

**ROGER**

Welcome, everyone, to this virtual MIT Starr Forum, America's Civil Military Crisis. I

**PETERSEN:**

want to first thank our sponsors, the MIT Center for International Studies and the Security Studies Program at MIT. We have one hour and 15 minutes today. So we are going to proceed in four segments. First, I'm going to have some very brief comments. Then we're going to hear from three speakers in the following order.

First, we'll hear from Professor Risa Brooks. She is the Allis Chalmers Associate Professor of Political Science at Marquette University. Her research focuses on issues related to American and comparative civil military relations, military effectiveness, and militant and terrorist organizations. James E. Baker, or Jamie Baker, is the Director of the Syracuse University's Institute for Security Policy and Law. He is a former marine infantry officer, legal advisor to the National Security Council, and Chief Judge of the US Court of Appeals for the armed forces.

And lastly, we'll hear from Congressman Seth Moulton, US Representative for Massachusetts' 6th Congressional district. He is Vice Chair of the Budget Committee, and also sits on the House Armed Services Committee, and its Subcommittees on Sea Power and Projection Forces, as well as Strategic Forces. So after we hear from the three panelists, we're going to have a little time for discussion and interaction among the panelists. And then we will have time for questions and answers. So as many of you are familiar, there is a question and answer feature at the bottom of the toolbar. Please type your questions there.

All right, so let me start off with just some basic issues, mainly because I know we have a foreign audience, a very broad audience. Some of you might be familiar with some of these issues. But I'm going to go over them anyway. I have been asked to host this virtual seminar mainly because I teach civil military relations here at MIT and have on and off for 20 years. Although that course is a comparative course and studies civil military relations and militaries around the world, it does focus on the United States as well.

And I always have MIT Military Fellows in the class. This year I had five Fellows from Army, Navy, Marines, and Coast Guard. And any insights I have today I think are going to be as much from my interaction with military Fellows as much as they are

from formal academic readings. So today's session is intended to be broad, and the speakers and choose what directions they take. However, obviously, this session is precipitated by recent events following the George Floyd killing. I'm anticipating that we're going to be discussing the connections among constitutional, legal, and moral issues connected to those events.

In civil military relations in the United States, over the course of our nation's history, civilian leaders and military officers have generally functioned according to a basic set of norms. Civilians do not politicize the military, and in return, the military carries out civilian orders without public protest. This relationship has had exceptions, of course. And has been under pressure for years. And I think even preceding the present administration, there was a fraying of this relationship.

But President Trump's march to Lafayette Square, which was accompanied by the Chair of the Joint Chiefs of Staff, General Milley, and the Secretary of Defense, that's illustrated really the broken nature of this relationship. Civilians are politicizing the military. And military officers, as seen in many public statements, are openly criticizing civilians.

Today at the National War College graduation ceremony, General Milley, in his pre-recorded comments, said of his presence in Lafayette Square, "I should not have been there. My presence in that moment and in that environment created the perception of the military involved in domestic politics." I would encourage everyone to look at his comments in full. They cover a lot of ground relevant to our topic today.

Before I turn to the first speaker, though, I want to quickly mention for our broader audience three quick points that I think are central for civil military debates in the United States. And I think points relevant to the recent situation, at least. Point number one, the president actually has the legal right to deploy active duty troops to quell protest by invoking 1807 Insurrection Act.

This Act was invoked by President Hoover in 1932 in the Bonus Army Incident. That was to disperse thousands of unemployed veterans who were demanding early pay of their World War I bonus. That was an action that involved, in fact, Generals MacArthur and General Patton in clearing out protesters. And the last time, though,

the Insurrection Act has been invoked was in 1992 in the wake of the Rodney King events in Los Angeles. In the recent events, the 82nd Airborne was positioned outside of Washington, DC, and was ready to be called in with the-- under this Insurrection Act.

Point number two, military officers in the United States take their oath very seriously. This is what I've realized from interacting with them. And in their recent written comments in protest, both the retired and military-- and active military officers, centered their comments often on this oath. So I'm just going to read the oath, so people are familiar with it.

"I," state your name, "do solemnly swear or affirm that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

In my Civil Military Relations class, military officers always are emphasizing this oath to the Constitution. This is not like oaths around the world. In China, your oath is actually to the political party, among other things. And the Constitution, of course, says that there is a duty to obey the commander in chief. In order to maintain civilian supremacy, the Constitution positions the president as the commander in chief of the armed forces. The Constitution also states that all citizens have a right to free speech, and that all citizens have the right to equal protection under the law.

The recent protests have been actions of free speech calling for equal protection under the law for African-Americans. General Milley's speech, by the way, covers all of these points. But the question that might arise in our forum today-- what if military officers proceed that the commander in chief is violating the Constitution? How should military officers respond? And how clear must the violation of the Constitution be to justify disobedience?

The third point I want to make in US civil military relations, US military officers cannot refuse to obey orders of the civilian leaders simply because they believe those leaders have chosen an unwise or even stupid path. Civilians have a right to be wrong on policy. The military should vigorously voice their concerns within the

time of debate, but when civilians make their decision, the military is expected to carry out orders.

However, there may be actions of the civilian leadership that military officers may not see as moral. If a military officer sees ordered actions as immoral, but not unconstitutional, or illegal, what should happen? And so, I think this is another question I might pick up on. And with that, I will turn it over to Professor Brooks.

**RISA BROOKS:** Good afternoon, everyone. It's great to be with you. And thank you for joining us to talk about this very timely topic. I want to start out with just adding a little bit to the great overview that Roger just provided about some of the events of the past week. And I'll start with just sort of what happened, a summary of that.

So we start out with the protests, of course, as everyone knows. And early on, there are some events with some criminal activity, and property destruction, and things like that. But at no point, or even early on, is there sort of a mass kind of uprising, or riots, or some real breakdown in social order. And I think that's sort of an important background point to keep in mind as we go forward.

