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Alexander Hamilton

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Chapter Two

War

TWO MONTHS AFTER the battle of Princeton, Captain Hamilton was promoted to lieutenant colonel and joined George Washington's "family," or staff of aides. It is not known for certain who recommended him: possibly General Henry Knox, commander of the army's artillery, possibly General Nathanael Greene.

General Washington had been an aide himself, to a British general during the French and Indian War over twenty years ago. His demands on his own aides now were exacting. "[T]hose about me," he wrote, will be "confined from morning to eve, hearing and answering . . . applications and letters." He wanted them for more than paper-shuffling. "They ought . . . to possess the soul of the general; and from a single idea given to them, to convey his meaning in the clearest and fullest manner."¹

Washington needed such helpers—he had thirty-two over the course of the war—because his duties were so complicated. Most of the commander-in-chief's time was consumed by administration. The American army was a combination of regular troops and militiamen, who signed up for short service. Every new batch of militiamen had to be fashioned into soldiers, so that, periodically, much of the American army was starting from scratch. To pay and equip the troops, money and supplies had to be wrung from Congress and the states. Meanwhile, the war was being fought on a front that stretched from Canada to Georgia. Though there was never simultaneous fighting everywhere, conflict could arise at the most far-flung points. While Washington was

besieging Boston and defending New York, the Americans were defeated beneath the walls of Quebec and the British were repulsed from Charleston. When France entered the war as America's ally in 1777, the rebels took on the additional delicate task of dealing with French officers. (Hamilton's French proved useful.) The commander-in-chief of the Continental Army had many of the responsibilities now handled by the president, the secretary of defense, and the secretary of state. Some aides chafed at the routine, and the pressure; some proved to be unsatisfactory: Major Aaron Burr went to Washington's staff early in 1776 but lasted only ten days there. Hamilton stayed at Washington's side for four years.

In March 1777, George Washington had just turned forty-five. The face that Gilbert Stuart made famous was fifteen years in the future. Washington's chestnut hair was beginning to turn grey, and he had put on weight. But he was a vigorous man in his prime, a superb horseman, and at over six feet, a commanding presence. His looks impressed everyone who saw him. His good manners, his reserve, and his evident force of will impressed everyone who dealt with him. By leaving an aristocrat's life to serve without pay, he had impressed the nation with his commitment to republican virtue. The country's need for a hero, and for a patriarchal substitute for Washington's royal namesake, would have caused such traits to be acclaimed in him whether he possessed them or not, at least initially. Happily, he was what he seemed.

Some who came to know him better, especially those whose intelligence was alloyed with envy, discerned other qualities. Years later, Aaron Burr would tell John Adams that he "despised Washington as a man of no talents . . . who could not spell a sentence of common English." Adams replied that Burr was "unreasonable," for to his "certain knowledge, Washington was not so illiterate."² Washington was sensitive about his reputation, and apt to be irritable. When truly provoked, his temper could be explosive. He was neither glib nor clever. He enjoyed hearing jokes rather than telling them. He planned everything carefully, including his battles, but if the plans went suddenly awry, he could be slow to react. There were some subjects he knew little about: the arts (except for plays), and finance. Most Americans knew no more about

these subjects than he did. Ignorance of the second was potentially fatal for a new nation.

But beneath these limitations, and compensating for them, were virtues that manifested themselves over the arc of his career: judgment (discernment in thinking), prudence (discernment in acting), and the ability to know what he needed and to find it in others. Washington had been introduced to war and glory in his early twenties, when he was impetuous, ambitious, and not above using flattery and backstairs politics to get his way. (His impetuosity, at least, he remembered fondly, if his affection for young officers like Hamilton was any indication.) But the passage of time, his own success in the world, and the seriousness of the issues now at stake, had all refined these traits out of him. He is "no harum-scarum, ranting, swearing fellow," wrote one of the congressmen who had picked him as commander-in-chief, "but sober, steady, and calm."³

For the first time in his life—also for the last—Alexander Hamilton was meeting a man who was greater than himself. His father had been a hurtful cipher. Reverend Hugh Knox and Nicholas Cruger were helpful patrons, like good animals in a fairy tale. Myles Cooper and Samuel Seabury, despite being decades older, were easily worsted opponents (Cooper even gave Hamilton the exquisite pleasure of saving an opponent's life). Hamilton's understanding was quicker than Washington's, and his analytical powers were greater. But in every other mental or moral quality, Washington was his equal or superior.

In a few respects, their minds were very similar. Both men had a passion for order. Washington had been trained as a surveyor. Everything from his handwriting to the design of Mount Vernon showed his clean, clear eye. Hamilton could bring order out of masses of information; Washington appreciated it. Both men also had practical temperaments. Washington wanted things done right; Hamilton was confident that he could do them right. His entry into Washington's "family" was the beginning of a twenty-two-year relationship, the most important of his career.

Hamilton had already modified the military ideas he expressed as a patriotic pamphleteer. "Our hopes," he wrote the Reverend Knox in

mid-1777, "are not placed in [holding] any city or spot of ground, but in the preserving a good army . . . to take advantage of favorable opportunities, and waste and defeat the enemy by piecemeal."⁴ This overview of American strategy superficially resembled the harassing and skirmishing Hamilton had called for in "The Farmer Refuted," but six months of fighting the British in the field had shown him that they could be effectively wasted only by a disciplined and professional force. Washington's task over the next four years, assisted by his staff, was twofold: to take advantage of opportunities and to preserve a good army, under his leadership. Sometimes both tasks involved as much contention with Americans as with the British.

After Princeton, the American army had camped in central New Jersey. In the summer of 1777, the British made two moves. Lord Howe, the commander in New York, put most of his army in his fleet and sailed for points unknown, while General John Burgoyne invaded upstate New York from Canada down the line of Lake Champlain. Hamilton did not fear much from the north. "The geography of the country," he wrote a committee of New York patriots, including Gouverneur Morris, would require the invaders to maintain "a chain of posts," or forts, "and such a number of men at each as would never be practicable. . . . By hanging upon their rear, and seizing every opportunity of skirmishing, their situation might be rendered insupportably uneasy."⁵

By the fall, the situation to the south had become extremely uneasy for the Americans. Howe's fleet appeared in Chesapeake Bay, and Washington, seeing that the enemy's goal was Philadelphia, the nation's capital, hurried to meet them. The British beat him twice, at the battles of Brandywine and Germantown. Hamilton had the job of telling Congress to flee the city; he also had a horse shot in a skirmish.

Howe had marched overland to Philadelphia from northern Maryland, and the Americans still held forts in the Delaware River that could prevent his fleet from sailing up to supply him. Washington also feared that the British might try a last attack before the campaigning season ended. Reinforcements were needed.

But Washington's efforts to get them were complicated by a great American victory. The original American commander in northern New

York, General Philip Schuyler, was the head of an old Dutch landowning family, who had an estate at Saratoga, forty miles north of Albany, in Burgoyne's line of march. He had blocked the invader's path with felled trees and dammed creeks, and fortified the countryside. But Schuyler's unpopularity with the New Englanders under his command had caused him to be replaced by General Horatio Gates, a former major in the British army who had taken America's side in the Revolution. Gates took advantage of Schuyler's preparations, Burgoyne's recklessness, and the abilities of his own second-in-command, General Benedict Arnold. While Washington was losing to the British in the outskirts of Philadelphia, Gates smashed them in the woods near Saratoga, taking Burgoyne and his entire army prisoner.

The battle of Saratoga brought France into the war as America's ally, and Congress, exiled to Reading, Pennsylvania, was so grateful, it struck a gold medal in Gates's honor, and promoted James Wilkinson, the aide who brought them the news, from colonel to brigadier general. Their jubilation had political implications, which did not bode well for Washington. Gates's force had been composed largely of militia, the troops most favored by republican ideology. The "good army" of professional soldiers sought by Washington and Hamilton was a bugbear of American theorists, who saw it as a potential tool of tyrants to overawe the people and the laws. There was also a budgetary angle: since militias were raised by the states, they came cheap, while professional soldiers cost money: "Are we to go on forever in this way, maintaining vast armies in idleness. . . ?"⁶ Congressman John Adams had complained earlier in the year. Saratoga looked like a vindication of both antimilitarism and thrift.

The advocates of militias did not take the circumstances into account: Burgoyne, by marching into a wilderness miles from his base, had committed another, larger Bunker Hill, and in such situations militia-men rallied enthusiastically. But for hard battles in succession, or months of tense inaction, only regular troops would serve. Still, victory was victory—Gates had won; Washington had not. Gates at his headquarters in Albany was conscious of his new stature; he sent word of Saratoga directly to Congress, rather than to his commander-in-chief.

Washington gave the job of getting troops from Gates to Hamilton. The twenty-year-old aide had to juggle military and political considerations. Gates had three brigades under his command, and would only release one. Hamilton reluctantly agreed, explaining in a letter to Washington that Gates had "the entire confidence" of the New England states, besides "influence and interest elsewhere" (meaning Congress). But then Hamilton found out (possibly from his classmate Robert Troup, who was serving as an aide to Gates) that the brigade he had been given was seriously understrength. He wrote Gates a sharp letter—"I did not imagine you would pitch upon [such] a brigade"—and demanded another, "without loss of time." Gates thought of complaining to Washington of Hamilton's "dictatorial power," but thought better of it.⁷

Hamilton's efforts turned out to be fruitless (the troops he rounded up reached Philadelphia too late to save the forts on the Delaware, while Howe chose to rest on his laurels). It was not Hamilton's last go-round with Gates. After Germantown, Gates got a letter from Thomas Conway, a vain French officer of Irish descent, who said that "a weak general and bad councillors" (i.e., Washington and his staff) had nearly ruined the country. When the phrase was reported to Washington, he sent Conway a mordant little note, quoting the words, and ending, "I am, sir, your humble obedient servant, George Washington." By not revealing his source, Washington allowed Conway, Gates, and whomever else they had been discussing his weakness with, to suspect each other of tipping him off. Worried, Gates offered two inconsistent defenses of himself: the letter was a forgery, and the offending phrase must have been "*stealingly copied*" by Hamilton when he was on his mission to Albany.⁸ Washington then told Gates the truth: that his own aide Wilkinson had blurted the words out in a tavern to another officer, who had passed it along to the commander-in-chief.

"I am wearied to death with the wrangles between military officers," Adams had written early in the war, "scrambling for rank and pay like apes for nuts." Historians still dispute what exactly Gates and Conway were scrambling for, but Washington and his "family" had no doubts: they were convinced that a "cabal" of officers and congressmen wanted

to replace him. The Marquis de Lafayette, a nineteen-year-old French nobleman who had arrived in America as a volunteer in August, warned Washington that he was beset by "stupid men. . . . Youth and friendship make perhaps myself too warm, but I feel the greatest concern of all what happens since some time." Hamilton was certain there was a plot: "[I]t unmasked its batteries too soon," wrote the former artillery captain, "but . . . all the true and sensible friends to their country, and of course to a certain great man, ought to be upon the watch. . . ."⁹

The following summer another difficult general fell by the wayside. The British abandoned Philadelphia and marched back to New York, as the Americans followed indecisively, none of them more indecisive than General Charles Lee. Lee was yet another British veteran who had taken the rebel side, and a capable officer, though not as capable as he thought himself to be. He twice refused command of the advance guard, yielding it to Lafayette, and twice demanded it back. He was in command when the Americans caught the British at Monmouth Courthouse in central New Jersey at the end of June. "The weather was almost too hot to live in," a soldier recalled; the fields felt "like the mouth of a heated oven." Hamilton had given Lee an order from Washington to attack, but when he rode to see how the attack was going, he found Lee's troops in disorder and Lee in a "hurry of spirits." "Do I appear to you to have lost my senses?" Lee asked him. "So singular and unexpected a question," Hamilton wrote later, "was not a little embarrassing." (Lee, for his part, would accuse Hamilton of being in a "frenzy of valor," though any valor might have looked to Lee at that moment as frenzied.) Meanwhile, word came to Washington in another part of the field that Lee had ordered the advance guard to retreat. A soldier overheard Washington say something. "Those that were nearer to him said that his words were 'd——n him.' Whether he did thus express himself or not I do not know. It was certainly very unlike him, but he seemed at the instant to be in a great passion." When Washington finally found Lee, Lee heard him. "I was disconcerted, astonished and confounded," Lee wrote afterward, "by the words and the manner in which His Excellency accosted me."¹⁰

Washington retrieved the collapsing situation. "His coolness and

firmness were admirable," wrote Hamilton. "He did not hug himself at a distance and leave an Arnold to win laurels for him"—a slap at Gates's generalship at Saratoga—"but by his own presence he brought order out of confusion . . . direct[ing] the whole with the skill of a master workman." One of his tools was Hamilton, who dispatched orders across the field and had another horse shot from under him. Equally important, the American troops showed their mettle. The battle of Monmouth, as it now developed, was not a surprise attack like Trenton, or a clash of advance guards like Princeton, but a face-to-face engagement by the main bodies of two armies in infernal heat, accompanied by a prolonged artillery duel. The years of drilling and leadership paid off. "Our troops," wrote Hamilton, "after the first impulse from mismanagement, behaved with more spirit and moved with greater order than the British troops. You know my way of thinking of our army, and that I am not apt to flatter it. I assure you I never was pleased with them before this day."¹¹ Though technically the battle was a draw—the British marched off at night before the Americans could reengage—the British had taken note of the new temper of their opponents. Their main army stayed in New York, not risking a major engagement for the rest of the war. Professionals had stood up to professionals.

Lee went to Congress, threatening to resign, "*aye, God damn them, that he would,*" and called Hamilton and the rest of Washington's family "earwigs" and "Toad Eaters."¹² A court-martial suspended him from command.

For the rest of his time on Washington's staff, Hamilton's duties were administrative. The war shifted focus when the British invaded South Carolina in 1780, and Gates was sent to crush them a second time. But without Burgoyne and Arnold to help him, he lost the battle of Camden and retreated with unseemly speed. "One hundred and eighty miles in three days and a half," Hamilton noted. "It does admirable credit to the activity of a man at his time of life."¹³ The last important episode in Hamilton's career as an aide offered him no active role, but he gave his friends and historians vivid firsthand accounts of it, which also illuminate his character and his state of mind.

In peace, Benedict Arnold had been a Connecticut merchant, trad-

ing in the West Indies, including St. Croix. In war, he had performed feats of generalship even more impressive than Saratoga. But slowness of promotion, investigations of his shady business dealings, and the charms of a young Tory wife had led him into disaffection. In the middle of September 1780, an American soldier stationed along the Hudson River encountered General Arnold on an empty road near Dobbs Ferry. "We met at a [fork] of the roads, and I observed he stopped, and sitting upon his horse, seemed minutely to examine each road. I could not help taking notice of him, and thought it strange to see him quite alone in such a lone place."¹⁴ He was inspecting the approaches to West Point, the riverside fort he planned to deliver to the British. With control of West Point and the lower Hudson, the British might be able to accomplish what Burgoyne had failed to do, striking into the heart of New York State and splitting New England from the rest of the country. As a bonus, Arnold also hoped to capture Washington, who was scheduled to visit the fort with Hamilton, Lafayette, and the rest of his staff.

The plot failed when Major John André, the British officer masterminding it, was captured behind American lines with a plan of West Point in his boot. Arnold fled as soon as he learned of André's fate, leaving behind incriminating papers and his wife. Mrs. Arnold now called Washington to her room, and Hamilton described the scene in a letter.

"It was the most affecting scene I ever was witness to. . . . The General went up to see her, and she upbraided him with being in a plot to murder her child. One moment she raved, another she melted into tears. Sometimes she pressed her infant to her bosom, and lamented its fate, occasioned by the imprudence of its father, in a manner that would have pierced insensibility itself. All the sweetness of beauty, all the loveliness of innocence, all the tenderness of a wife, and all the fondness of a mother showed themselves in her appearance and conduct."

There was more. "This morning she is more composed [although] she is very apprehensive the resentment of her country will fall upon her (who is only unfortunate) for the guilt of her husband. . . . She received us in bed, with every circumstance that would interest our sympathy; and her sufferings were so eloquent that I wished myself her brother, to

have a right to become her defender. . . . Could I forgive Arnold for sacrificing his honor, reputation, and duty, I could not forgive him for acting a part that must have forfeited the esteem of so fine a woman."¹⁵

This was not the first time that Hamilton had sympathized with the wife of a guilty husband—Rachel Faucett had had two, the harsh and grasping John Lavien and Alexander's imprudent father, James—nor would it be the last. Compassion and desire are a potent combination for anyone; for him, given his history, they were almost overpowering. The wish to be Mrs. Arnold's "brother" was a placeholder for both urges. Her maternal fondness awakened the yearnings of a son, while her artfully displayed bosom and bed awakened a different set of yearnings. Hamilton's sympathies, thus aroused, distorted his judgment: Mrs. Arnold had been plotting treason with her husband for a year, and finally joined him in occupied New York. It was also not the only time Hamilton, confronted with guilt, would mistake it for misfortune.

Major André was tried by an American court-martial, which ruled that, since he had been caught in civilian clothes on American-held territory, he must be hanged as a spy. André was twenty-nine years old, handsome, witty (he wrote comic poems in his spare time), and ingenuous. "I am too little accustomed to duplicity to have succeeded," he wrote Washington, the man he had hoped to capture. Wishing to be shot rather than hanged, he felt a shock when he saw that he was to die by the rope. But he quickly overcame it—"It will be but a momentary pang"—and fastened the noose himself.¹⁶

Hamilton described André's fate and character in a second letter. "To an excellent understanding, well improved by education and travel, he united a peculiar elegance of mind and manners, and the advantage of a pleasing person. . . . His sentiments were elevated, and inspired esteem. . . . His elocution was handsome; his address easy, polite, and insinuating." In their brief acquaintance, André had struck Hamilton as a soul mate and a model: someone he resembled—smart, polite, well spoken—and whom he aspired to resemble more closely. But there are signs in the letter that André was also different, and that Hamilton sensed it. "His knowledge appeared without ostentation, and embellished by a diffidence that rarely accompanies so many talents and accomplish-

ments." Hamilton did not parade his knowledge ostentatiously, but whenever it was relevant, he showed it; "diffidence" was never the word that sprung to anyone's mind concerning him. Moreover, André's military position was only superficially like Hamilton's. When arrested, André was the adjutant-general of Sir Henry Clinton, now the British commander in New York. "By his merit," wrote Hamilton, André "had acquired the unlimited confidence of his general." André's only regret was that Clinton, who had been "too good to me," would blame himself for the operation's end: "[H]e could scarce finish the sentence," Hamilton wrote, "bursting into tears."¹⁷ André was a courtier—talented, romantic, and brave. Hamilton admired the qualities, not the role. He had been twenty when he joined Washington's staff; now he was twenty-three, and beginning to want accomplishments of his own.

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As an aide, Hamilton had demonstrated his skill and his courage to himself, the world, and the man he would be working with for the next two decades. But his years at Washington's side were as important for what he saw as for what he did. Being a staff officer gave him a ringside seat on the country's problems, and a particular perspective on possible solutions. Some key traits of Hamilton's mind—his nationalism, his indifference to the states and their concerns—were in part a function of his foreign birth; one reason he lacked local loyalties was that he came from no American locality. But other immigrants in the founding generation became as fierce partisans of states' rights as native-born politicians. Hamilton's view of his new homeland was also shaped by his experience at army headquarters, and resembled the views of New England Yankees and southern aristocrats who underwent the same experience.

The main problem, from which all others radiated, was money. In "The Farmer Refuted," Hamilton had written as if the "enthusiasm" of liberty would carry all before it. But even the most enthusiastic soldiers required shoes, gunpowder, and food. Paying for them was a perpetual trial. Congress as it was then constituted lacked the power to tax: it could only make requisitions upon the states. Since many of the states were partly occupied by enemy troops, or lacked full-fledged cash

economies—Virginia allowed state taxes to be paid in tobacco—the return on requisitions was scant. Congress fell back on two alternatives. It raised \$11 million in loans from French and Dutch bankers (since most of the money was spent buying French and Dutch supplies, it was a prudent outlay). Congress also printed money—\$200 million worth by the war's end. Like all paper money not backed by gold, silver, or revenue, it quickly became worthless. At one point in 1779, the Continental dollar lost half its value over three weeks.

In March 1778, three months before the battle of Monmouth, Hamilton wrote a letter to New York governor George Clinton, who had been helpful to him when he was on his mission to Gates, assailing "refined politicians" who were too refined to pay the country's bills. "I never can adopt the reasonings of some *American* politicians . . . that no regard is to be paid to national character or the rules of good faith." Such conduct would "bring Government at home in contempt."¹⁸ It certainly brought Congress into contempt of the staff.

Some congressmen made themselves individually contemptible. Samuel Chase of Maryland had signed the Declaration of Independence, and would serve as a justice of the Supreme Court. In the fall of 1778, learning that Congress was about to make secret purchases for provisioning the French fleet, this patriot tried to corner the wheat market. Hamilton published a series of scathing open letters to Chase in a New York newspaper, signed "Publius," a name he had found in Plutarch's *Lives*. You "have the peculiar privilege," he told Chase, "of being universally despised. . . . No man will suspect you of the folly of public spirit—a heart notoriously selfish exempts you from any charge of this nature. . . . You have therefore nothing to fear from the reproaches of your own mind. Your insensibility secures you from remorse."¹⁹ Chase was investigated by the Maryland legislature and cleared on a party-line vote.

Congressmen did not like the criticism, general or personal, and when it came from officers, they feared (not unreasonably) where it might lead. A year after the Chase affair, a rumor made the rounds that Hamilton had declared in a tavern that the people should rise up under Washington's leadership and "turn Congress out of doors." This was

unlikely advice from an enemy of mobs, but Hamilton took the rumor seriously and tracked it down to Dr. William Gordon, a gossipy minister who was writing a history of the revolution. Alarmed, Gordon told the young officer he would reveal his source only if Hamilton promised not to challenge him to a duel. "Pleasant terms," Hamilton wrote to a friend. "I am first to be calumniated, and then, if my calumniator takes it into his head, I am to bear a cudgelling from him with Christian patience and forbearance. . . ." ²⁰ Dr. Gordon took his tale to Washington, who told him that if he had any real evidence of mutinous intentions he could present it to a court-martial; if not, he should keep quiet.

