

Women Warriors in a Men's World: The Combat Exclusion

Lori S. Kornblum*

Introduction	353
I. The Combat Exclusion: What It Is and How It Hurts	357
A. The Definition of Combat.....	357
B. The Exclusion Harms Military Women	365
1. Restricting Military Women's Employment	365
2. Military Women's Support Role	373
C. The Exclusion Harms All Women.....	378
D. The Exclusion Harms All Men	382
E. The Exclusion Harms the Military and Society	383
F. Conclusions	384
II. The Combat Exclusion: Mythology as Policy	385
A. Overview	385
B. Mythology Versus Reality	390
1. Myth: <i>The Exclusion is Historically Inevitable</i>	393
2. Myth: <i>The Exclusion Protects Women</i>	396
3. Myth: <i>The Exclusion Protects the American Family</i>	399
4. Myth: <i>The Exclusion Protects Military Women from Sexual Abuse</i>	404
5. Myth: <i>The Exclusion Protects the Military from Passive Incompetents</i>	406
6. Myth: <i>The Exclusion Preserves Combat Effectiveness</i>	408
a. Myth: <i>All Women Lack Physical Strength</i>	409

* B.A., Yale University, 1979; J.D., University of California-Berkeley (Boalt Hall) Law School 1982; former legal counsel to the Wisconsin Division of Corrections; Associate in Law, University of California-Berkeley (Boalt Hall). I thank those who helped with earlier drafts of this article, especially Professor Herma Hill Kay, Eleanor LeCain, the San Lorenzo Gang of Five, Jeffrey Kassel, Candyce Kornblum, Justice Shirley S. Abrahamson, Susan Cherwin and Bruce Semon. I also thank my dedicated typist, Nicole Gotthelf, and my editors, Mary L. Knoblauch and Carol Jean Pint.

b. Myth: <i>Soldiering and Childbearing are Mutually Exclusive</i>	417
c. Myth: <i>Women and Men Fail to Work Together in Combat</i>	420
d. Myth: <i>Women in Combat Invite Enemy Attack</i>	425
e. Myth: <i>Women are Poor Leaders</i>	426
C. Conclusion	428
III. Women in Combat: Methods for Change	430
A. Judicial Change	430
1. Characterizing the Injury	430
2. Equal Protection Challenges	433
3. Deference to the Military	438
B. Legislative Change.....	442
Summary	444

Women Warriors in a Men's World: The Combat Exclusion

Lori S. Kornblum

Introduction

I inspired my army, and I fed them. At night I sang to them glorious songs that came out of the sky and into my head. When I opened my mouth, the songs poured out and were loud enough for the whole encampment to hear; my army stretched out for a mile. We sewed red flags and tied the red scraps around arms, legs, horses' tails. We wore our red clothes so that when we visited a village, we would look as happy as for New Year's Day. Then people would want to join the ranks. My army did not rape, only taking food where there was an abundance. We brought order wherever we went.

. . . I never told them the truth. Chinese executed women who disguised themselves as soldiers or students, no matter how bravely they fought or how high they scored on the examinations.

—*The Woman Warrior*¹

Maxine Hong Kingston's woman warrior is more than a fictional character created to act in a mythical world. The warrior both depicts some people's image of women warriors and dramatically explains society's reactions to the discovery that women can fight. Some advocates of women's participation in combat would view Kingston's warrior as a model for all female combatants. Kingston's warrior is militarily successful—she leads a victorious army and attracts new recruits—but she achieves her success in a manner different from that of her male counterparts. She achieves success through traits typically associated with women. Traditionally, society has characterized women's strength as moral, as residing in their concern for others and maintenance of relationships.² Society has viewed women as the peaceful sex.³ Kingston's woman warrior

1. Maxine Hong Kingston, *The Woman Warrior: Memoirs of a Girlhood Amongst Ghosts* 37-39 (1977).

2. Carol Gilligan, *In a Different Voice* 16-17 (1982).

3. For commentators' views that women are peaceful or unmilitaristic, see Lesley Merryfinch, *Equality in the Army—No Way!*, *Spare Rib Mag.* March 1981, at 51; Edith Wynner, *Feminism and Militarism: The Perversion of Equal Rights*, *Spokeswoman*, April 1980, at 9; Ann Gordon, Mari Jo Buhle & Nancy Schrom, *Women in American Society*, *Radical Am.*, July-Aug. 1971, at 3, 16; *N.Y. Times*, Dec. 4, 1983, § 1, at 66 col. 6. Some other commentators do not view wo-

applauds this peaceful warrior image. The mythical warrior devotes herself to her soldiers. She inspires them and keeps them together as a unit. She works with them instead of separating herself from them. She views herself as one of her soldiers. Unlike the typical army led by men, her army does not kill or rape, nor does it steal food needlessly from its people. The woman warrior brings peace where others bring destruction.

Kingston's woman warrior conveys another important message. She poignantly demonstrates that the real obstacle to her warrior's success is not that she cannot win battles or that she will change the nature of warfare. Rather, the real obstacle is her gender. The mythical warrior's success depends on her ability to hide her gender from her society. Truth in her world meant death. Chinese society would rather kill her than admit that she, a woman, could be a victorious warrior. Society would rather kill her because her survival proved that Chinese women could fulfill social duties other than those traditionally associated with women, and that women could lead men, not just follow them.

Both ideas conveyed in Kingston's portrait emerge in debates over the American⁴ military's exclusion of women from combat positions.⁵ The vision of peaceful women warriors who

men as inherently peaceful, but view militarism and feminism as antithetical. See, e.g., Rena Patterson, *Militarism and the Tradition of Radical Feminism*, 8 Women: J. Liberation 2, 4 (1981); Cynthia Enloe & Wendy Chapkis, *Introduction*, in *Loaded Questions: Women in the Military* 4-7 (Wendy Chapkis ed. 1981); Jennifer Tiffany, *Equal Opportunity Trap*, in *Loaded Questions: Women in the Military* 36-39 (Wendy Chapkis ed. 1981); Astrid Albrecht-Heide, *The Peaceful Sex*, in *Loaded Questions: Women in the Military* 83-87 (Wendy Chapkis ed. 1981).

4. This article uses "America" to refer to the United States of America.

5. Congress statutorily requires both the Air Force and the Navy to exclude women from combat. The Air Force exclusion provides as follows:

Female members of the Air Force, except for those designated under section 8067 . . . [medical, dental, veterinary, nursing, judge advocates, etc.] may not be assigned to duty in aircraft engaged in combat missions. 10 U.S.C. § 8549 (1983).

The Navy's exclusion provides as follows:

The Secretary of the Navy may prescribe the manner in which women officers, women warrant officers, and enlisted women members of the Regular Navy and Regular Marine Corps shall be trained and qualified for military duty. . . . [W]omen may not be assigned to duty on vessels or in aircraft that are engaged in combat missions nor may they be assigned to other than temporary duty on vessels of the Navy except hospital ships, transports, and vessels of a similar classification not expected to be assigned combat missions. 10 U.S.C. § 6015 (1983).

Before 1978, the Navy's exclusion provided: "[W]omen may not be assigned to duty in aircraft that are engaged in combat missions nor may they be

will change the nature of warfare inspires some people to advocate eliminating the barriers to women in combat. These people argue that because women are more peaceful than men, a military with women in its combat ranks would be less likely than an all-male army to engage in needless warfare.⁶ Death as punishment for the woman who reveals that a woman, rather than a man, is a victorious warrior is also symbolically present in combat exclusion debates. Although American society does not actually kill women who are successful in combat, our society trivializes or makes invisible women's successful combat experiences.

