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## Introductory Remarks

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# VETERANS LAW SYMPOSIUM

## INTRODUCTION

*Donald N. Zillman\**

I am very pleased to welcome this distinguished company to the University of Maine School of Law and to Portland. I thank Chairman Cragin for bringing such a distinguished group to *his* law school. I thank the *Maine Law Review* for taking the sponsor's role and for insuring that the publication of our proceedings will take our thoughts far beyond this room.

There is a ritual to the Dean's introduction to such a scholarly symposium. What the Dean *says* is: "I am delighted to welcome this distinguished group examining the Federal Rutabaga Cultivation Act." What the Dean *means* is: "I really wonder if this is the best thing that Conference Organizer Professor Schmudlap has to do with his time." What the Dean *says* is: "I know that no topic is more deserving of insightful scholarly study than the Rutabaga Cultivation Act." What the Dean *means* is: "What the hell is the Rutabaga Cultivation Act?" What the Dean *says* is: "I wish you a very productive conference and I look forward to reading its proceedings." What the Dean *means* is: "I'm sure glad I've got a session of the Parking Appeals Committee to attend to get me out of this program."

Happily, no such equivocation is needed today. I can truly say that I am delighted to both welcome you and participate with you in this program. My interest in military law and veterans law as participant and scholar extends over the last twenty years. And so, when Chairman Cragin broached the idea of a conference to provide the first assessment of how the "new law of veterans affairs" was working, I needed little persuasion to carry the idea to the *Maine Law Review* Editorial Board, who has ably advanced it from there.

Why study veterans law? First, it is worth recalling that the care of its military veterans is the prototype government benefit program. Even at a time when everything is an "entitlement" as a matter of both law and moral rightness, nothing has such a clear claim on the national agenda as the claim of the veteran of military service. The claim becomes stronger when the veteran has served involuntarily (in our various periods of military conscription) or has been killed or disabled in the national defense. To rephrase John Kennedy: Having shown what they can do for their country, they are uniquely entitled to ask what their country can do for them.

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So has grown one of the great federal benefit programs. In 1988 Congress observed that the Veterans Administration (VA) was administering compensation and pension programs for nearly three million veterans, providing life insurance for over seven million veterans and military personnel, and providing home loan guarantees for almost thirteen million veterans and their dependents. The VA administered a network of 172 medical centers, 229 outpatient clinics, and 117 nursing home care units for a total of almost 90,000 patient beds.<sup>1</sup>

However, in 1988, Congress concluded that the benefits programs were not working terribly well for the beneficiaries. Two pieces of legislation, the Department of Veterans Affairs Act<sup>2</sup> and the Veterans' Judicial Review Act<sup>3</sup> sought to correct this. The first statute, the less discussed today, gave Cabinet status to veterans matters. The second, the major focus of our seminar, legalized and judicialized the benefits review process.

As Congress characterized the pre-1988 situation, the Veterans Administration stood in "splendid isolation as the single federal administrative agency whose major functions are explicitly insulated from judicial review."<sup>4</sup> The Veterans' Judicial Review Act sought to change all that. We now take a look at how the change is doing. Chief Judge Nebeker and Chairman Cragin will detail the statutory changes. Congress undertook major surgery. It ended the history of "no judicial review" when it created the Court of Veterans Appeals, a specialized court whose decisions are subject to further review. Congress also touched the workings of the Board of Veterans' Appeals. Along with the changes in statute have come the administrative and judicial decisions that implement them and have started to create a jurisprudence of veterans law. Lastly, the legal changes have brought about an attitudinal change that impacts every veteran and every employee concerned with veterans affairs. The changes are worth studying not only by students of veterans affairs but by those interested in the workings of legal institutions.

From a lawyer's point of view, the 1988 changes seem a success. To fans of the Administrative Procedure Act and due process, the change is positive evidence of the evolution of a civilized society. So the evidence today may persuade us.

But, I think some caution is appropriate. More law and more judi-

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1. S. REP. No. 100-342, 100th Cong., 2d Sess. (1988), *reprinted in* 1988 U.S.C.C.A.N. 3409.

2. Department of Veterans Affairs Act, Pub. L. No. 100-527, 102 Stat. 2635 (1988).

3. Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988).

4. H.R. REP. No. 100-963, 100th Cong., 2d Sess. (1988) *reprinted in* 1988 U.S.C.C.A.N. 5791 (quoting Roger L. Rabin, *Preclusion of Judicial Review in the Processing of Claims for Veterans' Benefits: A Preliminary Analysis*, 27 STAN. L. REV. 905 (1975)).

cial and administrative procedures are not by themselves good things. A different precedent comes to mind. The Draft Act of 1917 envisioned a plan in which all eligible, male citizens would register their availability for military service.<sup>5</sup> Representatives of government would select those who should serve. They would serve. In remarkably short order that act produced an army that helped win World War I, which is still the point of having armies. Contrast this with the situation in the late 1960s and early 1970s when the successor draft statute was attempting to man the war in Vietnam. The statute and its regulations had become a lawyer's dream—vast numbers of exceptions, large numbers of points of appeal, and bundles of cases reviewing the due process and substantive claims of the individual registrants who did not particularly want to fight. We may have paid great attention to individual fairness and judicial review. But did we achieve national goals? The question remains open to debate a quarter century later.

I close with an observation that may lend further perspective to veterans law in the 21st century. Government, particularly members of Congress and the executive branch, is increasingly removed from actual military service. It has been twenty years since we had a military draft that coerced or prodded many of us into a period of military service. The Congress that sent us to military service and then provided the veterans' compensation under which we have lived was heavily populated with World War II veterans. In the Congress elected in 1992, those World War II era legislators (those born before 1928) are overwhelmingly veterans of some period of service and often combat heroism (Bob Dole and Dan Inouye come to mind). Eighteen of twenty Senators were veterans. Thirty-five of thirty-seven male House members were veterans.<sup>6</sup>

Younger legislators (and few under seventy offer World War II service) are far less likely to come to Congress with active duty experience. A study of two groups is especially revealing. The first are the new legislators of all ages. Nine of twelve Senators elected for the first time in 1992 had no military experience. Ninety of one hundred four House members had no military service. Even in the Old Confederacy, that perceived bastion of American military experience, of thirty-four new representatives only five were veterans.

Looking at a different profile, twenty-two members of the House were born after 1955, making them of an age that freed them from any experience with the military draft. These are the men and women of the volunteer army era. Only one, Representative Buyer of Indiana, has military experience. If these trends continue we are electing a Congress that could not staff an Armed Services or Veter-

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5. Act of May 18, 1917, ch. 15, 40 Stat. 76 (authorizing President to increase temporarily the military establishment of the United States).

6. None of the four female House members of that age were veterans.

ans Committee with veterans.

The impacts on veterans law and policy are unpredictable. But at least two matters bear watching. First, any "fellow soldier" affinity is disappearing in Congress' oversight of veterans' issues. The military will not be without sympathizers (and there may be no greater military zealots than some who did not serve). But, they will bring a different perspective than did veteran legislators.

Second, our commitment to the Volunteer Force for the foreseeable future may change the old understandings about the government's duty to its veterans. These future veterans are citizens who have chosen a career with a distinct benefits package (free education, early retirement, subsidized living expenses, guaranteed medical care). No one forced them to enlist. Probably others would have liked to have been in their place. In a resource-short generation, the veteran may look little different from any other pleader for government help.