The attacks the younger staff officers sustained, and the attacks they made, combined with the pressure of the war to breed in them a spirit of ardent camaraderie. They saw themselves as brothers in honor, risking lives and reputations for an imperiled cause in a desperate time. Their rhetoric, as they contemplated themselves and their duties, could become rapturous. Emotions came to their pens as easily as they came to their hearts. In one letter to Hamilton, Lafayette called himself "a friend who loves you tenderly." James McHenry, an army surgeon attached to the staff, assured Hamilton that he "had not ceased to love you." John Laurens, a colonel from South Carolina, closed a letter to Richard Meade, "Adieu: I embrace you tenderly." Hamilton himself wrote to Laurens: ". . . till you bade us adieu, I hardly knew the value you had taught my heart to set upon you. Indeed, my friend, it was not well done. . . . You should not have taken advantage of my sensibility to steal into my affections without my consent." Since mid-century there had been a vogue for "sentimentality," a term of praise which meant experiencing and expressing the finer emotions—a fashion fed by novelists such as Samuel Richardson and Laurence Sterne. Even George Washington owned an anthology of Sterne. Modern readers unfamiliar with this background, who come upon the effusions of Washington's staff, can misread them as evidence of erotic ties. Hamilton defined their rhetoric truly in another letter to Laurens, when he apologized for having written "several strokes of the true schoolboy sublime." ²¹ They all felt sublime, and they were little older than schoolboys.

Hamilton and Laurens together came up with a project whose fate

sharpened their dismay with politics as usual. The two proposed to raise a regiment of slaves from South Carolina and Georgia, who would be given their freedom in return for their service. Many southern slave-owners in the revolutionary generation deplored slavery, but John Laurens was practically unique in wanting to do something about it; even in the north, Hamilton's opinions on the subject were rare enough (he did get the support of his fellow New Yorker John Jay). The South Carolina legislature rejected the plan. "I was outvoted," Laurens wrote Hamilton, "having only reason on my side." "[T]here is no virtue [in] America," Hamilton wrote Laurens. "That commerce which presided over the birth and education of these states has fitted their inhabitants for the chain . . . the only condition they sincerely desire is that it may be a golden one."²²

Two points emerge from these controversies. Later in his life, Hamilton's enemies would throw his foreignness at him. His references, sarcastic or despairing, to "*American* politicians" and the absence of virtue in America show that when he was exasperated he could throw his foreignness back at citizens who did not live up to his own standards. Hamilton's bitter ironies about "the folly of public spirit" and his earnest declamation on the chains of commerce—as bad, evidently, as the chains of slavery—were the inverse of his prewar idealism. If the inspiration of liberty was supposed to make "human nature rise above itself," then any sign of unrisen human nature was a betrayal of liberty.

But Hamilton was a practical young man. It went against his grain to brood on his own alienation, or to contemplate abstractions, whether inspiring or distressing. The country, the army, and Congress had a problem. How could it be solved?

Hamilton's first step was to keep educating himself. From the middle of 1777 on, he used the blank pages in the pay book of his former artillery company to jot down interesting items that he had read. Some were from the classics of Greece and Rome—a common source of allusions, ideals, and daydreams for eighteenth-century Americans, though Hamilton was less impressed by the ancient world than many of his contemporaries. A few years later, he would write that for America to imitate "the small ages of Greece and Rome" would be as "ridiculous"

as copying Hottentots or Lapps. His favorite classical author, appropriately, was the biographer Plutarch: not a visionary, like Thucydides or Tacitus, spinning out dark theories of history, but a historical journalist purveying observations and anecdotes. Hamilton also copied two revealing extracts from the Athenian orator Demosthenes. Where should Athens attack an enemy? Demosthenes asks, then answers that "war, war itself will discover to you his weak sides, if you seek them." This military advice mirrored Hamilton's style as a controversialist, from "The Farmer Refuted" on: hit the other side with everything, then hit them again. But Hamilton was as interested in governing as in disputing: "[W]ise politicians," said Demosthenes, should "march at the head of affairs," not waiting on "the *event* to know what measures to take; but the measures which they have taken, ought to produce the *event*."²³

Economic problems required economic measures, and Hamilton filled his pay book with economic data, much of it from a now unread book, Malachy Postlethwayt's *Universal Dictionary of Trade and Commerce*. Hamilton had skimmed facts from Postlethwayt, and another reference book, Wyndham Beawes's *Lex Mercatoria Rediviva; or, The Merchant's Directory*, in his tangles with Seabury. But now he dug in, covering pages of the pay book with facts: the dimensions of Europe; the recipe for crystal glass; the products of Asia Minor; England's balance of trade with Portugal, Hamburg, and India; rates of exchange; "the quantity of cash necessary to carry on the circulation in a state" (i.e., the money supply); the number of cannons in the French navy, and of horses in Hungary; the trees of Santo Domingo; the size of the British economy (49 million pounds); Aristotle's definition of money. Some of what Hamilton absorbed was tidbits ("Patmos has the best port" in the Aegean, but "nothing else remarkable"); some of it sounded themes that would resonate in his career for years: it takes twenty-five workers to support one hundred people "in all the necessities of life," and three acres to feed one man, at least in England, Hamilton noted, already sizing up the dynamics of a mixed economy.²⁴

Never one to keep his thoughts to himself, he wrote three important letters between late 1779 and early 1781: to Philip Schuyler, who had gone to Congress; to another New York congressman, James

Duane; and to Robert Morris, a rich Philadelphia merchant and investor. All three men were particularly concerned with America's fiscal crisis: in 1776, before the battle of Trenton, Morris had paid for crucial reenlistments out of his own pocket, while Schuyler had complained in a 1779 pamphlet that there was not "one member of Congress adequate to the important business of finance." Hamilton's letters showed that there was one man outside Congress who was trying to become adequate to the related businesses of finance and politics.

"The Confederation itself is defective," Hamilton wrote Duane, "neither fit for war nor peace." He proposed a constitutional convention that would give Congress "perpetual revenues," so that it would not have to beg from the states. Hamilton was willing to take hints from the enemy: America should have a bank like the Bank of England—"had it not been for this, England would never have found sufficient funds to carry on her wars"; with it, "she has done, and is doing, wonders"—though many of his notions of banking were still half baked (he thought changing the denominations of American bills from dollars to pounds would make people trust them).

Hamilton also called for a "proper executive," a suggestion that would naturally occur to a commander-in-chief's aide. "Such a body" as Congress, "numerous as it is, and constantly fluctuating, can never act with sufficient decision. . . . Two thirds of the members, one half the time, cannot know what has gone before." The veteran members "will only give information that promotes the side they espouse . . . and will as often mislead as enlighten."

Hamilton wanted to get the country moving. "There are epochs in human affairs," he told Duane, "when *novelty* even is useful" and "a change is necessary, if it be but for the sake of change." Striking a new note, he wanted to get his countrymen moving as well. The best tax system in the world would not generate revenue if there was insufficient economic activity, and the immigrant's enthusiasm of five years earlier for the energy and enterprise of Americans had abated. "We ought not to suffer our self-love to deceive us," he warned Morris. "We labour less now than any civilized nation of Europe."²⁵ This was not railing at wicked congressmen but soberly assessing the people they represented.

In later years, Hamilton stayed in touch with all three correspondents: Morris and Duane would help him out professionally, while Schuyler became his father-in-law.

"I give in to no kind of amusement myself," Washington wrote solemnly of the regimen of headquarters, "and consequently those about me can have none." But this was not entirely true, for during even the bleakest winters—and the winter at Valley Forge, 1777–78, was as grim as legend has it—the officers amused themselves with plays and dinner parties. After one dinner, the ladies and gentlemen had a gallant dispute about who should enjoy the company of one Mr. Olney. "Such a scuffle then ensued," wrote Washington, "as any good natured person must suppose. The ladies, as they always ought to be, were victorious." Washington enjoyed flirting. His younger colleagues, Hamilton among them, enjoyed it more seriously. They engaged in cats' cradles of correspondence: young men writing to young women, young women writing back, men writing to each other about women, women writing to each other about men. The letters were just what they should be: conventional revelations, ardent banalities, witticisms complex and stale as old wedding cakes. To his friend Laurens, Hamilton dictated a newspaper ad for a wife: "I lay most stress upon a good shape . . . a little learning will do . . . as to fortune, the larger stock of that the better." If she were a virgin, "I am willing to take the *trouble* of [that] upon myself." This was funny, in its way. To Miss Kitty Livingston, Hamilton solemnly declared: "ALL FOR LOVE is my motto."²⁶

The Livingstons were a family of New Jersey gentry that Hamilton had met when he first came to America. (John Jay had married Kitty's sister Sarah.) Another collection of attractive and well-heeled sisters was provided by the Schuyler family. Years later, the youngest of the Schuylers, Catharine, described the impression Hamilton made upon arriving in uniform at their house in the late 1770s. He "exhibited a natural, yet unassuming superiority." A "high expansive forehead, a nose of the Grecian mold, a dark bright eye, and the line of a mouth expressing decision and courage completed the contour of a face never to be forgotten."²⁷ All of the Schuyler sisters were infatuated with Hamilton, and he was infatuated with all of them. The one he fell in love with was

the second-oldest, Elizabeth, also known as Eliza and Betsey: dark-haired, serious, with intense, lovely eyes.

Elizabeth destroyed all the letters she sent Hamilton, an absence that makes her somewhat opaque, and which throws into undue prominence the many surviving letters of her oldest sister, Angelica. Angelica Schuyler had eloped with an Englishman, John Barker Church, who was said to have fled his country in the aftermath of a duel. She too was smitten with Hamilton, and her expressions of regard ring down the years, amplified by her vivid personality. If she appeared in a Jane Austen novel, it would be as one of those minor characters who amuse by their capacity to annoy. Angelica's mode was always to thrust herself into the center of attention. After the birth of a daughter, she wrote Elizabeth: "I intended to have called my little girl Eliza after Mr. Church's mother but she thinks Angelica a much prettier name. Mr. Church is also of that opinion." In other words, I would have given my daughter your name, but *everyone* wanted me to give her mine, which is nicer than yours anyway. Some years later, she promised to send Hamilton "every well-written book that I can procure on the subject of finance. I cannot help being diverted at the avidity I express to whatever relates to the subject." Later still, she wrote her "dear Eliza" about "my *Amiable*, by my *Amiable* you know that I mean your Husband, for I love him very much and if you were as generous as the old Romans, you would lend him to me for a little while [!] but do not be jealous, my dear Eliza [!!], since I am more solicitous to promote his laudable ambition, than any person in the world [more than George Washington? Eliza? Hamilton himself?], and there is no summit of true glory which I do not desire he may attain; provided always that he pleases to give me a little chit-chat, and sometimes to say, I wish our dear Angelica was here."²⁸

These, and many, many similar effusions, all returned with interest by Hamilton, led his enemies, and even some of his friends, to assume that Hamilton and Angelica were lovers. (Angelica once told Peggy, a third sister, at a public dinner party that there were no Knights of the Garter in America; "[T]rue sister," Peggy replied, but Hamilton "would be if you would let him."²⁹ Even apart from the double prohibition of in-

cestuous adultery, it is hard to imagine Hamilton seriously involved with such a woman. But his reaction to Mrs. Arnold showed that his judgment of women could be very erratic.

Not his judgment of Betsey. There were other events and factors in her life, besides the destruction of her letters, which cause her to seem surrounded by silence: the preoccupations of raising a large family; widowhood; the interplay of her temperament and tragedy. But in her twenties, when Hamilton met her, her fundamental nature was more easily discerned. She had "a strong character . . . glowing underneath," wrote James McHenry, "bursting through at times in some emphatic expression." On one outing, "she disdained all assistance" in climbing a hill, wrote another staff officer, "and made herself merry at the distress of the other Ladies." "I have told you, and I told you truly, that I love you too much," Hamilton wrote her in the summer of 1780. "I meet you in every dream, and when I wake I cannot close my eyes for ruminating on your sweetness. . . . To drop figures, my lovely girl, you become dearer to me every moment."³⁰ They were married at the Schuyler mansion in Saratoga that December; bride and groom were both twenty-three years old. McHenry wrote a wedding poem, in pleasant couplets that mostly steer clear of doggerel, populated with fairies and imps.

In marrying a Schuyler, Hamilton entered the world of upstate New York grandees. He had already encountered some of these people (Gouverneur Morris, for one) in New York City, where they doubled as politicians or merchants. But the source of their wealth and power were huge land grants, sometimes going back to the Dutch (whose rule had ended in 1664). Many of the families—the Van Rensselaers, the Van Cortlandts, the Schuylers—were Dutch. Others, like the Livingstons, had acquired their holdings at the end of the seventeenth century (the New Jersey Livingstons were a lesser sprig of this clan). Unlike planter aristocrats in Charleston or the Virginia tidewater, New York magnates worked their fields primarily with tenant farmers, not slaves. But the New Yorkers enjoyed a status and an opinion of themselves as high as any indigo or tobacco king. Tenant leases in New York ran for ninety-nine years, for one to three lifetimes, or forever, and were encumbered with a variety of feudal restrictions. Some of the estates, or manors, had

seats in the state legislature assigned to them, like rotten boroughs in the British parliament. Holders of Dutch grants bore the title *patroon*, or patron. The modern Spanish word *padron*, meaning an employer of indentured labor, captures the economic structure of patroonship; Mr. Collins's simperings about his "patroness," Lady Catherine de Bourgh, in *Pride and Prejudice* capture the social flavor. In the upheavals of the times, most of these landowners had sided with the patriots—"swimming with a Stream which it is impossible to stem," as Robert R. Livingston put it,³¹ who swam all the way to the Continental Congress and the committee that drafted the Declaration of Independence—and they had admitted some recruits into their ranks, such as George Clinton, a large landowner west of the Hudson. But their position was secure, and would remain so for decades. Feudal leases were not abolished until the 1840s, and then only after riots; Mr. Henry van der Luyden, the arbiter of New York society in *The Age of Innocence*, set in the 1870s, is still called "Patroon." New York's great families were proud, powerful, and used to having their own way. They were not unprincipled, but their highest principle typically was preserving their own position.

Hamilton was another new man, like Clinton. Philip Schuyler genuinely liked, and even admired him. "You cannot, my dear Sir," he wrote his son-in-law, "be more happy at the connection you have made with my family than I am"—generous words indeed from a patroon to an illegitimate West Indian. More remarkably, Schuyler urged his own son to model himself on Hamilton, in whom he "will see sense, virtue and good manners combined."³² Besides being sensible, virtuous, and good-mannered, Hamilton would be very useful to Schuyler in navigating the rapids of local politics. New York State at that period, a nineteenth-century historian observed, was divided into three parts: Clintons, Livingstons, and Schuylers. The Clintons had power, the Livingstons had numbers, the Schuylers had Hamilton. But Hamilton never became like his in-laws, or their peers. He never made anywhere near enough money, nor did he ever make the leap into their mind-set. The patroons were possessors; Hamilton was an achiever. Hamilton would have trouble understanding other American gentlemen he encountered.

Shortly after Hamilton was taken into the Schuyler family, he left

Washington's. Hamilton had been discontented for some time. By February 1781, he had been absent from the field for almost four years. Washington, who prized him as an aide, rebuffed all his requests to be reassigned. The break came one day at headquarters. Washington told Hamilton he wanted to see him in his upstairs office, and Hamilton, who was delivering a letter, said he would be back immediately. On his way, however, he was stopped by Lafayette for (he thought) about a minute. When he returned, he found an angry Washington standing at the top of the stairs. "Colonel Hamilton, you have kept me waiting . . . these ten minutes. I must tell you, sir, you treat me with disrespect." Hamilton replied, "without petulancy, but with decision," that he was not conscious of it, but since Washington thought so, "we must part." An hour later, Washington sent another aide to Hamilton offering to patch the quarrel up, but Hamilton answered "that I had taken my resolution in a manner not to be revoked."

These details, from a letter to Philip Schuyler, may have caused the patrol to wonder about his new son-in-law's sense. Hamilton defended his conduct by explaining that Washington was "not remarkable . . . for good temper."³³ This was true enough, though it had not changed over the course of Hamilton's service. The deeper reason was Hamilton's dislike of "personal dependence." In their attacks on the staff, the enemies of the army called Hamilton "the Boy." Washington himself addressed him as "my boy." Hamilton, who had turned twenty-four in January, was old enough, and young enough, to resent the role.

Hamilton did not go public with the details of the rupture. "I shall continue to support [Washington's] popularity," he wrote McHenry, as if that depended on his support. He still wanted a field command. "I am incapable of wishing to obtain any object by importunity," he wrote Washington in May, importuning him for an assignment.³⁴ Washington gave him an infantry brigade that summer, and Hamilton saw action again at Yorktown.

At the end of a war marked by confusion and crossed signals, the siege of Yorktown was a miracle of coordination. Nathanael Greene, who had replaced the humiliated Horatio Gates in the South, had driven the British under Cornwallis into eastern Virginia. The French

navy secured a temporary control of the eastern seaboard, French and American armies moved three hundred miles by land and water from the Hudson River to the York River in five weeks. A wave of hope and valor swept the troops. When the British made their headquarters in the home of Thomas Nelson, governor of Virginia, he told the American artillery to bombard it. Warned by an aide that they were standing too close to the embrasure of a gun emplacement, Washington remarked, "[I]f you think so, you are at liberty to step back." Hamilton had his troops mount the parapet of their trench and perform the order of drill in full view of the enemy. When Hamilton's unit was given the task of making a nighttime assault on a key British redoubt, the soldiers came on so rapidly that they overtook the sappers, the demolition experts who were supposed to prepare the advance. In his report after the redoubt was taken, Hamilton noted simply that "the ardor of the troops was indulged." Washington praised the "intrepidity, coolness and firmness" of the action.³⁵ The commander-in-chief and the former aide were free to reapproach each other on a more equal footing.

The British surrendered on October 19, though the war, and America's problems, would drag on for years.

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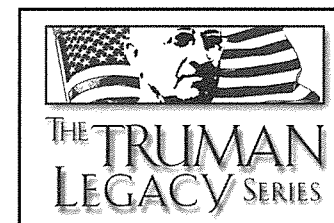
The Civil Rights Legacy of Harry S. Truman
Truman Legacy Series, Volume 2

Based in part on the Second Truman Legacy Symposium
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Edited by
Raymond H. Geselbracht

THE CIVIL RIGHTS LEGACY of HARRY S. TRUMAN

Edited By
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Cover Photo: President Truman meeting with African American leaders who want more African Americans in important positions in agencies involved in the administration's defense program, 28 February 1951. The President's prominent visitors include Mary McLeod Bethune, president emeritus of the National Council of Negro Women, Lester Granger, executive secretary of the National Urban League, Tobias Channing, director of the Phelps-Stokes Foundation, and Walter White, executive secretary of the NAACP.

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POLITICAL PRAGMATISM AND CIVIL RIGHTS POLICY

Truman and Integration of the Military

Richard M. Yon and Tom Lansford

Harry S. Truman was in many ways an unlikely advocate for civil rights in the United States. He was a product of a culture that was deeply segregated. Truman himself would later be faulted for his use of racist language and his attitude toward the tactics of the civil rights movement during the 1960s. Nonetheless, as president, Truman helped launch the modern civil rights movement by enacting antisegregationist policies and by adopting controversial, and often politically unpopular, stances in regard to racial equality. He became the first American president to develop a comprehensive civil rights program and thereby established a political precedent that future chief executives would follow. One of the most important and influential actions undertaken by Truman was his decision to integrate the military. The ultimate success of Truman's military integration policies undermined the political and social arguments against broader societal integration and emboldened the leaders of the African American community to seek further advances in desegregation.

Truman's military integration policies resulted from a combination of political courage and pragmatism. This essay explores the seeming contradictions between Truman's personal background and his military desegregation policy in the context of the obstacles and challenges faced by the administration as it sought to integrate the U.S. armed services. Specifically, the essay explores the personal, political, and practical reasons that prompted Truman to seek integration of the military. It also analyzes the main institutional, political,

and popular constraints Truman and the administration confronted as they sought to implement new policies, expand opportunities for African Americans, and more effectively utilize African American personnel in the armed forces. Finally, the essay surveys the immediate and long-term results of Truman's policies.

The first tentative steps toward integration of the U.S. armed forces occurred during World War II. The army and navy made limited efforts at integrating some units and commissioned a range of surveys to study desegregation. In September 1945, Secretary of the Army Robert P. Patterson appointed a board to undertake a comprehensive review of the Army's treatment of African Americans. In April of the following year, the Gillem Board (named after its chair, Lieutenant General Alvan C. Gillem Jr.) issued its recommendations under the title "Utilization of Negro Manpower in the Postwar Army Policy." Specifically, the report advised the army to adopt a number of initiatives, including "expanding the range of army jobs available to Negroes, mixing Negroes and whites in duty assignments in overhead (house-keeping) installations, increasing the types of Negro units, and steadily reducing the size of Negro units and assigning them to larger white units."¹ The board's recommendations were accepted and implemented, but they marked only minor progress toward integration.

In 1947, in the aftermath of the Gillem report, two Truman administration panels, the President's Advisory Committee on Universal Training and the President's Committee on Civil Rights, criticized continued segregation in the armed forces and called for increased integration. By January 1948, Truman had decided to use an executive order rather than going through Congress to end segregation in the armed forces because he believed Southern politicians would block legislation to achieve this end.²

On 2 February 1948, in a major civil rights speech, Truman announced to Congress that he had ordered the Secretary of Defense to integrate the military "as rapidly as possible." On 26 July 1948, Truman issued Executive Order 9981, which stated, "It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale."³ In order to implement the order, Truman established the President's Committee on Equality of

Treatment and Opportunity in the Armed Services (known as the Fahy Committee after its chair, Charles Fahy, a former U.S. solicitor general). Truman charged the committee with developing the necessary procedures, rules, and evaluations to ensure integration. Truman stated, "I want it done in such a way that it is not a publicity stunt. I want concrete results—that's what I'm after—not publicity on it."⁴

The committee sought to work with the military to achieve integration without controversy, but many senior officers publicly opposed the effort.⁵ The navy and the air force moved relatively quickly and had their integration plans approved by June 1949. The army, however, had to revise its plan several times and was not able to develop an acceptable plan until January 1950. It was not until 1953 that the army could report that 95 percent of African Americans were serving in integrated units.