So how does President Trump respond to this? He responds on, I think, it's June 1st, by starting to talk about the need to dominate the streets. He sort of suggests that he might invoke the Insurrection Act, which would allow him to send federal forces to the states whether or not the governors want them or not. And none of the governors had then or have since requested that.

He gets on a call with Secretary Esper. He's talking-- it's a call with the other governors-- with the governors-- and Esper makes this sort of now famous comment about dominating the battle space, showing sort of a disconnect in the mindset, thinking about that this is protests in the United States and not a battle space.

We see things like-- from what the reporting shows us or suggests, that there's this concern that the guard make its presence known and be more assertive to forestall the President ordering active duty regular military forces to the streets. And that's the background to this weird incident, with the helicopters in one of the DC neighborhoods, hovering over protesters and all of that, that that's sort of trying to make it look like the Guard has it under control and that they're very powerful on the streets.

So also at this time, some of the 82nd Airborne is deployed outside of DC, or brought to sites outside of DC, I believe in Virginia. And waiting there to see what will happen. And Milley, from also what the reporting suggests, is at this point Chairman Milley is telling Donald Trump, you cannot send the active duty military to the streets, we don't need it, don't do it. And then in this context, there's this moment, as we all know, and Roger mentioned, where both Secretary Esper and Chairman Milley walk across Lafayette Square after the protesters have been cleared with tear gas, et cetera, so that they could make that trip. And he has apologized for doing that.

And here's sort of the point I want to get to what's all this. So all of this is happening. And eventually, Esper decides that he's going to send the 82nd Airborne home. They've since left. I think Guard's been deactivated as well. And in the middle, we have this moment when the generals, so to speak, start to speak out. We have General Mattis, who is quite prominent because he's been so silent for so long, and refused to speak out, makes very direct comments about adhering to the Constitution, but also about Donald Trump's leadership and his tendency to divide the nation.

We see Admiral Mullen, another former Chairman. We also see Martin Dempsey as well speaking out. And others have since joined that. In addition, just I want to note this, we also saw civilians speaking out. We saw some former Secretaries of Defense and National Security leaders making comments. With the exception of Bob Gates, I think all of them in recent memory have made comments.

OK, so that's a little background. And let me get to the question that I want to address in my remarks here. And that is, should the generals have spoken out? And I guess I'll just start out-- I have a couple of different things I want to say about that, but I'll start out with how somewhat surprising how many people think that that was appropriate, and automatically thought that. Or some thoughtfully considered it and still came to that point. I was sort of surprised by that.

And I think the reason is, or the main argument that they're making is that this is a turning point in American democracy. That you have to really think that this moment warranted extreme action. And that if the generals can save the day, we

need to let them do it. And so I think it's the exigency of the moment that drives that view. And why even people who are hesitant to sort of sanction generals speaking out were willing to make an exception in this circumstance.

I think there's a more subtle argument to be made. And we can address that if you're interested. And I think that it's that there wasn't really a clear neutral position to be had in this situation. Inaction in the face of some of things that Trump was talking about would have looked like complicity. And so there were some political consequences for not speaking out. And again, we can go back to that in Q&A if anyone wants to.

But I'm just going to lay my cards on the table, and it's not a popular view. But it makes me extremely uncomfortable that this happened. And I'm going to tell you why. I think the first question I would ask is, was there another way? Did we really need the retired generals to get out and make these statements to stop Trump from deploying the military to the streets? Now, I don't know the answer to that. But I think a lot hinges on it.

Because if there was another way, if it wasn't necessary to really have that happen, then I think that would have been a better path. And the reason I think that is, first, I think the generals speaking out reflects some deeply unhealthy dynamics about American society, features of American society today. It reflects this odd imbalance of reverence for the military and a lack of regard for other institutions, the tendency to reach for military solutions to every problem, the militarism that's pervasive in American society.

And I noted that the Secretary of Defense has spoke out. And I did that for a reason. Because I bet that's not on anybody's radar. And it should be. It reflects the sort of privileging of military voices. So I think it's unhealthy-- it's a fundamentally unhealthy dynamic that we're seeing. Now again, I understand why some might view this as an exception. And I don't want to make a straw man argument, but it does disturb me for these reasons.

The second reason why I think we might want to question whether this is a really good phenomenon is that it's probably going to intensify the politicization of the military in the United States. Now, as Roger noted this is not a new phenomenon.

Since the 1990s, we've seen a variety of things, military involvement in domestic politics. One of them being periodic commentary on policy statements, not all the time, but that's happened by retired military officers. Retired officers also endorsing candidates, things like that. So this has been going on.

But I really fear that the floodgates have just been opened. And especially the validation that this has received. And I really think while respecting the opinions of these men, mostly men, it's really important to be mindful of the implications of some of these things while respecting their views and their effort to set us on a positive course. And I guess I would just ask you to think about this question. Next time retired generals speak out, it may not be on an issue you agree with. And what do we make of that? Is that a good thing?

Now, the counter, again, is this is about the Constitution, and respect for the Constitution, and Roger also flagged that, which is really excellent. If you view this as we're on the precipice of violating the US Constitution, you might see it differently. I'm not sure we were there yet. Maybe we were. But I think that's one way to see it, this is unique and different.

I think the third thing I would say, and this might be something that some of the more academically inclined the audience will appreciate a little better, but I'll try to make it clear. I think it paves the way for subjective control of the military in the United States. Now, full disclosure, some of you who know me, will know that I am no fan of *Soldier in the State*, which is the book that Samuel Huntington articulated the-- in which he also articulated the concept of subjective control.

And the idea of that is that political leaders control the military by relying on their co-partisans or their political allies. And basically, I think what has happened puts us further on the path of treating the military as political allies and having politicians, presidents, view them that way. And let me explain how I think this fits in.

