Separation Anxiety and Boot Camp: Why Basic Training Should Remain Gender-Integrated

Carrie Peterson*

I. Introduction

Several members of Congress are supporting legislation to separate men and women in basic training in the military[1] for a variety of reasons, including sexual harassment and sexual relations between men and women. The push for such legislation began with several incidents involving multiple fraternization,[2] sexual harassment and rape charges at the Aberdeen Proving Ground[3] outside of Washington, D.C.[4] In response to these epi-

---

* J.D. expected 1999, University of Minnesota Law School; B.S. and M.S., Rutgers University. I would like to thank my husband, Doug Robson, for doing all the housework while I wrote this Article; Valerie Branwell, for her lifelong friendship and encouragement of my beliefs; my parents, for their belief in my abilities; and the editors and staff members, and especially Maggie Gustafson, of the *Journal of Law & Inequality* for their hard work.

1. *See House, Senate Differ Basic Training of Sexes*, SEATTLE TIMES, June 25, 1998, at A3 [hereinafter *House, Senate Differ*] (explaining that the House of Representatives voted to support segregation while the Senate is awaiting further review).

2. The term "fraternization" means any type of nonprofessional relationship between officers and enlisted personnel. *See infra* text accompanying note 37 (defining fraternization).

3. The Aberdeen Proving Ground is an Army training center. *See House, Senate Differ*, *supra* note 1, at A3.

4. *See* Yumi Wilson, *Cohen Open to Gender Segregation to Prevent Abuse*, S.F. CHRON., July 22, 1997, at A4 (reporting that Sec. of Defense William Cohen was willing to consider gender segregated training in the interest of reducing sexual misconduct). In addition to the sexual misconduct at Aberdeen, many officers in the military have recently been accused of adultery. *See* Jack Meyers & Joseph Mallia, *Armed Services Reeling from String of Military Affairs*, BOSTON HERALD, Oct. 7, 1997, at 6. Before Aberdeen, the Navy's "Tailhook" conventions brought sex scandals to the public attention. *See id.* The worst offender at Aberdeen, Sgt. Delmar Simpson, was convicted of 18 counts of rape and faces 25 years in prison. *See id.* One other officer was convicted of rape, three others were convicted of sexual misconduct, and four other officers struck deals with prosecutors to leave the Army instead of facing courts-martial. *See id.* Sergeant Major of the Army Gene McKinney, the Army's highest ranking enlisted man, allegedly solicited sex from, exposed himself to, and fondled four women in uniform, and as a result faced charges for 18 counts of sexual misconduct. *See id.*

sodes, one-fifth of the members of the House of Representatives sponsored a bill in 1997 to segregate men and women in basic training.[5] However, due to opposition from other House members and military leaders, U.S. Representative Roscoe Bartlett, the original sponsor of the legislation, withdrew his proposal from consideration by the House National Security personnel subcommittee in June 1997.[6] Later that month, a nine-person panel began a study of gender issues in basic training.[7] In December 1997, the panel came forward with its conclusion that basic training should be segregated in certain respects.[8] In response, the House of Representatives passed a defense-spending bill in May 1998 that required separate training and housing of recruits.[9] The Senate,

---

An Army hotline received about 1000 calls in the first month after allegations arose surrounding activity and violations at the Aberdeen Proving Ground. *See* John Barry, *At War in the Barracks: Can Soldiers of Different Sexes Serve Together?*, NEWSWEEK, Feb. 17, 1997, at 47. Army investigators launched active criminal investigations into 200 of those cases. *See id.*

5. *See Women in Service*, INDIANAPOLIS STAR, May 18, 1997, at D2. Under the proposed legislation, only female drill instructors would be assigned to platoons of women. *See id.*

6. *See No Plan to Separate Sexes in Boot Camp*, FLA. TODAY, June 6, 1997, at 3A. The nation's four military service chiefs argued against the legislation because they felt that the decision should be left up to the military, not Congress. *See Top Military Brass Opposes Bill to Segregate Basic Training*, FLA. TODAY, May 22, 1997, at 7A. Representative Bartlett withdrew his proposal because it was clear that it lacked the necessary votes to pass in the House National Security personnel subcommittee. *See No Plan to Separate Sexes in Boot Camp*, *supra*, at 3A.

7. *See* Otto Kreisher, *Pentagon Panel Named to Study Coed Training*, SAN DIEGO UNION-TRIB., June 28, 1997, at A2 (describing the makeup of the panel, with four retired senior officers and five civilians, led by former Sen. Nancy Kassebaum).

8. *See* Mark Thompson, *Boys and Girls Apart: A Debate Brews after a Study Urges the Military to Separate the Sexes during Basic Training*, TIME, Dec. 29, 1997, at 104, 104. The panel recommended single-sex core units of 60 people, called platoons in the Army, while keeping most field exercises and classroom instruction, about 60% of all activity, integrated. *See id.* at 105; *Military Intelligence; Separating Men and Women in Basic Training Is a Step Forward for Both*, L.A. DAILY NEWS, Dec. 26, 1997, at N28, *available in* 1997 WL 4063256 [hereinafter *Military Intelligence*] (defining platoons). The panel also suggested housing male and female recruits in separate barracks, instead of the current practice of keeping them in the same building but on different floors or in different wings. *See* Thompson, *supra*, at 105.

9. *See House, Senate Differ*, *supra* note 1, at A3 (building new barracks for gender-segregated housing, which Pentagon leaders do not support, would cost $168 million, according to Defense Department estimates). Around 70 members of the House, including then-House Speaker Newt Gingrich, R-GA, and then-Majority Leader Dick Armey, R-TX, recently signed a letter to the House and Senate conference committee working out compromises for a Pentagon spending bill urging them to include House language to force the Army, Airforce and Navy to segregate basic training. *See Republican Leaders: Segregate Women, Men in Basic Training*, DES MOINES REG., Aug. 10, 1998, at 3A. Rep. Carolyn Maloney, D-NY, Minority Leader Dick Gephardt, D-MO, and 50 other House members counterat-

however, in June 1998, rejected attempts to pass legislation that would require gender segregation of barracks, and wants to continue the current practice of integrating basic training until a congressional study on the matter is completed in 1999.[10]

A general consensus exists among legal scholars that the military is a "male-oriented institution built on masculine traditions and practices."[11] The increasing presence of women in traditionally male-dominated spheres is bound to cause some turmoil. Men who wish to retain their domination in the military see the obvious solution as limiting the role of women and, if possible, segregating women from men.[12]

Explorations of the reasons given for segregating basic training reveal that they are not valid, but rather are just an excuse to keep women in their "proper" roles in the military.[13] Advocates of integrated training argue that segregation of men and women in basic training would have detrimental effects on women,[14] that segregation would harm military culture[15] and that

---

tacked with their own letter, pointing out that military leaders oppose moves toward segregated training. *See id.*

10. *See House, Senate Differ*, *supra* note 1, at A3 (noting that supporters call barrack segregation a move toward "restoring privacy and dignity" while those who oppose the measure argue that barracks already have separate sections for males and females). Defense Sec. William Cohen has also rejected segregating basic training and instead ordered separate sleeping areas and latrines for men and women. *See Republican Leaders: Segregate Women, Men in Basic Training*, *supra* note 9, at 3A. In an effort to keep men and women from sneaking into each others' rooms, Cohen approved plans to install breakaway fire walls and alarms. *See House, Senate Differ*, *supra* note 1, at A3.

11. Lucinda J. Peach, *Women at War: The Ethics of Women in Combat*, 15 HAMLINE J. PUB. L. & POL'Y 199, 201 (1994) (citing Patricia Shields, *Sex Roles in the Military*, *in* THE MILITARY: MORE THAN JUST A JOB? 99, 106 (Charles C. Moskos & Frank R. Wood eds., 1988)); *see* Karin Dunivin, *Gender and Perceptions of the Job Environment in the U.S. Air Force*, 15 ARMED FORCES & SOC'Y 71, 76 (1988)); Brenda L. Moore, *African-American Women in the Military*, 17 ARMED FORCES & SOC'Y 363, 366 (1991); Patricia Shields et al., *Women Pilots in Combat: Attitudes of Male and Female Pilots*, 8 MINERVA: Q. REP. ON WOMEN & MIL. 21, 22 (1990); *see also* Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499 (1991) (discussing forms of masculinity which cause discrimination on the basis of race, gender and sexual orientation); Madeline Morris, *By Force of Arms: Rape, War and Military Culture*, 45 DUKE L.J. 651, 708-10 (1996) (discussing a masculine ideal in military training which necessarily excludes women).

12. *See* Karst, *supra* note 11, at 541-44 (exploring the role of masculine ideology in restricting women's roles in the military).

13. *See infra* Part IV (discussing why justifications for segregated basic training are invalid).

14. *See* Barry, *supra* note 4, at 47 (arguing that segregated training would send a message that women cannot compete); *Separating Sexes Won't Fix Military's Abuse Problem*, USA TODAY, Nov. 20, 1996, at 12A (claiming that segregation of the military would restrict women's career potential).

15. *See* Barry, *supra* note 4, at 47 (suggesting that competition between men

other methods exist to end harassment.[16]

The purpose of this Article is to discuss whether Congress should legislate the segregation of basic training, and if it chooses to do so, whether such legislation is permissible under the Fourteenth Amendment of the Constitution. Part II of this Article discusses the history of the integration of men and women in the military and lays out the reasoning behind the current move toward segregation.[17] Part III examines the constitutionality of the proposed legislation.[18] Part IV explores the reasons given for segregated training and explains why those reasons are not valid and why the proposed legislation would not correct the problem.[19] In Part V, this article concludes that segregating basic training is not the solution to preventing sexual incidents in the military.[20]

II. Background

The issue of whether men and women should be integrated during basic training arose in 1970, when Richard Nixon announced a plan to abolish the draft and create an All-Volunteer Force (AVF).[21] Three years later, in 1973, Nixon enacted his plan.[22] The elimination of the draft, along with the negative attitude of youth toward the military during the Vietnam War era, caused the number of men enlisted in the Armed Forces to plummet.[23] The recruitment of women was then intensified to make up for the decreased enlistment of men.[24]

By 1978, the Army, Navy and Air Force had eliminated all of the separate military units that conducted basic training for women:[25] the Women's Army Corps (WAC), Women Accepted for

---

and women actually raises the performance of both sexes); *Separating Sexes Won't Fix Military's Abuse Problem*, *supra* note 14, at 12A (pointing out that the military needs women due to a shortage of qualified male recruits).