The desegregation of the armed forces had its origin in conditions that developed following World War II. After the war, Truman sought to refocus the nation's political attention on domestic issues and both complete and expand the New Deal programs begun by his predecessor, Franklin D. Roosevelt.⁶ However, throughout Truman's presidency, world events forced him to spend considerable time and energy on foreign policy. The military was one of several areas where domestic and foreign policy intersected. In order to confront the growing security challenges posed by the onset of the Cold War, Truman implemented dramatic reorganizations of the nation's defense and military structures, including the creation of the U.S. Air Force and the Department of Defense. In his memoirs, Truman stated that his intention was to create "an integrated military program and budget; greater economies through unified control of supply and service functions; improved co-ordination [*sic*] between the military and the rest of the government; the strongest means for civilian control of the military; creation of a parity for air power; systemic allocation of the limited resources for scientific research and development; and consistent and equitable personnel policies."⁷

One component of Truman's efforts at more equitable personnel policies was the creation of greater opportunities for African American service members. During the war, the navy developed a program that allowed limited integration on some ships, while the marines and the army resisted even limited efforts at integration.⁸ Truman's subsequent policies were designed to maximize the assets and capabilities of the military in order to free resources for domestic

programs while maintaining the nation's necessary security commitments. The motivations behind his military integration policies combined a range of factors and were testament to the complexity of Truman's character.⁹

At the core of Truman's practical considerations regarding military integration was efficiency. Segregation meant redundancy and repetition, since the military had to operate dual training programs and maintain dual housing and base facilities. In addition, because of segregation, the best and most capable officers were not always given commands appropriate to their abilities. For instance, in the army, only about one in ten African American soldiers who scored in the top two categories of entrance tests became officers; for white soldiers, the figure was one in four.¹⁰ Studies conducted by the military services also noted that the failure to adequately train African American soldiers had undermined the efficiency and morale of their units.¹¹ The President's Committee on Civil Rights bolstered these arguments when it reported that "by preventing entire groups from making their maximum contribution to the national defense, we weaken our defense to that extent and impose heavier burdens on the remainder of the population."¹²

Truman had personal reasons for promoting military integration. For instance, his own experiences with African American troops led him to believe that the main factor in past poor performance was not ability, but leadership. During World War I, Truman served alongside the African American 92nd Division. This segregated division performed poorly in combat, but another African American unit, the 93rd Division, fought well. After the war, Truman was curious about the differences in the two units and investigated their history. He found that the 92nd had only white officers, but the 93rd, which was under French command, had an integrated officer corps. Truman later recalled that the incident convinced him that integration was the only way to ensure that officers were chosen on the basis of skill and ability, and that the services would have the best possible leaders.¹³ In a speech to the National Colored Democratic Association in 1940, Truman quoted the commander of American forces in Europe in World War I, General John J. Pershing: "I cannot commend too highly the spirit shown among the colored combat troops, who exhibit fine capacity for quick training and eagerness for the most dangerous work." In the speech, Truman declared that "the Negroes' flag is our flag, and he [*sic*] stands ready, just as we do, to defend it against all foes from within and without."¹⁴

Presidential advisor Clark Clifford recalled that Truman was deeply bothered by the dichotomies inherent in segregation:

President Truman believed segregation in the armed forces undermined American values and acted against the nation's best interests. He thought it was outrageous that men could be asked to die for their country but not be allowed to fight in the same units because of their color. He knew that in the military, where arguments over equipment and privileges were a way of life, white soldiers inevitably took precedence over blacks.¹⁵

Truman knew that limited integration within the military had proven successful during World War II. He was impressed that the army's integration of its officer training corps during World War II had been successful, in spite of intense opposition from Southern politicians who especially objected to integrated living quarters for the officers. Army historian Morris J. MacGregor Jr. concluded in his study of the integration of the armed forces that "officer candidate training was the Army's first formal experiment with integration" and that "blacks and whites lived together with a minimum of friction, and, except in flight school, all candidates trained together."¹⁶

Truman believed that the treatment accorded African American veterans after World War II was unacceptable. Many who had served in combat units during the war were relegated to service and logistical units once the fighting stopped.¹⁷ Truman was especially moved by the violent receptions that awaited some African American veterans when they returned home after the war. In February 1946, one such veteran, Isaac Woodard, was attacked and blinded by policemen in Batesburg, South Carolina. In July, two African American veterans and their wives were shot to death by a white mob near Monroe, Georgia. The latter incident prompted Truman to order Attorney General Tom Clark to determine whether any federal statutes could be used against the mob leaders.

The violence against returning African American veterans led civil rights leaders to establish the National Emergency Committee Against Mob Violence. A delegation from the group met with Truman on 19 September 1946 and presented evidence of the atrocities being committed. The delegation's spokesman, Walter White, described in his memoirs Truman's reaction when he was told about the violence being suffered by African American veterans: "The President sat quietly, elbows resting on the arms of his chair and his fingers interlocked against his stomach as he listened with a grim

face to the story of the lynchings.... When I finished, the President exclaimed in his flat, midwestern accent, 'My God! I had no idea it was as terrible as that! We've got to do something!'"¹⁸

Truman's reaction underscores his recognition that whatever his personal beliefs were, he had to take action on civil rights. This was a longstanding characteristic of Truman's political career—he had supported civil rights for African Americans while continuing to hold racist beliefs. Before he became president, Truman supported civil rights legislation in the Senate, including a 1939 act to increase appropriations for the investigation of violations of civil rights and civil liberties.¹⁹ In the speech, which opened his campaign for reelection to the Senate, given in Sedalia, Missouri in the summer of 1940, Truman explained why he felt he had to support civil rights for African Americans. "In giving Negroes the rights which are theirs we are only acting in accord with our own ideals of a true democracy," he said. "If any class or race can be permanently set apart from, or pushed down below the rest in political and civil rights, so may any other class or race when it shall incur the displeasure of its more powerful associates, and we may say farewell to the principles on which we count for our safety."²⁰

This appreciation of the importance of equality before the law would underlie Truman's civil rights policies. In a ceremonial letter to the annual conference of the National Urban League, dated 12 September 1946, he made an unusually strong statement for such an occasion: "If the civil rights of even one citizen are abused, government has failed to discharge one of its primary responsibilities."²¹ On 6 December 1946, he launched his civil rights program by appointing the President's Committee on Civil Rights.

Truman's personal considerations in his push for military integration existed concurrently with very real and concrete political motivations. On the domestic level, he was acutely aware of the importance of the African American vote to the Democratic Party.²² On the international level, he also understood the necessity of mobilizing all components of American society in order to successfully wage the Cold War.

After the Republican capture of both houses of Congress in the 1946 midterm elections, Truman's aides turned their attention to the 1948 election. In late 1947, Clark Clifford sent Truman a forty-three page memorandum that prescribed an election strategy emphasizing, among other things, the need for the president to take strong action on civil rights. Clifford warned that Republicans in Congress

planned to introduce antilynching legislation and measures to curb the poll tax. By doing this, Clifford warned, the GOP could conceivably regain the strong African American support it had historically enjoyed before the New Deal. Presidential aide George Elsey concurred with Clifford and emphasized the importance of the African American vote in states such as New York, New Jersey, Illinois, and California.²³

William L. Batt, a researcher and strategist for the Democratic Party, underscored the recommendations of Clifford and Elsey and voiced concern about the potential loss of African American votes to third-party candidate Henry A. Wallace, who was campaigning on a platform that included a strong civil rights plank. Batt argued that Wallace might capture as much as 20 to 30 percent of the African American vote, and he pointed out that some New York ward leaders believed African American voters in their districts might support Wallace. He advised Truman to integrate the military as a means to appeal to African Americans and erode support for Wallace.²⁴

A range of political figures and groups advised Truman to integrate the military in order to assure victory in the upcoming presidential elections. In a letter dated 22 July 1948, Leon Henderson, chairman of Americans for Democratic Action (a group that included Hubert Humphrey and Franklin D. Roosevelt Jr.), urged Truman to "issue an Executive Order declaring it our national policy that there shall be no segregation or discrimination in the armed forces."²⁵ Henderson's letter was received the same day that the Students for Democratic Action sent the White House a letter calling on Truman to desegregate the military in order to deal Henry Wallace "a heavy blow."²⁶

African American voters did prove crucial in the 1948 election. In California, Illinois, and Ohio, African American votes helped provide Truman the margin of victory in the closely contested presidential race. Truman noted in his memoirs, "Without Ohio and California, I would have been assured of only 254 electoral votes, twelve less than the required 266."²⁷ Truman's actions on behalf of civil rights, including his issuance of Executive Order 9981, helped ensure that African Americans would remain loyal to the Democratic Party.

One final political consideration for Truman was the perception of the United States held by the rest of the world. Truman recognized the implicit dichotomy between America's promotion of democracy abroad and its practice of segregation at home. In his

memoirs, he wrote that any course other than integration "would be inconsistent with international commitments and obligations. We could not endorse a color line at home and still expect to influence the immense masses that make up the Asian and African peoples. It was necessary to practice what we preached, and I tried to see that we did it."²⁸

As the Cold War intensified, Truman needed African Americans to support the national effort to counter Soviet expansionism. According to army historian MacGregor, "the black community represented 10 percent of the country's manpower, and this also influenced defense planning. Black threats to boycott the segregated armed forces could not be ignored, and civil rights demands had to be considered in developing laws relating to selective service and universal training."²⁹ Truman needed the support of African Americans to accomplish his national security objectives, and African American leaders such as A. Philip Randolph and Grant Reynolds were demanding that the armed forces be integrated. In November 1947, Randolph and Reynolds organized the Committee against Jim Crow in Military Service and Training, which was dedicated to the desegregation of the military and the expansion of opportunities for African Americans. The group originally lobbied to include an amendment against discrimination in legislation on the military draft; when this effort failed, it concentrated on pressuring Truman to issue an executive order to force integration.

In March 1948, twenty-two African American organizations joined together at a meeting in New York to issue a demand that segregation in the armed services be abolished. In a letter to Truman dated 29 June 1948, Randolph and Reynolds threatened that African American youth would boycott the draft if Truman did not provide an executive order to abolish segregation. "In light of past official civil rights pronouncements," Randolph and Reynolds wrote, "it is our belief that the President, as Commander-in-Chief, is morally obligated to issue an order now."³⁰ These groups applied significant political pressure on Truman that, combined with other considerations, caused him to issue Executive Order 9981. With the promulgation of 9981, Randolph and Reynolds ended their call for a boycott of the draft.

The armed forces were not instantly integrated when Truman issued Executive Order 9981, as many obstacles remained. Truman's political dexterity served him well as he carefully maneuvered between groups opposed to and in favor of integration. He

employed his legendary political courage to deflect public criticism away from the military itself and away from others in the integration process. Truman also deftly utilized both force and compromise to achieve his goals without sacrificing the nation's military efficiency or capability.

Truman's decision to integrate the military was not uniformly popular. A Gallup poll conducted in 1948 found that 82 percent of those interviewed opposed Truman's civil rights policies. Many opponents of military integration sent angry letters to Truman.³¹ Newspaper editorials throughout the South condemned Truman's order to integrate and some commentators invoked state sovereignty and talked of possible revolt. Many newspapers asserted that the timing of the executive order was designed to erode support for Wallace and alleged that Truman's action was undertaken for the basest political reasons. Other newspapers supported Truman's decision. For instance, both the Republican-leaning *Pittsburgh Courier* and the Democratic *Chicago Defender* supported Truman in editorials.³²

Statements by some of the country's leading military figures provided substantial ammunition to anti-integration forces. Testifying before Congress, General Dwight D. Eisenhower argued that the military reflected society and should not be used to promote social change. He stated, "I do believe that if we attempt merely by passing a lot of laws to force someone to like someone else, we are just going to get into trouble." General Omar Bradley made a similar statement. The day after Truman issued Executive Order 9981, Bradley argued that the military was no place for "social experiments" and that desegregation would only be successful in the army when the rest of the country was integrated. Bradley later publicly apologized to Truman for his comments. Besides Eisenhower and Bradley, other prominent officers, including George C. Marshall and Mark W. Clark, also expressed opposition to integration. These pronouncements would be used repeatedly by those who were opposed to integration.³³

Negative public opinion with respect to civil rights had an effect on Truman's program. Historian Barton J. Bernstein has argued that Truman consistently limited his efforts on behalf of civil rights because he and his advisors feared a public backlash.³⁴ The Korean War intensified this caution, as some in the administration did not want to appear to be interfering with military efficiency. Furthermore, the rise of McCarthyism damaged hopes for further advances in civil rights by causing some prominent African Americans, such

as the performer Paul Robeson, to be perceived as sympathetic to the Soviet Union. Historian Kevern Verney argues that while Truman made important progress in the area of civil rights, the rise of McCarthyism delayed the full emergence of the civil rights movement until the 1950s.³⁵

McCarthyism and the Korean War also eroded Truman's personal popularity. In 1951 and 1952, his approval rating fell below 30 percent. His unpopularity and his growing sense of political and personal isolation constrained his ability and his willingness to exert pressure on the military to complete the process of integration. Nonetheless, he continued to urge the army, the most recalcitrant of the services, to achieve nearly full integration during the last years of his presidency.

Southern members of Congress tried in several different ways to blunt the effect of Executive Order 9981. On the eve of the order's issuance, Senator Richard B. Russell of Georgia tried to insert language into the draft order that would have allowed enlistees the option of choosing to serve in units of their own race. When Congress tried to pass legislation to eliminate a 10-percent quota system for African American enlistees, Southern politicians consistently blocked the effort and the quota system as it applied to the draft was only ended through an administrative decision by the Selective Service Commission.³⁶ Truman was forced to veto a bill in 1951 because it contained a clause requiring schools on federal military bases to conform to the education laws of the state in which the base was located. This would have caused schools on military bases in the South to be resegregated.³⁷ In one important instance, the segregationists were successful: the army made no effort for several years to force states to integrate their National Guard units, many of which remained segregated into the 1960s.

The most significant congressional opposition to Executive Order 9981 came from the support Congress gave to attempts by the army to delay integration. Anti-integration senators and representatives routinely met with Army officials to coordinate efforts to slow integration. E. W. Kenworthy, executive secretary of the Fahy Committee, recalled that the committee often faced officers who had been encouraged to mislead the committee. In addition, in a foreshadowing of the tactics used by anti-integration groups following the Supreme Court's 1954 *Brown v. Board of Education* decision, opponents of military integration seized on the phrase in Executive Order 9981 which stated that desegregation should occur "without

impairing efficiency or morale" in the military. Secretary of the Army Kenneth Royall believed that the order did not necessitate "swift" integration if it harmed morale. He continued to resist the integration of the army throughout his tenure as secretary.³⁸

On 11 May 1949, Secretary of Defense Louis Johnson approved the air force's integration plan but ordered the army and navy to revise theirs. A new navy plan was accepted on 7 June 1949, but the army continued to present plans that were unacceptable. At the core of the army's plans were continued segregation in some units, mainly combat units, and the maintenance of a 10-percent enlistment quota for African Americans. Both of these policies were vehemently opposed by the Fahy Committee.³⁹

Truman took great interest in the workings of the Fahy Committee and insisted on being kept informed of its work. The committee appealed to him on a number of occasions to pressure the army toward integration. In its interim report of 11 October 1949, for instance, the committee suggested that the president "may wish to advise the Secretary of Defense that the Committee's recommendations [with respect to the integration of the army] conform to the requirements of Executive Order 9981." The committee also threatened to release to the press statements critical of the army.⁴⁰ In response, Truman pressured both the committee and the army to work together to resolve the impasse. When the army developed another revised plan, Truman instructed senior officers that his acceptance would be based on the approval of the Fahy Committee.⁴¹ On 14 January 1950, the committee and the army agreed on an integration plan that still contained the quota for African American recruits. On 1 February, Truman informed the army that the Fahy Committee would remain in existence until the army ended its 10 percent recruitment quota. In March, the army surrendered and announced it would drop the quota the following month.⁴²

Once the 10-percent quota was ended, African American enlistments rose. By August 1950, African Americans constituted 11.4 percent of army personnel, and enlistments continued to grow as a percentage of the total. By early 1953, African Americans constituted 16.1 percent of army personnel. In January 1951, the main army command in Korea began unofficially to integrate all units. Meanwhile, the rush of new African American recruitments meant that all branches of the service had to desegregate basic training, and the Department of Defense made an announcement to this effect on 18 March 1951. On the third anniversary (26 July 1951) of Executive

Order 9981, the army announced that all units in the Asian theater would be integrated within six months.⁴³

Truman's commitment to civil rights, and perhaps most significantly his desegregation of the armed forces, brought him important political benefits. For one thing, most African Americans who voted supported Truman in 1948. Perhaps most significantly, Truman's desegregation of the armed forces helped offset negative perceptions of the Democratic Party caused by Southern segregationists in Congress and elsewhere, and it helped prevent the Republican Party from regaining its pre-New Deal level of support among African Americans. In the 1960s, Democratic presidents would take up the cause of civil rights again, with such success that African Americans became firmly bound to the Democratic Party.

Integrated military bases, including desegregated base housing, had a ripple effect on civil rights in local communities. In some areas, especially in the West and upper South, an increased measure of integration seeped into communities located close to military bases.⁴⁴ Nonetheless, many servicemen and their families continued to face discrimination in off-base housing and other accommodations. Efforts to end these practices through the use of federal economic sanctions were resisted by Congress and by the Department of Defense until the passage of the 1964 Civil Rights Act.

The successful integration of the armed forces was probably the most important civil rights achievement of the Truman administration. The Korean War, which gradually forced the army to integrate, greatly discouraged any further progress in Truman's other civil rights initiatives. The Democratic Party lost seats in the 1950 elections, partly because of the war's negative affect on Truman's popularity; neither house of Congress would even consider any of his major civil rights initiatives in the final two years of his presidency. Still, the desegregated military survived under succeeding presidents, and its existence and example helped inspire many in the country, including many leaders within the Democratic Party, to fight for a good and just society for all Americans, regardless of race.

Notes

¹Billington, "Freedom to Serve," 268.

²Shull, *American Civil Rights Policy*, 122.

³Executive Order 9981.

⁴Memorandum, Meeting of the President and the Four Service Secretaries with the President's Committee on Equality of Treatment and Opportunity in the Armed

Services, 12 January 1949, attached to C.G.R. [Charles G. Ross] to Donald Dawson, 17 January 1949. Truman Papers, Official File 1285-O, Truman Library. Most of the original documents cited in this essay are available at the Truman Library's online document collection, "Desegregation of the Armed Forces," www.trumanlibrary.org.

⁵Nichols, *Breakthrough on the Color Front*, 89-90.

⁶See Hamby, *Beyond the New Deal*.

⁷Truman, *Memoirs*, 2:67.

⁸For more on the navy's program, see Nelson, *Integration of the Negro into the U.S. Navy*.

⁹Pauly, *Modern Presidency and Civil Rights*, 36.

¹⁰Ginzberg, *Negro Potential*, 85.

¹¹E. W. Kenworthy to Charles Fahy, 10 March 1949. Record Group 220, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Truman Library.

¹²President's Committee on Civil Rights, *To Secure These Rights*, 162.

¹³Nichols, *Breakthrough on the Color Front*, 83-85.

¹⁴Truman, "New Deal for the Negro," in Horton, *Freedom and Equality*, 7.

¹⁵Clifford, *Counsel to the President*, 208.

¹⁶MacGregor, *Integration of the Armed Forces*, Chapter 2, World War II: The Army.

¹⁷MacGregor, *Integration of the Armed Forces*, Chapter 2, World War II: The Army.

¹⁸White, *A Man Called White*, 330-31.

¹⁹Truman, *Memoirs*, 1:177.

²⁰Quoted in Daniels, *Man of Independence*, 339-40.

²¹Truman to L. B. Granger, 12 September 1946. Truman Papers, President's Personal File 2685, Truman Library.

²²Vaughn, "Truman Administration's Fair Deal for Black America," 291-305.

²³McCullough, *Truman*, 590.

²⁴Gropman, *Air Force Integrates*, 106-8.

²⁵Leon Henderson to Harry S. Truman, 22 July 1948. Truman Papers, Official File 93-B, Truman Library.

²⁶Richard A. Givens to John R. Steelman, 22 July 1948. Truman Papers, Official File 93-B, Truman Library.

²⁷Truman, *Memoirs*, 2:257.

²⁸Truman, *Memoirs*, 2:257.

²⁹MacGregor, *Integration of the Armed Forces*, Chapter 12, The Present Resident Intervenes.

³⁰Grant Reynolds and A. Philip Randolph to Harry S. Truman, 29 June 1948, attached to Matthew J. Connelly to James V. Forrestal, 7 July 1948. Truman Papers, Official File 93-B, Truman Library.

³¹Gardner, *Truman and Civil Rights*, 106, 119.

³²Dalfiume, *Desegregation of the U.S. Armed Forces*, 158; Berman, *Politics of Civil Rights*, 118-19; and MacGregor, *Integration of the Armed Forces*, Chapter 13: Service Interests Versus Presidential Intent.

³³Quoted in Nichols, *Breakthrough on the Color Front*, 167, 172. See also Edgerton, *Hidden Heroism*, 164.

³⁴Bernstein, "America in War and Peace."

³⁵Reddick, "Negro Policy of the American Army," 208; and Verney, *Black Civil Rights in America*.

³⁶Reddick, "Negro Policy of the American Army," 202, 210.

³⁷McCoy and Ruetten, *Quest and Response*, 244.

³⁸Gardner, *Truman and Civil Rights*, 112; and Nichols, *Breakthrough on the Color Front*, 92, 89.

³⁹Billington, "Freedom to Serve," 266–67, 269.