So we've had retired generals speak out, not just against what Trump was going to do, but against him and his leadership. And I'm not defending that. Again, I'm just stating that that's happened, that that wasn't warranted. But what's the next step? Trump's allies start to speak out. Now, that hasn't happened yet. And maybe the stuff that he's done with the pardoning the war criminals, threatening to basically sic

the military on the American people, I mean really horrific things, will mean that there aren't generals that speak out and side with Donald Trump. But it's possible.

And so what does this do? In part, this plays into Trump's effort to personalize politics in general. And I'll give you an example of that. General Milley, at one point during these events, Trump talks about putting Milley in charge of some kind of centralized command in DC. And those of us who know a little about the military are like, that's just instance institutionally absurd. It just doesn't work that way. But what's really going on there?

He's signaling that Milley is his general-- I'm going to put my general in charge to follow my orders and what I want. And that's part of this whole treating the military as a political ally. And I think the logical extension of where this ultimately brings us is that presidents start to look at who they're going to appoint to, or support for key positions in terms of, well, what are their political affiliations? What is their world view? Do they agree with me or not? There's Democratic and Republican generals, and I only appoint the one that aligns with my party.

And so I foresee that this kind of dynamic of generals speaking out, retired generals speaking out in favor or against politicians is a piece or a step on that path to some really unhealthy features of American civil military relations. And so I would ask that while we have understanding of this moment, and maybe breathe a sigh of a relief, that we don't get too comfortable with where we are right now with it, and think hard about whether it's really a good place to be. Thank you, Roger.

**ROGER**

Thank you. Thank you, Risa. I think we'll go directly to Jamie Baker now.

**PETERSEN:**

**JAMES BAKER:** OK, thank you, Roger. Can you hear me? Thank you very much, Roger. And thank you MIT for hosting this important event. When I think about civil military relations, I think about three different aspects of the thing, of the concept. One is civilian control of the military. One is the relationship between civilian and civil society. And the third is the use of the military in civil contexts.

And it's this third pillar of civil military relations that has received the most attention recently. But I think it's very important to look at current events with all three of the pillars of civil military relations in mind. So what I'm going to do is I'm going to

spend a few minutes talking about each of those pillars in bullet point form and make a couple of observations about each.

So first, civilian control of the military, which is, until recent events, was usually the measure by which we would look at civilian military relations. It's most manifest, of course, in the role of the president serving as commander in chief. That's what people think. When you ask students what civilian control of the military mean, they say the president is the commander in chief. But the concept of civilian control of the military is embedded throughout the structure of the military.

For example, the court I sat on, the US Court of Appeals for the Armed Forces, is in theory a court comprised of five civilians hearing military justice appeals, with appeal from our court to the Supreme Court of the United States. That's a form of civilian control of the military, albeit not as dramatic as the president serving as commander in chief. The Congress, of course, has the power in the Constitution to raise and support armies, provide and maintain a Navy, and importantly, make rules and regulations for the land and Naval forces. So Congress has an important role to play in civilian military affairs.

And we see it as well-- and this is something folks might want to focus-- the DOD instruction regarding defense support for civilian law enforcement, and in particular in the context of what is called civil disturbance operations, the DOD instruction expressly states that "Any employment of federal military forces in support of law enforcement operations shall maintain the primacy of civilian authority. And unless otherwise directed by the president, responsibility for the management of the federal response to civil disturbances rests with the attorney general."

So there, we have a couple of illustrations of civilian control of the military. So here are a couple of observations about that. First of all, the president's authority in this area of the Constitution is very broad. So as Jackson said in Youngstown, being commander in chief doesn't make the president the commander in chief of the country, but he is the commander in chief of the armed forces. And the command relationships, and how those relationships are structured, is provided to the president in the Constitution. And he can do a lot with it. He has very broad authority. So that's point number one, in terms of how command is exercised.

Point two, as Risa was saying, President Trump is unlike any other commander in chief we've seen. Whether your for him, against him, neutral, whatever, he's different than all the other commanders in chief, in style and approach. Reflected in what Risa referred to as him always referring to members of the armed forces as his generals or his military. It's not. It's the United States military.

Before we jump to conclusions about whether it's good for the president to be the commander in chief or not, noting that it is the constitutional process, recall where we'd be if we didn't have President Truman as Commander in Chief. In the context of current events, recall that it was President Truman in 1948 who pushed for the integration of the armed forces, not the military. And we might still be waiting for that to happen if not for President Truman.

If not for President Lincoln, we would most certainly be waiting for General McClellan to cross the Potomac. So thank goodness for the civilian control of the military in those contexts. So it's important to step back and look at the constitutional hole and the virtue that comes from civilian command and control and not just a moment in time. However, especially with respect to events in DC, we have seen that notions of command and control are opaque, amorphous, unclear. We have come to learn that the National Guard from other states were deployed to Washington, DC in a Article 32 status, not an Article 10 status, and not a state active duty status.

And I would say as well, that we tend to forget when the public, when someone in a protest, peacefully assembling, as the Constitution provides, when somebody is in that context, they're not distinguishing between a National Guard member and a member of the 82nd Airborne. They don't care whether the person is in Article 32 status or Article 10-- or a Title 10 status. They see a member of the armed forces.

And then my last point on civilian control is, that I think Congress has pretty much gone by this wicket without taking the opportunities it's had to reinforce the concept. We saw this when General Mattis, they had to change the law to allow General Mattis to become the Secretary of Defense. I saw it with my court, where a member of the Senate wanted to, I believe, put a person on the court. And they changed the law that said you could have retired from the armed forces, after all, to serve on the court. So now instead of having a civilian court, we have a court that's

comprised of four retired colonels and one real civilian. The judges are wonderful, but if you're a lance corporal appearing before the court, you're going to see four retired colonels, not five civilian judges.