Americans may learn, through history and literature,⁷ of a few prominent American women who served in combat—the Molly Pitchers of the American Revolution,⁸ Deborah Samson, who served in the Army during the Revolutionary War as "Robert Shirliffe," Lucy Brewer, a Marine on the U.S.S. Constitution who served as "George Baker" during the War of 1812,⁹ Running Eagle, a warrior of the Blackfoot Nation in the early 1800s,¹⁰ or Sarah Borginis, a brevet colonel in 1846.¹¹ Americans may also learn about other women warriors—Joan of Arc, Kenau Hesselaer of the Netherlands,¹² or Queen Isabella of Spain, who, though not actually a warrior, developed a modern

assigned to vessels of the Navy other than hospital ships and transports." 10 U.S.C. § 6015 (1959). Congress amended this statute after a federal court in *Owens v. Brown* held the statute unconstitutional because it prohibited women from filling jobs they *could perform* and it inhibited the Navy's discretion to assign women aboard combat ships. 455 F. Supp. 291 (D.D.C. 1978).

The Army's exclusion is based on its own policies. Congress authorizes the Army to determine the assignment policies of all soldiers. 10 U.S.C. § 3012(e) (1983). Based on this authority, the Secretary of the Army excluded women from combat in 1972. Office of the Deputy Chief of Staff for Personnel, Department of the Army, *Women in the Army Policy Review 7* (1982) [hereinafter cited as WITA].

6. For further discussion, see *infra* notes 165-170 and accompanying text.

7. For images of women warriors in literature, see Mary Jane Lupton, *Terrible Yet Splendid: Images of Women and War in Literature*, 8 *Women: J. Liberation* 14-17 (1981).

8. Historians believe the original "Molly Pitcher" was Mary Hays. She was the wife of John Hays, an artilleryman in the 7th Pennsylvania Regiment. Jeanne Holm, *Women in the Military: An Unfinished Revolution* 3-5 (1982). The name "Molly Pitcher" now stands for the countless American women who were "camp followers" during the American Revolution. They were usually wives who followed their husbands to war. They fed them, nursed them, and kept them clean. They also loaded and fired guns. Linda DePauw, *The Forgotten Spirit of '76: Women of the Revolutionary Era*, Ms., July 1974, at 51, 55.

9. Holm, *supra* note 8, at 5.

10. Beverly Hungry Wolf, *The Ways of My Grandmother* 62-68 (1980).

11. Holm, *supra* note 8, at 5.

12. John Laffin, *Women in Battle* 11-12, 24 (1967); Martin Binkin & Shirley Bach, *Women and the Military* 4-5 (1977).

army and prepared battle plans.¹³ Most Americans may not even learn about these few women warriors.

Society views these female combatants as heroines whose presence and success are aberrations. These heroines are not proof that ordinary women can be combat soldiers. Like the mythical warrior's Chinese society, many Americans believe that women in combat are inimical to American and Western civilization, that women warriors are "anti-God and anti-family . . . and would rot the moral fiber of young America."¹⁴ Many Americans view women's exclusion from combat as historical imperative or as a necessary consequence of biology and culture.¹⁵ They ignore women's participation in combat or argue for its elimination.

The exclusion of women from combat is neither a biological nor a historical imperative. Rather, the exclusion results from military and congressional policy decisions. Those decisions prevent women's formal participation in what military men view as the soldier's primary function, fighting and winning wars.¹⁶ By creating the combat exclusion for women, the military and Congress ignore the historical reality that women can be effective fighting soldiers and that women have served and continue to serve as combatants in the United States and elsewhere.¹⁷

Some people support the combat exclusion to prohibit women's participation in the military's oppression of certain cultures and its emphasis on death. I respect this position but I cannot support the combat exclusion. Although many people believe that the combat exclusion protects women, it does not. It does not protect military women from actual combat because women have been and are in actual combat. The exclusion simply limits women's potential exposure to military combat because it makes women ineligible for a military draft¹⁸ and se-

13. Laffin, *supra* note 12, at 20-21.

14. Quoted in Lisa Myers, *A Giant Step Toward Equality?*, New Republic, March 1980, at 15.

15. See, e.g., Margaret Mead, *A National Service System as a Solution to a Variety of National Problems*, in *The Draft: A Handbook of Facts and Alternatives* 107 (Sol Tax ed. 1967).

16. WITA, *supra* note 5, at 3-1. The Supreme Court agrees with Congress' and the military's view. See *Parker v. Levy*, 417 U.S. 733, 743 (1974) ("the primary business of armies and navies [is] to fight or be ready to fight wars. . . .") (quoting *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 17 (1955)).

17. For discussion of the history of women in combat, see *infra* notes 230-54 and accompanying text.

18. See *infra* notes 547-49 and accompanying text.

verely limits the number of women who can serve in the military.¹⁹ Ironically, rather than protecting women, the combat exclusion harms both military and civilian women economically, politically, and socially.²⁰ Furthermore, the exclusion also harms men, the military, and society.²¹ Although I do not argue, as some have,²² that eliminating the combat exclusion will end discrimination against women in the military as a matter of course, I conclude that eliminating the combat exclusion is a necessary step for changing the position of women in American social institutions.²³ To that end, I first analyze what the combat exclusion is and how it affects women, men, the military, and society. I then evaluate the validity of arguments advanced in support of the combat exclusion, particularly the belief that women in combat will decrease combat effectiveness. Finally, I offer possible avenues for change.

I assume American society will have some form of military establishment for the foreseeable future. I also assume that the participation of women in combat will not change the nature of our military, an institution that embraces and propounds values traditionally associated with men.²⁴ In view of those assumptions, equal opportunity in today's military would mean equal opportunity to participate in a male institution. Equality in the present military would mean only women's right to be treated the same as men. Equality today would not mean the recognition of both women's and men's values. I hope a notion of military equality that includes both women's and men's values and experiences will eventually evolve as women become full participants in the military. With this aspiration, I begin with a critical evaluation of the combat exclusion.

I. The Combat Exclusion: What It Is and How It Hurts

A. The Definition of Combat

The term "combat" is defined in many different ways. Re-

19. See *infra* notes 60-62, 86-91 and accompanying text.

20. See *infra* notes 137-58 and accompanying text.

21. See *infra* notes 162-70 and accompanying text.

22. See, e.g., Jill Goodman, *Women, War, and Equality: An Examination of Sex Discrimination in the Military*, 5 Women's Rts. L. Rep. 253 (1979).

23. See *infra* notes 171-75 and accompanying text.

24. Sara Ruddick, *Pacifying the Forces: Drafting Women in the Interests of Peace*, 8 Signs 471, 488 (1983). Ruddick points out that "[n]o one denies the masculinism of the military. Indeed soldiers are trained in misogyny and male supremacy." *Id.*, at 478 n. 11. For further discussion of how masculinity influences the military and combat, see *infra* notes 116-36 and accompanying text.

ardless of how it is defined, or whether it is defined at all, the term "combat" is used to prevent the formal recognition of women's participation in certain forms of warfare. Some people define "combat" as hand-to-hand fighting. For example, one officer responsible for the R.O.T.C. program at the University of Wisconsin reportedly opposes women in combat because he "wouldn't want to see a women [sic] in hand-to-hand combat with a 6'3" Russian."²⁵ Other people distinguish between combatants and non-combatants on the basis of those who kill and those who do not kill. In these terms, "combat" is leading a platoon through the mud or standing behind a machine gun.²⁶ According to this definition, the combat exclusion means that women can be killed, but should not be in a position to kill.