16. *See* Wilson, *supra* note 4, at A4 (proposing other methods, such as an outside civilian commission to review sexual misconduct and allowing victims to sue, to stop sexual harassment).

17. *See infra* notes 21-58 and accompanying text.

18. *See infra* notes 59-118 and accompanying text.

19. *See infra* notes 119-255 and accompanying text.

20. *See infra* notes 256-63 and accompanying text.

21. *See* Walter A. McDougall, *Sex, Lies, and Infantry*, COMMENTARY, Sept. 1, 1997, at 43.

22. *See* DOROTHY SCHNEIDER & CARL J. SCHNEIDER, SOUND OFF! AMERICAN MILITARY WOMEN SPEAK OUT 253 (1988).

23. *See* McDougall, *supra* note 21, at 43-44.

24. *See id.* at 44 (explaining how, in order to make the AVF succeed, the Defense Department began to accept women in regular military-occupational specialties, in addition to the auxiliary positions in which they had traditionally served).

25. *See* MAJ. GEN. JEANNE HOLM, USAF (RET.), WOMEN IN THE MILITARY: AN

Voluntary Emergency Service (WAVES) and Women in the Air Force (WAF).[26] With the elimination of the WAC, WAVES and WAF, basic training was integrated.[27] However, in 1982, the Army decided once again to segregate men and women in basic training.[28] Basic training in the Army remained segregated until 1994, when new Defense Department regulations opened up more combat support jobs to women[29] and re-integrated basic training.[30] As a result, all branches of the military now have integrated basic training except the Marine Corps.[31] Yet many now argue that integrated training should be abolished to eliminate sexual harassment.[32]

UNFINISHED REVOLUTION 280-86 (rev. ed. 1992).

26. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 254.

27. *See id.*

28. *See* JUDITH HICKS STIEHM, ARMS AND THE ENLISTED WOMAN 61 (1989). The Army stated that the official reason for the policy was to make basic training more physically challenging for men. *See id.* However, some Army officials felt that because men seemed to perform better in all-male groups, the segregation of training was in response to the negative effect of women on men's psychological ability to perform in basic training. *See id.*

29. Examples of combat support positions include piloting or crewing aircraft that fly over enemy territory, occupying forward supply positions and serving on ships within striking range of enemy aircraft and missiles. *See* Michael J. Frevola, *Damn the Torpedoes, Full Speed Ahead: The Argument for Total Sex Integration in the Armed Services*, 28 CONN. L. REV. 621, 625 (1996).

30. *See* James Kitfield, *Basic Training Gets Nice*, 29 NAT'L J. 1914, 1914 (1997). The Army decided to integrate basic training in response to a series of experiments performed during the 1980s. *See House, Senate Differ*, *supra* note 1, at A3. The decision was mandated by the Administration and did not receive Congressional approval. *See id.*

31. *See U.S. Department of Defense: Gender Integrated Training (Part I)*, M2 PRESSWIRE, June 6, 1997, *available in* 1997 WL 10371598. The Marine Corps historically has claimed that its segregation policy was due to the design of boot camp to produce combat-ready Marines, which did not include women. *See* HOLM, *supra* note 25, at 273. Now that more combat support positions have been opened to women in the Marines, the reason given for segregation is that female recruits need women role models. *See U.S. Department of Defense: Gender Integrated Training (Part I)*, *supra.*

Even the Marine Corps is not completely segregated, however. *See U.S. Department of Defense: DOD News Briefing*, M2 PRESSWIRE, Sept. 24, 1997, *available in* 1997 WL 14463773. Although female Marines have female instructors and male soldiers have male instructors, the male and female soldiers train together. *See id.*

32. *See* Kreisher, *supra* note 7, at A2 (attesting that male drill sergeants abusing their authority by having sex with female trainees raises questions about the success of integrated training); Kathleen Parker, *Separate the Sexes during Basic Training*, ORLANDO SENTINEL, Feb. 19, 1997, at E1 (asserting that since the Army began mixed basic training, the military has been flooded with sexual harassment allegations); *Women in Service*, supra note 5, at D2 (stating that the proposed legislation is in response to "the politically correct but hormonally explosive policy of mixing the sexes . . ." and that it would protect women from sexual harassment and intimidation).

Prevention of sexual relations between military personnel is another justification given for segregating basic training.[33] This argument is based on an assumption that young men and women, when placed together, will not be able to control their sexuality.[34] It is argued that sexual relations may affect the performance of both men and women.[35]

Opponents of gender integration in the military also raise fraternization as a reason to segregate basic training.[36] The term "fraternization" in the military means any type of camaraderie between officers and enlisted personnel.[37] Fraternization causes many problems within the military: senior personnel can influence a subordinate's assignments and promotions, and relationships between officers and enlisted personnel can lead to morale problems among troops.[38] Fraternization is especially troublesome when an officer and an enlisted member are having sexual relations, because it can cause jealousies and the potential for favoritism.[39]

One concern about mixing women with men in the military is pregnancy.[40] Estimates of the percentage of women pregnant at any one time have varied dramatically from one military branch to another,[41] but the general number cited is about ten percent.[42]

---

33. *See* Charley Reese, *Feminist Fantasies Serve Only to Weaken America's Defense*, ORLANDO SENTINEL, Dec. 5, 1996, at A18; *Women in Service*, *supra* note 5, at D2.

34. *See* Reese, *supra* note 33, at A18.

35. *See* Lori S. Kornblum, *Women Warriors in a Men's World: The Combat Exclusion*, 2 LAW & INEQ. J. 353, 404 (1984) (stating that people who "fear sexual responses may detract from military responsiveness").

36. *See* McDougall, *supra* note 21, at 45 (proposing that keeping men and women together will cause courtships, jealousies and favoritism); James Webb, *A Warrior's Perspective: Now Is the Time to Consider the Trade-Off between Equal Rights, Military Efficiency*, ORLANDO SENTINEL, Feb. 9, 1997, at G1 (arguing that it is not possible "to decide an issue in favor of a spouse or lover without at least appearing to be judging matters unfairly").

37. *See* HOLM, *supra* note 25, at 73-75 (explaining the social problem of fraternization).

38. *See* LINDA BIRD FRANCKE, GROUND ZERO: THE GENDER WARS IN THE MILITARY? 263 (1997).

39. *See* McDougall, *supra* note 21, at 45.

40. *See id.* at 46 (expounding that pregnancy causes high attrition rates for women in units getting ready to be deployed); FRANCKE, *supra* note 38, at 104-05 ("Pregnancy has been the weapon of choice against women since 1975 . . . .").

41. *See* STIEHM, *supra* note 28, at 211. A 1976 Army study of women reported 3.8% of women in the Army as pregnant. *See id.* A 1978 Army study claimed that 15% of enlisted women became pregnant in 1977 and that 39% of the pregnancies were carried to term. *See id.*

42. *See* Economist Staff, *Today's American Army*, ECONOMIST, Apr. 25, 1981, at 23, 25; Peach, *supra* note 11, at 219 n.84 (citing Marilyn Gordon & Mary Jo Ludvigson, *A Constitutional Analysis of the Combat Exclusion for Air Force Women*, 9 MINERVA: Q. REP. ON WOMEN & MIL. 26, 27 (1991)).

Servicemen complain that women get a leave of absence after giving birth,[43] women do less work than men during pregnancy[44] and women can get pregnant in order to leave the military permanently.[45]

Another complaint about gender-integrated training is that physical standards have to be lowered so that women can keep up with men.[46] Indeed, the reason given for segregating basic training in the Army in 1982 was that men were not being "physically challenged enough" with integrated training.[47] Some examples of lowered standards include the competing of recruits against themselves instead of having to meet a set standard in daily training,[48] making a Navy obstacle course less challenging by moving it indoors,[49] and drill sergeants using less name-calling and hands-on punishment.[50] In fact, there have been complaints that Army boot camp is simply too easy.[51] Many recruits believe that lowered standards in basic training harm combat readiness.[52]

Some men also complain of incidents where women were allowed not to complete drills when they were not physically able to

---

43. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 197-98.

44. *See id.* at 199-201.

45. *See* FRANCKE, *supra* note 38, at 109-10.

46. *See* Kreisher, *supra* note 7, at A2 (stating that mixing basic training has forced the military to lower the physical fitness standards); Parker, *supra* note 32, at E1 (articulating that the lower training standards for women have diminished military morale); Reese, *supra* note 33, at A18 (advocating that standards have to be lowered with integrated training and, consequently, men get less training than they would otherwise); *Women in Service*, *supra* note 5, at D2 (explaining that double standards still exist for physical training and performance).

47. STEIHM, *supra* note 28, at 28. The official justification for ending integration was "to facilitate the Army's toughening goals and [to] enhance the soldierization process." *Id.* at 61 (quoting *Army to End Coed Companies in Basic Training*, BALTIMORE SUN, May 4, 1982). At least one Army official felt that all-male training would "foste[r] greater competition" and push soldiers "beyond the minimum training standards." *Id.*

48. *See* Paul Richter, *Army Seeks Sweat Equity in Wake of Sex Harassment Military: Women Face Fitness Tests More on Par with Men after Report Cites Male Perception of 'Lesser' Soldiers*, L.A. TIMES, Sept. 14, 1997, at A1.