So now my next pillar is the connection between civil society and the military. First of all, let me step back here and say, I hate the concept the term civil military relations. It sounds like you're dealing with two countries, rather than what should be a fully integrated relation-- a fully integrated society, both military and civilian, right? The citizen soldier-- they're not a military member or a civilian, they're all part of the same mix. So here I see both an issue of too little and an issue of too much.

Too little is the 1% issue, which Admiral Mike Mullen was so eloquent about and so persistent about, talking about how only a small percentage of the citizens of the United States serve in the military. That's too bad. He defined it as the 1%. That's too bad for a lot of reasons, but one of the reasons is the military is the most diverse organization an institution I've ever been affiliated, and it's a great place to learn how everybody is, in fact, equal, to live up to the ideals of the Constitution.

In the category of too much, I'm thinking here of the risk of having, as Risa pointed out, too many generals, or too many flag officers, in particular, but military officers in general, either appearing to take political roles or taking political roles. We know from Gallup polls that the most respected institution in the United States is perennially the United States military, coming in at about 80%. And everybody else is in the 50s at best. And Congress is under 10%. Sorry about that, Seth. Just reporting on the data.

But the military, one reason the military is there, is because of this oath and this feeling that the public has, that it's an apolitical institution committed to the Constitution. They risk that with military officers who take overt political positions, and indeed contexts where too many of them take policy positions. So a couple observations about that.

There's a long and venerable history of officers doing this, right? General Marshall is the most significant. He served as Secretary of State and Secretary of Defense. And who wouldn't want that? General Goodpaster or General Scowcroft, among the

finest people to serve on the presidential staffs. My issue is with too much of a good thing. And then it's not a First Amendment issue. Admiral Mullen has made this clear. General Mattis has made this clear.

Generals have the right, retired generals, flag officers, have the right to mouth off, to speak up. It's a question not of First Amendment rights, but a question of where your ultimate loyalty lies. Is it to the institution and the status of the institution, or to your own voice in politics? So here's just a couple of observations. And I'll head for home.

First, I worry with too many military officers serving in policy positions-- I don't have the data to demonstrate this, but my concern is military officers, rightfully, because of pillar one, civilian control of the military, they tend to salute when they receive a lawful order and execute it. And I think there is a risk with a military officer who is performing a policy function in a civilian role, that they may switch too quickly to it's lawful, yes, sir, rather than that's an awful idea, even if lawful, forget it.

Leon Panetta, Bob Gates, they're not going to say, yes, sir, if they get a ridiculous order. They're going to push back on it. And I worry that someone who has come up their entire career through the military chain of command and now switches over to a military role may fall too easily back into the yes, sir mode.

So I'll move on to the third pillar, which is the manner in which-- oh, no, I want to make one more point about civilian military society. We don't think-- when we think about civil military relations, rarely do people bring up the issue of judges and courts. And let me remind you that that too is an area where this is important. Think about this. In the generation following World War II, 85% of the district court judges in the United States had served in the military. In the generation following the Korean war, 60% of the district court judges.

In the generation following the Vietnam conflict, 25%. Today a negligible number. We lose an important understanding of American society if we don't have judges who know the military or have served in it. How many justices on the Supreme Court had served in the military when *Brown vs Board* was heard, the most important case of the 20th century? A majority. And majority the Supreme Court justices who decided *Brown* were military veterans. So then, what about military use-- use of the

military for civilian purposes? A quick walk through the law. And then we can double back on that if you wish.

First, start with the Constitution. Always start with the Constitution. Don't jump to Posse Comitatus first. We always start with the Constitution. Congress with the authority to make rules and regulations, the president as commander in chief. Look at Section 4 of the Constitution, about domestic violence. And so I'll leave it at that.

Posse Comitatus Act you all know. You can find it at 18 USC 1385, generally prohibiting the use of the military for civil law enforcement, unless expressly authorized by statute or the Constitution. And the statute that most people are talking about today as expressly authorizing use of the military for civil law enforcement is the Insurrection Act. And here, I would make the point that the president's authority here is broad, but there are actual factual predicates for the president stepping in without a governor's request. And I would refer you to look at those and ask yourself, have those predicates, in fact, been met when any president invokes the Insurrection Act? They're real predicates. They're not soft predicates.

Lawful orders, what is the rule about lawful orders? Article 90 and Article 92 of the UCMJ penalize with criminal law failure to follow a lawful order. A lawful-- an order is inferred to be lawful-- an order is inferred to be lawful, and it is disobeyed at one's peril. However, that inference does not apply in the case of something that is known to be patently unlawful. Patently unlawful, that means clearly or without doubt. So if you receive an order that is clearly unlawful, you not only should not follow it, the inference about lawful orders is no longer in play.

So move on. Couple of observations, and then I'll pass the baton on to Seth. We're talking about law, but this is really about culture, about culture and leadership. What role should the military play? It's not a legal question. It's about the norms and our understanding of history, and going all the way back to George Washington and the Temple of Virtue in Newburgh, New York.

If I were speaking to a member of Congress today, for example, I would say the command relationships and situation in DC was a mess. It was a mess as to under what authority, who was there, and why. And I would seek to clarify that one way or the other. The thing that I found most scary, other than the notion of clearing

Lafayette Park, was this notion of calling in National Guard forces from other states to police the streets of DC, not based on federal authority, but based on a request to come in and do it under article 32. So you had national guardsmen from other states policing the streets of DC.

And it may happen again. So there's a phrase-- there's two phrases. "I'm prepared to die for my country, but I'm not prepared to give up my career." And there's the phrase, "It's time to put your stars on the table." And I think in order for us to get this right, we have to do a lot more educating of our military, and a lot more educating of our civilians, and frankly, members of Congress and members of the executive branch, about these cultural aspects of civilian military relations, as well as the law.