Since the term "combat" forms the heart of the combat exclusion, we might expect the military to define it uniformly among the services and to categorize jobs accordingly. The military, however, does not. When Congress adopted the combat exclusion in 1948, the Army did not have a definition of "combat."²⁷ The Navy's definition of "combat" was codified as serv-

25. The [University of Wisconsin-Madison] Daily Cardinal, Oct. 20, 1983, at 7, col. 2.

26. *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 Services, 93rd Cong., 2d Sess. 38-39 (1974) (testimony of Rep. Samuel Stratton) [hereinafter cited as *Service Academy Hearings*].*

[Rep. Stratton] I am not suggesting that we ought to have women in combat, Mr. Chairman. I am not sure. . . . [T]he fact of the matter is that the definition of combat is a whole lot narrower than many people—especially those who have never been in combat—think it is. There are an infinite number of very important combat support assignments that women can fill, in the combat zone, without ever having to fire a rifle: intelligence, medical, aviation, auto maintenance, communications, logistics. We now have Academy graduates filling those jobs; colonels, lieutenant colonels, and so on.

For that matter, there are an awful lot of shipboard jobs in the Navy that don't involve direct 'combat' either, including our whole nuclear Polaris fleet. . . .

I think we have got to recognize when it comes to combat that there is this distinction, Mr. Chairman, between killing somebody else and being killed yourself. . . . You can go into the combat zone and you can run the risk of being killed, but you don't have to lead a platoon through the mud or stand behind a machinegun. I have often thought—this is a digression but I can't help saying so—that the matter of conscientious objection in the case of people in recent years in going into the service has supposedly been an objection to killing other people, but I have thought in many cases it was really just a conscientious objection to being shot at.

27. Holm, *supra* note 8, at 118-19.

ice aboard ships, and the Air Force's definition as service aboard aircraft engaged in combat missions.²⁸ These definitions were too broad and vague to be useful. The definitions did not describe combat in military terms. Rather, the definitions simply described where combat takes place: aboard Navy ships or Air Force planes.

Thirty years after enactment of the combat exclusion, the Defense Department defined "combat." Since 1978, the Defense Department has had a three-factor definition of "close combat." "Close combat" exists when (1) a person engages an enemy with individual or crew-served weapons while exposed to direct enemy fire, (2) the person is subject to a high probability of direct physical contact with the enemy's personnel, and (3) the person is subject to a substantial risk of capture.²⁹ The Army's definition of "direct combat" substantially repeats the Defense Department's three-factor definition and adds that "direct combat" takes place while the person "clos[es] with the enemy by fire, maneuver, and shock effect to destroy or capture him or while repelling his assault by fire, close combat, or counterattack."³⁰

It appears that the Defense Department formulated its "close combat" definition to justify women's exclusion from positions in the military. In theoretical terms, the definition simply reiterates three arguments most commonly advanced to support the combat exclusion. Proponents argue that the exclusion protects women from (1) fighting the enemy while exposed to enemy fire,³¹ (2) having direct physical contact with the enemy,³² and (3) being subject to a substantially increased risk of capture.³³ In practical terms, the Defense Department's definition neither accurately reflects the dangers that military women now face nor accurately describes the positions from which they are now excluded.³⁴ The definition's gross inaccuracy suggests little, if any, rational basis for its existence. The

28. See *supra* note 5.

29. WITA, *supra* note 5, at 7-8 (numerals added). The definition of "direct combat" is discussed *infra* at text accompanying notes 48-56. I assume there is no distinction between "combat," "direct combat" and "close combat," because the Defense Department does not mention or clarify any distinction that may exist.

30. *Id.*

31. See *infra* notes 256-64 and accompanying text.

32. *Id.* See also *infra* note 316 and accompanying text.

33. See *infra* notes 265-71 and accompanying text.

34. Application of the definition is both over and under-inclusive. The definition itself is dramatically under-inclusive.

combat exclusion exists as an exclusion simply for the sake of excluding. The following discussion explores some of the discrepancies between the definition and its application.

The Army applies the definition of "direct combat" in an over-inclusive way. The Army categorizes many positions as "combat" positions even though the positions themselves do not involve *any* of the three factors set forth in the definition. The positions of carpentry and masonry specialist, plumber, and interior electrician are all Army combat positions.³⁵ These positions, however, do not involve the three factors in the definition of "combat." The other branches of the service make the same error. Until recently, the Air Force classified as "combat positions" *all* positions on *any* aircraft, including aircraft involved only in training missions.³⁶ Positions at land-based missile installations are classified as "combat" positions,³⁷ despite the fact that hostile forces may never come near the missile bases.³⁸ Until recently, Congress precluded the Navy from assigning women to "combat" ships, including the entire nuclear Polaris fleet. This fleet is not only far from hand-to-hand fighting, but was designed never to be used.³⁹

The Navy's obsolete combat exclusion is an example of the over-inclusiveness of the military's distinction between "combat" and "non-combat." Prior to 1979, the Navy did not allow Navy women to serve on any Navy vessels that might have been called into combat.⁴⁰ At that time the Navy used civilian,

35. See *infra* note 61 (MOSs 51B, 51K and 51R).

36. Binkin & Bach, *supra* note 12, at 22.

37. *Id.* at 22-23.

38. *Service Academy Hearings* (testimony of General George Brown, Chief of Staff of the Air Force), *supra* note 26, at 143.

[Mr. Hillis] I'm sure you classify service in a missile area as combat service, do you not, even though the people may be based in this Nation 5,000 miles away from it—the hostile forces?

[General Brown] Yes. The crews in the Minuteman and in the Titan missile sites in the United States are considered combat crews, and that duty is restricted to males today.

[Mr. Hillis] Could not women perform that duty?

[General Brown] I think it's conceivable, yes, sir.

39. *Id.* at 39 (testimony of Rep. Samuel Stratton):

[Rep. Stratton] For that matter, there are an awful lot of ship-board jobs in the Navy that don't involve direct 'combat' either, including our whole nuclear Polaris fleet. Do women automatically have to be disqualified from such assignments?

Many combat weapons, particularly those that are integral parts of the United States policy of nuclear deterrence, are designed never to be used. George Quester, *Women in Combat*, Int'l. Security, Spring 1977, at 80, 86. For further discussion of the Navy's policy, see *infra* notes 40-41 and accompanying text.

40. *Owens v. Brown*, 455 F. Supp. 291 (D.D.C. 1978). See *supra* note 5 and *infra* note 43 (discussions of *Owens v. Brown*).

Air Force, and Army women to perform tasks that Navy women were not allowed to perform.⁴¹ Civilian women worked in "unsafe combat positions" when they repaired complex electronic equipment aboard ship. Female pilots from other services or civilian women made deliveries to "combat" ships since Navy women were also not allowed to hover over or land on those ships. In addition, Air Force and Army women were allowed to travel on Navy ships, even though Navy women could not. The fact that the combat exclusion was not equally applicable to all women illustrates the slim connection between the combat exclusion and the actual protection of women from warfare.

The Navy continues to exclude women from many positions. The Navy may now assign women to ships at its discretion, but only as long as the assignment is temporary, and does not include combat.⁴² Such a policy eases the administrative burden on the Navy⁴³ without addressing whether the continued exclusion is justifiable or whether it comports with Defense Department policy.