⁴⁰Charles Fahy, Memorandum for the President, 11 October 1949, and Further Interim Report to the President, 11 October 1949, both attached to David Niles to the President, n.d.. Truman Papers, President's Secretary's Files, Truman Presidential Library; and Charles Fahy to David K. Niles, 30 November 1949, and E. W. Kenworthy to Charles Fahy, 19 December 1949. Record Group 220, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Truman Library.

⁴¹Billington, "Freedom to Serve," 271–73; and McCoy and Ruetten, *Quest and Response*, 230.

⁴²Dalfiume, *Desegregation of the U.S. Armed Forces*, 196–98.

⁴³Dalfiume, *Desegregation of the U.S. Armed Forces*, 205, 209, 211; McCoy and Ruetten, *Quest and Response*, 233; MacGregor, *Integration of the Armed Forces*, Chapter 17, The Army Integrates.

⁴⁴Gropman, *Air Force Integrates*, 141.

TRUMAN, DESEGREGATION OF THE ARMED FORCES, AND A KID FROM THE SOUTH BRONX

Colin Powell

Of all the many domestic challenges President Truman faced in 1948, none was greater than the need to move the nation's civil rights agenda forward. The reality of life in America in 1948 was that during the eighty years since the Civil War ended slavery, America had designed and implemented a system of apartheid, almost as evil as slavery and far more duplicitous. The Reconstruction period that flourished briefly after the Civil War ended abruptly before much progress could be made toward full citizenship for African Americans. Reconstruction died, and the nation, so soon after the promise of the Emancipation Proclamation, sank into Jim Crow and the concept of separate but equal. Black Americans were disenfranchised, black Americans were lynched, courts in the South were closed to black Americans. Education, unions, trade, political life—all were closed to black Americans. Blacks were excluded systematically from legislative or executive power at almost every level of government. In 1948, fourscore years after the Civil War, the sad, troubling, disgraceful traditions of our past continued.

This is our history. It is cold to recite these facts, but we must understand them if we want to understand where we are and where we have to go. The reality of our history is that president after president, Congress after Congress, Supreme Court session after Supreme Court session continued to read our Declaration of Independence's glorious conception of inalienable rights as not applying to black Americans. The Constitution was similarly interpreted. When it

IKE'S FINAL BATTLE

THE ROAD TO LITTLE ROCK AND THE CHALLENGE OF EQUALITY

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CHAPTER TEN

THE RECKONING

"...I did not want to see any governor humiliated."

—Dwight D. Eisenhower

A COUPLE OF DAYS into his vacation, Eisenhower flew back to Washington to confer with his attorney general. To get from Newport to the Naval Air Station at Quonset, Ike unknowingly started a trend. When he had first arrived in Rhode Island on September 4th, the presidential yacht named for his granddaughter, *Barbara Anne*, had carried him from the naval base to his lodging on the other side of Narragansett Bay. The trip took twenty-five minutes; too long for a man in a hurry.

Eager to confer with his staff in person about the events in Little Rock, Ike decided he needed to get back to Washington as soon as possible. Now, he boarded a khaki-colored Marine helicopter. The four-minute flight allowed him to reach the air base much more quickly and to get on the plane and back to Washington much sooner. Ike was impressed by how much time he had saved. The Air Force had previously given him a test ride in a Bell H-13J Helicopter. But Ike was convinced that the Marine UH-34 was a better fit. The Marine One helicopter service for presidents was born.

Once he arrived in Washington, Ike turned to the battle ahead. Like a war council, he met with his top staff to chart a course of action. His chief of staff, Sherman Adams, said that Eisenhower's mindset in the early days of the standoff was very much a military one. "Eisenhower," Adams observed, "as he did when a soldier, wanted to give Faubus every opportunity to make an orderly re-

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treat by no longer defying the order of the Court.¹ But, the president insisted, even though he would explore every alternative to the use of force, there could be "no compromise or capitulation by the administration on this issue."

Ike had always been able to see clearly the flag in the midst of the smoke and sounds of the battlefield. Now, looking at Little Rock, Eisenhower quietly assessed what was at stake and what might have to be done. Still, he hoped that Faubus would have the sense to back down.

He didn't. And he wouldn't. Faubus had too much to gain from his defiance. But others shared Ike's hope that a standoff could be avoided. On Monday, September 9th, Chief of Staff Adams received a phone call from an old friend of his, Brooks Hays. As a congressman from Arkansas, Hays had served with Adams in the House. A mild-mannered and measured man, he was, in many ways, the antithesis of Faubus, who had stirred up the boiling pot and was now watching it overflow. Hays was also guided by spiritual convictions. He was currently serving as the president of the Southern Baptist Convention. He was a decent man who wanted to do what was right.

His views on civil rights, though progressive by Arkansas standards, were fairly close to Ike's. In 1956, Hays had helped to write the Democratic Party National Platform that generally endorsed civil rights without specifically endorsing the *Brown* ruling.

Most of all, Hays was a practical man who now offered a practical solution to Adams. Would Eisenhower consider meeting personally with Faubus to resolve the crisis? Hays claimed that the idea had first been put to him by Faubus. Adams was receptive. He thought Ike might do it, he told Hays. But there was a condition: The governor must agree to enforce the law as defined by the federal courts. Eisenhower would not discuss whether desegregation was the law, but merely how best to enforce it.

Hays agreed and promised to get back to Adams after he talked to the governor. In the meantime, Adams mentioned the call to Ike. "Without a moment of hesitation, Eisenhower said that he would be in favor of it, under the proviso I had expected

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him to mention—that the governor not come to the meeting in his present mood of defiance.”²

When Hays called back, he reported that the governor wanted to meet with the president. “What would be a convenient time for the president?”³ Adams reminded him of the conditions they had previously discussed.

Hays and Adams discussed a request letter from Faubus. In it, the governor would express his “intention of observing the federal law.” Hays said that he understood this, but that it would be difficult to arrange given the governor’s current position. Though he was being castigated in the national press and in the federal courts, Faubus was being celebrating by white Arkansans. He was not ready to change course.

Hays now set about a thankless task—to get Faubus to request a meeting with the president on the terms laid down by the White House. A series of discussions ensued. Faubus would appear to agree to the conditions, only to change his mind just as Hays was about to call the White House. Finally, Hays called with good news. A deal had been reached. Faubus would wire the president, promising to cooperate and enforce the law. Hays read the proposed language to Adams on the phone: “[I]t is certainly my intention to comply with the order that has been issued by the District Court. May I confer with you on this matter at your earliest convenience?”⁴ Adams thought this sounded fine. Hays hung up and promised that the governor’s letter would follow shortly.

It did, and it was different. Instead of the language that Hays and Adams had agreed to, Faubus wrote that he would “comply with the order that has been issued by the District Court in this case, consistent with my responsibilities under the Constitution of the United States and that of Arkansas.”⁵ The meeting was already off to a bad start. Adams was outraged at the double-crossing. On the telephone, he complained to Hays. The congressman, embarrassed, told Adams that Faubus’s advisors had insisted on the change.

It would not be the last time Faubus disappointed the White House.

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By now Ike had resumed his vacation in Rhode Island. On September 11th, Ike was playing golf at the Newport Country Club when Faubus's telegram arrived. Earlier that day, the president had called Brownell in Washington to discuss matters. He complained that "the whole U.S. thinks the president has a right to walk in and say 'disperse—we are going to have Negroes in the high schools and so on.' That is not so."⁶ Sitting in his golf cart after finishing the first hole, he wrote a response with his press secretary, Jim Hagerty. Faubus would arrive in Providence on the 13th. He would then fly over to Newport by helicopter for a meeting on the 14th.

It was a risky strategy for Ike. His attorney general believed that the governor had "soiled" himself, and he was pessimistic. "Perhaps the time is now ripe," Ike responded on the phone that day.⁷ He had always believed that people of different views could reason together. He had also publicly talked about how the people of the South were good people who just needed time to change. He could hardly refuse to meet with one of their leaders now. He had also spoken of how laws alone were not enough to bring about racial justice. If reason and persuasion were needed—and he believed that they were—he was dutybound to talk some sense into Faubus.

Yet, as the date of the meeting approached, Eisenhower could not help but notice that Faubus was already negotiating in bad faith. The governor had been told what his request should say. And Ike had seen the change that Faubus had inserted into it. "This significant change made by Faubus supported the attorney general's skepticism that any good could come out of a meeting with him," Ike later observed.⁸

Orval Faubus was now an international celebrity. The *New York Times*' front page carried a story on the showdown at Little Rock virtually every day that September. Foreign media were captivated by the story as well. Hypocrisy makes a great story. People undoubtedly enjoyed the irony of democratic America keeping black kids oppressed by the use of force. Radio Moscow had a par-

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ticularly good time embellishing the story by informing listeners that Elizabeth Eckford had been "brutally murdered."

Like many politicians, Faubus seemed to believe that all press was good press. His standing with white voters in Arkansas had seldom been any higher. And now, he was about to receive the greatest prize of all for the governor of a small state—face time with the president. Sure, he was worried about the firm hand that Judge Davies was exercising in the courtroom. But hadn't Ike said he couldn't imagine a scenario where he would have to intervene with troops? This was a man the governor could do business with.

Eisenhower was less optimistic. To him, a man's word was his bond. And Faubus had already been caught lying once. Still, Eisenhower had long believed in his own powers of personal persuasion. He had first-hand experience dealing with the likes of Montgomery, Patton, and Churchill. Certainly he could handle the governor of Arkansas.

And so, as the summit date approached, the two principal players tried to judge the situation. Faubus essentially hoped that Eisenhower would be sympathetic and, as Ike had done at Mansfield, refuse to intervene. Eisenhower hoped that Faubus was looking for a way to save face.

Both men were wrong.



A glorious Rhode Island morning dawned on Saturday, September 14th. Governor Faubus and Congressman Hays had arrived in Providence the night before. They were ready for the meeting.

Eisenhower also had reinforcements for the day's confrontation. Chief of Staff Adams, Attorney General Brownell, and Gerald Morgan, the president's special counsel, all flew up from Washington early that morning. When they arrived at Quonset, they were taken by helicopter to Ike's summer headquarters on Coaster's Harbor Island. The chopper landed on the front lawn, and the men exited. They entered the building and went up a flight of stairs to the president's office.

Ike was already there. He greeted his staff members "in a bright and good-humored mood," Adams recalled.⁹ This was perhaps the biggest tip-off of what was going on inside the presi-

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dent's mind. Ever since he had sat in that dank, Gibraltar cave during the war, Ike made every effort to bring a positive attitude to his work. His mood was an inverse measure of how grave he believed the crisis to be. The more strenuous the moment, the more upbeat he seemed to become. And that morning, Ike was in an exceptionally upbeat mood "as he usually was before tackling an important and difficult job," Adams said. The president knew what was at stake. The newspapers were already calling this the most serious constitutional crisis since the Civil War.

Ike's team discussed the tactics for the upcoming meeting. Ike wanted to be alone with Faubus first. Undoubtedly, he wanted to remove the tension that inevitably increases with the presence of additional people. It was agreed that Ike would take Faubus into his private office—a small room with a desk and only two or three chairs. Like Grant at Appomattox, Ike was determined to give Faubus the consideration and dignity necessary for a complete surrender. After his private visit, the president would take Faubus into the bigger conference room, where the staff would join and finalize the capitulation.

A few minutes before 9:00 a.m., Adams, joined by Jim Hagerty, walked out to the front lawn to await the arrival of Governor Faubus and Congressman Hays. Adams had arranged for a helicopter to transport them from Providence to the front lawn. The helicopter soon appeared over the horizon, shuddering the ground below as it got closer. It sat down easily on the lawn. As the blades relaxed, Adams walked over to greet the visitors. Hays emerged and shook the hand of his old colleague. He then introduced Adams to Governor Faubus. Nearby reporters snapped photos of the men, who soon disappeared into the building. Faubus carried a briefcase and wore a dark suit.

To Adams, the governor of Arkansas possessed a "quiet-mannered but forceful and determined" personality.¹⁰ His first impression led him to believe that Faubus would "not be unreasonable or difficult to deal with."

After the four men made their way up the stairs, they entered the office, where the president greeted them, accompanied by Brownell and Morgan. Ike was wearing a light-colored, three-

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button summer suit. His skin was a bit bronzed from his golf outings. He was relaxed, warm, and gracious. Ike talked to the governor about his trip from Little Rock. He also talked a little history, discussing the naval base and the surrounding area. But the velvet exterior only served to mask the steel inside of the president. He meant business.

With the greetings out of the way and the tension seemingly eased, Ike carefully choreographed his visitor into the smaller, private office. After Faubus entered, the door shut, leaving the others behind. For the next twenty minutes, the two men talked alone about Little Rock.



As the meeting began in earnest, the Arkansas governor talked at some length of his admiration for the commander in chief. Eisenhower later recalled that Faubus had "protested again and again that he was a law abiding citizen, that he was a veteran, fought in the war, and that everybody recognizes that the Federal law is supreme to State law." Faubus later said he had asked Ike for "breathing room," by which he meant some time to resolve the matter in his own way. Revealingly, Faubus found it necessary to remind Ike that he wasn't a criminal. He undoubtedly was aware of how irritated the president was with him.¹¹

That irritation soon manifested itself. Faubus would later say that Ike began to lecture him in a "rehearsed" manner. Eisenhower remembered it as less a lecture than a simple, straightforward plan for ending the stalemate. "I suggested to him that he go home and not necessarily withdraw his National Guard troops, but just change their orders...." Rather than keep the black students out of the school, Ike recommended that the governor "tell the Guard to continue to preserve order but to allow the Negro children to attend Central High."¹²

Then, in a shrewd proposal to a politician in a bind, Ike offered Faubus a deal too good to turn down. "I pointed out that at that time he was due to appear the following Friday, the 20th, before the Court to determine whether an injunction was to be issued."¹³ Faubus stared at the president. If Faubus would cooperate by employing the Guard to protect the Little Rock Nine "the

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Justice Department would go to the Court and ask that the governor not be brought into Court."

An adroit politician, Faubus knew how to phrase words to ensure maximum flexibility upon his return home. "He seemed to be very appreciative of this attitude and I got definitely the understanding that he was going back to Arkansas to act within a matter of hours to revoke his orders to the Guard to prevent re-entry of the Negro children into the school," Ike recalled.¹⁴ But "seemed" is very different from "committed." Faubus had managed to convince Ike that he basically agreed with him, without specifically saying so.

Not that Ike didn't have doubts about Faubus's next move. He gave the governor an explicit warning about the consequences of further resistance. "I further said that I did not believe it was beneficial to anybody to have a trial of strength between the president and a governor because in any area where the federal government had assumed jurisdiction and this was upheld by the Supreme Court, there could be only one outcome," Ike told him, "that is, the state would lose, and I did not want to see any governor humiliated."¹⁵

Faubus thanked the president. The private meeting ended twenty minutes after it had begun. Now it was time to bring in the others—Adams, Brownell, Morgan, and Hays. As the group expanded, Eisenhower announced in a matter-of-fact tone that the two men had agreed to allow the black children into the school.

Brownell was astonished. He couldn't imagine that Faubus could surrender when the white voters of his state were up in arms. He also perceptively noticed that Faubus had said nothing when Ike had finished recapping their meeting. Brownell believed that the governor's silence spoke volumes. He was convinced that Faubus was up to no good.

The attorney general, in a stern tone, spoke to make himself—and the law—clear to Faubus. Like a parent lecturing an adolescent, Brownell told Faubus that the desegregation law didn't have to be liked to be enforced. But it was the law, and it must be en-

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forced. Ominously, Faubus said only that he recognized that it was the law. He made no comment about enforcing it.

It seems not to have occurred to Eisenhower that his presence and stature likely precluded a frank discussion. Faubus had practically admitted as much when he opened their private meeting with a description of his loyalty to the president and his World War II service. It was likely difficult for Faubus to tell Eisenhower that he disagreed with him, much less that the president of the United States should mind his own business. Instead, like any diplomat in an uncomfortable situation, Faubus said what he had to say in order to get the meeting over with. Brownell surmised correctly that Eisenhower had failed to change the governor's mind.

There are no lost causes, T.S. Eliot once wrote. This seemed to be Orval Faubus's guiding principle in September 1957. Segregation may have been a losing issue, but it was a winning political strategy in a Southern state. The man who had once feared losing office was now the darling of Arkansas's white society. And no president, not even the hero of D-Day, could change his mind about it.

Perhaps Congressman Hays realized that the vast gulf between the two men had not really been bridged. He brought everyone to laughter when he told a joke about the "Alabama Horse Deal" in which two men would sell a horse back and forth, each time raising the price, all the while thinking they were actually making money.¹⁶



The extent of the governor's defiance became clear soon enough. After the meeting, Brownell excused himself for a reunion at Yale. Faubus, accompanied by Hays, slithered back to Providence. Like any summit, the plan was for a joint statement to be released to the press. Like many summits, finding common ground for a written statement proved to be more difficult than the talks that had transpired.

Press Secretary Jim Hagerty took a first crack at writing a statement based on Ike's account of the meeting. He reported the governor's intention to obey the law and to enforce the court rulings. So claimed the White House, anyway. Faubus remembered

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things differently. He was rather enjoying the attention, and he liked the role of the small state governor standing up to the big federal government.

Not more than two hours after Faubus left Ike's headquarters, Congressman Hays called with ominous news. The governor was already hedging. Sherman Adams insisted that he keep his word and issue a public statement along the lines agreed to in the meeting. But Faubus had played his hand well. He had been careful to leave himself some room. And now he was prepared to exploit it. Over the phone, Adams read Hays the version of the statement written by the president's team. Negotiations went back and forth.

The final text amounted to two statements: one from Ike and one from Faubus. To see the fault lines in the situation, only a quick glance at the differences in the two documents was necessary.

Eisenhower spoke of the governor's "intention to respect the decisions of the United States District Court and to give his full cooperation in carrying out his responsibilities in respect to these decisions."¹⁷

Faubus said that in carrying out those responsibilities "it is essential that...the complexities of integration be patiently understood by all those in Federal authority."¹⁸

Eisenhower stressed his conviction that it was "the desire of the Governor not only to observe the supreme law of the land but to use the influence of his office in orderly progress of the plans which are already the subject of the order of the Court."¹⁹

Faubus emphasized that in enforcing the court orders everyone should remember that the "changes necessitated by the Court orders cannot be accomplished overnight." In direct reference to Ike's somewhat conflicting statements that summer, he added: "As I interpret the president's public statements, the national Administration has no thought of challenging this fact."²⁰

Most telling was Eisenhower's declaration of the "inescapable responsibility resting upon the governor to preserve law and order in his state."²¹

Faubus agreed, sort of: "It is my responsibility to protect the people from violence in any form."²²

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As Faubus left Rhode Island, reporters asked him about Eisenhower's insistence that he change the orders of the Arkansas National Guard. "That problem I will have to take care of when I return to Little Rock." On the whole, the scorecard showed Eisenhower winning the private meeting but losing the public debate afterward. Faubus's departing words were entirely consistent with his position before he had gone to Newport. He had not moved very much.

This became clearer still the following day, when Faubus appeared on CBS's *Face the Nation*. He again demurred on whether he would change the orders of the Guard. Viewers around the country, having heard the upbeat pronouncements from the White House, could be forgiven for their confusion.

At the White House, the optimism began to recede. Perhaps the president read the Faubus statement and compared it to his own. Perhaps Brownell had a few more harsh words about the dubious character of the man they were dealing with. Whatever it was, the Eisenhower team began to show signs of nervousness. Presidential secretary Ann Whitman wrote: "I got the impression that the meeting had not gone as well as had been hoped, that the Federal government would have to be as tough as possible in the situation. Governor Faubus seized this opportunity and stirred the whole thing up for his own political advantage. The test comes tomorrow morning when we will know whether Governor Faubus will, or will not, withdraw the troops."²³



More than anyone else, Eisenhower, as a career soldier, should have understood the limitations of a summit-style approach to resolving the standoff. Seldom do Munich-like agreements address the underlying issues in an evolving, emotionally volatile climate. The fundamental problem must be resolved, not massaged.

The pressure was rising. The *Arkansas Gazette* had reported earlier in the month that Secretary of State Dulles feared that the situation in Little Rock was "not helpful to the influence of the United States abroad."

Faubus wasn't concerned about world opinion. He was worried about local opinion. Upon his return to Little Rock, he bided

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his time. And after a couple of days, it became evident what he was going to do: nothing.

The troops remained at the school, and the governor remained silent. He didn't change the orders of the Guard, as he had hinted to Ike that he would. He didn't talk about finding a way out. Instead, he simply dug in his heels, perhaps hoping against hope that the national media attention—and more important, the president's attention—would fade away.

A shrewd surveyor of the local political climate, Faubus had spectacularly misjudged the president. As the days passed and the troops remained sentinels of segregation, Ike became convinced that Faubus had double-crossed him.

Until now, the issue was somewhat complicated, involving court rulings, school board plans, and local politics. Now, the issue was simple: Eisenhower had been lied to. It was personal. As he later wrote: "The troops stayed at Central High all the following week."²⁴ Eisenhower had used his office, his prestige, and his time to help find a way out for Faubus. In return, he felt that Faubus had taken advantage of him.

Now, at last, he was prepared to act. Enraged, he called Brownell in Washington. "You were right," he said, his anger obvious to Brownell even over the phone line, "Faubus broke his word."²⁵ He wanted to denounce the governor publicly. Both Brownell and Adams urged him to hold his fire. They reminded him that Faubus had a court date on September 20th with Judge Davies. They were certain the judge would order Faubus to admit the black students. It was just as likely that Faubus would remain defiant. In a memo written by General Andrew Goodpaster, Eisenhower was urged to wait for Faubus to defy Judge Davies. Let Faubus overplay his hand, Goodpaster essentially argued. Then, it would become the president's responsibility to use "whatever means may be necessary."²⁶

The drama escalated. On September 20th, in a Little Rock court room, Judge Davies convened the hearing with the words: "Civil Case no. 3113 on a motion for preliminary injunction." This was the case against Faubus. In his ruling, Judge Davies officially en-

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joined the governor. He said that Faubus ought to have used the troops to assist with integration rather than block it.