Morris Janowitz, Samuel Huntington, nobody reads these anymore. I can't find a military officer who I can have an engagement in on those topics. All of which is fine. What I want them to understand is that backdrop to that oath, not just the oath. So with that, thank you very much. Thanks for the time.

**ROGER PETERSEN:** All right, thank you, Jamie. I think I'll go directly to Congressman Moulton. So the floor is yours, Congressman.

**SETH MOULTON:** Great, well thank you all for having me. Can you hear me OK? Are we good?

**JAMES BAKER:** Yes.

**SETH MOULTON:** Thanks, Jamie. Good afternoon, everyone. Thanks again for having me. I'm honored to join you, but saddened by the circumstances under which we're meeting. Now, as we get started here, I'm going to uphold one norm and violate a second in terms of what you would expect from the only politician on the panel. The norm I will uphold is that I will not be terribly academic. I'm not saying that's a good thing. But be that as it may, the norm I'm going to violate is I am not going to talk forever. In fact, I'll be quite brief. And that, I hope, will leave more time for your questions at the end.

America is a nation founded in dissent, literally birthed in freedom, committed to equality, and yet regularly reminded that we struggle to achieve all three. Protesting is not only protected by the very First Amendment to the Constitution, it's a consummate act of patriotism, as it has been since the seeds of the revolution

were sown not far from here.

With the president's actions in the last week and a half, he has made it clear that the fight for these foundational constitutional principles is a fight against himself. For nearly four [INAUDIBLE], Gold Star families, to the pardoning of war criminals, from his denigration of heroes like Senator McCain, to the use of the military as a political prop. From his elevation of dictatorial enemies of America, like Kim Jong Un, to his actions in response to the George Flynn protests-- George Floyd protests, the President has shown he has no understanding of why our military exists or why our troops sign up to serve.

This is a president who given countless opportunities to serve our country has served himself at every turn. Now, past presidents did serve. Kennedy used his father's connections to circumvent medical restrictions so he could serve in World War II. Trump used his father's connections to fabricate medical restrictions to prevent him from serving in Vietnam. And make no mistake, another brave American had to go in Trump's place. So I think we've known who this president is for a long time.

And I think it's up to us, those of us who are veterans, those of us in government, and all of us as citizens who care about the Constitution, to remind the President that those who serve take an oath not to the commander in chief, not to a political party, but to the Constitution. And if the President chooses to abuse the military, as a tyrant would do, to stifle dissent, suppress freedom, and cement inequality, then I have called on all our proud young men and women in uniform, as a veteran and a patriot, to lay down your arms, uphold your oath, and join this new march for freedom. Be on the right side of history, the side of patriots, of our Constitution, of our flag, and of our freedom. That is a call that I believe all of us should heed.

Finally, we also shouldn't forget, in the midst of this current crisis, that the men and women of the United States military are fighting wars overseas, including the longest war in American history in Afghanistan, that impact only a very small sliver of the American population. The civil military divide because of that fact alone has been widening. And we shouldn't stop looking at that piece of the question as well.

So once again, I'm honored to join you today, because few things are as important

as this. We are facing a crisis. And the state of our American experience depends on how we act in the coming days. Whether we let the President divide us further, or whether we recognize opportunity in this crisis to rally together, to uphold and protect our Constitutional rights and extend them to others. Thanks.

**ROGER** All right. Can people hear me?

**PETERSEN:**

**SETH** Got you, Roger.

**MOULTON:**

**ROGER** OK, OK, thanks, Seth. I'm going to make an executive decision. We had a third section, interaction among panelists, but I think the panelists have been clear enough and eloquent enough that we can skip that section and go right to the questions and answers. So I'm going to start with one that I think might focus some of our discussion.

**PETERSEN:**

This question is, for all panelists, a simple yes or no question. Well, I don't think you have to be simple yes or no on this. But should the chairman of the Joint Chiefs of Staff participate in any public event with the president where the audience is not the military? So is it the nature of these events, or what is the norm, and what should be the rule of the chairman with a president? Risa, do you want to come in on that?

**RISA BROOKS:** Sure, I'll be happy to. Am I showing up now?

**ROGER** Yes, we you.

**PETERSEN:**

**RISA BROOKS:** Perfect. I would say that that's not the right distinction to make, who's in the audience. I think what matters is what the president says. And it's up to the president to uphold the normal conventions of not saying partisan things with military leaders present. And I'll give you something to watch for. In a few days, President Donald Trump is going to give a commencement address at West Point. And I think we'll all be watching to see whether he does the normal thing that presidents do, which is usually normal comments you make at these kinds of events, and then discussing some foreign policy issues, perhaps, or is it going to be

a partisan rally?

And so for me, it's not so much that it's the military or not, or whether the Chairman is only present with him in the military or not, it's what the president chooses to do with those opportunities, and whether he or she in the future abides by what is appropriate behavior for a president in those contexts.

**ROGER**

Jamie, you would like to come in on this?

**PETERSEN:**

**JAMES BAKER:** Just briefly. I like Risa's answers. It is the commander in chief, as it is often the leader of the unit, who sets the tone. I do agree with that. There are a lot of events where it's just not possible to draw a distinction like that. And if you look at the State of the Union address, which is an inherently political act, you see how uncomfortable the Supreme Court justices look.

And I always want to look to make sure that chiefs of staff are just as uncomfortable. Because that gives me a sense of whether they are as apolitical and they ought to be. So watch to make sure they're as equally uncomfortable. This is a lesson learned, and credit to General Milley for appearing to learn it. Actions speak louder than words, and it matters what you wear. And if the Secretary of Defense has referred to America as battle space, you don't wear your combat fatigues to a meeting with the President.