Application of the Defense Department's "close combat" definition is also under-inclusive. During actual wartime, both military and civilian women have been subject to the three risks set forth in the Army's and the Defense Department's own "combat" definition. The military does not label the positions these women fill "combat positions." American women "non-combatants" served in Europe during World War II, in the South Pacific, in North Africa, and in Vietnam.⁴⁴ During the recent invasion of Grenada, American military women faced the same risks as male "combat" soldiers.⁴⁵

41. Holm, *supra* note 8, at 331.

42. See *supra* note 5.

43. The former combat exclusion for Navy women had the disadvantage of making all women ineligible to serve on ships, whether or not they were qualified for that service. The current combat exclusion allows Navy commanders to exercise their discretion to permit qualified women to work on ships. As the court noted in *Owens v. Brown*, 455 F. Supp. 291, 307 (D.D.C. 1978), a more carefully tailored combat exclusion increases the operational effectiveness and flexibility of available forces, decreases problems caused by a shrinking manpower pool, and does not "sacrifice" the national defense. The Navy itself argued that it needed greater flexibility in making shipboard assignments. *Id.* at 298.

44. *Implications of Draft Registration—1980: Hearings Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice*, 96th Cong., 2d Sess. 159 (1980) (testimony of Judy Goldsmith for the National Organization of Women [NOW]) [hereinafter cited as *Selective Service System Hearings* (NOW Statement)]. Judith Stiehm, *Bring Me Men and Women: Mandated Change at the U.S. Air Force Academy* 93-94 (1981).

45. Time magazine reports:

The most conspicuous members of the occupying force [in Gre-

Medical women are more well-known than other women in combat. Women are more likely than men to work as military nurses or as other military medical professionals.⁴⁶ Medical professionals have always faced the same risks as "combat" soldiers. During wartime, nurses have been routinely exposed to fighting. They have been prisoners of war and they have been killed in the line of duty.⁴⁷

Civilian women are also exposed to the risks that define "combat" for the military. Civilian women are exposed to direct enemy fire during war. Enemy missiles, for example, would no more spare civilian women living near the Strategic Air Command (SAC) base in Omaha, Nebraska than they would "combatant" men working at SAC. Furthermore, during wartime civilian women often have direct physical contact with enemy troops, since enemy troops, as well as "friendly" troops, rape civilian women, take their food, and decimate their families. Civilian women also face the risk of being captured by invading soldiers.

The Army seemed to recognize that the three-factor definition of "combat"⁴⁸ does not correspond to the positions it labels as "combat positions." When the Army adopted the Defense Department's definition, the Army stated that "[i]f 'combat' is

nada] are the more than 100 women troopers. Since arriving four days after the invasion, they have handled a wide range of chores, from escorting VIPs and guarding the U.S. embassy to flying helicopters and doing intelligence work. Though they theoretically hold 'support' positions away from battle areas, the lines can blur on Grenada. 'If somebody shoots at me, I think I'm allowed to shoot back,' says Lieut. Kathryn Henderson, 24, a helicopter pilot from Winter Springs, Fla.

When War Winds Down, Time, Dec. 5, 1983, at 47.

46. Medical officers, including physicians, dentists, nurses, and closely allied professional medical services officers, are mostly women. As of September 1982, slightly more than 40% of all female officers in the military were medical officers. Only nine percent of all male officers were medical officers. Office of the Secretary of Defense, Dep't of Defense, *Military Women in the Department of Defense* 7, 10 (Apr. 1983). As of September 1982, more than 10% of all enlisted women were in the medical field. Approximately four percent of enlisted men were in the medical field. *Id.* at 19. In World War I, 73% of the 49,000 women in uniform were nurses. *Id.* at 1.

47. In World War II, the nurses closely followed the Allies at Anzio while conditions were still "arduous and dangerous." Laffin, *supra* note 12, at 69. Nurses in one nurses' corps were taken prisoners-of-war in the Philippines. Helen Rogan, *Mixed Company: Women in the Modern Army* 258 (1981). Nurses at the Qui Nhon hospital in Vietnam experienced small-arms fire in the compound on several occasions. Although the male nurses were given .45s, the female nurses were not. At other hospitals, nurses worked through shellings, went deep into "dangerous" situations, and carried weapons. *Id.* at 274. See also *infra* notes 269-70 and accompanying text.

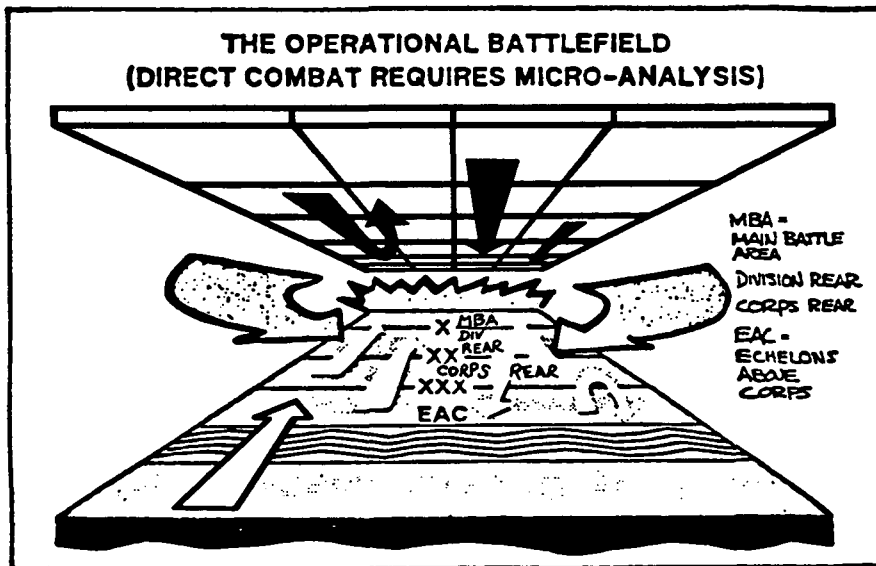
48. See *supra* notes 29-30 and accompanying text.

defined as presence in a combat theater of operations, then women have always been in combat."⁴⁹ The Army's addition to the Defense Department's definition does not alleviate any of the "combat" exclusion's inconsistencies between theory and practice. Both definitions are extraordinarily under-inclusive because they fail to exclude women from combat experience. During wartime, women have had close contact with the enemy, have fired at the enemy, tried to destroy or capture the enemy, and tried to repel the enemy's attack. Even the Army's definition of "combat" fails to exclude women from activities from which it purports to protect them.