49. *See id.*

50. *See* Kitfield, *supra* note 30, at 1914. Current rules outlaw cursing at recruits and treating them disrespectfully. *See id.*

51. *See* Andrea Stone, *Army Cracking Down by Pumping up Unfit Recruits*, USA TODAY, Oct. 20, 1997, at 14A (relating concerns of drill sergeants, among others, who feel that basic training is easier now than 10 years ago); Cal Thomas, *Have Women and Budget Cuts Hurt Our Military?*, MILWAUKEE J. SENTINEL, Sept. 24, 1997, at 16 (giving an example of one recruit who stated that boot camp was like summer camp).

52. *See* Richter, *supra* note 48, at A1 (citing a poll revealing that only 57% of troops feel their unit is ready for a crisis).

finish them.[53] The perceived double standard is one of the most frequent complaints from men about women in basic training.[54] Male soldiers often feel that women are not "pulling their load" when it comes to physical training.[55] Some men even claim that they are hesitant to help women when they see them being mistreated because of the double standard.[56] They may feel that the military thinks of women as "less" than men, because of the lowered standards for women.[57] The reasons advanced for segregation of basic training are examined in greater detail in Part IV of this article, which discusses the government's objectives for advocating segregated training.[58]

III. Segregation of Basic Training and Equal Protection

The Fourteenth Amendment of the Constitution provides that no state can deny any person "equal protection of the laws."[59] Although the Fourteenth Amendment Equal Protection Clause applies only to state governments, the United States Supreme Court has extended equal protection to the federal government through the Fifth Amendment Due Process Clause.[60] By segregating basic training on the basis of gender, Congress may be violating the Constitution. The Marine Corps' current policy of segregating basic training[61] may not pass Constitutional muster, either.

---

53. *See* Capt. William M. Marcellino, *Letters to the Editor: Rugged Women Marine Officers*, WALL ST. J., Nov. 25, 1996, at A19 (commenting that, in his experience, women Marines often were allowed to become conveniently sick on days of training events); Adam G. Mersereau, *'Diversity' May Prove Deadly on the Battlefield*, WALL ST. J., Nov. 14, 1996, at A22 (noting a time when a female officer could not sprint 40 yards, lift a "wounded" Marine onto her shoulders and run back).

54. *See supra* note 46 (highlighting various concerns about double standards in basic training).

55. Richter, *supra* note 48, at A1 (conveying that a survey of troops revealed that 50% of male soldiers feel that women don't "pull their load").

56. *See id.* One military official expressed concern that male soldiers will not report abuse of female soldiers by drill sergeants because they might feel that "the Army kind of thinks of her as less anyway." *Id.*

57. *See id.*

58. *See infra* Part IV (examining the government's objectives in segregation of basic training).

59. U.S. CONST. amend. XIV, § 1.

60. *See* Bolling v. Sharpe, 347 U.S. 497 (1954) (holding that the Fifth Amendment Due Process Clause prohibits the federal government from making classifications that are not reasonably related to a proper governmental objective).

61. *See supra* note 31 and accompanying text (explaining that the Marine Corps still uses segregated basic training).

A. Level of Scrutiny

Historically, the Supreme Court has applied two different standards of review to challenges using the Fourteenth Amendment:[62] rational relationship[63] and strict scrutiny.[64] In *Craig v. Boren*, the Court developed an intermediate level of scrutiny for cases of gender discrimination.[65] Under intermediate scrutiny, the government must first show that a classification based on gender serves "important governmental objectives."[66] Second, the government must demonstrate that the classification is "substantially related" to achieving the important objectives.[67]

Congressmen have stated that the government's objective for introducing legislation to segregate men and women in basic training is to protect women from sexual harassment.[68] In *Mississippi University v. Hogan*, however, Justice O'Connor stated in the majority opinion:

> Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions. Thus, if the statutory objective is to exclude or "protect" members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate.[69]

---

62. *See* Kathy L. Snyder, *An Equal Right to Fight: An Analysis of the Constitutionality of Laws and Policies That Exclude Women from Combat in the United States Military*, 93 W. VA. L. REV. 421, 423 (Winter 1990/91).

63. *See* Romer v. Evans, 517 U.S. 620 (1996) (declaring invalid Colorado's Amendment 2, which had precluded all legislative, executive and judicial action at any level of state and local government designed to protect against discrimination based on sexual orientation, because the amendment did not bear a rational relationship to a legitmate governmental purpose). Under rational basis review, the lowest level of scrutiny, the government only has to show that its classification is rationally related to a legitimate governmental interest. *See* Snyder, *supra* note 62, at 423.

64. *See* Palmore v. Sidoti, 466 U.S. 429, 432-33 (1984). Under the strict scrutiny standard, the government must show that the classification in a statute is justified by a compelling governmental interest and is necessary to achieve a legitimate purpose. *See id.*

65. 429 U.S. 190 (1976).

66. *Id.* at 197. In *Craig*, a male challenged an Oklahoma statute that prohibited beer sales to males under 21 and females under 18. *See id.* at 90. The state claimed the difference in ages between males and females was due to the better driving records of teenage women. *See id.* at 200-01. The Supreme Court considered the state objective of enhancement of traffic safety as important enough to withstand Constitutional scrutiny. *See id.* at 199-200.

67. *Id.* at 197. The Supreme Court found the relationship between the objective of traffic safety and the statute to be insubstantial because the statute was based on inadequate statistical evidence. *See id.* at 201.

68. *See supra* note 32 (giving examples from proponents of segregation for reasons of sexual harassment).

69. 458 U.S. 718, 725 (1982).

The government perpetuates the stereotype that women are helpless when it protects women from sexual harassment. In adopting this stereotype, the government assumes that women are unable to take care of themselves by reporting the crimes and working through the system in place that addresses sexual harassment. Consequently, the governmental objective of protection is not likely to withstand intermediate scrutiny. In addition, as will be discussed later, segregation of basic training may actually increase incidents of sexual harassment.[70] Thus, no direct relationship exists between the governmental objective cited and the method proposed to serve that objective.

The government also cites sexual relations as a reason to separate men and women in basic training.[71] Yet the government cannot show that preventing sexual relations is a legitimate objective or that sexual relations lead to a decrease in combat readiness.[72] In addition, the chosen means of segregating basic training is not substantially related to the objectives cited by Congress. Because men and women are integrated after basic training anyway, gender-segregated training does not serve to prevent sexual relations between men and women.[73] The Marine Corps claims that it segregates basic training because women are not allowed in combat training, which accounts for a large portion of the Corp's training.[74] Although this objective may be legitimate for recruits who will continue on to combat training, the justification fails for Marines who will ultimately be integrated anyway.

While the Supreme Court could theoretically invalidate legislation to segregate basic training under intermediate scrutiny, in reality, the Court has applied a lower level of scrutiny to cases involving the military.[75] In *Rostker v. Goldberg*, for example, the Court upheld the male-only selective service registration law, applying a strong deference to Congressional military judgments.[76] The Court found that because women were not eligible for combat,

---

70. *See infra* notes 131-51 and accompanying text.

71. *See supra* notes 4-5 and accompanying text (stating that the proposed legislation in favor of segregation is in response to sex scandals).

72. *See infra* notes 175-80 and accompanying text (suggesting that sexual relations do not affect combat-readiness).

73. *See infra* text accompanying notes 126-28 (explaining how men and women are integrated in other areas of the military).

74. *See supra* note 31 and accompanying text (explaining that women are excluded from combat positions in the Marines).

75. *See, e.g.*, Rostker v. Goldberg, 453 U.S. 57 (1981).

76. *See id.* at 66.

they were not "similarly situated" for registration purposes.[77] Thus, the Court did not apply the "important government interest/substantial relationship" standard as staunchly as it normally would, but instead gave a "healthy deference" to Congress.[78]

One reason the Court defers to Congress in matters of the military is because the Constitution provides power over the military only to Congress and the executive branch, without mentioning the judicial branch.[79] This deference, which concludes that the military is a separate entity from the civilian world, to be ruled solely by Congress, is also known as the "separate community" principle.[80] For example, in *Goldman v. Weinberger*,[81] the Supreme Court considered whether a regulation forbidding headgear could be applied against an Orthodox Jew wearing a yarmulke while on duty and in uniform as a commissioned officer.[82] The Court found that the regulation did not violate the First Amendment because "[t]he essence of military service 'is the subordination of the desires and interests of the individual to the needs of the service.'"[83]

The Court does not always defer to Congressional decisions on the military, however.[84] The Court has previously balanced its policy of deferment to military decisions against its duty to protect individual rights.[85] In *Frontiero v. Richardson*, for example, the Supreme Court considered the validity of the Women's Armed Services Integration Act of 1948, which required that female, but not male, service-members prove that their children and spouses were dependent on their salaries to receive additional governmental benefits.[86] The Court used strict scrutiny to find that the government drew an inappropriate line between the sexes solely for administrative convenience.[87] The separate community doctrine, then, could be interpreted as banning any control by the Court over administrative decisions of the military, but allowing the

77. *Id.* at 78-79.

78. Kornblum, *supra* note 35, at 438-39.

79. *See* U.S. CONST. art. I, § 8, cl. 13-14; art. II, § 2, cl. 1.

80. Frevola, *supra* note 29, at 659-60.

81. 475 U.S. 503 (1986).

82. *See id.* at 505-06.

83. *Id.* at 507.

84. *See* Kornblum, *supra* note 35, at 440.

85. *See* Frontiero v. Richardson, 441 U.S. 677 (1973) (applying an equal protection standard of review); *see also* Schlesinger v. Ballard, 419 U.S. 498 (1975).

86. 411 U.S. at 678-79.

87. *See id.* at 690-91. *Frontiero* was decided before the Court established an intermediate standard for cases involving gender discrimination.

Court to decide on matters of severe Constitutional violations by the government. With this interpretation courts need to act to ensure that a "military exception" to the Constitution is not created.[88]

The Court also has a history of deferring to Congress because of its "self-perceived lack of confidence to review policies that relate to military functions, organization, and control."[89] Consequently, the Court refuses to decide matters in which it has little expertise.[90] When it comes to segregation of basic training, however, the Court should not defer to Congress. If legislation is passed, at least two studies will probably be presented before any decision is made.[91] Courts are just as competent as Congress to decide whether a study of integrated training evidences a need for segregation.[92] In the past, courts have evaluated evidence about major social institutions like schools, corporations and prisons.[93] For example, the Supreme Court in *Brown v. Board of Education* considered extensive social evidence to conclude that segregated schools had a detrimental effect on the psychological well-being of school children.[94] Evaluating evidence about integrated basic training in the military requires no greater expertise.