So the Chairman and the Secretary are masters of their own fate, but again the ultimate responsibility is with the president. The only other thing I'd add is, I'm always surprised-- I worked for the-- as my biography indicated, I was once on the NSC staff. And I was always surprised senior people did not know. Not because they were good or bad people, but because no one had told them. And I do have the sense that there's not enough educating going on behind the scenes.

And I would not pass up an opportunity if I were a lawyer in the executive branch, in any department, or if I were the chairman, to convey our understanding of what civil military relations looks like in the United States, when given the opportunity. Because it's sure as heck hard to do that when you're in the middle of a crisis. So, thank you.

**ROGER** Thanks, Jamie. Congressman, would you like to say anything?

**PETERSEN:**

**SETH**  
**MOULTON:** No, I think it's been very, very, well said. And I think you saw in the apology that came from the Chairman that he's really thought about the implications of his action. And it's pretty unprecedented for a chairman like that to have to apologize on such a political issue. It is a very political issue. Just out of curiosity, I went to Foxnews.com just before this panel got started. And I was looking for any mention of the Chairman's apology on their home page. I literally could not find any mention.

I did find an article about Boston University or Boston College apologizing for letting cops use their restrooms. That's the only reference to apology I could find. So look, this is a very, very political moment. And it's exacerbated by the political divisions in our country, institutions like Fox News and the party it represents. And I think Milley did the right thing.

**ROGER**  
**PETERSEN:** Thank you. Risa brought up some questions related to retired versus active military, I think. And I think what really is interesting to someone like me, who's been working with military officers in the classroom, in the civil military classroom a number of years, is 10 years ago there was a lot of-- a lot of my military students were upset that even retired military were entering and talking on CNN or Fox News and becoming politicized that way.

And the one with General Milley's speech today, especially is active military, this is really something I didn't-- I think a lot of us didn't really understand. So to come back to this and how we treat retired military, active military. Should retired military act differently than active military? And this gets into also a question I'll read here then. Because when we talk about some of the individuals that are involved with this, they're both retired military, but they've had policy jobs.

So here's the question here. We have lumped multiple retired generals together in our normative analysis, but isn't the case of Mattis unique? Mattis' highest office held was a cabinet member, the most senior level political appointee. It seems to me that we should not treat him, nor Colin Powell, as retired generals, but as former senior political appointees for whom norms of political participation are quite

different. Whether appointing generals to such positions, or how long after retirement we should wait to appoint them, is a separate question. So maybe I'll go in reverse order. Congressman Moulton, would you like to comment on that?

**SETH MOULTON:** It's an interesting point. And I think, frankly, the reason why we always talk about the military service of Colin Powell or James Mattis is not just because it was an important part of their careers, but because the military is such a respected institution. I spent more time in Harvard than I did in the Marine Corps. No one ever introduces me as Seth Moulton, the Congressman who is a Harvard grad. They introduce me as Seth Moulton, the Congressman who's a Marine veteran. And I think that's out of a view that America has towards military service, the importance of it, for some of the very good reasons that Jamie brought up, but also just for the simple fact that this is one of the most respected institutions we have in the country.

**ROGER** Jamie.

**PETERSEN:**

**JAMES BAKER:** I agree with the premise of the question, that we should distinguish between former military officers who are speaking in their role as cabinet officers. Cabinet officers are supposed to engage in policy debates. And I think here, it is imperative, though, that when they do so, they do so not as general Mattis, but as Secretary Mattis. And they can control their own destiny to a certain extent.

When General Kelly was Chief of Staff, it made a difference to me whether he introduced himself as General Kelly, or John Kelly, or Mr. Kelly. So I think the people who are in these policy roles need to be clear and not use the uniform or their title of general or admiral to advance a political agenda or to give additional credibility to a political agenda or a policy agenda. I think they need to wear their hat-- the right hat at the right time. And so the question was a good one. I think Secretary Mattis is different because he was a Secretary.

**ROGER** Thank you, Risa.

**PETERSEN:**

**RISA BROOKS:** I'll just make three quick points about retired officers speaking out and why that's-- why the distinction between active and retired might not matter as much as it should. And that is, in part, it's because the American people don't parse those

distinctions. They see General Mattis. They don't even necessarily know that he was Secretary of Defense. They just see that, and they say, oh, this is what the military thinks.

And there's been research on that, that shows that most Americans don't make those distinctions when they hear commentary. So they're, in effect, speaking on behalf of the military. And one can make the argument, well, you can do that, as a citizen in your own personal capacity. Yeah, but nobody wants to hear from you if you were just some Joe on the street. I mean, that's not-- that's not really a sort of fair argument I would make.

Second, they're still tied to their service as a retired officer. It's not the same as retirement from other professions. And last, I would say about Secretary Mattis, I think the reason why he gets grouped with the retired generals is that he really maintained the persona of a Marine general, even as Secretary of Defense, and the mindset. And he was recently retired.

And I don't fault him for that. I just think it means that people-- I mean, I think there are some issues that arise from that, potentially, but I think people who see him as a general first. Whether they should or not is different. But I think that's why he's grouped with them, lumped with them.

**JAMES BAKER:** May I [INAUDIBLE] on that. I totally agree. That goes back to the point I hope I made at the outset, which was the Congress needs to take care to keep this distinction between civilian and military going. And that's one of the consequences of changing or providing a waiver for how long you have to wait before you go from being retired flag officer to serving as Secretary of Defense.

And Risa's quite right. Our audience may not know this, but a retired military officer is subject to recall. And so this notion that they continue to have a status, they not only have a cultural status as a former member of the military, but they actually are still part of the military as a retired officer. And in theory, subject to recall.

**SETH MOULTON:** Let me just make a quick comment on this because I was in the room for many of these discussions. I sit on the House Armed Services Committee, and the waiver had to originate with us. And I can tell you, we took it very seriously. This was not something we did flippantly. And there are a lot of mistakes Congress makes, and a

lot of things we do too flippantly these days. I'll be the first to say that.