Rather than clarifying the Defense Department's three-factor definition, the Army's addition adds more inconsistencies because it is based on an out-dated conceptualization of where and how military actions occur. To apply the "new" definition we must assume that all "combat" action takes place within a clearly defined space. The Army's image of a battlefield looks like a football field with only one goal post.⁵⁰ Based on this "football-field" model, the Army classified "combat" positions on a sliding scale of one (closest to combat or the goal)

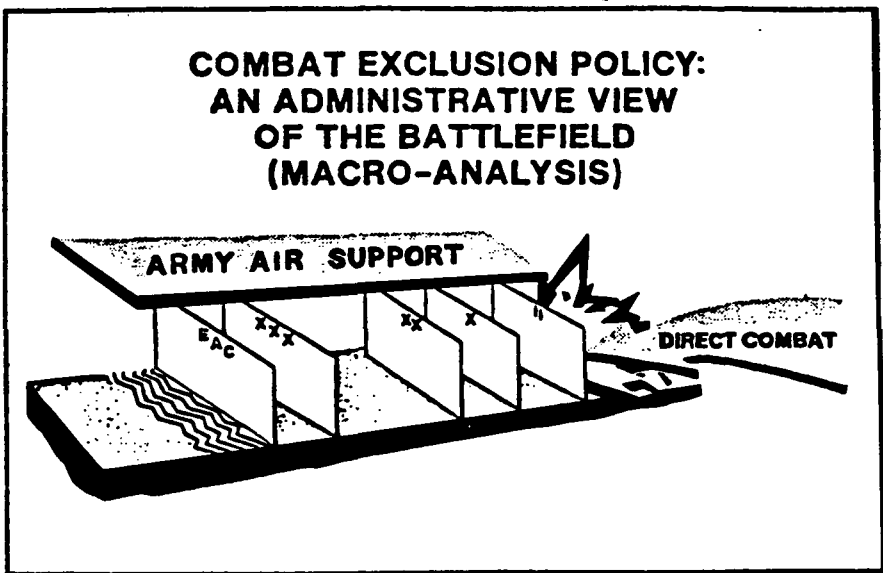
49. WITA, *supra* note 5, at 4-3. There is some indication that the Army is moving from a total combat exclusion to a risk analysis. The combat exclusion now means only that "the probability of [women] being engaged in combat will be reduced." *Id.* at 10.

50. These figures show the Army's perception of combat. WITA, *supra* note 5, at 4-4 (figure 4-1) and 4-6 (figure 4-2).



through seven (farthest from combat or in the far end zone).⁵¹ This model, as even the Army admits, presents an unrealistic view of modern warfare.⁵² A battlefield hardly resembles a football field with seven defined zones. The Army itself characterizes a battlefield as "an extremely fluid environment where many soldiers, assigned to units located in rear areas, are required to perform duties in forward combat areas."⁵³ The recent war in Lebanon tragically demonstrates how "fluid" and broad "combat" zones are. People in Lebanon, as in El Salvador, Israel, and other parts of the world, do not fight on distant battlefields, but throughout their own towns and countryside.⁵⁴

The Army and the other military services do nothing to resolve the many contradictions in their definitions of "combat" and their application of those definitions. They label positions as "combat positions" even though the positions do not involve factors most people consider "combat." They label women "non-combatants" but define "combat" to include the risks that military and civilian women face during war. They use an un-



51. WITA, *supra* note 5, at 4-11, 4-12, 5-5. The Army never states which military occupational specialties (MOSSs) fall into which "direct combat probability codes." Extrapolating from the Army's figures, it appears that the MOSSs that are closed to women are closest to combat. *Id.* at 5-5.

52. *Id.* at 4-5.

53. *Id.*

54. Jane Mayer, *Lebanon's Children: The Orphans of War Are Scarred and Afraid—And Often Vengeful*, Wall St. J., Nov. 16, 1983, at 1, col. 1. See also N.Y. Times, Dec. 7, 1983, § A, at 1, col. 5-6.

realistic model of a battlefield to develop a definition of "combat" which excludes women from numerous positions but not from actual combat. The military definition of "combat" has no relationship to the positions from which the military ultimately excludes women. "Combat" is like a living skin that stretches and shrinks to fit the living organism of the military.⁵⁵ It is the military's wild card.⁵⁶ Simply stated, "combat" means "No Women Allowed."

B. The Exclusion Harms Military Women

Proponents of the combat exclusion cite it as one of women's most significant legal protections.⁵⁷ In fact, however, the combat exclusion harms rather than helps women. The exclusion's harmful effects on military women are clearly identifiable even though the precise jobs that are off-limits to military women change according to the military's definitions of "combat." The combat exclusion limits both the number and type of military and civilian jobs available to military women. It limits the number of women who serve in the military and relegates most military women to the lowest-paid and lowest-ranked jobs. Not surprisingly, most military women are allowed to serve the military only as men's helpers, not as soldiers in their own right.

1. Restricting Military Women's Employment

The combat exclusion directly limits the number of jobs available to military women. Military recruiters and the popular media claim that women are eligible for ninety-five percent of all military jobs.⁵⁸ This statistic misleads the public about the actual number of jobs closed to women. For example, until 1982, Army women were eligible for employment in all but thirty-eight of the 348 "Military Occupational Specialties" (MOSSs).⁵⁹ A woman enlisting in the Army before 1982 might

55. *Cf. Towne v. Eisner*, 245 U.S. 418, 425 (1917).

56. *Hearings on H.R. 6569: Registration of Women Before the Military Personnel Subcomm. of the Comm. on Armed Services*, 96th Cong., 2d Sess. 104 (1980) (testimony of Kathleen Teague presenting statement of Phyllis Schlafly) [hereinafter cited as *Registration Hearings* (Schlafly Statement)].

57. President Reagan, for example, supports the combat exclusion because he believes it helps women. Government Research Corporation, Nat'l J., Sept. 17, 1983.

58. *Registration Hearings*, (statement of Rep. White), *supra* note 56, at 16; George Gilder, *The Case Against Women in Combat*, N.Y. Times, Jan. 28, 1979, § 5 (Magazine), at 44-45.

59. WITA, *supra* note 5, at 5-6. The 38 specialties originally closed to women were:

have calculated that she was eligible for more than ninety per-

<u>MOS</u>	<u>Title</u>
11B	Infantry
11C	Infantry
11H	Infantry
11M	Infantry
12B	Combat Engineer
12C	Bridge Crewman
12E	Atomic Demolition Munitions Specialist
12F	Engineer Tracked Vehicle Crewman
12Z	Combat Engineer Senior Sergeant
13B	Cannon Crewman
13C	TACFIRE Operations Specialist
13E	Cannon Fire Direction Specialist
13F	Fire Support Specialist
13M	Multiple Launch Rocket System Crew Member
16F+	Light ADA Crewman
16G	Roland Crewmember
16P	Air Defense Artillery Short Range Missile Crewman
16R	Air Defense Artillery Short Range Gunnery Crewman
16S	MANPADS Crewman
17K	Ground Surveillance Radar Crewman
17M	Remote Sensor Specialist
19D	Cavalry Scout
19E	M48-M60 Armor Crewman
19K	M1 Abrams Armor Crewman
19Z	Armor Senior Sergeant
24M	VULCAN System Mechanic
24N	CHAPARRAL System Mechanic
24S	Roland Mechanic
27C	Roland Rep.
27D	Roland Fmts. Rep.
45D	Self-Propelled Field Artillery Turret Mechanic
45E	XMI Tank Turret Mechanic
45N	M60A1/A3 Tank Turret Mechanic
45T	Improved Tow Vehicle/Infantry Fighting Vehicle/Cavalry Fighting Vehicle Turret Mechanic
63D	Self-Propelled Field Artillery System Mechanic
63E	XM1 Tank System Mechanic
63N	M60A1/-3 Tank System Mechanic
63T	Improved Tow Vehicle-Infantry Fighting Vehicle/Cavalry Fighting Vehicle System Mechanic

cent of the Army's enlisted positions. Not so. The specialties that were unavailable to women before 1982 comprised forty-two percent of all Army enlisted positions.⁶⁰ In 1982, the Army expanded the combat exclusion and closed an additional twenty-three specialties to women.⁶¹ The sixty-one specialties now closed to women include 302,000 of 572,000 enlisted positions, or fifty-three percent of all enlisted positions.⁶²

Sources of this list are WITA, *supra* note 5, at 5-6; U.S. Dept. of the Army, Pamphlet 611-7 Army Occupational Pamphlet A-1 to A-24 (Apr. 15, 1982). For descriptions of these 38 MOSs, see Army Occupational Pamphlet *passim*.