Not that it mattered to Faubus. Knowing full well what the ruling would be, he didn't even bother to show up. His lawyers represented him in the courtroom. And on cue, they got up and walked out even before the hearing started. Later, to reporters, Faubus vainly tried to portray himself as the victim of a heavy-handed federal court and federal government: "Now begins the crucifixion."²⁷ But no one was buying the Messiah routine. Even his most ardent local defenders knew that this was a crisis that Faubus wanted, even if it was not going as planned.

Faubus had a final card to play. Three hours after the court's ruling, the governor of Arkansas officially removed the National Guard troops from Central High School. He urged black parents not to send their kids to school on Monday. With that, he exited for the Southern Governors Conference in Sea Island, Georgia.

Eisenhower, monitoring the events from Newport, was concerned about possible mob violence when the schoolbell rang the following Monday morning. Publicly, he called the removal of the troops "a necessary step in the right direction" and urged that the order of the court be "executed promptly and without disorder."²⁸ Privately, he was very worried. He expected that a handful of police would not be enough if a riotous crowd were to show up, as they had on the first day of school. He discussed it with Brownell, saying he was "loath to use troops" to restore order even though he did not doubt his authority to do so. He hoped to enlist Brooks Hays on one last mission. He told Brownell that Hays should be told "just how low the governor has fallen in the president's estimation since he broke his promise."²⁹

He also repeated his longstanding fear about what a local school district might resort to, once its back was against the wall: "Suppose the children are taken to school and then Governor Faubus closes the school? Can he do that legally?" Brownell said he would check.

That weekend, Eisenhower, realizing that he could soon find himself again sending troops into battle, tried as best he could to relax. Some of his gang of friends had joined him in Newport.

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They played golf and bridge and devoured steaks cooked by the president. During a game of bridge, Ike complained about how hard he had worked to avoid a confrontation in Little Rock. And yet "...the agitators won't let it be that way." He compared the coming showdown to previous battles like D-Day and the Bulge. The general might not have wanted a confrontation, but he was ready for it.³⁰

Meanwhile, Faubus and his wife, en route to Sea Island, stopped in Atlanta for the Georgia-Texas football game. If the governor was worried about the fate of the black children, it didn't show. "He's really lapping up the glory," another governor told reporters. "There were 33,000 people at the game, and every time they cheered a play, Faubus got up and bowed."³¹

After the game, the governor completed his journey and was feted like a conquering hero at the Silver Room of the Cloister Hotel. He drank and danced and signed autographs from well-wishers. One of those who danced with him was Mrs. James Karam, a friend who had been a part of the governor's entourage from Little Rock. Her husband was one of Faubus's best friends. He was also a professional strikebreaker who knew how to quickly round up enough brutes to cause trouble. Karam hadn't made it to Sea Island because he had business to take care of back home. That weekend, Karam spoke with Little Rock school superintendent Virgil Blossom about the upcoming Monday at Central High. "I like you personally," he assured Blossom, "but don't make a martyr out of yourself." He added, ominously, "Don't go out there tomorrow."³²



The first to arrive on Monday, September 23rd, were the police; some seventy Little Rock cops reached the school at 6:00 a.m. They put up sawhorse barricades. And then they waited for school to start.

It wasn't long until a mob a thousand strong began to assemble. Their taunts echoed the ugliness that had greeted the Little Rock Nine back on September 4th. Only this time, the crowd seemed angrier, nastier, meaner. An uneasy tension filled the air.

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"Here come the niggers!" went the battle cry just after the schoolbell rang at 8:45 a.m. A roar from the crowd ensued. But the black students had yet to arrive. Instead, the crowd was incited by having spotted four black reporters who were on hand to record the day's events. A group of around twenty thugs went after the four men. One of the four, reporter Alex Wilson, chose to stand his ground. This was natural because he had served in the Marine Corps. He was also a large man, more than six feet tall. He was dressed sharply in a tan hat and dark suit, with the middle button fastening the jacket together. When the toughs approached him, he didn't back down. "I fought for my country, and I'm not going to run." One of the thugs surrounding Wilson held a brick in his hand. He raised it up and smashed it against Wilson's head. The proud reporter, with his immaculate suit still buttoned together, fell to the ground. (He survived the attack but died a couple of years later of complications from the wounds he received that day at Little Rock.)

Any semblance of order was now gone. It was mayhem. But it wasn't accidental. Right in the middle of the disorder was Faubus's friend, Jimmy Karam. He was no innocent bystander. He was directing the action. When police tried in vain to stop the chaos, Karam yelled out, "The niggers started it!" The crowd's intensity went up another notch.³³

Unknown to the mob, the black students had already entered the school building. Distracted by the beating of the reporter, most people never saw the two cars that had delivered the kids to a side entrance. Daisy Bates, of the local NAACP, had planned the logistics for the Little Rock Nine, only this time even Elizabeth Eckford was included.

Inside, the kids found a climate nearly as hostile as it was outside. They were quickly ushered into the office, where they met with Principal Jess Matthews and Vice Principal Elizabeth Huckaby. "Here are your class schedules and homeroom assignments," Ms. Huckaby said, pretending that it was business as usual that morning. Soon, the door to the office opened, and a white student marched in. "You're not gonna let those niggers stay in here, are you?" he demanded.

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Thelma Mothershed, one of the black students, collapsed on an office bench. The pressure was just too great. The other kids were told to make their way to their homerooms. When Melba Pattillo asked why all of the nine kids were going to different homerooms, a white officeworker gave her a less-than-reassuring answer: "You wanted integration...you got integration."³⁴

As Melba walked down the hall to her classroom, another white school employee entered her personal space. "Nigger bitch," the woman said, "why don't you go home?" When Melba at last entered her homeroom, the white students who were already there recoiled at her sight. As she sat down, several of the kids around her picked up their books and moved to different seats.

"Are you going to let that nigger coon sit in our class?" a boy asked the teacher. His question was ignored. Melba's next class wasn't much better. At one point that morning, en route to another class, she was tripped by a white student and fell down on the floor, cutting herself. "What do you know?" snickered a white kid. "Niggers bleed red blood. Let's kick the nigger."

Throughout the ordeal, Melba and the other kids could hear the mob outside screaming insults. The crowd had grown tired of beating up on reporters. Now, they had finally learned that the Little Rock Nine were already inside the building. "Oh, my God, they're going in!" one woman screamed in horror. "The niggers are in!"

They wouldn't be for long. The mob began pushing forward, determined to break through the line of police in front. Karam continued his incitement. In fact, the crowd, perhaps having decided to share their anger with everyone, now turned on even the white reporters within reach. *Life* photographers Francis Miller and Gray Villet were each punched in the face. And the *Life* reporter, Paul Welch, had his face beaten and his neck cut. To add insult to injury, the three men were arrested by the police. The charge? Inciting a riot.

Finally, assistant police chief Gene Smith capitulated. Several of the protestors had pierced the police line and were angrily storming into the school building. At 11:30 a.m., Smith ordered the black kids removed. All nine were led out by police escort, placed

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in cars, and driven home. For the second time in three weeks, mob violence had prevented the integration of Central High School.

As the crowd celebrated its latest triumph, Daisy Bates began to plan her next move. The driving force behind the local NAACP's effort to integrate Central High, she was enraged by what had transpired that morning. Running out of options, she could only imagine one last resort that might just save the experiment.

When a reporter asked her that day whether the Little Rock Nine would return to Central the next day, she said no. She would instruct the black students to stay out of school "until the president of the United States guaranteed them protection within Central High School."³⁵



The stage was now set for the single most important constitutional showdown since the Civil War. Sides had been chosen. Lines had been drawn. Tension grew. Emotions filled the air. Anger. Fear. Rage. Hatred. Love. Hope.

Little Rock represented something else as well: the culmination of Eisenhower's own attitude toward racial justice.

As a young football player, he had instinctively sympathized with the black players on the other team. As an Army commander, he was willing to circumvent War Department policy to use his Negro troops. And as president, he had called segregation "criminally stupid."

But having the right instincts is different from doing the right thing. Sympathy is distinct from support; still more, it is far removed from identifying or enforcing a solution.

Until now, Ike had enjoyed the luxury of endorsing civil rights in broad terms, knowing full well that much of segregation law was a state and local matter.

Little Rock ended that. At last, the smoke had cleared, the battlefield was prepared, and Eisenhower could clearly see the line of attack that was needed. He had always said that where there was a federal issue involved, he would act. He had done so with the military and in the District of Columbia. Now, there was

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a federal issue in Little Rock. And he had to act. "The issue had now become clear both in fact and in law," he later observed.³⁶

On the morning of September 23rd, 1957, while a howling mob raged in front of Central High School, Eisenhower was inside the serene confines of Washington's Sheraton Park Hotel. He was there to speak to the governors of the International Bank, the International Monetary Fund, and the International Finance Corporation.

Eisenhower's speech was a thoughtful, high-minded call to promote and sustain "prosperity in peacetime" for all the peoples of the world. "Our economies can help generate an ever better lot for our peoples if we are both forward-looking and prudent in our private and public policies."³⁷

Black families in his own land would welcome such prosperity; but they were demanding justice. The violent scenes from Little Rock that morning soon overshadowed the president's eloquent words on the global economy.

Eisenhower returned to Newport later that afternoon. He received a call from Brownell. The attorney general didn't pull any punches in describing the deteriorating scene at Central High. Eisenhower was fed up with Faubus. He was ready to do something about it. He and the attorney general worked out a statement to be released to the press, putting the governor, the mob, and the nation on notice: "I will use the full power of the United States including whatever force may be necessary to prevent any obstruction of the law and to carry out the orders of the Federal Court." The federal law "cannot be flouted with impunity by any individual or any mob of extremists."³⁸

Faubus offered his own commentary on the chaos. "The trouble in Little Rock vindicates my good judgment," he said, patting himself on the back for having originally used National Guard troops to keep the Little Rock Nine out.³⁹ Eisenhower was particularly irritated that Faubus continued to confuse the cause and the effect. He believed that Faubus "saw in the mobs not his duty but rather his vindication for having called out the National Guard in the first place."

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Later that same day, in Newport, Eisenhower issued another public statement, this one a proclamation entitled "Obstruction of Justice in the State of Arkansas." In it, he ordered "all persons engaged in such obstruction of justice to cease and desist...."⁴⁰

The mess in Little Rock left the president little choice. No less a source than Mayor Woodrow Mann had sent an urgent telegram to Newport describing the scene, as well as who he believed was responsible. "The mob that gathered was no spontaneous assembly," he wired. "It was agitated, aroused, and assembled by a concerted plan of action." He specifically fingered Jimmy Karam as the mastermind and informed the president that Karam was a "political and social intimate of Governor Faubus, and whose wife is now with the governor's party at the Southern Governor's Conference." Mann concluded that "Governor Faubus at least was cognizant of what was going to take place."⁴¹

School Superintendent Virgil Blossom called the Department of Justice and asked Brownell for federal intervention. When the call ended, the attorney general began working on a draft proclamation establishing the president's authority to use force to enforce the law. He called Newport and read it to the president on the phone. "I want you to send up that proclamation," Ike said. "It looks like I will have to sign it, but I want to read it."⁴²

That night in Little Rock, events continued to deteriorate. Police broke up a racial fight at 15th and Main Streets. Bricks and bottles were hurled through windows. One hundred cars, filled with angry people and guns and dynamite, drove into Daisy Bates's neighborhood. After the police chased them off, Daisy's phone rang. "We didn't get you...," the voice threatened, "but we will. And you better not try to put those coons in our school."

In Newport, President Eisenhower retired to the sun porch of his living quarters to review the material that Brownell had sent him. Perhaps he reflected on the whirlwind of events that had led to this moment. The *Brown* ruling...the local integration plan put in place by Little Rock...the National Guard blocking the school doors...the federal court's injunction...the meeting at Newport with the governor...the duplicity of Faubus...the removal of the troops...the return of mob violence at the schoolhouse door.

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Now, he was considering sending military troops into a Southern city for the first time since Reconstruction.

It was a lot to take in. The president retired to his bedroom. The executive order was left unsigned.



A few minutes before 8:00 a.m. on the morning of September 24th, Dwight D. Eisenhower walked toward his office in Newport, breathing in the sea-kissed air of Newport. "There's a cold wind blowing up," he said, not making it clear whether he was referring to the Newport breeze or the political storm weather in Little Rock.⁴³

At 8:35 a.m., Brownell called for the first of many updates that would come that day. The two men talked about issuing a statement in case hostilities continued in Little Rock, which they both fully expected would happen. Brownell thought it was important to point out that there had been previous disturbances in American history when a president had had to act, such as the Whiskey Rebellion. Eisenhower liked the reference and thought that it might be worth reminding the public of "like emergencies." He also thought it was important not merely to state that the "law has been defied." He wanted to express his personal sympathy.

The discussion moved to tactics. Brownell had already talked to General Max Taylor, Army chief of staff, about utilizing the National Guard troops in Little Rock. Eisenhower cautioned that this might create a "brother against brother" environment because they would be going up against their own families and friends in Little Rock. Instead, he recommended using National Guard troops from other parts of the state.⁴⁴

Having given Brownell his preliminary orders, Ike turned to other business. His friend, General Al Gruenther, had urged him to return to the White House from his vacation. In response, the president wrote that the "White House office is wherever the president may happen to be." He then specifically addressed the tumult in Little Rock:

I do not want to give a picture of a Cabinet in constant session, of fretting and worrying about the actions of a misguided gov-

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ernor who, in my opinion, has been motivated entirely by what he believes to be political advantage in a particular locality.

Besides, Ike continued:

The Federal government has ample resources with which to cope with this kind of thing. The great need is to act calmly, deliberately, and give every offender opportunity to cease his defiance of Federal law and to peaceably obey the proper orders of the Federal court.

By pursuing this dispassionate course of action, Eisenhower hoped to avoid a situation where people like Faubus "are not falsely transformed into martyrs."⁴⁵

Having completed this letter, Eisenhower now returned to managing the federal response to Little Rock. He called Brownell at 12:08 p.m. In the few hours since their first call that morning, Ike had changed his mind on tactics. "In my career," Eisenhower said, referring to his decades in uniform, "if you have to use force, use overwhelming force and save lives thereby." He would nationalize the Arkansas National Guard and take those troops out from under Faubus's command. But he would also send in perhaps the most famous military unit in America: the 101st Airborne Division. This same division had been visited by General Eisenhower in the hours before D-Day. He had counted on them before. And he knew he could count on them again. Plus, they were specifically trained for crowd-control challenges.

The conversation ended with another surprise from the president to his attorney general. "Meet me at the White House," he said. "I'm going to address the nation on TV."⁴⁶ In the meantime, Eisenhower issued an executive order federalizing the Arkansas National Guard and authorizing the use of active duty troops to enforce the law. He personally called General Taylor at 12:15 p.m. and told him to mobilize the 101st for duty in Arkansas.

Shortly after Ike gave the go-ahead, he received another telegram from Mayor Mann in Little Rock. "The immediate need for federal troops is urgent..." it read, since the "mob is much larger in numbers" than the day before. Mann described a chaotic scene

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in which the "police cannot disperse the mob...." Only military troops could do the job.⁴⁷

At Fort Campbell, Kentucky, one thousand soldiers from the 101st Airborne prepared to leave that day for Little Rock. The first elements would arrive that afternoon, the rest by nightfall.

Still in Newport, Eisenhower conferred with Jim Hagerty on a speech. Having made the decision and issued the orders, he now had to explain it to the nation. A flight was scheduled to take him back to the White House. The communications facilities were better at the White House. But it was also important, Ike thought, to speak to the nation from the capital. The whole nation, indeed the whole world, would be watching. Eisenhower would have to marshal his words carefully, not just to give the moment clarity, but to give it meaning. The man who derided the role of speechmaking in the presidency would now have to give the speech of his life.



Of all the myths in American politics, few are as enduring—and so misguided—as the power of the presidential speechwriter. Scholars and pundits enjoy regaling audiences with tales of surrogate presidents like Hughes or Sorenson or Noonan. Like a lyrical Svengali, a speechwriter is assumed to possess powers of hypnosis over those for whom he works. The speechwriter crafts the words, and the president reads them. Like most myths, this one has elements of truth, but it is largely untrue. Any honest presidential speechwriter will downplay his role.

The myth of the speechwriter doesn't factor in that a president is his own first and best speechwriter. No speech of any significance ever comes out of a president's mouth that didn't at least come in part from his hand, if not his heart or his mind. This was especially true for Eisenhower, who, as a career military officer, had written countless speeches for himself and others. As president, he was no less involved in the speechwriting process. "He reworked and revised his manuscripts endlessly," remembered one speechwriter, Art Larson. "Every open stretch of a few hours was pressed into service" for reworking and editing speeches. "No speech manuscript was finished until he carried it to the podium," Larson recalled.⁴⁸

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Eisenhower didn't reserve his involvement for the editorial backend of the process, as he demonstrated on the flight from Newport to Washington. The day he boarded the presidential plane, *The Columbine II*, air-traffic controllers were already calling it Air Force One. As president, Eisenhower had brought a sense of military decorum to the presidential plane. A desk had been placed there for him to work, along with a video projector to watch briefings from the Pentagon and State Department. A radio provided the news, and a safe was on hand, where he could securely store important documents. It was there in the confines of his plane that the president would craft one of the most important speeches of his presidency.

During the short flight to Washington, Eisenhower took out a piece of White House stationery with his initials "DDE" centered at the top. As the plane headed South from New England, the president began to scribble some basic principles that he wanted the speech to convey. Like all good writers, he began to narrow his focus, pulling the arrows out of his quiver, zeroing in on his target.

"Troops—Not to enforce integration but to prevent opposition by violence to orders of a court." Then, having established the theme of the speech, he drew a line to separate the rest of his thoughts. Beneath it, he added some more of the details that he wanted to cover in the speech:

"In Arkansas—Governor ordered out troops, armed and equipped and partially maintained by Fed Government with instructions to prevent execution of a plan proposed by School Board, approved by Fed Judges." Now that he had written out the general theme and the specific problem, he drew another line and began a third section. There, he hoped to outline the solution:

"President can stand by...or he can carry out his oath of office." The speech had to describe the choice that Ike had made and why he had made it. Troops would be sent into the South for the first time since Reconstruction. As he put it on the stationery while flying down to Washington, to allow mobs to disregard federal law would mean the "destruction of our form of government."⁴⁹

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The writing skills he had first tested as a young officer, honed with MacArthur, and perfected in World War II had served him well this day. On one sheet of paper, Eisenhower had written out a compelling and complete outline of the speech. He had a theme, a problem, a solution, and, most important for the dramatic effect necessary to hold an audience's attention, a choice. Eisenhower would portray his decision as a choice between lawlessness and the law.

Once he was safely returned to the White House, Eisenhower spent the remainder of the day preparing for his address, which was scheduled to be broadcast live to the nation that night at 9:00. Eisenhower took television seriously. He relied on actor Robert Montgomery for advice on everything from the use of makeup to camera angles. Long before Kennedy or Reagan, Eisenhower pioneered the art of creating a forceful image.

For this appearance on this night, stylistic concerns were less important than substance. Secretary of State John Foster Dulles was also very forthcoming with suggestions. Earlier that day, he had told Brownell that Little Rock was "ruining our foreign policy. The effect of this in Asia and Africa will be worse for us than Hungary was for the Russians." It was during this call that Brownell urged Dulles to add foreign-policy language to the speech. He did, later calling Eisenhower and suggesting that Ike add: "It would be difficult to exaggerate the harm that is being done to the prestige and influence, and indeed to the safety, of our nation and the world. Our enemies are gloating over this incident..."⁵⁰

As Ike began editing the speech as prepared, he added many of Dulles's suggestions. He also had his own edits to make. In the section describing the Supreme Court's ruling of 1954, Ike, in his own hand, added: "Our personal opinions as to the accuracy of the decision have no bearing on the matter of enforcement." After all these years, he still wouldn't publicly say what he thought of the *Brown* ruling. It was the law; that's what mattered.

The speech then praised the desegregation efforts of other Southern communities. Ike added in his own hand that the willingness of these communities to cooperate with federal law was "the cornerstone of our liberties."

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Toward the end of the speech, Ike added an entire paragraph making it "clear that Federal troops are not being used to relieve local and state authorities of their primary duty to preserve the peace and order of the community." And again, he added language to show that he was not trying to demonize anyone in the South: "The decision of the Supreme Court concerning school integration affects the South more seriously than it does other sections of the country. In that region I have many warm friends."

His edits finished, Dwight Eisenhower entered the Oval Office a few minutes before 9:00 p.m. and sat behind his desk. As the camera trained its eye on him, he greeted the country wearing a three-piece, gray suit, a dark tie, and the glasses needed to read the text in front of him. "For this talk, I have come to the president's office in the White House," he said in explaining his decision to leave Newport. But by coming to the White House and "speaking from the house of Lincoln, of Jackson, and of Wilson, my words would more clearly convey both the sadness I feel in the action I was compelled today to take and the firmness with which I intend to pursue this course until the orders of the federal court at Little Rock can be executed without unlawful interference."⁵¹

His pitch and tone were perfect: a strong hand tempered by a heavy heart. He read through the speech with evident conviction, occasionally looking down at the text, but often staring right into the camera. It was tightly crafted and well-delivered. Still, it was only a speech. And Ike understood that speeches don't win battles.



More than a thousand miles away, his troops were taking care of that. That night, the 101st Airborne set up camp in a field just beyond the tennis courts. They had arrived from Fort Campbell in eight C-130 and C-123 transport planes. Jeeps and trucks soon carried them to Central High. A makeshift tent city was quickly erected to house the soldiers. Communications equipment and wiring were set up. Perhaps most impressive of all, no mob dared assemble to challenge the troops. In a matter of hours, the 101st Airborne, with spectacular military precision, had secured the school grounds. This was exactly why Eisenhower had ordered them—and not just Na-

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tional Guard troops—to Little Rock. He knew that their professionalism would be a warning against any agitators.