But this is something that we considered very seriously in a bipartisan way. And it certainly wasn't just a bunch of Republicans who said this is a good idea because it was their president, and a bunch of Democrats who had reservations. In fact, the overall consensus was that we have a very dangerous president. And we believe that the trust that many of us had developed in General Mattis is something that would help.

And I can tell you from my experience in as a sort of board of directors for the Department of Defense over the last several years, General Mattis lived up to that reputation. He was willing to stand up to the President, certainly much more so than any of his successors. And so while he's far from perfect, I want you to know that it was a very considerate decision to let him have this waiver. And I think in many ways the rationale we used were borne out by experience.

**ROGER**

**PETERSEN:**

All right. Thanks. I'm going to move to a related question now. And one thing came up in Civil Military Relations class this year, one issue was what's also unique about this administration is the number of former military officers appointed to the executive branch. And not just military officers, but over-representation of Marines. And I'm looking at our panel today, and we've got over-representation of Marines on this panel too. So let me read the question here.

Should there be legal limits to the number of former military officers appointed by the president to positions within the executive branch? Or perhaps, an extension of the time they must spend out of active duty before being available for civilian positions? Or should that be left to the discretion of the president? I'll let anybody weigh in that wants to on this one. Risa.

**JAMES BAKER:** Wait a second.

**ROGER**

Oh, Jamie.

**PETERSEN:**

**RISA BROOKS:** Go ahead.

**JAMES BAKER:** I'm joking, because I think Seth and I would agree that this is a proper allocation of

Marines on the panel. No, go ahead, Risa. You have to first go.

**RISA BROOKS:** Oh, let's see. I don't know if legal remedies makes sense. And I'll leave that to Jamie, because that's his gambit. But I will say that I think it's not a good idea to have recently retired military officers in positions that civilians usually hold, within the Pentagon in particular. Let me just focused on that piece. Because that's actually happening as we speak, or just has happened with-- anyway.

And I think that's for two reasons. Or there's different reasons. I'll highlight two. One is that I think that there is a mindset that when it cultivates in a long career. And the point that I think Jamie made about following orders versus considering, and pushing back, and evaluating. I think that that matters. We want people in political positions to act like people who make policy and who understand that.

The second thing is, those folks have a lot of ties to their own social networks through long careers. And they may be encountering them in their official capacity. By the way, I'm seeing Jamie's face. Are you seeing me on the screen right now? You are, awesome. I wasn't sure. A little confusing.

So anyway, it's just a natural thing to gravitate to people that you know. And if any of you have developed these relationships with other people in the building, you're going to talk to them. And what does that mean for the civilian political appointees, again, I'm talking about the Pentagon in particular, and relationships, and how that works? And I just think that that could be really undermining to the core idea of the National Security Act of 1947, and the creation of the Department of Defense, and the idea of a civilian apparatus that oversees the military.

**SETH MOULTON:** I'll just say that I agree with-- well, I should first comment on your Marine comment. I think at MIT you believe in natural selection. So I don't [INAUDIBLE] objection to the number of Marines on the panel. But look, I agree with everything Risa just said. These are very well considered concerns, long considered concerns.

I think to me, the most frightening part of this moment, with Trump as our president, this moment in history, is the way that he has changed our norms [INAUDIBLE] We discovered that so much of how we're used to things operating in Washington is not necessarily written into law, but it's just norms. I'll give you a very quick example.

One of the ways that Congress gets a lot of things done, in terms of providing oversight to the administration, is we write letters. We write letters to the administration demanding information on certain things. And it's a very reasonable step before you have a whole big hearing, or a press conference, or whatever. And the administration provides information to you and gets back to you.

Well, the Trump administration just stopped responding to letters. Just like they've now stopped showing up to hearings. We weren't really prepared for that to happen. And I think the big question now is, have they truly broken this norm henceforth? And will this be an issue with future presidents? Or are we going to snap back to the way it's been for a very long time, Democrat and Republican alike?

And I hope that this is an aberration, in which case I don't think you're going to see a lot of presidents pick a lot of military officers to be in their cabinets. That's a norm that most presidents have upheld. The question is whether Trump has done so much damage that we might actually have to think about formal restrictions to kind of keep us within the bounds that the Founders and the Constitution intended.

**ROGER**

**PETERSEN:**

We're going to run out of time. And there's a lot of very good specific questions that we could talk about. But I'm going to go to try to get two last questions in that are very big picture questions here. So one question, is there a consensus among military leaders that the institution is over-funded?

So what we're going to hear-- and people have e-mailed me about this. They're talking about defunding police departments. A lot of people have e-mailed me, in fact, saying, why don't we defund the military and make similar types of resource allocations that would be more beneficial to our country than going into the military? So I'm not sure who wants to pick up on that first, but that's the question open.

**SETH**

**MOULTON:**

I'll just dive in for openers, since I'm responsible for funding the military as part of my day job. And look, I can certainly share my position, as both a veteran and a member of the House Armed Services Committee. I think a lot of money is wasted in the military because we're investing in a lot of weapons systems, and training, and techniques, and everything else, that are outdated. And we have to modernize.

But I think the question, and the fact that you said you've received several of these

questions, is indicative of the civil military divide, where so many Americans do not appreciate what the military does to keep us safe every single day. How many people watching the panel today know someone who's in Afghanistan tonight? And do you think that those troops have enough funding? Do you think that they're adequately supported on the ground?

Because I suspect if you knew some of those troops, you would say, no, they don't have all the gear that they need. And so it's not a simple question of should we defund the military. That question takes on a very different patina if you actually know some of the troops who are on the ground, many of whom feel like they are not adequately supported. But if you step back from it, and look at it holistically, and ask are we allocating at a strategic level our resources correctly, I think that there are a lot of room for improvement.