The cases in which the Supreme Court has deferred military judgment to Congress have had drastically different fact patterns and policies involved than those in gender-segregated training.[95] In basic training, however, women are similarly situated to men because both must complete basic training and both face decisions about sexual relations.[96] In addition, both men and women could be subjected to sexual harassment. Although men and women

88. Karst, *supra* note 11, at 565.

89. Frevola, *supra* note 29, at 660.

90. *See id.* at 664.

91. *See supra* note 8 and accompanying text (stating that a panel study was conducted on integrated basic training); *supra* text accompanying note 10 (noting that the Senate would like to conduct another study before segregating basic training).

92. *See* Kornblum, *supra* note 35, at 441.

93. *See id.*

94. 347 U.S. 483, 494 (1954).

95. *See, e.g.*, Rostker v. Goldberg, 453 U.S. 57, 78-79 (1981); Gilligan v. Morgan, 413 U.S. 1, 14 (1972).

96. Some may argue that women are not similarly situated as men, especially in the Marines, because women are still not allowed in combat. *See supra* note 31. However, men in the Army who are going into combat positions do not train with women. *See* Rowan Scarborough, *Mixed-Sex Training to Pass in Review: Debate Overlooks Army's 2-Track Tack*, WASH. TIMES, Oct. 18, 1997, at A1. A similar system could be set up in the Marines, whereby men who are training for combat train with men only.

have different physical fitness standards in basic training, there is no legitimate reason why they cannot train in the same facilities.[97]

In *Gilligan v. Morgan*, the Court refused to grant judicial surveillance of the Ohio National Guard's activities.[98] A detachment of the unit opened fire on student protesters at Kent State University during the Vietnam War.[99] The plaintiff respondents requested that the Court comprehensively review the daily operations of the Guard.[100] The court felt it was not qualified to make decisions on the Guard's "training, weaponry and orders,"[101] because the issue presented was a nonjusticiable controversy since the U.S. Constitution vests in Congress the power:

> [t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . .[102]

A decision on gender-segregated training would not interfere with the day-to-day operations of the military because such a judgment would simply be a broad prohibition against segregation. Ordering sexual integration of basic training is a less drastic remedy than that sought in either *Gilligan* or *Rostker*.[103]

B. Separate but Equal

If the Supreme Court were to determine that gender-segregated training violated the Equal Protection Clause, it would next need to evaluate whether the violation is allowed because the separate basic training programs are equal.[104] In *United States v. Virginia*, the Court decided that the exclusion of women from a state-supported military academy violated the Fourteenth

---

97. *See infra* note 220 (explaining the differing physical fitness requirements for men and women). If the government decided to use the rationale that segregation would improve morale of the men because of the differing standards, the Court may still invalidate the legislation on the grounds that there is no direct, substantial relationship between the proposed legislation and the objective of boosting morale.

98. 413 U.S. at 14.

99. *See id.* at 1.

100. *See id.* at 5-6.

101. *Id.*

102. U.S. CONST. art. 1, § 8, cl. 16.

103. Continuation of integration would not affect military operations severely, because most of the soldiers have adjusted to the integration. *See infra* note 255 (describing a poll that evidences acceptance of integration in basic training).

104. *See* United States v. Virginia, 518 U.S. 515, 546 (1996).

Amendment.[105] After declaring the exclusion unconstitutional, the Court stated that separate-but-equal educational programs must provide men and women with "substantial equality" in educational benefits.[106] The Court determined that a separate "parallel" program proposed by Virginia designed for women was not "substantially" equal because it did not have the same unique opportunities provided at Virginia Military Institute (VMI), such as VMI's prestigious reputation and alumni networks, which lead to increased job opportunities.[107] The Court also found that the separate institute was not equal because it did not eliminate the discriminatory effects of the past exclusion of women.[108]

If basic training is segregated, women might still have the same chance for advancement that they did before. However, basic training itself is not the same for men and women because the physical fitness standards are lower for women, and gender-segregated training would allow these differences to continue.[109] Because the Army and the Air Force use strength testing to determine whether service members are qualified for certain Military Occupational Specialties (MOS's),[110] different physical fitness standards in basic training may limit women's abilities to train for certain positions.[111] Also, instead of remedying past discrimination, segregated training could increase discrimination.[112]

In *Brown v. Board of Education*,[113] the Supreme Court considered whether separate-but-equal educational facilities were inherently unequal because of psychological damage to Black children.[114] The Court found that separating these children from

105. *See id.* at 533.

106. *Id.* at 553.

107. Laura J. Geissler, *Unfinished Business: Intermediate Scrutiny, "Real Differences," and "Separate-but-Equal" in United States v. Virginia, 116 S. Ct. 2264 (1996)*, 20 HAMLINE L. REV. 471, 505 (1996).

108. *See* 518 U.S. at 547-48.

109. *See infra* note 220 (explaining that physical fitness requirements are different for men and women in basic training). The standards may remain different even if integration continues, but there may be more incentive to create one single standard if men are allowed to see the double standards and protest.

110. *See* Karst, *supra* note 11, at 532 n.132 (relating that strength requirements are used to counsel recruits on which MOS they should try). A Military Occupational Specialty is a categorization of the jobs available in the Army. *See* STIEHM, *supra* note 28, at 287.

111. *See infra* note 236 and accompanying text (describing an incident where basic training did not prepare a female recruit for advanced training).

112. *See infra* notes 131-51 and accompanying text (suggesting that segregation of men and women may increase sexual harassment).

113. 347 U.S. 483 (1954).

114. *See id.* at 493-95.

others "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone."[115] The Court applied this rationale to women in *Roberts v. United States Jaycees*[116] when it stated that "stigmatizing injury, and the denial of equal opportunities that accompanies it, is surely felt as strongly by persons suffering discrimination on the basis of their sex as by those treated differently because of their race."[117] If the Court applied this rationale to separation of men and women in the military, it may find separate basic training programs inherently unequal because women will feel decidedly inferior if they are required to attend separate basic training. Because basic training was integrated for almost twenty years for the Air Force and Navy, and five years for the Army,[118] segregating basic training now would almost certainly stigmatize women, as they would feel that they cannot compete with men, and thus must be placed in separate training.

IV. Examination of the Government's Objectives

In *Owens v. Brown*,[119] a group of female Navy officers and enlisted personnel challenged the Navy's absolute bar against women serving on naval vessels. The United States District Court for the District of Columbia applied a heightened scrutiny standard based on *Craig*.[120] The court first found that the governmental objective of increasing the combat effectiveness of Navy ships was important.[121] The court then examined the relationship between the government's objectives and the legislation.[122] The

115. *Id.* at 494.

116. 468 U.S. 609 (1984). The Supreme Court in *Roberts* dealt with the case of a nonprofit organization that limited membership of women to an "associate membership," which allowed less benefits than the "regular membership" men enjoyed. *Id.* at 609. The Court was required to determine whether allowing women to become regular members would violate the male members' freedom of expressive association or freedom of intimate association under the First Amendment. *See id.* The Court found that it did not. *See id.* at 610.

117. *Id.* at 625.

118. *See supra* notes 27-30 and accompanying text (explaining when basic training was integrated for the various forces).

119. 455 F. Supp. 291, 294 (D.D.C. 1978).

120. *See Owens*, 455 F. Supp. at 305.

121. *See id.*

122. *See id.* at 306. The court enumerated the government's concerns as follows: unknown effects that full integration might have on group dynamics under combat conditions, the ability of the Navy to operate as effectively as it might with all male combatants, the capacity of the American people to accept the prospect of female casualties, and the attitudes of enemies towards engaging the United

court, after examining each of the government's arguments, dismissed each justification one by one.[123]

Owens should be used as a template for analyzing the current proposed legislation and dispatching the justifications given by the government as not substantially related to the means advanced. This is because an evaluation of the government's arguments will reveal that these justifications are either unsubstantiated or not consistent with the legislation. Further, a challenge to the proposed legislation to segregate basic training should similarly be treated under the intermediate standard set forth in *Craig*.[124]

A. Sexual Harassment

One frequently cited reason for separating men from women in basic training is that by mixing the sexes, sexual harassment will necessarily follow. The proposed solution is not tailored to the problem, however. Because the incidents of sexual harassment and rape at Aberdeen did not occur in basic training, segregating basic training will not solve the problem.[125] One senior Defense official has pointed out that men and women go through coed high school, society, training and operations, so that it is artificial to segregate basic training.[126] Almost every other aspect of the military is integrated, including work groups[127] and combat training.[128] In 1980, when basic training in the Army was still segregated, a report issued by the Army suggested widespread sexual harassment.[129] Thus, it seems that simply segregating basic training will not stop sexual harassment in the military. Harassment occurs in all areas of the military, not to mention civilian society.[130]

In fact, segregation may actually cause more harassment

States in combat because of a perceived weakness in its combat arms. *See id.*

123. *See id.* at 306-09.

124. *See supra* notes 79-103 and accompanying text (explaining why the Court should use an intermediate standard like the one established in *Craig* rather than defer to military judgment).

125. *See U.S. Department of Defense: Gender Integrated Training (Part I), supra* note 31 (revealing that recent sex scandals reported by the media did not occur in basic training).

126. *See id.*

127. *See* STIEHM, *supra* note 28, at 197.

128. *See* Marcellino, *supra* note 53, at A19. Although women are not allowed in the infantry, some women go through Basic Officer Training, which emphasizes elementary infantry skills and tactics. *See id.*

129. *See* STIEHM, *supra* note 28, at 205-06.