The next morning, September 25th, a crowd did gather. But it was outmatched, as it soon found out. The 101st had established a barrier at an intersection just east of the school. They called it "Roadblock Alpha," and it was there that a group of angry whites decided to engage the enemy. They were greeted by an officer's voice on a loudspeaker. "Please return to your homes, or it will be necessary to disperse you," Major James Meyers ordered.⁵² The crowd refused to move. Twelve soldiers snapped into formation, pointed their bayonets forward, and began marching in perfect order toward the crowd. The crowd began to run. It was the first engagement in the battle that day. And the 101st had shown no problems toward winning it.

At 8:45 a.m., an Army vehicle entered through the barricade at South Park and 16th Streets. In front of the school, the car slowed down to let out nine black students. The youngsters were soon enveloped in a cocoon of soldiers, who escorted them up the steps and into the school. As they had done before, the angry white protestors bitterly complained that "the niggers are inside!" But this time, there was nothing to be done about it. One of the most powerful units in the entire U.S. military was protecting the Little Rock Nine.

Meanwhile, back at "Roadblock Alpha," the crowd had regained its nerve after being chased by the troops earlier. As the crowd grew in size and intensity, another order came over the loudspeaker from Major Meyers: "Let's clear this area right now. This is the living end!" The officer speaking added that this time "we're not going to do it on a slow walk," meaning that the crowd faced a real charge from the troops.

When the crowd didn't move, the charge began. Many of the protestors took refuge in houses, but the troops didn't care. They followed the resisters through the neighborhood until they were pushed well away from the school. Only one protestor tried to put up a fight. He was C. E. Blake, a switchman for the railroad. He tried to grab a soldier's gun and tumbled to the ground with him. He soon regretted it when another soldier took the butt of

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his gun and smashed it into Blake's head. An ample amount of blood soon flowed from his head. The crowd was now learning the hard way that these soldiers from the 101st were different from the police who had guarded the school earlier in the week. These boys didn't mess around.

Once inside the school, the black students fanned out to their homerooms. Each had an assigned soldier to follow and protect them. The soldiers had been briefed on their students. When Melba Pattillo first noticed a soldier following her, she turned and looked to him. Before she could speak, he did. "Melba," he said, "my name is Danny. I'll be waiting for you here. We're not allowed to go inside the classrooms. If you need me, holler." For the next few days, Danny served as a human metaphor for the federal government, walking behind Melba to make sure she was all right. "It takes a warrior to fight a battle and survive," Danny later told her. "This here is a battle if I've ever seen one." These little pep talks, often spoken from behind Melba as she walked down the hall, helped her to endure the ongoing insults from the white students. "In order to get through this year, you will have to become a soldier," Danny would say. "Never let your enemy know what you are feeling."⁵³

Meanwhile, Faubus was again casting himself as the victim, even joking that he had been relieved of his job "like MacArthur." Harry Ashmore was not impressed. In the *Arkansas Gazette* he neatly summarized the strategic flaw inherent in the governor's strategy. Faubus "has by his actions and words dealt a major and perhaps a lethal blow to the cause of segregation which he purported to uphold."⁵⁴ Now that the federal government had been provoked, it had effectively settled the issue once and for all. Faubus may have scored some temporary political victories with his white constituents, but he had lost the war over integration.

Faubus was determined to go down fighting, anyway. He gave a televised address in which he portrayed C. E. Blake and himself as martyrs. He also cast aspersions on the character and conduct of the 101st. "In the name of God, whom we all revere, in the name of liberty which we hold so dear, which we all cherish, what is happening in America?" he asked.

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Faubus realized how hopeless his cause was. He saw the proficiency of the professional troops monitoring Central High. He saw that the crowds no longer challenged the troops. He knew that it was over. He began to wallow between defiance and self-pity. He even referred to the head of the 101st, General Edwin A. Walker, as the "Commander of the Little Rock Occupational Forces."

While the 101st soldiers were escorting the kids into the school that morning, Ike returned to Newport. On the plane ride, he gave a lift to a reporter from *Time* magazine. John L. Steele was the magazine's White House reporter and knew Ike well; well enough to coax the president into a candid post-mortem. The conversation aboard the *Columbine II* that day was the closest thing to an after-action report that Ike ever uttered on the subject. In an off-the-record session, he spoke of the pain of the past few days.

Sending in troops "really doesn't settle anything." He paused, then clarified: "It really doesn't settle anything except the supremacy of the federal government." Sending in troops to an American city was the hardest decision he'd ever had to make, save possibly for D-Day.

"Goddamn it," he said, "it was the only thing I could do. Just a moment after I signed the order, I read an entirely irrational, hysterical telegram from the mayor—what's his name?—in Little Rock. It was nutty stuff."

Steele observed a "sad man flying back to Newport." It had given him no joy to intervene militarily. "The issue here is *not*—repeat: *not*—segregation," Eisenhower reiterated. "It isn't even the maintenance of public order. It is a question of upholding the law—otherwise you have people shooting people." Steele said that Eisenhower worried that people would misunderstand his motives. No, it was not part of a crusade for racial justice. But neither was it an effort to disperse with mob rule. Simply put, it was to enforce the law of the land. This was an important distinction to Ike, and one he would continue to emphasize for the rest of his life.

Ike expressed a particular animus for the agitators. "This thing is going to go on and on and on in other places; these

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damned hooligans...I was trying to speak last night to the reasonable people, the decent people in the South."

Ike felt that his speech just might have struck the right tone with his audience. He said that his former treasury secretary, George Humphrey, a man with considerable ties to the South, had called him to say that the speech had hit "exactly" the right tone. Still, Ike admitted that the whole ordeal had taken a toll on him, saying that it had "been nagging me day and night."

As the presidential plane landed at Quonset Point, the president turned to Steele: "Gee, it's been swell—wish we could do this more often, John. But damnit, there's so many of you." It was the first, and most detailed, account he had ever given on his decision to send in the troops. And it sounded themes that he would echo for years to come.⁵⁵

As Eisenhower tried to resume his Rhode Island vacation, responses to his actions poured in from all over the nation.

"Please accept my congratulations," Jackie Robinson wired, "on the positive position you have taken in the Little Rock situation." Robinson's fervor for Ike had cooled considerably during the standoff. But he now confessed, "I should have known you would do the right thing at the crucial time."

Another icon of the black community who had also been restless with Ike's patience during the crisis was the great musician Louis Armstrong. He, too, wired his approval: "Daddy, if and when you decide to take those little Negro children personally into Central High School along with your marvelous troops please take me along...." Satchmo concluded by telling the president: "You have a good heart."⁵⁶

Praise came as well from Martin Luther King, Jr. He waxed poetic about how eventually "justice must spring from a new moral climate." FDR's son, James, who had once sought to recruit Ike as a Democratic candidate for president, saluted Eisenhower's "firm and direct action...."⁵⁷ An associate of Fort Worth oilman Sid Richardson also approved. Monty Moncrief wrote that the "overwhelming majority of the American people are in full accord with the determined action you have taken."⁵⁸ Harry Ashmore took time out from a busy newspaper schedule to wire from Little Rock:

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"Thank you sir for your masterful statement...."⁵⁹ And Woodrow Wilson's grandchildren sent words of approval.

Even Daisy Bates congratulated the president on his "forthright address...and decisive action."

Not all the mail was so kind. The man who had run against Ike in 1952 as Stevenson's running mate was particularly enraged. Senator John Sparkman spoke of the "resentment and disappointment that the troops were ordered in so soon after your command 'to cease and desist....'" He echoed Faubus's language in saying that "occupying Little Rock has brought about further deterioration of relations and further embitterment between our Negro and white citizens."⁶⁰

Perhaps the deadliest venom came from Georgia senator Richard Russell. He explicitly compared the 101st Airborne troops to Hitler's stormtroopers. An indignant Eisenhower personally penned a response on a piece of White House stationery:

I must say that I completely fail to comprehend your comparison of our troops to Hitler's storm troopers. In one case military power was used to further the ambitions and purposes of a ruthless dictator; in the other to preserve the institutions of free government.⁶¹

Some of the warmest applause for his action came from his own household. Mamie was particularly pleased, noting that those "folks have got to get an education, too."⁶² Mamie and Ike spent time each day with Sgt. Moaney, who was still serving as the president's valet, and his wife, Delores, who served as the First Family's cook. Indeed, when traveling, the Eisenhowers refused to stay anywhere that refused to house the Moaneys. Mamie had even landed her own blows for racial equality. In 1953, she was saddened to see black children outside the White House gates, denied access to the Easter Egg Roll because of their race. She decreed an end to such exclusivity, integrating the beloved tradition around the same time Ike was pressing local authorities to desegregate the District of Columbia. Now, four years later, she had no doubts that her beloved Ike had done the right thing at Little Rock.

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Not all of the responses about the crisis were directed toward Ike. Many others were made in the press or privately. Senate Majority Leader Lyndon Johnson, with his eye on the 1960 election, tried to stake out a middle ground by saying that "there should be no troops from either side patrolling our school campuses anywhere."⁶³ He elaborated, in a letter to former Secretary of State Dean Acheson, writing that Eisenhower "may find that getting the troops out is a much more difficult proposition than getting them in."⁶⁴

Senator John F. Kennedy was even more skillful in navigating the Little Rock minefield. "The Supreme Court's ruling on desegregation of schools is the law of the land," he told a reporter, "and though there may be disagreement over the president's leadership on this issue, there is no denying that he alone had the ultimate responsibility for deciding what steps are necessary to see that the law is faithfully executed." In one sentence, Kennedy had reassured Northern liberals that he supported the *Brown* decision while hinting to Southern Democrats that he did not wholly approve of the president's handling of the crisis.⁶⁵



During the next several weeks, pressure mounted on Eisenhower to remove the troops. In October, he met in the Oval Office with four Southern governors. They suggested having Faubus send Eisenhower a declaration of his desire to cooperate with the law upon the removal of the federal troops. The president, undoubtedly remembering the experience a month earlier at Newport, told them to go ahead with it anyway. They did. In the Fish Room across from the Oval Office, the gubernatorial quartet worked on a statement. Yet, when they tried to engage Faubus, he did exactly what Ike had expected. A draft statement was sent to Little Rock, whereupon the governor began hedging. After seemingly endless negotiations, a single sentence was approved: "I now declare that I will assume full responsibility for the maintenance of law and order and that the orders of the Federal Court will not be obstructed."

Even still, Faubus couldn't help himself. At the last minute, and without notifying the four governors, he issued his own ver-

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sion of the statement, inserting the words "by me" at the end of it. It changed the entire meaning. Faubus was merely saying that he wouldn't cause trouble. This left him room to allow people like Jimmy Karam to do that for him.

"The statement issued this evening by the governor of Arkansas," Eisenhower answered in his own rejoinder, "does not constitute in my opinion the assurance that he intends to use his full powers as governor to prevent the obstruction of the orders of the United States District Court. Under the circumstances, the president of the United States has no recourse at the present time except to maintain Federal surveillance of the situation."⁶⁶

Privately, his tone was harsher. The day after Ike met with the four Southern governors, he sent word to Vice President Nixon that he hoped to play a round of golf that afternoon. "If you already have a game, please don't think of changing your plans because mine are necessarily so uncertain because of the stupidity and duplicity of one called Faubus."⁶⁷

Eisenhower continued to hope that patience and goodwill might change hearts and minds in the South. But he soon lost one of his closest allies in the fight. By prior agreement, Attorney General Herbert Brownell stepped aside later that month. Brownell's service would be missed. But his impact would remain. For years, the gentlemanly Brownell had gently nudged Ike forward on civil rights. One of his most successful—and least publicized—efforts involved the selection of judicial nominees. Brownell helped to ensure that Eisenhower nominated federal judges who were friendly to civil rights. He even persuaded Ike to appoint the grandson of Justice John Harlan—author of the famous dissent in *Plessy v. Ferguson*—to the Supreme Court in 1955. (Harlan's insistence on answering questions from the Senate during his confirmation process helped to set the precedent for all future Supreme Court confirmation hearings.)

But it was the lower-level judges who would make the greatest impact. For the next twenty years, the civil rights community would seek out these judges when taking their cases to court. "The best civil rights judges in the South," civil rights leader Andrew Young later remembered, "were the Eisenhower appointees...."⁶⁸

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Like lumberjacks in a vast, overgrown forest, these men would chop down segregation one ruling at a time. Still, Brownell would be missed, not least of all by the president. At the Department of Justice, Brownell's job would be filled his deputy, William Rogers, who shared his predecessor's passion for civil rights.

By October, the president began withdrawing troops. On October 23rd, the Little Rock Nine walked into school with no troops supporting them. It had taken a month, but Ike's troops had broken the resistance in Little Rock. The president was also able to defederalize large portions of the Arkansas National Guard. Without too many problems, integration continued throughout the remainder of the year. At the end of the school year, the only senior out of the original nine black students, Ernest Green, became the first black to graduate from Central High. So powerful was this moment to the civil rights community that Dr. Martin Luther King, Jr. flew in for the graduation ceremonies.

Faubus continued in his self-appointed role of Southern defender. Politically, his tactics were paying off. A Gallup Poll in 1958 revealed Faubus as one of the ten most admired men in America. And the man who had once feared a serious primary challenge was overwhelmingly nominated for a third term as governor in the summer of 1958.

Eisenhower had always hoped that moderate people of goodwill would solve the problem of racial injustice. At Little Rock, he learned just how naïve he had been. It wasn't just Karam's hoodlums who had chanted obscenities in front of Central High. It was some of the otherwise finest of Little Rock society—doctors, lawyers, and other professionals. Eisenhower, sensing that his faith in the people of the South may have been misplaced, complained bitterly to Oveta Culp Hobby. Hobby had left the Eisenhower administration and returned to Houston to care of her ailing husband in 1955. Ike told her that among influential newspaper editors only Ralph McGill of the *Atlanta Constitution*, had spoken up in support of the president's position at Little Rock.

Meanwhile, Ike's efforts at spiritual reconciliation were also failing. During the Little Rock crisis, a member of Billy Graham's staff penned an article called "No Color Line in Heaven," which

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showed that Graham generally opposed segregation. Graham himself enjoyed friendly relations with Dr. King. But when King asked Graham to stop including segregationist public officials on the platforms of his rallies, relations between the two men cooled a bit. Part of the power of a Billy Graham crusade was its quasi-official status, testified to by the presence on stage of elected officials. Graham was unwilling to kick these people off the stage, even though he didn't share their segregationist views.⁶⁹ Sadly for Ike, there was a limit to what white ministers were willing to do in confronting racism. Dr. King would learn this lesson anew six years later in a Birmingham jail.

And though he had tried to rally moderate editors in the South to his cause, very few seemed interested.

When the Supreme Court in 1958 unanimously upheld the federal government's actions in Little Rock, Faubus did what Eisenhower had always feared he would do: He simply closed down the public schools in Little Rock for the school year. But even politics is not a strong enough force to match economics. And since many white families couldn't afford to send their kids to private schools, the pressure soon mounted to reopen the public schools. In the late summer of 1959, the public schools of Little Rock were opened again. And they were operated on an integrated basis. At last, the Battle of Little Rock was over. But the fallout was just beginning.

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Justice John Paul Stevens and Judicial Deference in Military Matters

*Eugene R. Fidell**

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INTRODUCTION

With the death of Chief Justice William H. Rehnquist, Justice John Paul Stevens became the only sitting Justice with wartime military experience.¹ Chief Justice Rehnquist served as a Sergeant in the Army

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¹ Three other sitting Justices have worn the uniform. Justice Kennedy served as a Private First Class in the California Army National Guard in 1961, the year he graduated from Harvard Law School. See Federal Judicial Center, Judges of the United States Courts, <http://www.fjc.gov/servlet/tGetInfo?jid=1256> (last visited Apr. 22, 2009). Justice Breyer served in the Army in 1957 while he was a Stanford undergraduate. See *Stephen G. Breyer*, N.Y. TIMES, http://topics.nytimes.com/topics/reference/timestopics/people/b/stephen_g_breyer/index.html (last visited Jan. 11, 2010). Justice Alito participated in the Reserved Officers' Training Corps at Princeton and served on active duty for four months (followed by several years in the reserves) after graduating from Yale Law School in 1975. See *Alito Joined ROTC While at Princeton*, WASH. POST, Nov. 3, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/02/AR2005110202722.html>.

Air Force from 1943 to 1946.² Justice Stevens served as a naval officer at Pearl Harbor from 1942 to 1945, analyzing intercepted message traffic and decrypting enemy call signs.³ While the Chief Justice turned down the opportunity for a commission, Justice Stevens eventually attained the grade of Lieutenant Commander.

Despite their shared military background, Justice Stevens and Chief Justice Rehnquist take differing stances in cases relating to the armed forces. Justice Stevens's careful, nondoctrinaire approach is of a piece with the Supreme Court's World War II-era approach in *Duncan v. Kahanamoku*.⁴ In *Duncan*, the majority rejected military claims that it was necessary to employ military courts in Hawaii after Pearl Harbor.⁵ This is a far cry from the uncritical deference that typified Chief Justice Rehnquist's decision-making in cases such as *Goldman v. Weinberger*⁶ and *Winter v. Natural Resources Defense Council*.⁷

Military cases, even broadly defined, form a small part of the Court's docket. When they do occur, however, they present issues that are often both doctrinally challenging and symbolically potent. Examples of this appear in Justice Stevens's landmark Guantánamo-related opinions in *Rasul v. Bush*⁸ and *Hamdan v. Rumsfeld*,⁹ as well as in his eloquent dissent in *Rumsfeld v. Padilla*.¹⁰ Consistent with his abstention from the "cert pool," what emerges from his separate opinions in cases relating to the military — whether concurring, as in *Goldman v. Weinberger*¹¹ and *Solorio v. United States*,¹² or dissenting, as in *United States v. Scheffer*¹³ — is a determinedly independent perspective not easily pigeon-holed as liberal, conservative, or "activist." To be sure, at times he has been perfectly willing to join in

² Chief Justice William H. Rehnquist, Remarks at the American Meteorological Society (Oct. 23, 2001), available at http://www.supremecourtus.gov/publicinfo/speeches/sp_10-23-01.html [hereinafter Remarks of Chief Justice Rehnquist] (noting that Chief Justice Rehnquist left air force because he "had had enough spit and polish for a while").

³ John Paul Stevens, Letter to the Editor, *The Dissenter*, N.Y. TIMES MAG., Nov. 4, 2007, at 12.

⁴ 327 U.S. 304, 335 (1946).

⁵ *Id.* at 324.

⁶ 475 U.S. 503, 507 (1986).

⁷ 129 S. Ct. 365, 382 (2008).

⁸ 542 U.S. 466 (2004).

⁹ 548 U.S. 557 (2006).

¹⁰ 542 U.S. 426, 455-65 (2004) (Stevens, J., dissenting).

¹¹ 475 U.S. at 510-13 (Stevens, J., concurring).

¹² 483 U.S. 435, 451-52 (1987) (Stevens, J., concurring).

¹³ 523 U.S. 303, 320-39 (1998) (Stevens, J., dissenting).

others' opinions. Examples of this are *Rostker v. Goldberg*,¹⁴ which upheld male-only draft registration, and *Rumsfeld v. Forum for Academic and Institutional Rights*,¹⁵ which upheld the Solomon Amendment requiring the Reserve Officers' Training Corps and recruiter access to college campuses.¹⁶

Those who have served in uniform can attest that military service is a vivid experience. This holds true even if one did not see action in combat and even if one's period of service was brief. Indeed, lawyers who served in World War II recall details of cases tried a lifetime ago. People form personal habits that may stay with them forever. It is tempting to speculate that the approach apparent in Justice Stevens's votes and writing in military-related cases reflect the three years he served in Hawaii.

This Article explores the effect of Justice Stevens's military experience on his judicial career. Part I of the Article explores military patriotism by examining language he contributed in a pair of flag burning cases. Part II puts this obvious sense of patriotism into context by reviewing how he defers to and occasionally rejects military traditions. Part III uses a pair of courts-martial cases to illustrate further how active military service may have influenced him and, finally, Part IV discusses the extent to which this perspective contributes to the Supreme Court.

I. FLAG BURNING

A starting point for this study is a pair of flag burning cases decided well into Justice Stevens's second decade on the Court — *Texas v. Johnson*¹⁷ and *United States v. Eichman*.¹⁸ Although these cases do not directly concern the military, they nonetheless afford an insight into his view of the related matter of patriotism.

A. *Texas v. Johnson*

In *Johnson*, the Court struck down a state flag-burning statute, holding that that activity was expressive and protected by the First Amendment.¹⁹ There were two dissenting opinions, one by Chief

¹⁴ 453 U.S. 57 (1981).

¹⁵ 547 U.S. 47 (2006).

¹⁶ *Id.* at 58; *see also* 10 U.S.C. § 983 (2006).

¹⁷ 491 U.S. 397 (1989).

¹⁸ 496 U.S. 310 (1990).

¹⁹ *Johnson*, 491 U.S. at 405-06.

Justice Rehnquist, with whom Justices White and O'Connor joined, and another by Justice Stevens. Both are remarkable. The Chief Justice's was as much an exercise in poetry and history as anything else. In it, he reproduced lines from Emerson's Concord Hymn, The Star-Spangled Banner, and John Greenleaf Whittier's Barbara Frietchie.²⁰ Martial visions from the Revolutionary War to Fort Sumter, Iwo Jima, the Korean War, and Vietnam round out the picture.²¹ It can only be called a bravura performance. The Chief Justice's distaste for the majority's approach is on display for all to see:

The Court decides that the American flag is just another symbol, about which not only must opinions pro and con be tolerated, but for which the most minimal public respect may not be enjoined. The government may conscript men into the Armed Forces where they must fight and perhaps die for the flag, but the government may not prohibit the public burning of the banner under which they fight.²²

Justice Stevens's dissent, in which no other Justice joined, was equally remarkable, but in a less flashily literary way.²³ No need here for the obligatory footnote, like the Chief Justice's opinion, cataloguing the numerous state flag-desecration laws. Indeed, the whole opinion is perhaps a quarter the length of his.²⁴ And it is quieter. Here is how it ends:

²⁰ *Id.* at 422-25 (Rehnquist, C.J., dissenting).

²¹ *Id.* at 422-23, 425-26.

²² *Id.* at 435.