**JAMES BAKER:** I'd like to join the Seth bandwagon there. I would phrase it a little differently, not than Seth, than the question. Which is, it's not about-- although money is finiteness, of course, but it's less about too much money being spent on the military, it's a question of whether it's being spent in the right places. But just as importantly, and this is something Secretary Gates identified, Secretary Mattis, which is it's the under-funding of the other arms of national security and foreign policy.

So what you end up having, and there's a very clear parallel here to current events in how police forces are used. When you do not have a social work network that can come out and deal with someone who is having a mental health crisis, you end up with a police officer. And when your only tool in the national security kit is the United States Marine Corps and the 82nd Airborne Division, and not a fully funded ID, and not a pandemic response team, you're going to send the military if you send anyone.

And that's a huge mistake. And so it's not over-funding the military, it is under-funding these other essential resources. Just like it's under-funding in our civil society, we're putting money into the police, but we're not putting it into mental health, social services, and those sorts of things.

**SETH MOULTON:** Just really quickly, such an important point. Such an important point, and something that you actually hear a lot of veterans talk about in Congress because we've seen

this on the ground. The State Department doesn't show up. And we have to do their jobs. And of course, we've talked a lot about Secretary Mattis. He was the one who said, if you cut the State Department, you're going to have to buy me more ammunition.

**ROGER** Risa, I got to believe you have some thoughts on this.

**PETERSEN:**

**RISA BROOKS:** Yes, well, I'll just echo what my colleagues have said. First, yeah, waste is bad. And there's lots of that. And we don't need to spend money on that. And there's also some perversity, going back to Ike and his military industrial complex, and some of the way the procurement process works that could really be addressed if we could figure out how.

I will also just add, echo, yes, the imbalances that we have, another of them, I would say beyond the way we view the military relative to other institutions, another imbalance, and maybe these are related, is not valuing and supporting the other instruments of statecraft that we have, like our diplomats. And that's been a problem for a long time. And it's gotten acute right now.

I guess I would add two things. And I would say push one of the themes I started out with, which is the bigger picture of societal culture and the sort of militarist tendencies that we see. And I know that's an old-fashioned word for some. But I think it's something we need to examine and really think about culturally what's going on that allows for and enables some of these really negative dynamics.

And then the last thing I think is something that a lot of people would say, not just me, in response to are we over-funding, it really depends on what you're going to use the military for. That's how it's decided. And if you're not-- you don't have a clear picture of that, it's really impossible to completely answer the question of how much should be funded and what should be funded.

**ROGER** All right. We're out of time. I'm going to ask one last question, though, just because

**PETERSEN:** I've gotten, again, a lot of emails on this. And here's one question for today. What are the risks for a military coup? This may sound wild at first, but who would have thought four years ago we would be where we are? So let me get some help from the panelists on the best response to that question.

**RISA BROOKS:** Who wants to take that? Do you want me to take it, Roger?

**ROGER PETERSEN:** Yes, I would like you-- I would like someone to take it. So give me the direct response.

**RISA BROOKS:** Let's see, how much hot water do I want to get myself into here? I don't think the military has any interest in engaging in any military coups. It's the furthest thing that folks over in DOD are thinking about and want to be thinking about. I think the scenario that other people have raised is what happens if Donald Trump contests the election and says I'm not leaving. And the Supreme Court doesn't really grapple with that, because I think they're the first to do that, or would be.

And then who's in charge of ushering him out? And how does that happen? Or does he contest the election and say, oh, you National Guard from X state, you're my ally, why don't you send your Guard to DC to hang out with me. And this is a point that somebody else just made in an article, so that's actually not an original point.

And I think-- I guess I'll just say this, and I'll get myself in hot water. Because I'm a professor, and I have tenure, and that's part of my job, to say things like this. Which is one way to think about what's just happened in DC is as a trial balloon. Let's see what the military is going to do in November. Are they going to go along with me saying put troops in the streets to enforce whatever will that I have?

I hope that's not-- I'm not trying to be conspiratorial. I have no idea. And maybe I'm making that up. I hope I'm making that up. But I think we need to be thinking about all these scenarios. And being prepared, because we've seen some behaviors that are just kind of unprecedented in recent times. And please don't send me hate mail. That's my last thing. Thank you, Roger.

**JAMES BAKER:** I'd like to strike a slightly more optimistic tone. And it will take us back to where you started, Roger, which is that oath. And that oath to the Constitution is very strongly felt by people who serve in the United States military. By the way, it's also very strongly felt by the career lawyers and career public servants in the United States government, who also take such an oath.

And I think we are in unusual times for sure, but the oath will hold. These wonderful

public servants will hold. I think the Chairman has learned an important lesson. I think he will hold and deal with the stresses that come. George Marshall, who after holding every position in government was wanted to say when there was a crisis, "I've seen worse."

And I think this is a particularly tough time to do-- a COVID, George Floyd combo, is a pretty complex situation. But I have faith that the military will stand up for the ideals of the Constitution, as well the country. I really do.

**SETH  
MOULTON:**

Maybe I'll make a brief attempt to just tie this all together, because I agree with both what Risa said and what Jamie said. Look, I'm optimistic as well. I think the military will uphold that oath at the end of the day. But the fact that people have to ask this question, the fact that we have to have a debate about this, is, to me, exactly what is so concerning to the military itself. And it is fundamentally why you hear these generals speaking out, whether it's the right thing to do or not. This is why we're in this moment in American history. And it's why it's so important.

**ROGER  
PETERSEN:**

Thank you, Congressman. We are out of time. I want to thank Professor Brooks, Jamie Baker, and Congressman Moulton for being with us. I'd like to thank everyone for attending. Please be aware of future Starr Forums. And I'll turn it back to our Starr Forum administrators.

[MUSIC PLAYING]