60. Tiffany, *supra* note 3, at 39.

61. The 23 additional specialties are:

<u>MOS</u>	<u>Title</u>
00B	Diver
13R	Field Artillery Firefinder Radar Operator
16J	Defense Acquisition Radar Operator
17B	Field Artillery Radar Crew Member
17C	Field Artillery Target Acquisition Specialist
23U	NIKE High Power Radar-Simulator Repairer
26F	Aerial Photo Sen. Rep.
26K	Aerial Electronic Warning/Defense Equipment Repairer
45G	Fire Control Systems Repairer
51B	Carpentry and Masonry Specialist
51K	Plumber
51R	Interior Electrician
52G	Transmission and Distribution Specialist
54C	Smoke Operations Specialist
54E	NBC Specialist
62E	Heavy Construction Equipment Repairer
62G	Quarrying Specialist
62H	Track Vehicle Repairer
62J	Quartermaster and Chemical Equipment Repairer
67T	Tactical Transport Helicopter Repairer
67U	Medium Helicopter Repairer
82B	Construction Surveyor
82C	Field Artillery Surveyor

Sources of this list are WITA, *supra* note 5, at 5-6; Army Occupational Pamphlet, *supra* note 59, at A-1 to A-24. For descriptions of these 28 MOSs, see Army Occupational Pamphlet *passim*.

62. WITA, *supra* note 5, at 4-17. Reportedly as a result of political pressure from the Secretary of Defense, the Army may revise its combat exclusion policy and reopen some of the recently closed specialties to women. Milwaukee Journal, Oct. 18, 1983, § 1, at 2. The Army has given no indication it will allow women to serve in the original 38 closed specialties.

Besides barring women from "combat" positions, the combat exclusion closes many positions labeled "non-combat" positions to women. The Navy, for example, has a "rotation policy" that limits the number of off-ship, and therefore non-combat, positions otherwise available to women.⁶³ The rotation policy reserves many shore positions for sea-going men. The Navy justifies the rotation policy on the grounds that "if women were permitted to fill a large number of shore-based positions, fewer men could be assigned ashore, and they would have to spend a longer time at sea."⁶⁴ Sixty-two percent of the Navy's total non-combat positions (287,000 enlisted home-base positions) were reserved for men as rotation spaces in 1977.⁶⁵

The Air Force has a similar rotation policy. During 1977, the Air Force reserved for rotation purposes approximately 6,500 "behind-the-line" jobs for which enlisted women were otherwise eligible.⁶⁶ Female Air Force officers were ineligible for approximately forty percent of all Air Force positions as a result of rotational policies and combat restrictions.⁶⁷ Likewise, the Marine Corps' rotation policy closed about 28,400 jobs to women in 1977.⁶⁸ One general estimated that, as a result of rotation policies, all branches of the military reserved to men a "large part" of the fifty-seven percent of the positions that were otherwise available to women.⁶⁹

63. Holm, *supra* note 8, at 126.

64. *Id.*

65. Binkin & Bach, *supra* note 12, at 24-25.

66. *Id.* at 23.

67. *Id.*

68. *Id.* at 29-30. In the Marine Corps, all but four of the occupational fields are open to women. The closed fields are infantry, field artillery, tank and amphibian tractor crew, and aircrew. Although these jobs are not in the fleet Marine units, their limitations close an additional 1,300 jobs to women. *Id.*

69. *Service Academy Hearings* (testimony of General Benade), *supra* note 26:

[General Benade] [A]bout 54 percent of the armed forces are in combat units or direct combat skills, a little more than half. In the support base about 46 percent. . . . One of the great problems we have in all of the services—and the Navy is an outstanding example—is the matter of insuring in the structure sufficient spaces for the rotation of the individuals from the shops at sea to billets on shore, for example.

The billets on shore in the continental United States generally are not considered to be combat units. Yet it is necessary to have vacancies in those billets to accommodate the men who come in off the ships at sea. If women were in those billets there would [not] be adequate rotation base for the men.

[Mr. Nedzi] Offhand, do you see any problem in having a 50-50 mix [of women and men]?

[General Benade] Yes, I would definitely see very great problems

The combat exclusion limits the types, as well as the number, of jobs available to women. Since the military views its central mission as fighting and winning wars,⁷⁰ combat experience is often a prerequisite for promotion to positions that are otherwise available to women.⁷¹ More than three-quarters of the Navy's officer positions require combat experience.⁷² Air Force women cannot be promoted to most training or supervisory positions because the Air Force requires combat experience for those positions.⁷³ The Air Force also heavily favors pilot and navigator experience—both combat positions—in determining promotions.⁷⁴ The Army's career planning ladders⁷⁵ illustrate how jobs theoretically open to women are in reality closed to them. Tracking thirteen of the thirty-eight originally closed MOSs through the expected career progressions reveals that promotional access to at least six non-combat MOSs is severely restricted. The upper level restriction occurs because nearly all of the lower level positions which lead upward are MOSs unavailable to women.⁷⁶ The Marine Corps similarly limits women's access to promotions. In 1977, the Marine Corps set aside 2,400 non-combat enlisted positions to allow for male

if we had a mix that large, unless women were fully prepared to assume and perform in combat roles.

[Mr. Nedzi] I am talking about the 46 percent having no combat connection.

[General Benade] But I'm driving at the fact that *a large part of that 46 percent—the spaces are used by people who rotate from the fleet and combat units overseas.*

Service Academy Hearings, supra note 26, at 72-74 (emphasis added).

70. WITA, *supra* note 5, at 3-1.

71. Promotions are a much greater determinant of success in the military than in the civilian sphere. Peter Drucker, *Making Room in No-Growth Firms*, Wall St. J., Dec. 30, 1983, at 8, col. 4.

72. *Service Academy Hearings* (testimony of Admiral Mack), *supra* note 26, at 100.

73. Binkin & Bach, *supra* note 12, at 22-23.

74. Holm, *supra* note 8, at 123.

75. Career planning ladders show which MOSs lead to which career Army jobs. See U.S. Army Regulation AR611-201, Personnel Selection and Classification: Enlisted Career Management Fields and Military Occupational Specialties, effective January 1, 1974 (Field Career Ladders are on unnumbered page inserts.) [hereinafter cited as Army Regulation 201].