²³ See Laura Krugman Ray, *Clerk and Justice: The Ties That Bind John Paul Stevens and Wiley B. Rutledge*, 41 CONN. L. REV. 211, 261 (2008) ("For Stevens, less is generally more when he chooses the most appropriate form for his ideas, however strongly held."). His opinion in *Rasul*, in which five other Justices joined, shows his awareness that sometimes the best rhetoric device is a complete absence of rhetoric. *Rasul v. Bush*, 542 U.S. 466 (2004). After briefly recording the terrible facts from which the controversy arose (the 9/11 attacks) and singling out the heroism of the passengers of one of the hijacked planes, the opinion is devoid of color. It is as distilled a legal analysis as can be imagined and the more potent for that. Resisting the temptation when others might not have done so makes it all the more salient when the pen of rhetoric is employed.

²⁴ Of Justice Stewart, Justice Stevens once stated, "He could say in a paragraph or two what someone else had been trying to say in 25 pages." *An Interview with Justice John Paul Stevens*, 39 THIRD BRANCH 1, 11 (2007), available at <http://www.uscourts.gov/ttb/2007-04/interview/index.html>; see also Ray, *supra* note 23, at 263. Justice Stevens's conflict-resolving opinion for a unanimous Court in *McLaughlin v. United States*, 476 U.S. 16 (1986), weighed in at a mere five paragraphs (plus three footnotes). I am grateful to my colleague Noah Messing for this reference.

The ideas of liberty and equality have been an irresistible force in motivating leaders like Patrick Henry, Susan B. Anthony, and Abraham Lincoln, schoolteachers like Nathan Hale and Booker T. Washington, the Philippine Scouts who fought at Bataan, and the soldiers who scaled the bluff at Omaha Beach. If those ideas are worth fighting for — and our history demonstrates that they are — it cannot be true that the flag that uniquely symbolizes their power is not itself worthy of protection from unnecessary desecration.²⁵

It is not immediately obvious which approach is more convincing. Nor is it immediately obvious why Justice Stevens did not join the Chief Justice's dissent, which had garnered the votes of two other Justices. Perhaps it was because Justice Stevens found the matter so profoundly disturbing that it was essential that the voice be his own, even if it was to be *only* his own. In a way, his very solitude in dissent on this is the obverse of *Cooper v. Aaron*,²⁶ the Little Rock school desegregation case, where greater moral authority was thought to come with an opinion signed by all nine Justices. One thinks here of the "still small voice" of which the Bible speaks, rather than the trumpets at Jericho.²⁷

B. *United States v. Eichman*

Almost exactly a year later, in *Eichman* the Court once again ruled on the constitutionality of the federal flag-desecration statute. The vote was the same, 5–4, but there was only one dissenting opinion, this time written by Justice Stevens.²⁸ The opinion is only a little longer than his opinion in *Johnson*, and it is perhaps less powerful rhetorically because he had already made the main point he wished to make the year before. This second effort is arguably the more powerful of the two because it speaks in a personal voice:

The impact [of flag burning] is purely symbolic, and it is apparent that some thoughtful persons believe that impact, far from depreciating the value of the symbol, will actually enhance its meaning. I most respectfully disagree. Indeed,

²⁵ *Johnson*, 491 U.S. at 439 (Stevens, J., dissenting).

²⁶ 358 U.S. 1 (1958). It is sometimes forgotten that Justice Frankfurter not only signed the Opinion of the Court, but also filed a separate concurrence. It is difficult to imagine that the other eight were pleased by his doing so.

²⁷ 1 Kings 19:12.

²⁸ *United States v. Eichman*, 496 U.S. 310, 319 (1990) (Stevens, J., dissenting).

what makes these cases particularly difficult for me is what I regard as the damage to the symbol that has already occurred as a result of this Court's decision to place its stamp of approval on the act of flag burning. A formerly dramatic expression of protest is now rather commonplace. In today's marketplace of ideas, the public burning of a Vietnam draft card is probably less provocative than lighting a cigarette. Tomorrow flag burning may produce a similar reaction. There is surely a direct relationship between the communicative value of the act of flag burning and the symbolic value of the object being burned.

The symbolic value of the American flag is not the same today as it was yesterday. Events during the last three decades have altered the country's image in the eyes of numerous Americans, and some now have difficulty understanding the message that the flag conveyed to their parents and grandparents—whether born abroad and naturalized or native born. Moreover, the integrity of the symbol has been compromised by those leaders who seem to advocate compulsory worship of the flag even by individuals whom it offends, or who seem to manipulate the symbol of national purpose into a pretext for partisan disputes about meaner ends. And, as I have suggested, the residual value of the symbol after this Court's decision in *Texas v. Johnson* is surely not the same as it was a year ago.²⁹

This is potent rhetoric. It acknowledges the power of symbols and seeks to carry that power to the reader, the American citizen. It conjoins the native-born and the naturalized. It speaks to the American people “as a country” and addresses others. The dissenting opinion comments that “[t]o the world, the flag is our promise that we will continue to strive for” the ideals of liberty, equality and tolerance.³⁰ This may foreshadow the opportunities and challenges presented by the post-9/11 cases, and the need to speak to an audience beyond our shores.

By voicing his own opinion, Justice Stevens adds to an already powerful opinion. Why did he not go along with the majority? After all, the Court decided the basic point in *Johnson*. As Justice Stevens explained — without invoking the notion that *stare decisis* is of less

²⁹ *Id.* at 323.

³⁰ *Id.* at 321.

importance in constitutional adjudication — doing so “would not honestly reflect my considered judgment concerning the relative importance of the conflicting interests that are at stake.”³¹ In other words, this is one of those occasions when a Justice feels impelled to stake out an irredentist position.³² When done judiciously, it can add to the force of an opinion. No wonder the four dissenters coalesced in a single opinion; there was no need for another.

As previously mentioned, these flag-burning cases do not directly involve the military. Their subject matter, however, does resonate with other, not-unrelated areas of our jurisprudence. In *Rumsfeld v. Padilla*, for example, the Court needlessly required a United States citizen who was being detained as an “enemy combatant” to restart his quest for habeas corpus after the government transferred him from civilian federal custody in New York to a naval brig in South Carolina. Justice Stevens concluded his dissent by pointing out, “[I]f this Nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny.”³³

There is no doubt that Justice Stevens spoke from the heart in *Johnson* and *Eichman*.³⁴ Comments he later made about a proposal to overturn these decisions with a constitutional amendment confirm this. They also say much about Justice Stevens and his commitment to freedom:

³¹ *Id.* at 324.

³² Justices Brennan and Marshall’s position, and later, that of Justice Blackmun, on the death penalty is perhaps the prime example of irredentism. *E.g.*, *Callins v. Collins*, 510 U.S. 1141, 1144-45 (1994) (Blackmun, J., dissenting from denial of certiorari); *Brown v. North Carolina*, 479 U.S. 940, 942 (1986) (Brennan & Marshall, JJ., dissenting from denial of certiorari); *Stewart v. Wainwright*, 478 U.S. 1050, 1050 (1986) (Brennan & Marshall, JJ., dissenting from denial of stay).

³³ *Rumsfeld v. Padilla*, 542 U.S. 426, 465 (2004) (Stevens, J., dissenting). Professor Diane Marie Amann perceptively links this to his quotation from Thomas Paine in *United States v. Alvarez-Machain*, 504 U.S. 655, 688 (1992) (Stevens, J., dissenting). See Diane Marie Amann, *John Paul Stevens, Human Rights Judge*, 74 *FORDHAM L. REV.* 1569, 1578 & n.50 (2006).

³⁴ That Justice Stevens read his dissent from the bench is in itself a sign of the depth of his feeling. See Linda Greenhouse, *Oral Dissents Give Ginsburg a New Voice on Court*, *N.Y. TIMES*, May 31, 2007, at A1. See generally John Q. Barrett, *Commending Opinion Announcements by Supreme Court Justices* (2007) (unpublished manuscript, on file with the author), available at <http://www.stjohns.edu/media/3/55c14b0772794f148fec48e3c14851a7.pdf> (collecting cases). A law clerk who was present reports that “his face was flush, his eyes just shy of tears” as he did so. Ray, *supra* note 23, at 261 n.292 (quoting EDWARD LAZARUS, *CLOSED CHAMBERS: THE FIRST EYEWITNESS ACCOUNT OF THE EPIC STRUGGLES INSIDE THE SUPREME COURT* 36 (1998)).

The proposed constitutional amendment that I shall now mention would authorize legislation making flag-burning a crime. As many of you know, I dissented in both of the 5–4 decisions holding that such laws violated the First Amendment. I remain firmly convinced that my dissents correctly interpreted the law — as well as the original intent of the Framers — and I must confess that I am rather proud of what I had to say in those opinions. Nevertheless, after thinking a good deal about the issue, I have concluded that it would be unwise to amend the Constitution to reverse those decisions. Ironically, those decisions seem to have solved the flag-burning problem because nobody burns flags any more. What once was a courageous act of defiant expression is now perfectly lawful, and therefore is not worth the effort. More importantly — given the decision of Justices Brennan, Marshall, Blackmun, Scalia, and Kennedy, which is now the law [of] the land — burning the flag is now a symbolic act that conveys a far different message than it once did. If one were to burn a flag today, the act would convey a message of freedom — that ours is a society that is strong enough to tolerate such acts by those whom we despise. Today, one could not burn a flag without reminding every observer that we cherish our freedom.³⁵

II. DEFERENCE TO MILITARY TRADITIONS

Goldman v. Weinberger concerned an Air Force psychologist whose wearing of a skullcap while in uniform, contrary to regulations, became a serious issue only after he testified as a defense witness in a court-martial.³⁶ This is a disturbing case because not only does it seem wrongly decided, it also seemed unwise to cast the issue as Captain Goldman's counsel had done. It would have been more productive to frame the case as one of retaliation forbidden by the Uniform Code of Military Justice ("UCMJ").³⁷

³⁵ Justice John Paul Stevens, Remarks to the Chicago Bar Association and Chicago Bar Foundation: Canons to the Left, Canons to the Right (Sept. 14, 2006) [hereinafter Remarks by Justice John Paul Stevens], in CHI. B. ASS'N REC., Nov. 2006, at 54, 55.

³⁶ According to Justice Stevens's concurring opinion, one or two complaints had been received before the court-martial, but they had not been acted on. *Goldman v. Weinberger*, 475 U.S. 503, 511 n.4 (1986) (Stevens, J., concurring).

³⁷ See *id.* at 511 n.5. Justice Blackmun's notes for the January 17, 1986 conference indicate that Justice Stevens viewed *Goldman* as "a retaliation case (got his superior officer mad)." Harry A. Blackmun, Notes on *Goldman v. Weinberger* (Jan. 17, 1986) in

In any event, the Court, in a brief opinion by then-Justice Rehnquist, rejected Captain Goldman's free exercise claim, holding that the challenged portions of the regulation "reasonably and evenhandedly regulate dress in the interest of the military's perceived need for uniformity."³⁸ "The First Amendment," he wrote, "does not prohibit [dress codes] from being applied to petitioner, even though their effect is to restrict the wearing of the headgear required by his religious beliefs."³⁹ Not surprisingly, given his own admission that he had, in the service, "learned to obey orders,"⁴⁰ Justice Rehnquist invoked *Chappell v. Wallace*,⁴¹ a case that barred members of the armed forces from suing their superiors by arguing that Congress had provided other remedies. The Court had observed in *Chappell* that "[t]he inescapable demands of military discipline and obedience to orders cannot be taught on battlefields; the habit of immediate compliance with military procedures and orders must be virtually reflex with no time for debate or reflection."⁴² Writing in *Goldman*, Justice Rehnquist stated, "The desirability of dress regulations in the military is decided by the appropriate military officials, and they are under no constitutional mandate to abandon their considered professional judgment."⁴³

Justice Stevens again found himself allied with Justice Rehnquist, this time in the majority rather than in dissent. Even though Justice Stevens joined Justice Rehnquist's Opinion of the Court, he also wrote separately. Joined by Justices White and Powell, each of whom had served during World War II,⁴⁴ Justice Stevens began by acknowledging, "Captain Goldman presents an especially attractive case for an exception from the uniform regulations that are applicable to all other Air Force personnel."⁴⁵ The concurring opinion goes on to recognize, in a variety of ways, both Captain Goldman's personal devotion and the authenticity of the yarmulke as an expression of deep, longstanding religious belief. The "interest in uniformity,"

Harry A. Blackmun Collection, Manuscript Division, Library of Congress, box 439, folder 4 [hereinafter HAB Papers].

³⁸ *Goldman*, 475 U.S. at 510.

³⁹ *Id.*

⁴⁰ Remarks of Chief Justice Rehnquist, *supra* note 2.

⁴¹ 462 U.S. 296 (1983); *see Goldman*, 475 U.S. at 507-08.

⁴² *Chappell*, 462 U.S. at 300.

⁴³ *Goldman*, 475 U.S. at 509.

⁴⁴ Indeed, Justices White and Stevens had known one another during World War II. *An Interview with Justice John Paul Stevens*, *supra* note 24, at 11.

⁴⁵ *Goldman*, 475 U.S. at 510 (Stevens, J., concurring).

however, trumps all these factors.⁴⁶ Justice Stevens noted that this interest “has a dimension that is of still greater importance for [him].”⁴⁷ It is enough for Justice Stevens that “professionals in the military service attach great importance to” the plausible interest in uniformity as such, “even though personal experience or admiration for the performance of the ‘rag-tag band of soldiers’ that won us our freedom in the Revolutionary War might persuade us that the Government has exaggerated the importance of that interest.”⁴⁸

It remains unclear what impelled Justice Stevens to write separately. Although his concurrence never explains this directly, it seems that he thought it was important to test the regulation as applied to all service personnel, not just Captain Goldman. Justice Stevens also appeared concerned that the decision might afford a basis for differentiating among faith groups,⁴⁹ a point nowhere made in Justice Rehnquist’s Opinion of the Court. Under this dimension, a soldier who was an observant Jew might fall on one side of the constitutional line, whereas the religiously driven appearance of a Sikh or Rastafarian might fall on the other. Justice Stevens saw the interest in uniformity in two dimensions: both within the armed forces as a whole, and across faith-group lines.

Reading between the lines, it is tempting to believe that Justice Stevens was uncomfortable with this conclusion. His observations on the issue are highly autobiographical. For example, he argued that “personal experience” might lead one to question military claims that perfect uniformity in dress is critical.⁵⁰ He also spoke of his respect for the ill-clad heroes of the Revolutionary War.⁵¹ Additionally, his emphasis on Captain Goldman’s personal sincerity and a footnote reference to the role of anti-Semitism in American history may sound like protesting too much.⁵² But however he actually felt about the outcome, his concurrence underscores the extent to which he is — or was at the time — willing to defer to the judgment of military professionals even when there is something of considerable moment on the other side of the scale.

⁴⁶ *Id.* at 512-13.

⁴⁷ *Id.* at 512.

⁴⁸ *Id.*

⁴⁹ *Id.* at 512-13.

⁵⁰ *Id.* at 512.

⁵¹ *Id.*

⁵² See Amann, *supra* note 33, at 1592-93, 1593 n.138 (pointing out that Justice Stevens’s attention to anti-Semitism in American history is deep and long standing); see also *Fullilove v. Klutznick*, 448 U.S. 448, 534 n.5 (1980) (Stevens, J., dissenting).

Happily, Congress responded promptly to *Goldman* by enacting a statute that acknowledged the need to accommodate religiously-driven exceptions to military uniform regulations.⁵³ That law called for the issuance of regulations and the area has, overall, remained nearly free of controversy ever since.⁵⁴

A more recent decision, which has nothing to do with military personnel matters or the First Amendment, suggests that Justice Stevens may be less deferential to military decision-making now than he was in *Goldman*. Decided in 2008, *Winter v. NRDC*⁵⁵ concerned the effects of antisubmarine warfare training exercises on marine mammals. The Court vacated a preliminary injunction because, among other things, the lower courts had failed to defer sufficiently to the Navy's claims as to how the injunction would affect its operations.⁵⁶ Justice Stevens did not write separately. Rather, he joined in the portion of Justice Breyer's separate partial concurrence and partial dissent that would have required the lower courts to explain their conclusion that the balance of the equities favors the Navy.⁵⁷ In other words, Justice Stevens was unwilling to accept at face value the service's claims of injury. Of course, that is not to say he would not have deferred in the end. But by insisting with Justice Breyer that the lower courts do a better job in explaining what they made of the evidence, Justice Stevens appears to reject a position of unquestioning deference. At the very least, he waits until it is strictly necessary before deciding whether to defer. This stance is therefore respectful of both the Executive Branch and, even though it requires them to do more work, the lower federal courts.

⁵³ Pub. L. No. 100-180, § 508(a)(2), 101 Stat. 1019, 1086-87 (1987) (codified at 10 U.S.C. § 774 (2006)); John P. Jurden, *Spit and Polish: A Critique of Military Off-Duty Personal Appearance Standards*, 184 MIL. L. REV. 1, 47 (2005) ("Congress wasted little time in responding to what it perceived as *Goldman*'s improper infringement on service members' religious rights."). Senators Frank Lautenberg (D-N.J.) and Alphonse D'Amato (R-N.Y.) introduced the measure on April 8, 1986, two weeks after *Goldman* was decided. Justice Blackmun's *Goldman* case file at the Library of Congress includes the *New York Times* account of the bill. See *Bill Offered on Headgear Ban*, N.Y. TIMES, Apr. 10, 1986.

⁵⁴ See Air Force Discharge Review Board, Hearing Record, Docket No. FD-2006-00118 (May 23, 2006), available at <http://boards.law.af.mil/AF/DRB/CY2006/FD2006-00118.pdf>.

⁵⁵ 129 S. Ct. 365 (2008).

⁵⁶ *Id.* at 382.

⁵⁷ *Id.* at 382-86 (Breyer, J., concurring and dissenting in part).

III. COURTS-MARTIAL

Even though the Supreme Court has had the power to review courts-martial — the quintessential military cases — by writ of certiorari for twenty-five years, it has rarely granted review. Two cases in which it has done so are *Solorio v. United States*,⁵⁸ and *United States v. Scheffer*,⁵⁹ each of which offer insight into how military service may have influenced Justice Stevens's decision-making process.⁶⁰

A. *Solorio v. United States*

Courts-martial have come before the Court on collateral review repeatedly over the Nation's history,⁶¹ but *Solorio* was the first to do so on direct review. At issue was whether offenses committed off base against dependents of another service member were subject to trial by court-martial if the only "service connection" lay in the fact that the accused was on active duty. The Court had previously held in *O'Callahan v. Parker*⁶² that nonservice connected offenses could not constitutionally be tried by court-martial. In the intervening years before *Solorio*, the United States Court of Military Appeals (now known as the United States Court of Appeals for the Armed Forces) developed a reasonably clear set of rules implementing both *O'Callahan* and a subsequent case involving application of the service connection test, *Relford v. Commandant, U.S. Disciplinary Barracks*.⁶³ Early in the *O'Callahan* era, that court repeatedly ruled that the victim's status as a military dependent was, standing alone, insufficient to support court-martial jurisdiction.⁶⁴

⁵⁸ 483 U.S. 435 (1987).

⁵⁹ 523 U.S. 303 (1998).

⁶⁰ I argued on behalf of the American Civil Liberties Union as an amicus curiae in support of Petty Officer Solorio. Justice Blackmun's papers at the Library of Congress reveal that the vote was 5–4 to permit me to argue. Harry A. Blackmun, Notes on *Goldman v. Weinberger* (Jan. 17, 1986) in HAB Papers, *supra* note 37, at box 439, folder 4. I wish we had done that well on the merits.

⁶¹ See, e.g., *Middendorf v. Henry*, 425 U.S. 25 (1976) (involving summary court-martial, not criminal trial); *Parker v. Levy*, 417 U.S. 733 (1974) (upholding articles 133–34 of Uniform Code of Military Justice, 10 U.S.C. §§ 933–34 (1974)); *O'Callahan v. Parker*, 395 U.S. 258 (1969) (holding court-martial for civilian offense requires service connection); *Reid v. Covert*, 354 U.S. 1 (1957) (finding no court-martial jurisdiction over military dependent); *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955) (finding no court-martial jurisdiction over discharged personnel).

⁶² 395 U.S. 258 (1969).

⁶³ 401 U.S. 355 (1971).

⁶⁴ See *United States v. McGonigal*, 19 C.M.A. 94, 95 (1969); *United States v. Shockley*, 18 C.M.A. 610, 610–11 (1969); *United States v. Henderson*, 18 C.M.A. 601,

O'Callahan itself had been the subject of immediate and unending attacks in the literature,⁶⁵ thanks in large measure to the strident tone of the Opinion of the Court written by Justice Douglas.⁶⁶ When *Solorio* came along, the stage was set to reopen the issue. A military judge had dismissed the nonservice connected charges, but his decision was reversed by the Coast Guard's intermediate court of military review. The Court of Military Appeals, in turn, affirmed,⁶⁷ laboring to articulate a basis for upholding the exercise of jurisdiction over these offenses. It relied on, among other things, the fact that the law generally became more sensitive to the interests of victims since O'Callahan.⁶⁸ Thus, the Court of Military Appeals concluded that court-martial jurisdiction could be asserted over off-base offenses without offending O'Callahan or *Relford*.⁶⁹

Rather than take that approach, the Supreme Court simply overturned O'Callahan in an opinion by Chief Justice Rehnquist. The Court reasoned that the historical basis for the O'Callahan decision was "far too ambiguous"⁷⁰ and that the plain meaning of Article I, section 8, clause 14 of the Constitution — which does not include a service connection requirement — governed.⁷¹ The Court also claimed that the service connection approach "has proved confusing and difficult for military courts to apply," evidenced by how the decisions of the Court of Military Appeals shift far more in this regard than in dependent-victim precedents.⁷²

602 (1969).

