, retired flag officers face the same restrictions with respect to free speech as active duty members of the military. This provides a legal basis for restricting retirees’ public speech regarding information which could be used to injure the United States.

From an enforcement standpoint, the biggest impediment would be proving the retiree’s speech was injurious. An operational commander, however, could argue that any speech given by a retired officer, which sends a mixed message conflicting with his strategic communication would, by definition, cause adverse impact to his objectives, and thus harm to the United States. Although retired flag officers are legally bound to restrict their public speech in accordance with the rules of the UCMJ, many citizens counter that this violates the retirees’ First Amendment rights.

Counter Argument

The most common counter argument to restricting the public speech of retired flag officers is that as U.S. citizens, these individuals should enjoy the same right to free speech guaranteed by the constitution as all Americans.³⁵ Although this argument appeals to our sense of freedom, the fact remains that upon acceptance of a commission in the U.S. Armed

³⁴ *Persons Subject to This Chapter*, U.S. Code, Title 10, sec. 802 (3 January 2006).

³⁵ John L. Kiel, Jr., “When Soldiers Speak Out: A Survey of Provisions Limiting Freedom of Speech in the Military,” *Parameters* (Autumn 2007): 80.

Forces, individuals, in effect, enter a contract in which they agree to be bound by the legal constraints of the Uniform Code of Military Justice. That contract subjects active duty officers and retirees to Article 2 and Article 134 which restricts their speech.

In addition, many assert that commissioned officers are duty-bound to speak out in criticism of strategies or policies which, in their professional judgment, run counter to our national interests. The rationale supporting this position is that commissioned officers have sworn an oath to the U.S. Constitution, not the president or the chain of command.³⁶ In the case of the Revolt of the Generals, retired Army Lieutenant General William Odom justified public opposition to Operation Iraqi Freedom, labeling it “the worst strategic mistake in the history of the United States.”³⁷

From General Odom’s perspective, the Pentagon’s errors in leadership were so egregious that his colleagues were justified in dissenting with the commander’s strategy. His camp contended that one’s moral obligation to advocate his position overrides any concerns regarding the potential to negatively impact an operational commander’s achievement of objectives by undermining his strategic communication effort. In rebuttal, as discussed previously, the civil-military relationship in the United States expects military leaders to advise their governing civilians, and then following a decision, to obey their lawful orders. Thus, the military officer’s moral obligation is to insure that the orders he executes are lawful rather than to insist his advice be followed.

³⁶ Nathaniel Fick, “General Dissent: When Less Isn’t More,” *USA Today*, 24 April 2006, http://www.usatoday.com/news/opinion/editorials/2006-04-24-general-dissent_x.htm (accessed 13 October 2008).

³⁷ Richard J. Whalen, “Revolt of the Generals,” *The Nation*, 28 September 2006, <http://www.thenation.com/doc/20061016/whalen/print> (accessed 13 October 2008).

RECOMMENDATION AND CONCLUSION

Retired flag officers' public speech related to ongoing military operations can undermine a commander's strategic communication thereby adversely impacting his operational objectives. In situations involving retired flag officers, professionalism and preservation of our nation's civil-military relationship support the rationale behind restricting their free-flowing public discourse. Active duty officers' public speech is constrained by Article 134 of the UCMJ, while Article 2 of the UCMJ makes this restriction applicable to military retirees drawing pensions.

Given that retired flag officers have begun speaking out on issues regarding current military actions with increasing frequency, one might conclude that these individuals are unaware of the legal constraints on their public speech. Congress should therefore act to explicitly prohibit retired flag officers' unrestricted speech related to ongoing military operations. When flag officers retire from active duty, Congress confirms or disapproves their retirement requests. This confirmation process provides an opportunity for Congress to require the retiring officers to agree, in writing, to refrain from publicly commenting on issues relating to ongoing military operations. The language in this agreement should reaffirm that Article 2 designates retired officers as subject to enforcement under the UCMJ while receiving military pensions.

Although retired flag officers have the potential to undermine an active operational commander's strategic communication by publicly communicating conflicting messages in addition to exceeding the bounds of professionalism and eroding the civil-military relationship, their speech is legally restricted by the UCMJ. Congress should introduce

legislation aimed at making retired generals and admirals aware of their obligations and then expect the laws to be aggressively enforced.

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