76. For example, the following "closed" MOS career fields lead to MOSs that are not formally "closed" to women: MOS 11B and 11C lead to MOS 11Z (an infantry command specialty in the highest pay category). Both MOS 11B and 11C also lead to MOS 00Z (Command Sergeant Major). MOS 12B (Combat Engineer) and MOS 12C (Bridge Crewman) lead to MOS 00Z (Command Specialties). MOSs 13B, 13C, 13E, 13F, and 13M lead to MOSs 13W, 13Y, 13Z, and 00Z. MOSs 13W and 13Y are in the second highest pay grades. MOSs 13Z and 00Z are in the highest pay grades. The newly closed specialties follow this same pattern. Army Regulation 201, *supra* note 75, *passim*.

enlistee promotions from positions that were closed to women.⁷⁷ The National Organization of Women (NOW) estimated that, as a result of the combat exclusion, seventy to seventy-five percent of all military positions were closed to women in 1980 because the positions either were defined as combat positions or combat experience was a prerequisite for the positions.⁷⁸

Military policies themselves refute the military's claim that ninety-five percent of military positions are open to women. The Defense Department, in 1977, estimated that the combat exclusion itself blocked women from forty-three percent of all military jobs, the rotation policy excluded women from another seven percent, and other unspecified reasons excluded women from an additional twenty-three percent.⁷⁹ Thus, realistically, only twenty-seven percent of *all* military jobs are jobs that women may hold.⁸⁰ This percentage, of course, changes with each change of the military's definition of combat.⁸¹

Limiting the number of jobs available to military women directly limits the number of women that may serve in the military. This limitation, however, does not determine the actual number of military women. Although twenty-seven percent of military jobs are theoretically open to women, no male military leader has advocated filling all twenty-seven percent of the positions with women.⁸² In 1968, Congress lifted the then-existing

77. Binkin & Bach, *supra* note 12, at 29-30.

78. *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 26.

79. *Id.* at 165 (quoting Department of Defense Information on "Service Data Submission on Potential Use of Women"). Physical limitations were not the basis for excluding women from any positions. See *infra* note 80. This fact demonstrates that the Defense Department does not consider physiology a valid prerequisite for combat positions. See *infra* notes 340-41 and accompanying text.

80. The Defense Department's chart is:

A	Total Positions	100%
B/C	Combat and Combat Support	43
D	Net A - (B/C)	57
E	Rotation Base	7
F	Physiological Limits	0
G	Other Limits	23
H	Open to Women $H = D - (E + F + G)$	27
I	Women Utilized in 1977	6

Department of Defense Information, *supra* note 79, at 165.

81. See *supra* notes 59-62 and accompanying text.

82. Maj. Gen. Jeanne Holm WSAF (Ret.) implicitly argues that women should fill all the positions that are open to them. See generally Holm, *supra* note 8.

two percent ceiling⁸³ on female enlistments. Between 1968 and 1981, the number of enlisted Army women increased from 10,000 to 65,000.⁸⁴ Between 1979 and 1982, the total number of women in uniform increased from 150,000 to 190,000.⁸⁵ The military did not allow this increase to continue unchecked. In 1981, when the Army began to study upper body strength and combat requirements for jobs, it "paused" at 65,000 enlisted women.⁸⁶ After completing its study, which concluded that twenty-three additional MOSs should be unavailable to women,⁸⁷ the Army lowered its overall goals for female enlistment.⁸⁸ Not only the Army, but the entire military has lowered its goals for female enlistment. Women currently constitute approximately nine percent of the American military forces.⁸⁹ The Carter administration's overall 1985 goal for enlisted women was 254,000, twelve percent of the military forces.⁹⁰ The Reagan administration's goal for 1985 is 212,000.⁹¹

The combat exclusion not only limits the number of jobs available to women, but also reinforces the wage disparity and job segregation that exist between women and men. In 1980, approximately eighty-three percent of enlisted women worked in the military's four lowest pay grades,⁹² while twenty-three percent of enlisted men worked in the four highest pay grades. Only three percent of enlisted women worked in the four high-

83. The Women's Armed Services Integration Act of 1948 established the two percent ceiling. Pub. L. No. 80-625 (1948) (codified as 10 U.S.C. § 3215 (1959), repealed by Pub. L. No. 91-30 (1967)).

84. Between 1968 and 1981 the total number of Army women, including both officers and enlisted women, increased from 15,790 to 73,778. WITA, *supra* note 5, at Tables 1-3.

85. Military Women in the Department of Defense, *supra* note 46, at 1.

86. WITA, *supra* note 5, at 1-11.

87. See *supra* note 61.

88. Capital Times (Madison, Wis.), Aug. 27, 1982, at 2.

89. Military Women in the Department of Defense, *supra* note 46, at 1. The percentage of American military forces comprised of women is comparable to the ratio of women in other militaries around the world: 5% of Belgium's military forces were women in 1980; 4.9% of Great Britain's forces in 1980; 6.8% of Canada's forces in 1980; 15.2% of Denmark's territorial militia in 1979; 5.3% of France's forces in 1979; 0.07% of West Germany's forces in 1980; 7% of Greece's forces in 1980; 1% of Netherlands's forces in 1979; and 0.3% of Norway's civil defense units in 1979. Loaded Questions, *supra* note 3, at 88-90. For additional information on women in militaries in other countries, see Nancy Loring Goldman, *Female Soldiers—Combatants or Non-combatants? Historical Perspectives* (1982).

90. See Holm, *supra* note 8, at 258-59.

91. Capital Times (Madison, Wis.), Aug. 27, 1982, at 2.

92. *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 156-67.

est pay grades.⁹³ Not surprisingly, military women serve in low-paid and low-ranked positions that are traditionally labeled "women's work." For example, in the Army, persons who hold supervisory positions are in higher pay grades.⁹⁴ Army women are barred outright from eighteen supervisory positions.⁹⁵ As a result, Army women have less access than Army men to higher paid and higher ranked MOSs and are thus left in the lowest pay grades. A recent Defense Department study confirmed this wage disparity and job segregation.⁹⁶ The study noted that military women are clustered in the three lowest pay grades.⁹⁷ The Defense Department attributed the clustering to women's recent entry into the military and noted that the recent entry pattern could affect occupational distributions.⁹⁸

Not coincidentally, the status of women in military employment is similar to women's status in civilian employment. Wage disparity and job segregation pervade both spheres.⁹⁹

93. *Id.*

94. The Army categorizes jobs by skill levels and grades: skill level one denotes positions in grades E-3 and E-4; skill level two denotes positions in grade E-5; skill level three denotes positions in grade E-6; skill level four denotes positions in grade E-7; and skill level five denotes positions in grades E-8 and E-9. Positions in grades E-1 through E-6 do not have supervisory responsibilities, positions in grade E-7 have minimal supervisory responsibilities, and positions in grades E-8 and E-9 have the most supervisory responsibilities. Army Regulation 201, *supra* note 75, at 1-5.

95. *Id.* at 2-1 to 2-19.

96. Military Women in the Department of Defense, *supra* note 46, at 12. The status of military women has not changed dramatically during the past twenty years. Although the ratios vary from service to service the pattern is the same. During 1965, nearly 70% of all enlisted women performed clerical and administrative work. Twenty-three percent of all enlisted women worked in medical facilities. More than 75% of the women line officers were in administration, personnel, information, and similar desk jobs. Holm, *supra* note 8, at 184.

97. Military Women in the Department of Defense, *supra* note 46, at 12.

98. *Id.* The military now appears to promote women and men after roughly the same number of years in service. *Id.* at 28. *But cf.* Schlesinger v. Ballard, 419 U.S. 498 (1975). Evidence suggests however, that occupational distribution, more than recent entry patterns, causes clustering. See *supra* notes 96-97 and accompanying text.

99. The concentration of military women's work parallels women's employment in the civilian sector. Two-thirds of all women working outside the home in the United States are in clerical, service, and sales work. In fact, 50% of women working outside the home are clustered in ten professions. Half of these women are secretaries, food service workers, teachers (excluding college professors), private household workers, nurses, cashiers, and typists. This women's work is characterized by low skill, low wages, and low prestige jobs. Several sociologists theorize that "women's work" is low-paying work precisely because women perform the work. Many employers do not like to hire women, so they compensate for hiring women by paying low wages to the women they do hire. Likewise, employers compensate male co-workers who do not like working with women, by paying the men more than women. Consumers who dislike women employees are compensated by buying women-made goods at

The military differs from civilian employers only because it *openly* creates, through the combat exclusion, structural barriers to the advancement of women.