⁶⁵ E.g., Norman G. Cooper, *O'Callahan Revisited: Severing the Service Connection*, 76 MIL. L. REV. 165, 186-87 (1977); Robinson O. Everett, *O'Callahan v. Parker — Milestone or Millstone in Military Justice?*, 1969 DUKE L.J. 853, 859-96; Jonathan P. Tomes, *The Imagination of the Prosecutor: The Only Limitation to Off-Post Jurisdiction Now, Fifteen Years After O'Callahan v. Parker*, 25 A.F. L. REV. 1, 9-35 (1985). Professor Robinson Everett was later elevated to the Court of Military Appeals. See Mark S. Martins, Comment, *National Forums for Punishing Offenses Against International Law: Might U.S. Soldiers Have Their Day in the Same Court?*, 36 VA. J. INT'L L. 659, 670 (1996) ("Professor Everett, former Chief Judge of the United States Court of Military Appeals, has been one of the most eloquent and influential guardians of the military justice system.").

⁶⁶ *O'Callahan*, 395 U.S. at 264-66.

⁶⁷ *United States v. Solorio*, 21 M.J. 251, 252, 258 (C.M.A. 1986).

⁶⁸ *Id.* at 254-55.

⁶⁹ *Id.* at 254.

⁷⁰ *Solorio v. United States*, 483 U.S. 435, 445 (1987).

⁷¹ "The Congress shall have Power . . . To make Rules for the Government and Regulation of the land and naval Forces . . ." U.S. CONST. art. I, § 8, cl. 1, 14.

⁷² *Solorio*, 483 U.S. at 448-49.

The vote was 6–3, with Justices Brennan and Blackmun joining in a dissent by Justice Marshall. Justice Stevens concurred in the judgment with a separate opinion that consisted of a single brief paragraph:

Today's unnecessary overruling of precedent is most unwise. The opinion of the United States Court of Military Appeals demonstrates that petitioner's offenses were sufficiently "service connected" to confer jurisdiction on the military tribunal. Unless this Court disagrees with that determination — and I would be most surprised to be told that it does — it has no business reaching out to reexamine the decisions in *O'Callahan v. Parker* and *Relford v. Commandant, U.S. Disciplinary Barracks*. While there might be some dispute about the exact standard to be applied in deciding whether to overrule prior decisions, I had thought that we all could agree that such drastic action is only appropriate when essential to the disposition of a case or controversy before the Court. The fact that any five Members of the Court have the power to reconsider settled precedents at random, does not make that practice legitimate.

For the reasons stated by the Court of Military Appeals, I agree that its judgment should be affirmed.⁷³

In a footnote, Justice Stevens commented that "[e]ven in its brief proposing the reconsideration of *O'Callahan*, the United States asked the Court to reconsider that decision only in the event that the Court disagrees with the United States' submission that petitioner's acts of sexual assaults on military dependents are service related."⁷⁴

For those on the losing side, it would have been more satisfying to see Justice Stevens as a fourth vote to reverse, but his approach was at least a small consolation. To be sure, Justice Stevens was correct in speculating that the Chief Justice and the four other Justices who joined his opinion would not have hesitated to uphold the decision of the Court of Military Appeals on the basis stated by that court. In that sense, the overruling of *O'Callahan* was indeed unnecessary and hence objectionable for the reason he powerfully states. However, an affirmance that left *O'Callahan* intact (even if only until an off-base drug case came along) and yet upheld the lower court's abandonment of its own correctly decided dependent-victim cases would have marred the integrity of the law. The Opinion of the Court should have

⁷³ *Id.* at 451-52 (Stevens, J., concurring) (citations omitted).

⁷⁴ *Id.* at 452 n.*.

made more of an attempt to defend itself against Justice Stevens's criticism. His vote in this case not only evinces his independence of thought, but also is a classic illustration of his commitment to avoiding constitutional issues where possible.

B. *United States v. Scheffer*

Compared with his one-paragraph, separate opinion in *Solorio*, Justice Stevens's solitary dissent in *Scheffer*⁷⁵ seems almost long-winded. The case involved a provision in the *Manual for Courts-Martial* ("MCM") that bars the use of polygraph evidence and considered whether Rule for Courts-Martial 707 ("Rule 707") violated the constitutional right to present a defense. The Court sustained the rule. Justice Thomas delivered the Opinion of the Court, garnering eight votes for parts of it, and only four for others. Justice Kennedy concurred in part and in the judgment, joined by three other Justices.⁷⁶

Only Justice Stevens dissented.⁷⁷ His opinion is noteworthy for several reasons. First, he was reluctant to address the constitutional issue at all. By his analysis, the threshold question ought to have been whether Rule 707 violated the rule-making provision of the UCMJ.⁷⁸ Only after resolving that question would Justice Stevens consider the constitutional question. The nonconstitutional ground involved Article 36 of the UCMJ, which provides that the President may make rules of procedure and evidence for courts-martial, and that those rules must conform to the rules generally applied to criminal trials in the federal district courts to the extent the President deems practicable. Cautioning that he wrote without the benefit of briefing and argument on the statutory issue, Justice Stevens analyzed the disparity between Rule 707 and the treatment of polygraph evidence in the district courts. He concluded "as presently advised"⁷⁹ that:

The stated reasons for the adoption of Rule 707 do not rely on any special military concern. They merely invoke three interests: (1) the interest in excluding unreliable evidence; (2) the interest in protecting the trier of fact from being misled by an unwarranted assumption that the polygraph evidence has "an

⁷⁵ *United States v. Scheffer*, 523 U.S. 303, 320-39 (1998) (Stevens, J., dissenting).

⁷⁶ *Id.* at 318 (Kennedy, J., concurring).

⁷⁷ *Id.* at 320 (Stevens, J., dissenting).

⁷⁸ *Scheffer*, 523 U.S. at 320 (Stevens, J., dissenting); see Uniform Code of Military Justice, art. 36, 10 U.S.C. § 836 (2006).

⁷⁹ *Scheffer*, 523 U.S. at 320 (Stevens, J., dissenting).

aura of near infallibility"; and (3) the interest in avoiding collateral debates about the admissibility of particular test results.

It seems clear that those interests pose less serious concerns in the military than in the civilian context. Disputes about the qualifications of the examiners, the equipment, and the testing procedures should seldom arise with respect to the tests conducted by the military. Moreover, there surely is no reason to assume that military personnel who perform the fact-finding function are less competent than ordinary jurors to assess the reliability of particular results, or their relevance to the issues. Thus, there is no identifiable military concern that justifies the President's promulgation of a special military rule that is more burdensome to defendants in military trials than the evidentiary rules applicable to the trial of civilians.

It, therefore, seems clear that Rule 707 does not comply with the statute. I do not rest on this ground, however, because briefing might persuade me to change my views, and because the Court has decided only the constitutional question.⁸⁰

Justice Stevens thus reveals not merely a willingness to go it alone, but also a reluctance to address constitutional issues unnecessarily (as in *Solorio*). He also expresses a willingness to probe, albeit tentatively, behind claims of military judgments (in this case ostensibly a presidential judgment, because the Rules for Courts-Martial are promulgated by Executive Order), and to do so in the particular context of the UCMJ's rulemaking provision. That provision turned out to be important ten years later, when the Court decided *Hamdan v. Rumsfeld*. *Hamdan* involved a military commission rather than a court-martial.⁸¹

Hamdan merits close study for, among other things, what it reveals about the virtues and weaknesses of minimalism.⁸² The case has

⁸⁰ *Id.* at 325 (footnote omitted).

⁸¹ At the time, the UCMJ applied to both courts-martial and military commissions. When it enacted the Military Commissions Act of 2006, Pub. L. No. 109-336, 120 Stat. 2600, 2602 (2006) ("MCA"), Congress added a separate chapter 47A to title 10 to cover military commissions that involve offenses by unlawful enemy combatants. The UCMJ itself continues to cover courts-martial and military commissions that try lawful enemy combatants.

⁸² Compare Owen Fiss, *The Perils of Minimalism*, 9 THEORETICAL INQUIRIES L. 643 (2008) (criticizing minimalism), with John Paul Stevens, *Judicial Restraint*, 22 SAN DIEGO L. REV. 437 (1985) (arguing that constitutional framers left gaps for future legislators to fill).

already generated a considerable body of commentary, but one point that deserves greater attention is the debate between Justices Stevens and Thomas concerning Article 36 of the UCMJ, referred to above. Article 36 has two parts, both of which were amended after *Hamdan* by the MCA. Subsection (a) concerns “conformity.” It sets district court practice as the benchmark for court-martial practice in the absence of a countervailing statute or impracticability determination by the President. Subsection (b) concerns “uniformity.” Both concepts came into play in *Hamdan*. Writing for the majority, Justice Stevens concluded that in order to satisfy Article 36 and meet the “regularly constituted court” requirement of Common Article 3 of the Geneva Conventions, military commission procedures had to conform to court-martial procedures.⁸³

Justice Thomas had the better of the argument with respect to Article 36. In order to understand why, a short history lesson is required. The Articles of War were the Army and Air Force antecedent to the UCMJ. As enacted in 1916, Article of War 38 included a rulemaking provision very much like Article 36. It included no uniformity clause, even though it applied to both courts-martial and military commissions. That clause appeared in 1950 when Congress enacted the UCMJ,⁸⁴ creating for the first time a single military criminal code applicable to all branches of the armed forces. Quite simply, as Justice Thomas explained,⁸⁵ Congress intended the uniformity clause to ensure uniformity from service to service, rather than as between courts-martial and military commissions.⁸⁶

On the other hand, Justice Stevens’s willingness⁸⁷ (along with Justice Kennedy)⁸⁸ in *Hamdan* to probe Executive Branch assertions that it was impracticable to follow court-martial procedures in the pre-MCA military commissions is correct. The empty assertions in President Bush’s November 13, 2001 Military Order⁸⁹ that set the stage for the

⁸³ *Hamdan v. Rumsfeld*, 548 U.S. 557, 620-25, 631-33 (2006).

⁸⁴ Uniform Code of Military Justice, Pub. L. No. 81-506, pt. 1, art. 2, 64 Stat. 107, 109 (1950).

⁸⁵ *Hamdan*, 548 U.S. at 712 & n.17 (Thomas, J., dissenting).

⁸⁶ As Professor Vagts, Colonel Sullivan and I had suggested in 2005, this is the better reading of the statute. Eugene R. Fidell et al., *Military Commission Law*, 12 ARMY LAW. 47, 47 n.8, 48 & nn.8-10 (2005).

⁸⁷ *Hamdan*, 548 U.S. at 623-25.

⁸⁸ *Id.* at 640-41 (Kennedy, J., concurring in part).

⁸⁹ Notice, Military Order: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,833 (Nov. 13, 2001) (to be codified at 3 C.F.R. pt. 918 (2001 Comp.)). See generally Eugene R. Fidell, *Military Commissions and Administrative Law*, 6 GREEN BAG 379 (2003) (exploring deficiencies in process

pre-MCA military commissions, even with the additional comments of subordinates to the media,⁹⁰ were deficient. The Military Order itself offered no specifics in support of its determination that district court prosecutions were impracticable, merely citing “the danger to the safety of the United States and the nature of international terrorism.”⁹¹ Such a transparently deficient rationale asks the impossible of a coordinate Branch that might have been entirely willing to defer if given a rationale by the White House that contained even a modicum of substance.

Scholars will debate the best course of action to take if an impracticability determination was flawed. Professor Samuel Estreicher and Judge Diarmuid O’Scannlain have suggested that a *Chenery*-style⁹² remand was required to afford the President a second bite at the apple.⁹³ The Court took the position that recourse to court-martial norms was required, as indeed is suggested by the preamble to the MCM, which provides that absent a contrary “applicable rule of international law” or “regulations prescribed by the President or by other competent authority, military commissions and provost courts shall be guided by” court-martial rules and principles.⁹⁴

This may be sound as a matter of international law, but it is possible that Article 36(a) dictates otherwise. Although the outcome in *Hamdan* is desirable, the statutory default mode is district court practice, rather than court-martial practice. Accordingly, if the President’s determination that conformity with district court practice is impracticable, the result should arguably have been a ruling that required conformity with district court practice.

It is unfortunate that, despite their dueling references to Article 36, the Justices seem not to have had this aspect of the statute in proper focus. If Congress revisits the MCA and the changes it made in the UCMJ, both it and the Executive Branch would do well to explore this aspect of the matter with care. This might redeem both for the hasty process by which the MCA found its way into the statute book,

surrounding rulemaking for military commissions).

⁹⁰ See *Hamdan*, 548 U.S. at 624 n.52 (claiming need to protect classified information).

⁹¹ Military Order, *supra* note 89, at 57,833.

⁹² *SEC v. Chenery Corp.*, 318 U.S. 80 (1943).

⁹³ Samuel Estreicher & Diarmuid O’Scannlain, *The Limits of Hamdan v. Rumsfeld*, 9 GREEN BAG 353, 357 (2006).

⁹⁴ JOINT SERV. COMM. ON MILITARY JUSTICE, DEP’T OF DEF., MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. 1, 2(b)(2) (pmbl.) (2008 ed.).

pushed along by gale-force winds from the White House on the eve of the 2006 congressional elections.

IV. DESIRABILITY OF MILITARY EXPERIENCE

The goal of this Article is not to offer a pop-psychology “take” on Justice Stevens. His judicial history is too nuanced for that. Rather, this Article first analyzes his distinctive approach to military-related cases by comparing it with the approaches of other Justices. Second, it evaluates his impact on the Court’s developing jurisprudence in this area. The pattern that emerges has significant institutional implications.

The country is both curious and anxious about what the Court’s direction may be when, inevitably, vacancies must be filled. Must the next appointment go to another woman⁹⁵ (even after the elevation of Justice Sotomayor to succeed Justice Souter)? A Hispanic? A Native American? Are six Catholics too many?⁹⁶ Are there too many Harvard and Yale graduates⁹⁷ or former Supreme Court law clerks? Is prior service as a federal appellate judge essential, merely desirable (as Chief Justice Roberts has suggested)⁹⁸ or downright undesirable?

⁹⁵ See Neil A. Lewis, *Speculation Grows About Minority or Woman Nominee*, N.Y. TIMES, Sept. 4, 2005, http://www.nytimes.com/2005/09/04/politics/politicsspecial1/04cnd-candidates.html?_r=2; Adam Liptak, *Justice Ginsburg Undergoes Surgery for Cancer*, N.Y. TIMES, Feb. 6, 2009, at A12. One school of thought holds that even before President Obama nominated Justice Sotomayor, the Court has already had a Hispanic Justice, although it may depend on whether Portuguese-Americans (Cardozo, J.) count as Hispanic. See Kevin R. Johnson, *On the Appointment of a Latina/o to the Supreme Court*, 5 HARV. LATINO L. REV. 1, 7-14 (2002). Compare Dahlia Lithwick, *Chief Justice Roulette*, SLATE, Nov. 25, 2002, <http://www.slate.com/id/2074450> (Nov. 26, 2002 correction) (“Cardozo — of Portuguese-Jewish descent — may well have been the first Hispanic justice, depending on who you consult; some Hispanic organizations classify Portuguese-Americans as Hispanic, and many others do not.”), with Kevin R. Johnson, *The First Latino Supreme Court Justice? What the Controversial Nomination of Miguel Estrada to a Federal Appeals Court Seat Is Really About*, FINDLAW’S WRIT, Oct. 17, 2002, http://writ.news.findlaw.com/commentary/20021017_johnson.html (pointing out that if named to Supreme Court, Mr. Estrada would have been first Latino Justice).

⁹⁶ See Lynette Clemetson, *Alito Could Be 5th Catholic on Current Supreme Court*, N.Y. TIMES, Nov. 1, 2005, at A23; Robin Toner, *Catholics and the Court*, N.Y. TIMES, Aug. 7, 2005, at C4.

⁹⁷ See Laurie Goodstein & David D. Kirkpatrick, *Class Matters: On a Christian Mission to the Top*, N.Y. TIMES, May 22, 2005, at A1, A22.

⁹⁸ Adam Liptak, *Roberts Sets Off Debate on Judicial Experience*, N.Y. TIMES, Feb. 16, 2009. Chief Justice Roberts’ lecture is available on the Internet. See John G. Roberts, Jr., Chief Justice of the Supreme Court of the U.S., 2009 Rehnquist Center Lecture, Feb. 4, 2009, [mms://www.law.arizona.edu/archive/events/RehnquistCenterLecture2009.wmv](http://www.law.arizona.edu/archive/events/RehnquistCenterLecture2009.wmv).

That conversation should also address whether the Court should have more Justices with extended service in the active duty military. Nominees with military experience would broaden and enrich the experience base of the Justices.⁹⁹ In addition, and perhaps more importantly, Justices (and judges generally) without active military experience may be (or may *feel*, which can amount to the same thing) at a disadvantage when dealing with cases that involve military matters, even though they seem utterly lacking in fear when it comes to tackling equally (or more) arcane or inaccessible areas of the law. Phrases like “deference . . . is at its apogee” or “separate society” come to mind.¹⁰⁰ Judicial caution may confer on the government so significant — and, at times, undeserved — an advantage as to erode the adversary process in our highest court. To be sure, whether and how any particular veteran who is elevated to the bench is influenced by military experience will vary.¹⁰¹ Counterintuitive though it may seem, judges with real military experience may be less likely to defer, at least around the edges, than those with none.

It would be as improper for Justices with even substantial military experience to assume the mantle of a specialized court¹⁰² as it would

⁹⁹ See *supra* text accompanying note 16. Deconstructing Alfred, Lord Tennyson’s *Charge of the Light Brigade* for a bar audience in 2006, Justice Stevens advised that:

The famous line in the poem — “Theirs not to reason why / Theirs but to do and die” — reflects the poet’s understanding of a soldier’s duty to execute unambiguous orders. The actual battle, however, teaches two lessons that may be useful not only to junior officers in combat but to judges as well. Text does not always convey the meaning its author intended; and knowledge of the author’s purpose may avoid unfortunate and unintended consequences. The ever-present risk of a scrivener’s error should never be ignored entirely.

Remarks by Justice John Paul Stevens, *supra* note 35, at 55. It is hard to imagine that this insight did not reflect his own long-ago experience as a relatively junior naval officer.

¹⁰⁰ *Rumsfeld v. F.A.I.R.*, 547 U.S. 47, 58 (2006) (quoting *Rostker v. Goldberg*, 453 U.S. 57, 70 (1981)); *Parker v. Levy*, 417 U.S. 733, 743 (1974) (“[S]pecialized society separate from civilian society.”).

¹⁰¹ “[W]hile military service is formative, it does not set everyone on the same path.” Amann, *supra* note 33, at 1599.

¹⁰² There of course is a specialized court for military matters, the United States Court of Appeals for the Armed Forces, 10 U.S.C. § 941 (2006), although the Supreme Court has not been shy about substituting its judgment for that court’s. See *Clinton v. Goldsmith*, 526 U.S. 529, 539 (1999); *Middendorf v. Henry*, 425 U.S. 25, 42-43 (1976). Justice Stevens was on the Court when *Middendorf* was decided but did not participate, having been elevated only after it had been argued (and re-argued). Because in the end the Court split 5–3, his vote could not have changed the outcome.

be for a trial judge to rely on personal knowledge of surgery when deciding a medical malpractice case. But it seems fair to suggest that having veterans in the Conference can add to the robustness of both discussion and scrutiny of government claims that might otherwise be embraced uncritically.¹⁰³ Experience since 9/11 demonstrates that Justices are not reluctant to test and, when appropriate, reject government claims sounding in military or national security matters.

But the Executive Branch's litigative advantage in these fields is profound. Despite occasional setbacks,¹⁰⁴ this advantage remains daunting despite the impressive mobilization of the civilian bar in the wake of the Guantánamo and other "enemy combatant" detentions. As a result, a cautious approach seems justified. It is not desirable, in a democratic society, for the government to have an effective monopoly on learning or credibility in these areas. It is therefore a good thing that law schools increasingly offer courses in military and national security law.

At most, only a handful of lawyers with the credentials to be plausible candidates for appointment also have significant military experience. An appointment strategy that took particular note of substantial military service may therefore be difficult to achieve when the next one or two vacancies arise. As time passes, however, and as more and more young people serve in conflicts like the Gulf Wars, combat in Afghanistan, or elsewhere, the number of veterans will increase. Inevitably some will find their way to law schools and the legal profession. When that happens, those responsible should have no difficulty finding highly qualified veterans to serve on the Court. Equally clearly, among them will be found another Holmes, another

¹⁰³ Is the same true of Congress, which has experienced a steady decline in the number of veterans? See generally Donald N. Zillman, *Where Have All the Soldiers Gone? Observations on the Decline of Military Veterans in Government*, 49 ME. L. REV. 85, 91, 100 (1997) (tracking decline in number of veterans in Congress); Donald N. Zillman, *Where Have All the Soldiers Gone II: Military Veterans in Congress and the State of Civil-Military Relations*, 58 ME. L. REV. 135, 137-38 (2006) (same). President Zillman's latest research reveals that "[a]fter the 2008 election the percentage of veterans continued a consistent decline since 1992 and was only 21% of the Congress." E-mail from Donald N. Zillman, Interim President, University of Maine at Presque Isle to author (Apr. 22, 2009, 10:45:00 EST) (on file with author). Only 11 members of the current Congress, all Representatives, served in the military after 1990. *Id.*

¹⁰⁴ See, e.g., *United States v. Denedo*, 129 S. Ct. 2213 (2009) (5-4 decision) (ruling that service court of criminal appeals had authority to issue writ of error *coram nobis*). The author was co-counsel for Petty Officer Denedo.

Brennan, another Powell,¹⁰⁵ another Rehnquist, and, yes, another Stevens.

¹⁰⁵ Justice Holmes left the Union Army as a brevet lieutenant colonel. Max Lerner, *Holmes: A Personal History*, in *THE MIND AND FAITH OF JUSTICE HOLMES: HIS SPEECHES, ESSAYS, LETTERS AND JUDICIAL OPINIONS* xvii, xxiv (Max Lerner ed., 1943). Justices Brennan and Powell served as colonels in World War II. HUNTER R. CLARK, JUSTICE BRENNAN: THE GREAT CONCILIATOR 33 (1995); JOHN C. JEFFERIES, JR., JUSTICE LEWIS F. POWELL, JR. 108 (1994); Linda Greenhouse, *Lewis Powell, Crucial Centrist Justice, Dies at 90*, N.Y. TIMES, Aug. 26, 1998, at A1, D19.