130. *See, e.g.*, SCHNEIDER & SCHNEIDER, *supra* note 22, at 32-79 (detailing incidents of sexual harassment in all areas of the military affecting all ranks of women).

than it prevents.[131] Studies have shown that when women are present in more than "token" numbers,[132] they are more accepted as coworkers and leaders, and thus, less susceptible to sexual harassment.[133] Separating men from women may even send a message that women are incapable of defending themselves, thus fostering sexual violence against women.[134] Segregating women would probably also send the message to men that women should be treated as less than equal.[135]

Experience in the private work force has shown that the more women are integrated into the workplace, the more likely they will be treated like coworkers and not sexual objects.[136] The entrance of women into police forces provides a telling example.[137] At first, women were shunned as police officers because of the masculine atmosphere in police stations and beliefs that women would not be as good as men at police work.[138] As women increased in numbers in police forces, however, sexual relations between male and female police officers became less evident, and women were treated more like coworkers than sex objects.[139]

Black men also experienced harassment, although of a different sort, when they were integrated with White men in the mili-

131. *See U.S. Department of Defense: Gender Integrated Training (Part I), supra* note 31, (asserting that changing basic training may actually increase sexual harassment).

132. A "token" is "[o]ne that represents a group, as an employee, whose presence is used to deflect from the employer criticism or accusations of discrimination." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1884 (3d ed. 1996).

133. *See* STIEHM, *supra* note 28, at 207 (suggesting that more harassment occurs where women are in short supply, such as overseas operations); Karst, *supra* note 11, at 538 n.154 (revealing that studies show the number of women needed to avoid social problems is equal to 25% of the total number of members of the group).

134. *See* Kornblum, *supra* note 35, at 406 (expressing concern that excluding women from combat would have such effects).

135. *See* Karst, *supra* note 11, at 538-44 (arguing that if women are allowed to do their jobs in front of men, they can prove themselves capable, and men will have more respect for them).

136. *See id.* at 538 (giving examples of law firms, law faculties and law school student bodies).

137. *See id.* at 539-40 (referring to police force integration as an experiment that proved that women can succeed in previously male dominated roles); Kornblum, *supra* note 35, at 405 (discussing female police officers' perceptions of their acceptance).

138. *See* Karst, *supra* note 11, at 539.

139. *See* Kornblum, *supra* note 35, at 405 (relating that interviews with police show that men and women now work together without sexual involvement affecting their work).

tary.[140] Now that Blacks are present in more than token numbers, they are accepted, even as leaders, and racial tensions have dramatically decreased.[141] Women may experience similar acceptance if their numbers are increased in the military and if they are more integrated with men.

The experience of soldiers in the Persian Gulf War, where men and women were integrated, shows that when men and women work together in teams, they act more as comrades and sexual harassment is not much of a problem.[142] Integration of men and women works to curb sexual harassment and sex crimes because it interrupts the all-male culture created by single-sex activities.[143] In an all-male culture, a male group dynamic is created, so that harassment directed against women occurs due to bonding between the men.[144] Men's sports may serve as an example of men's attitudes toward women in a male-dominated group.[145] A study of gang rapes by college athletes between 1989 and 1990 revealed that none of the fifteen rapes reported involved athletes in individual sports like swimming or tennis, but rather team sports such as football, basketball and lacrosse.[146]

The same factors that are present in all-male sports teams are also present in all-male military groups.[147] These factors include men eating and living together twenty-four hours a day and depending on each other as a team under great pressure.[148] Under such situations, men feel they must prove their masculinity and forge bonds by reducing women to sex objects and ridiculing each other by calling each other "girls."[149] This type of male group dy-

140. *See* Karst, *supra* note 11 at 541-42 (explaining that some military officials in the 1940s felt that allowing Blacks into leadership positions would be disastrous).

141. *See id.* (citing examples of Black generals and drill instructors).

142. *See* HOLM, *supra* note 25, at 463.

143. *See* FRANCKE, *supra* note 38, at 158.

144. *See id.* ("Reducing women to sex objects [is] considered essential to forging close fraternal bonds."). Professor Peter Lyman at the University of Southern California studied the bonding mechanism among fraternity brothers on one college campus and concluded, "The group separated intimacy from sex, defining the male bond as intimate but not sexual and relationships with women as sexual but not intimate." *Id.*

145. *See id.* at 158-59 (describing bonding that occurs in male groups based on common disparaging of women).

146. *See id.* at 159.

147. *See id.*

148. *See id.*

149. *See id.* at 158-59. In the military, this type of male bonding was encouraged in the past. *See id.* at 160-61. Currently, however, visitors to integrated training camps have reported less name-calling and personal abuse than was previously present in the all-male culture. *See* Kitfield, *supra* note 30, at 1914.

namic can cause men to commit sexual acts against women that they would not think of doing as individuals.[150] A return to gender-segregated basic training might very well create this type of masculine dynamic, causing more problems with sexual harassment when the sexes are integrated in officer training or training for MOS's.[151]

Other methods exist to curb sexual harassment. For example, the military could continue its sexual harassment hotline.[152] Civilian oversight in the form of an outside commission can be created to review sexual misconduct, with findings sent to the President and Congress.[153] Accountability can be increased by requiring claims to be reported within twenty-four hours to the first general-grade officer in the chain of command, and then later to Congress.[154] The military should continue to prosecute any offenders it finds in violation of its regulations. It should also ensure moral leadership by improving selection, training and supervision of drill sergeants, possibly even making psychological screening more stringent.[155] Currently, soldiers are not allowed to sue the military for most injuries suffered during service.[156] Congress could pass legislation allowing victims of sexual harassment to sue.

Women should also be integrated with men so that men can see women in positions of leadership, and gain respect for them.[157]

---

150. *See* FRANCKE, *supra* note 38, at 159-60. This is why so many rapes occurred in Vietnam by American soldiers. *See id.* Many of the men would not have considered raping women on their own. *See id.*

151. *See supra* note 110 and accompanying text (defining "MOS").

152. *See* Tom Bowman, *General Ponders His Future; Ralston May Withdraw from Consideration for Top Military Post; Meeting Set with Cohen; Two Panels, Lawyers to Study Issues of Sex and the Armed Forces*, BALTIMORE SUN, June 8, 1997, at 1A (pondering the fate of military officers' appointments after sexual indiscretions and discussing various methods employed by the military to curb sexual harassment).

153. *See* Wilson, *supra* note 4, at A4. A bill to that effect was introduced by U.S. Rep. Carolyn Maloney, D-NY. *See id.*

154. *See id.* This type of legislation was proposed by Sen. Olympia Snowe, R-ME. *See id.*

155. The Army currently has plans to begin more stringent psychological screening, increase the number of trainers, and add a week to basic training for values training. *See* Kitfield, *supra* note 30, at 1914.

156. *See id.*

157. *See* Karst, *supra* note 11, at 541 ("Servicewomen will be accepted as leaders when women in leadership positions are no longer remarkable."). Judith Stiehm proposed that five conditions promote harassment of women in the military:

> (1) the lack of both older women supervisors and a separate women's corps, where shelter and good advice could be sought; (2) the isolation experienced by women who have moved into new job fields, integrated living quarters, and remote locations; (3) the degree to which many women are

Research has shown a relationship between gender composition of groups and behavior of individuals within those groups.[158] The results of studies show that men tend to exhibit anti-female behavior mostly when they are part of an all-male group.[159] Groups that contained mostly male members and only one female member were the most anti-female.[160] The more women are added to a group, the more men tend to identify with feminine characteristics in themselves.[161]

When women are a minority in a group they are less apt to take on leadership roles.[162] In one study from the 1970s, when women were placed as majorities in a group, they were less satisfied than when they were in predominately male groups.[163] This was probably because women, especially in the 1970s, were not used to leadership positions.[164] Thus, it was easier for women in male-majority groups because they could simply conform to the males' expectations.[165] Also, men tended to reject women who strove for leadership in the male-majority groups.[166]

Since the 1970s, however, women have become more accustomed to taking on leadership positions. This is also true of some women in the military.[167] Placing women in leadership positions

---

> outnumbered, constantly exposed to men who do not know them, cannot reasonably expect to get to know them, and therefore feel entitled to test and tease them; (4) the fact that many young women (and men) are away from home for the first time and find themselves immersed in a culture where people play the game of courtship according to rules very different from those followed in their high school or home town; (5) military living quarters and dining arrangements that ensure that even during off-duty hours women are exposed to comments, pressure, and intrusions. They have no "space," no place for a "time out."

STIEHM, *supra* note 28, at 205; *see also* SCHNEIDER & SCHNEIDER, *supra* note 22, at 52-60 (describing instances when women, as leaders, have gained men's respect).

158. *See generally* Diane N. Ruble & E. Tory Higgins, *Effects of Group Sex Composition on Self-Presentation and Sex-Typing*, 32 J. SOC. ISSUES 125 (1976) (suggesting that the gender composition of groups affects awareness of sex roles and sex-related responses of group members); Ross A. Webber, *Perceptions and Behaviors in Mixed Sex Work Teams*, 15 INDUS. REL. 121 (1976) (comparing the behavior of males and females in groups when they are the minority gender and conversely, when they are the majority gender).

159. *See* Ruble & Higgins, *supra* note 158, at 127.

160. *See id.*

161. *See id.* at 131.

162. *See* Webber, *supra* note 158, at 122. The Webber study involved separating students in graduate schools of management into groups of four persons, each with three members of one sex and one member of the other. *See id.* at 123.

163. *See id.* at 127-28.

164. *See id.* at 129.

165. *See id.*

166. *See id.* at 126.

167. *See, e.g.*, SCHNEIDER & SCHNEIDER, *supra* note 22, at 58-60.

during basic training could be used as an impetus to acclimating women to positions of authority. In addition, women should be integrated with men in basic training so that men can see women in positions of leadership, and acclimatize to the idea of women leaders before they go on to other positions in the military where they will have women as leaders. With increasing numbers of women in basic training, perceptions about women may change more easily. Experience with Congress and the Supreme Court has shown that women can be accepted in positions of authority by men and that, when given a chance, women can become acclimatized to leadership positions.[168]

To help men accept women as leaders in the military, the number of women in the military should be increased.[169] The military sets recruitment goals for women,[170] and these goals should be increased so that women are present in more than token numbers. The military should aim for a minimum goal of twenty-five percent women, because when this percentage is reached, women become less of a novelty and sexual harassment should decrease.[171] Congruently, women should be placed in more leadership positions so that men will learn to accept them in positions of authority.[172]

B. Sexual Relations

Those who fear that sexual relations will affect performance of men and women in basic training sometimes cite incidents of prostitution by female soldiers in the Persian Gulf War.[173] It is true that relations between men and women in integrated situations are inevitable. Whether this actually affects performance is debatable.[174] During the Persian Gulf War, even though sexual

168. *See id.* (giving examples of women in the military who have succeeded in leadership positions).

169. *See supra* notes 132-51 and accompanying text (describing how tokenism may increase sexual harassment).

170. *See* HOLM, *supra* note 25, at 387.

171. *See* Karst, *supra* note 11, at 538 n.154 (suggesting that women need to be present in percentages greater than 25% to prevent harassment problems). Currently, women comprise about 14% of the military. *See* Thompson, *supra* note 8, at 104.

172. *See supra* notes 157-61 and accompanying text (suggesting that women should be placed in more leadership positions).

173. *See* Frevola, *supra* note 29, at 650 n.172 (citing Pamela M. Jones, *Note, Women in the Crossfire: Should the Court Allow It?*, 78 CORNELL L. REV. 252, 265 (1993)).

174. Madeline Morris has suggested that any loss of cohesion resulting from gender integration should be balanced against the negative effects of segregation. *See* Morris, *supra* note 11, at 759. Morris explains in her article that one such negative implication in segregation is the increased military rape incidents caused

relations did exist, they did not affect combat effectiveness.[175] Seventy-seven percent of Gulf veterans polled reported that sexual activity had little effect on readiness and sixty-one percent felt it had no effect on morale.[176] Furthermore, studies have shown that when field training exercises are integrated, measurable unit performance is not affected,[177] and that members of such units develop brother-sister bonds rather than sexual ones.[178] This type of brother-sister relationship was confirmed by members of the military.[179] Brother-sister relationships could be encouraged by enacting a broadened fraternization policy of disallowing sexual relationships between members of the same military units.[180]

C. Fraternization

The military has responded to the problem of fraternization

---

by an all-male military culture. *See id.*

175. *See* FRANCKE, *supra* note 38, at 249-50. Surveys revealed that almost three-quarters of the Army and Marine personnel, 64% of Air Force personnel and 41% of Navy sailors polled reported sexual activity. *See id.* at 249.

176. *See id.* at 250.

177. *See* Snyder, *supra* note 62, at 435 (citing studies reported in Mady Wechsler Segal, *The Argument for Female Combatants, in* FEMALE SOLDIERS–COMBATANTS OR NONCOMBATANTS? 279 (Nancy Loring Goldman ed., 1982)).

178. *See* Peach, *supra* note 11, at 214-15. The two studies mentioned in Peach's article were conducted by the Army Research Institute and were entitled *Women Content in the Army: REFORGER* (REFWAC 77) and *Women Content in Units Force Deployment Test* (MAXWAC). *See id.* at 214 n.59. MAXWAC revealed that when percentages of females were varied from 0 to 35%, no significant effect on unit performance was shown. *See id.* REFWAC results showed that a percentage of 10% females in a 10 day field exercise had no effect on performance of combat support and combat service support units. *See id.* In addition, several observers of military exercises have concluded that integrated units performed just as effectively, if not more so, than single-sex units. *See id.*

One commentator relates that the results of a large-scale study reported interviews of soldiers in Somalia where women felt brother-sister relationships with members of their units. *See* Morris, *supra* note 11, at 756-58. The interviews also revealed that women felt harassment came from members outside their unit, and that male members of a unit often stood up for females in their unit. *See id.* Morris concludes that by encouraging these brother-sister bonds, a different type of bonding between members of the same unit can be substituted for the typical male bonding. *See id.*

179. *See* Kornblum, *supra* note 35, at 405. The first female engineer in the Engineering Corps stated:

> [T]he argument about 'put two people in a foxhole and one ends up pregnant' only goes so far. When people are used to working together, the social relations calm down. It's cooling here [West Point] now; there were real passions, but now we're more like brothers and sisters.

HELEN ROGAN, MIXED COMPANY: WOMEN IN THE MODERN ARMY 219 (1981).

180. *See* Morris, *supra* note 11, at 757 ("Just as military units have traditionally been a 'band of brothers,' gender-integrated units would have to be carefully shaped and defined as a band of brothers and sisters between whom sexual relationships would be unacceptable.").

by passing regulations forbidding it.[181] These regulations vary among the different branches, however, and are inconsistently applied.[182] Some of the biggest complaints about fraternization policies are their over-application.[183] The fraternization policies are often used to prevent enlisted personnel and officers from marrying or even to prevent married couples from living together.[184]

Some military officials feel that the fraternization policies do work, and that fraternization incidents are on the decline.[185] The best solution to fraternization, then, seems to be regulation of management/command relationships within the same chain of command.[186] If fraternization regulations are strictly enforced, seniors and subordinates in the same chain of command can be disciplined, while couples that do not work together can be seen together without fear of favoritism.[187] In addition, the military's rules against fraternization should be applied evenly to men and women to discourage sexual misconduct.

D. Pregnancy

One big concern of male soldiers is that servicewomen are allowed at least four weeks of maternity leave.[188] However, women lose less time altogether than men do for illness, drug and alcohol abuse, and disability.[189] Further, accommodations are of-

---

181. *See* STIEHM, *supra* note 28, at 209 (listing the different fraternization regulations among branches of the military).

182. *See id.* The Army passed a regulation in 1978 forbidding relationships between superiors and subordinates. *See id.* The Air Force prohibits friendships between officers and enlisted personnel that would prejudice "the good order and discipline of the unit." *Id.* The regulation does not outright forbid dating between enlisted personnel and officers. *See id.* The Navy forbids fraternization in its "Manual for Courts-Martial." *See id.* Fraternization is usually punished because of its effects in particular circumstances but not because of the act itself. *See id.*

183. *See, e.g.*, SCHNEIDER & SCHNEIDER, *supra* note 22, at 166-75.

184. *See id.*

185. *See* Christopher Horrigan, *The Combat Exclusion Rule and Equal Protection*, 32 SANTA CLARA L. REV. 229, 260 (1992) (citing *Women in the Military: Hearing Before the Military Personnel and Compensation Subcomm. of the Comm. on Armed Servs.*, 101st Cong. 29-30 (1990) (prepared statement of Vice Admiral J.M. Boorda, Chief of Navy Personnel, Department of the Navy)).

186. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 167-68 (relating opinions among female servicewomen who were interviewed that officers and enlisted personnel in the same chain of command should not be allowed to socialize).

187. *See id.*

188. *See id.* at 197.

189. *See* Peach, *supra* note 11, at 218. A 1980 survey of lost time in the Navy revealed the following statistics:

ten made for both men and women in the service who do not carry their load.[190] For example, people who are inexperienced are often allowed to pull less weight than others.[191] In addition, some enlisted personnel are given special consideration in the form of arranging work schedules so that they can moonlight to attend school or to work civilian jobs.[192]

It is true that some women use pregnancy as an excuse to get out of difficult assignments or physical training.[193] However, other servicewomen look down on women who use pregnancy as an excuse to get out of heavy work.[194] Numerous examples exist of women who do everything they can to keep working as long as possible,[195] including hiding their pregnancies to continue work-

Lost Time Category	Lost Days as a Percent of Total Days Available	
	Men	Women
Alcohol Abuse	.12	.09
Drug Abuse	.12	.02
Unauthorized Absence	.24	.05
Returned Deserters	.62	.07
Abortion	0	.03
Pregnancy	0	.37
Total	1.10	.63

Kornblum, *supra* note 35, at 412. Navy studies conducted between 1989 and 1992 concluded that among medical evacuations, AIDS and substance abuse accounted for up to 8%, while pregnancy barely accounted for 1%. *See* FRANCKE, *supra* note 38, at 112. It was also estimated that if all the time spent by superiors in dealing with disciplinary problems were considered, the down time for men might be 10 times greater than for women. *See* Frevola, *supra* note 29, at 648. During the Persian Gulf War, more women were able to carry out their assignments than men, with the leading cause of attrition for men being sports-related injuries. *See id.* From personal observations, men lose more time due to medical and disciplinary problems than women do from pregnancy. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 197.

190. *See* STIEHM, *supra* note 28, at 211.

191. *See id.*

192. *See id.*

193. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 200-01 (describing one woman who got the easy job of dispatching during her whole nine months of pregnancy, another woman who did not have to dig a foxhole because she was pregnant, and another woman who was relieved from carrying cargo chutes weighing 250 pounds).

194. *See* FRANCKE, *supra* note 38, at 115 (citing an enlisted woman in a Navy aviation squadron complaining about women who use pregnancy to get out of work and get sit-down jobs). Many women are compelled by the condemnation of pregnancy to work up to the point of labor. *See id.*

195. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 199-202. It has been noted that in the early months of pregnancy, some women can perform strenuous exercise. *See* Snyder, *supra* note 62, at 439-40 (describing one Marine who went through a strenuous officer-candidate training school while she was six months

ing.[196] Many women work the entire nine months.[197]

Using pregnancy as an excuse to leave the military may indeed be a problem, because women may choose to get pregnant if they decide they do not want to stay in the military.[198] At one time, the military instantly discharged any woman who became pregnant.[199] In 1974, the Department of Defense directed all the services to make discharge for pregnancy voluntary.[200] Thus, women can still use pregnancy as a reason for discharge, and even use the military benefits of health care and paid maternity leave, and then quit.[201] Pregnancy could be used to get out of basic training if a woman realizes that she does not want to stay.[202] Experience in wars has shown, however, that women do not overwhelmingly use pregnancy as an excuse for dismissal.[203] In the Persian Gulf War, records of nondeployability due to pregnancy were practically non-existent,[204] and most officials agree that pregnancy was not used as a widespread excuse to get out of the war.[205] Indeed, there are many examples of women who, out of loyalty to their country, gave up their maternity leave and rejoined

---

pregnant).

196. *See* FRANCKE, *supra* note 38, at 115-16 (describing a pregnant woman who hid her pregnancy so that she could complete her aviation training and complete two jumps, and Army pilots who hid their pregnancies to keep flying).

197. *See id.* at 115 (describing an Air Force mechanic who stayed on the flight line all nine months); SCHNEIDER & SCHNEIDER, *supra* note 22, at 199-202 (detailing stories of women who drove as airmen, processed troops and worked in motor pools until they delivered).

198. *See* FRANCKE, *supra* note 38, at 109-10.

199. *See* STIEHM, *supra* note 28, at 210. During World War II, getting married was grounds for requesting discharge, and unmarried female nurses who got pregnant received "less than honorable" discharge from the Army. *See id.* Until the 1960s, married women were not even allowed to join the military. *See id.* Until 1974, women were not allowed to be in the military if they had children, even if they were teenagers or from a husband's previous marriage, unless a special waiver was obtained. *See id.*

200. *See id.*

201. *See* FRANCKE, *supra* note 38, at 109-10 ("Almost half of the approximately 8% of Army enlisted women who gave birth in 1978 left the service after their six-week maternity leave.").

202. *See id.*

203. *See* HOLM, *supra* note 25, at 83-85. In World War II, percentages of pregnant women were lower in the military than in civilian populations, despite discomforts, hardships, lack of supplies, lack of promotions and problems of administration. *See id.* at 83.

204. *See* FRANCKE, *supra* note 38, at 117-28.

205. *See id.* at 126-28. Gen. Tom Jones, former director of human resources for the Army, stated, "The rate of nondeployables because of pregnancy was what we anticipated it would be. It [was] not an order of magnitude problem." *Id.* at 127. "The overall nondeployability rate for the total force was some 3 percent, well under the 5 percent safety margin set by military guidelines." *Id.* at 128.

their units after giving birth.[206] If using pregnancy to get out of the military is not a considerable problem in war, there is no reason to believe it is a problem in basic training.

Moreover, pregnancy is not always the easiest way to exit the military. The services have begun to refuse to discharge some women based on pregnancy.[207] As for using the benefits the military provides, even though health care is quite a bit cheaper than civilian health care, it is still a high financial burden to have a baby.[208]

At any rate, pregnancy concerns should not be addressed by separating men and women in basic training. The military should try other alternatives, such as providing better education on birth control and sex to men and women, especially since most women who enter the military are relatively young.[209] The military should also consider housing men and women on separate floors or in different wings of a building to help discourage sexual relations between young recruits and to prevent pregnancy.[210] Finally, the military could create a policy of not allowing women to be discharged for pregnancy.

E. Lower Physical Standards

Men's complaints that women hold them back are generally unfounded.[211] Military officials claim that other factors besides

---

206. *See* Frevola, *supra* note 29, at 648-49 (citing Col. David Hackworth, *War and the Second Sex*, NEWSWEEK, Aug. 5, 1991, at 30).

207. *See* STIEHM, *supra* note 28, at 212.

208. *See* SCHNEIDER & SCHNEIDER, *supra* note 22, at 198-99. Servicewomen do get paid maternity leave, but it may cost over $1000 to have a baby, and most women in the military do not make much money. *See id.*

209. One study reported that less than half the men and women who had been involved in a Navy pregnancy had ever received any instruction in pregnancy prevention. *See* FRANCKE, *supra* note 38, at 113. The Navy tested a new sex education program in 1990-1991 that tried to change the behavior of recruits by teaching personal goals and values, instead of just identifying body parts and birth control devices like previous programs. *See id.* at 128. Despite promising test results, the program was never implemented. *See id.*

210. *See Military Intelligence*, *supra* note 8, at N28. The Pentagon advisory committee expressed concern that this type of separation was not enough for two reasons: men and women could still sneak into each other's rooms, and little supervision is allowed due to fear of the military that drill sergeants will engage in improprieties with recruits. *See* Thompson, *supra* note 8, at 104. However, by keeping females and males in separate wings of buildings, with a drill sergeant of the same sex keeping watch, sexual horseplay could probably be avoided, especially if recruits are severely punished for this type of horseplay. By severely reprimanding any drill sergeant who is found in the wrong section of the building, sexual relations between sergeants and recruits could probably be avoided.

211. *See* STIEHM, *supra* note 28, at 102. The Army based its 1982 decision to segregate training on field commanders' complaints about troop performance

gender-integration are responsible for relaxed requirements in basic training.[212] The reason most often cited is that today's armed forces need more soldiers who can think on their feet rather than soldiers who are merely physically strong.[213] Besides, at least in the Army, physical fitness tests, critical for promotion and required to pass basic training, have not actually been lowered for men.[214] Different requirements do exist for men and women.[215] The military allows this difference in standards because of the difference in upper body strength and endurance capabilities between the sexes.[216]

It should be noted that women are not allowed in combat positions in the military.[217] Many of the MOS's[218] open to women, like nursing, do not require brute strength.[219] The question remains whether the physical fitness standards required in basic training, consisting of push-ups, sit-ups and running, are related to a soldier's ability to perform his or her MOS.[220] As military

---

rather than evidence that women affected performance. *See* Peach, *supra* note 11, at 216 n.67.

212. *See* Kitfield, *supra* note 30, at 1914. Some reasons cited for lowering standards are to avoid attrition, to "minimize abuse in a more racially and ethnically diverse Army" and to accommodate the less fit yet more educated generation of the 1990s. *Id.* In fact, in the Army, 15.7% of recruits in 1994 washed out of the military within six months of entry, a 70% increase of wash-outs since 1987. *See* Stone, *supra* note 51, at 14A. In addition, 8% of recruits failed an initial fitness assessment just prior to entering basic training. *See id.* Many blame lowered physical fitness standards in public schools' physical education programs, not decreased standards in the military. *See id.*

213. *See* Richter, *supra* note 48, at A21.

214. *See* STIEHM, *supra* note 28, at 198 tbl.91 (giving the standards for 1986); Desrae D. Gibby, *Your Voice: Modified Military Standards for Fitness Give Women a Fighting Chance*, NEWS TRIB. (Tacoma, WA), Sept. 25, 1997, at A9 (describing modern physical fitness standards). In fact the standards have been raised since 1983. *See* STIEHM, *supra* note 28, at 197.

215. *See* Snyder, *supra* note 62, at 432 n.89 (citing BRIAN MITCHELL, WEAK LINK: THE FEMINIZATION OF THE AMERICAN MILITARY 69, 71 (1989)).

216. *See id.* at 432 (quoting studies by the Pentagon that "[w]omen have only about fifty-five percent the muscle strength and sixty-seven percent the endurance of men").

217. *See* Frevola, *supra* note 29, at 626. Combat positions originally closed to women included piloting airplanes in combat missions, serving as combatants onboard naval vessels and any ground position covered by the "risk rule," a rule deciding which positions were too dangerous for women. *Id.* at 626 nn.32-34. Currently, only hand-to-hand combat positions are closed to women. *See id.* at 626 n.34.

218. *See supra note* 110 (defining MOS).

219. *See* Gibby, *supra* note 214, at A9 ("If I were bleeding to death, I would want my nurse to save my life – not run two miles.").

220. *See id.* The physical standards for women in the Army require a minimum of 18 push-ups, running two miles in 18:54 minutes, and 50 sit-ups. *See* Richter, *supra* note 48, at A1. The standards for men are 42 push-ups, running two miles in 15:54 minutes, and 52 sit-ups. *See id.* Recently the standards were increased

fighting becomes more technical, less physical strength is required in most specialties.[221] As the Persian Gulf war demonstrated, more technical skills, intelligence and training are required to fight modern wars.[222] In addition, Vietnamese soldiers have shown that soldiers can perform well in combat despite their small physical size.[223]

There are numerous examples of women performing well even though the standards are not the same for men and women in basic training.[224] It is ironic, then, that concessions are made for weak men in the military,[225] but when a woman can not perform as well as a man, men reject women as unequal. The Persian Gulf War supplied many examples of women who could perform just as well, if not better, than their male counterparts.[226] Furthermore, a recent study revealed that gender integration is perceived by soldiers to have a relatively small effect on readiness, cohesion and morale.[227] Far more women than men get the highest possible scores on physical fitness tests, which shows that women might put forth more effort than men.[228] Overall, some military officials feel that today's soldiers are more physically fit than American

---

for women in response to negative publicity; the new standards will require women to run a little faster and do a few more push-ups. *See id.*

221. *See* Kornblum, *supra* note 35, at 410. For example, technology has made operation of a B-52 Bomber, a minuteman missile, or a battleship as easy as "driving a car with power steering." *Id.* One Admiral has even testified that women can now perform all Naval combat jobs as effectively as men. *See Hearings on H.R. 9832 to Eliminate Discrimination Based on Sex with Respect to the Appointment and Admission of Persons to the Service Academies and H.R. 10705, H.R. 11267, H.R. 11268, H.R. 11711, and H.R. 13729 to Insure That Each Admission to the Service Academies Shall Be Made without Regard to a Candidate's Sex, Race, Color, or Religious Beliefs before Subcomm. No. 2 of the House Comm. on Armed Serv.*, 93rd Cong. 38-39 (1974) (testimony of Admiral Mack). In addition, only about 16% of jobs in the Air Force require heavy physical activity. *See* MARTIN BINKIN & SHIRLEY BACH, WOMEN AND THE MILITARY 81-82 (1977).

222. *See* Frevola, *supra* note 29, at 637.

223. *See id.* at 641.

224. *See* Kornblum, *supra* note 35, at 411 (reporting women's successes in combat-like situations); Marcellino, *supra* note 53, at A19 (describing a female Marine who performed extraordinarily well in the "Nine Day War," a grueling form of tactical training in Basic Officer Training, and another female Marine who was in such great shape that she could outperform most of the other Marines).

225. *See* Kornblum, *supra* note 35, at 412 n.359 (reporting that weak men who could not perform tests in the Air Force Academy were helped by other cadets), 420 n.414 (revealing that some men receive remedial physical training); *cf. id.* at 414 n.368 (stating that short male cadets could use a stool to climb the testing wall at Annapolis Naval Academy).

226. *See* HOLM, *supra* note 31, at 450-55 (giving numerous examples of women who performed courageously during the Persian Gulf War).

227. *See Military Poll Shows Most Support Role for Women in Combat Units*, BUFFALO NEWS, Oct. 22, 1997, at A8.

228. *See* Richter, *supra* note 48, at A1.

soldiers of the past.[229]

To assure that women can perform well in the MOS's in which they are placed, the military could set individual standards for each MOS.[230] The Army and the Air Force have tried to develop such strength tests for MOS's, but have not validated the tests by reference to actual job performance.[231] For instance, the Army uses its strength requirements only for recruitment counseling, not to limit assignments.[232] The Navy has used the excuse that implementing such strength requirements would be financially infeasible.[233] Some women argue that they must achieve the same technical efficiency as men to qualify for a MOS.[234]

Still, some argue that basic training should be segregated so that the difference in physical fitness requirements will not be noticed by men. Then maybe men will want to perform to their full potential.[235] However, gender-segregated training is not the answer. Some personal testimony suggests that segregated basic training currently does not fully prepare women for further training, which is ultimately integrated.[236] In addition, even though recent military conflicts were highly technical, physical strength may still be required for use[237] or repair[238] of some technological tools.

The best solution may be to make physical standards equal for men and women, without lowering them.[239] It seems that

---

229. *See* Frevola, *supra* note 29, at 637 n.112.

230. *See* Kornblum, *supra* note 35, at 414 (suggesting that the military determine requirements for combat and non-combat positions in order to ensure people are placed in positions that fit their physical abilities).

231. *See* Karst, *supra* note 11, at 532 n.132.

232. *See id.*

233. *See* STIEHM, *supra* note 28, at 200. It is ironic that the military is willing to spend money on panels to determine whether basic training should be integrated, but does not seem to have enough money to develop strength guidelines for military specialties.

234. *See* Rowan Scarborough, *Army Chief Rejects One Fitness Standard for Men, Women Say Idea Would Foster Mediocrity*, WASH. TIMES, Oct. 2, 1997, at A6.

235. *See* Robert L. Maginnis, *Separate the Sexes*, USA TODAY, Feb. 10, 1997, at 14A.

236. *See* Marcellino, *supra* note 53, at A19 (citing the example of his wife, who had to resort to remedial physical training because basic training did not prepare her for the Wireman school).

237. *See* Mersereau, *supra* note 53, at A22 (stating that even the most sophisticated radios require lifting of a 50-foot telescopic antenna).

238. *See* Peach, *supra* note 11, at 217 (citing the example of fork lifts which broke in the Persian Gulf and soldiers who had to haul heavy loads by hand as a result).

239. The military should also prevent people who cannot meet the entrance requirements for basic training from entering. Recruits who cannot pass the initial

women might be able to meet men's standards, especially since thirty-two percent of women have met or exceeded the minimum male test scores on an Army Physical Fitness Test.[240] If some women could not meet the men's standards, they could be placed in remedial physical training.[241] Sometimes it is not a matter of a woman's strength that keeps her from performing, but her lack of experience at using her body effectively.[242] For example, when the Air Force Academy recently began teaching women the proper way to do push-ups and pull-ups, women were able to do them.[243] This evidence suggests that there is no reason why physical fitness standards in basic training cannot be made equivalent for men and women.[244]

Equal physical fitness standards for men and women is a legitimate method to reduce resentment among male recruits. At a minimum, studies should be conducted comparing all-male troops with gender-integrated troops to determine any real differences in attitudes toward women before gender-segregation is approved.[245]

F. The Combat Exclusion Rule

Separating the sexes in basic training would thwart efforts to include women in combat positions.[246] Since 1994, women have

---

physical requirements are currently sent to remedial training called the fitness training company. *See* Stone, *supra* note 51, at 14A. At these remedial fitness units, recruits spend four weeks getting fit, and are told that they will be discharged if they still cannot pass the minimum requirements, which include 13 push-ups for men and only one for women. *See id.* Borderline soldiers are still sent through to basic training, however. *See id.*

240. *See* FRANCKE, *supra* note 38, at 248. At least one woman has received a perfect score on the ROTC advanced training test. *See* Kornblum, *supra* note 35, at 411-12.

241. *See* Kornblum, *supra* note 35, at 414. This type of remedial physical training is already provided for some men. *See id.*

242. *See id.* at 415. A 1996 Army study of 41 women revealed that after six months of weight lifting, jogging with 75-pound backpacks and performing squats with 100-pound barrels on their shoulders, 78% were able to qualify for "very heavy" military jobs. FRANCKE, *supra* note 38, at 248.

243. *See* Kornblum, *supra* note 35, at 416.

244. In fact, the military recently announced expected changes in fitness standards to move women's standards closer to men's. *See* Stone, *supra* note 51, at 14A. The new standards would toughen requirements for female and older soldiers and ease some male standards. *See id.* The Army's combat-fitness experts are also currently studying whether or not women can handle a more rigorous fitness level requirement. *See* Scarborough, *supra* note 234, at A6. The Chief of Staff of the Army is still vehemently opposed to the idea of one standard for both men and women. *See id.*

245. This type of study could be done with some Army companies, because recruits who train for land combat go through both basic training and combat training without women. *See* Scarborough, *supra* note 96, at A1.

246. *See generally* FRANCKE, *supra* note 38. A recent study indicates that 80%

gained the ability to fly combat missions,[247] serve on combatant ships[248] and complete gender-integrated basic training in the Army.[249] Yet women are still forbidden from hand-to-hand combat.[250] Excluding women from combat harms women by disallowing them from some promotions and positions of power,[251] from jobs and access to training,[252] and from preferential treatment as veterans.[253] Although Secretary of Defense William Cohen claims that gender-segregation of basic training will not "turn back the clock,"[254] separating the sexes may have exactly that effect.[255] Men would likely return to their traditional attitudes about women being incapable of fighting, which would hinder women's chances of ever convincing the military to repeal the combat exclusion.

After examination of the reasons for segregation, it is obvious that the government's objectives are not served by gender-segregated training. Instead, the government should invest time and resources into investigating the many alternatives suggested in this Article and by other advocates of women's rights.

---

of enlisted women and 50% of enlisted men in the military support allowing women in ground combat. *See Study: Sex Bias Persists in Military*, NEWSDAY, Oct. 23, 1997, at A25.

247. *See* Frevola, *supra* note 29, at 625 n.30.

248. *See id.*

249. *See supra* notes 29-30 and accompanying text (explaining how basic training became integrated in 1994).

250. *See* Frevola, *supra* note 29, at 626 n.35.

251. *See* Horrigan, *supra* note 185, at 235 (revealing that combat records has been made a focal point of discussions in presidential campaigns); Kornblum, *supra* note 35, at 380 (suggesting that the Guatemalan, Nicaraguan, and Zimbabwean revolutionary experiences confirm that women's acceptance into combat leads to greater political and social rights); Snyder, *supra* note 62, at 445 (explaining that promotions in the military often require experience in combat positions).

252. *See* Karst, *supra* note 11, at 524 (stating that exclusion from combat prevents women's employment and access to training); Linda K. Kerber, *"A Constitutional Right to Be Treated Like . . . Ladies": Women, Civic Obligation and Military Service*, 1993 U. CHI. L. SCH. ROUNDTABLE 95, 120 (1993) (citing a 1980 Congressional Hearing that revealed women receive the lowest paying jobs in the military).

253. *See* Kerber, *supra* note 252, at 115-16 (revealing that combat veterans often receive preferential scoring in federal, state, county and municipal civil service examinations).

254. Kreisher, *supra* note 7, at A2.

255. A recent study revealed that a majority of enlisted men (and women) have come to accept integrated training. *See Study: Sex Bias Persists in Military*, *supra* note 246, at A25. Only 25% of the women and 39% of the men polled favored training separately. *See id.* "Of the 934 service members surveyed, just two people listed gender as a factor that influences a unit's ability to do its job." *Id.* The study revealed that both men and women feel that women perform about as well as men. *See Military Poll Shows Most Support Role for Women in Combat Units*, *supra* note 227, at A8.

V. Conclusion

Proponents of gender-segregated basic training may have benign intentions, but legislation to segregate basic training will not have the desired effect of eliminating sexual tension in the military.[256] Segregation of basic training, by promoting an all-male culture, may in fact increase harassment and discrimination against women.[257] Conversely, integration of basic training may have positive effects on women and the military.[258] In addition, separating the sexes to prevent sexual relations, fraternization and pregnancy is unnecessary because such "problems" generally do not affect troop performance.[259] Similarly, concerns about resentment towards differing physical standards for men and women are generally unfounded.[260] Thus, the reasons stated for segregation are unsubstantiated and do not serve any governmental objective. Moreover, alternatives exist to solve some of the problems described by proponents of segregation.[261] Accordingly, if such legislation is passed, it may not pass Constitutional muster under the equal protection analysis.[262] Congress should consider the consequences of its actions and avoid changing the current integrated status of basic training.

256. *See supra* notes 125-245 and accompanying text.
257. *See supra* notes 131-51 and accompanying text.
258. *See supra* notes 157-72 and accompanying text.
259. *See supra* notes 174-210 accompanying text.
260. *See supra* notes 211-45 and accompanying text.
261. *See supra* notes 152-56, 169-72, 180, 188-90, 209-10, 239-45 and accompanying text.
262. *See supra* notes 59-118 and accompanying text.