The harmful effects of the combat exclusion continue even after military women re-enter civilian society. Several combat jobs qualify men to perform skilled civilian jobs.¹⁰⁰ Other combat jobs do not have civilian equivalents but the Army itself describes even these positions as training men to take leadership roles.¹⁰¹ Military women are not trained for these jobs. Women leaving the military most often have only the skills for the lowest-paid jobs in civilian society.¹⁰² Therefore, job training in the military disadvantages military women when compared to combat-trained military men. In addition, if women comprise only nine percent of the armed forces,¹⁰³ women as a group have less access than men to veterans' preference hiring programs.¹⁰⁴

2. Military Women's Support Role

Men consider military women as tangential rather than

lower prices. Jane Lillydahl, *The Employment of Women*, in *Women and the Social Costs of Economic Development: Two Colorado Case Studies* 84-85 (Elizabeth Moen et. al. eds. 1981).

100. The following Army positions are some of the positions in the original 38 MOSs unavailable to women that train men directly for civilian jobs:

<u>MOS</u>	<u>Civilian Counterpart</u>
2B and 12C	Raftsmen, bridgemen, rigger, light truck driver, motorboat or small ferry operator.
12E	Light truck driver, security guard or equipment technician.
24M	Electrical repairman or electrical instrument repairman.

See Army Occupational Pamphlet, *supra* note 59, *passim*.

101. The Army, for example, states with respect to infantry specialties (MOS 11):

There is not a civilian job like this one. However, you can learn teamwork, leadership, responsibility, and to do things on your own which are abilities civilian employers look for in someone who wants a job.

Id. at B-18.

102. See *supra* notes 96-99 and accompanying text.

103. See *supra* note 89 and accompanying text.

104. See Dept. of Veterans Benefits, Veterans Administration, VA Pamphlet 27-82-2, A Summary of Veterans Administration Benefits (April 1982). Cf. *Personnel Adm. of Mass. v. Feeney*, 442 U.S. 256, 281 (1979) (Marshall, J., dissenting). Justice Marshall argued that Massachusetts' veterans' preference system discriminates against women because it "inescapably reserves a major sector of public employment to an already established class which, as a matter of historical fact, is 98% male." *Id.* at 284 (quoting *Feeney v. Massachusetts*, 451 F. Supp. 143, 150 (D. Mass. 1978) (Campbell, J., concurring)).

central to the military because women are not permitted to fight. Men use the combat exclusion to restrict military women's occupational options to support roles. The support role of contemporary American military women is similar to women's roles in armed forces around the world, particularly those that systematically exclude women from combat. Military women serve male needs.

Armed forces have always used women to fill personnel shortages and to free men for fighting.¹⁰⁵ During World War II, both the French and American armed forces enlisted women on a large scale when faced with critical "manpower" shortages. The French military allowed women to volunteer for general staff positions in the artillery, engineering, and health services auxiliaries.¹⁰⁶ French military women later became liaison pilots, and some served in Indochina and Algeria.¹⁰⁷ Similarly, soon after Pearl Harbor, the American government recognized that women would have to be utilized in the all-out war effort.¹⁰⁸ The American military then permitted women to form several auxiliary corps.¹⁰⁹ During World War II, 350,000 women served in these corps.¹¹⁰

The Pentagon's current recruitment record as well as the military's historical use of women reflects the direct relationship between women's military participation and "manpower" shortages. In 1977, when male military recruitment was down,

105. The Defense Department openly admits that it has historically used women only to free men to fight. Military Women in the Department of Defense, *supra* note 46, at 1.

106. Binkin & Bach, *supra* note 12, at 117-18.

107. *Id.*

108. Holm, *supra* note 8, at 23.

109. The War Department considered drafting women in 1942, but the "proposal was rejected." *Selective Service System Hearings* (testimony of Karen J. Lewis), *supra* note 44, at 298. As an alternative, the women's auxiliary corps were formed. These auxiliary corps included the WAAC (Women's Army Auxiliary Corps), the WAVES (Women's Service), the Marine Corps Women's Reserve, the SPAR (Coast Guard Women's Reserve) and the WASP (Women's Air Force Service Pilots). Anne Hoiberg, *Military Staying Power*, in *Combat Effectiveness: Cohesion, Stress and the Volunteer Military 226-27* (Sam Sarkeesian ed. 1980).

110. Hoiberg, *supra* note 109, at 227. Maj. Gen. Jeanne Holm WSAF (Ret.) reports that many of the women in these auxiliary corps received little assistance from the veterans' administration because many of the VA's local offices "were either unsympathetic to the needs of female veterans or unaware that women were entitled to the same benefits as male veterans." Holm, *supra* note 8, at 128-29. Another example of how the VA ignored women's contributions to the military is the VA's 1981 study of the Vietnam war's impact on 1,340 veterans. The veteran pool for the study did not include even one female veteran even though approximately 7,500 women served in Southeast Asia. *Id.* at 241.

the Pentagon raised its recruitment goal for female enlistees.¹¹¹ In 1980, President Carter touted women as the "major, underutilized personnel resource for the military" in a statement with the subheading, "Reducing the Need to Recruit Young Men."¹¹² When male recruiting improved after 1980, the Pentagon lowered its goal for recruiting women¹¹³ and the Army expanded the combat exclusion,¹¹⁴ despite evidence suggesting that recruiting women might be more cost effective.¹¹⁵

The role of women in the Israeli Army exemplifies how armed forces use women to free men for battle. While Israel promotes the image that Israeli Army women are battle-toughened combatants, the reality is quite different. Israeli Army women at one time did serve in fighting roles.¹¹⁶ Before and during the war for Israeli independence, the nature of the Israeli military struggle was such that women were in the frontline war zones.¹¹⁷ Israeli women are no longer combat-

111. Capital Times (Madison, Wis.), Aug. 27, 1982, at 2. See also Binkin & Bach, *supra* note 12, at 20 (Table 2-5).

112. *Presidential Recommendations for Selective Service Reform*, H.R. Doc. No. 265, 96th Cong., 2d Sess. 227 (1980). President Carter made this statement in his report that recommended the registration of women with the Selective Service System. *Id.*

113. See *supra* notes 86-91 and accompanying text.

114. See *supra* note 61 and accompanying text.

115. In 1980, the military spent \$3,700 to recruit a "quality" man for the All-Volunteer Forces. At the same time it cost only \$150 to recruit a woman. *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 19. See also Stiehm, *supra* note 44, at 203; *Registration Hearings*, *supra* note 56, at 64 (testimony of Robbi Smith, representing National Coalition for Women in Defense), *id.* (testimony of Rep. Pat Schroeder) at 25; *Service Academy Hearings*, *supra* note 26, at 118-19 (Navy's appraisal of the costs of integrating women into combat positions).

The costs of recruiting women for the All-Volunteer Forces may change if the combat exclusion is eliminated. Presently when a woman is allowed into the military, she may see her opportunity as a privilege since the military severely limits the number of women in the military. Since being in the military is a privilege right now, highly qualified women are attracted to the military services. As a result, women are inexpensive to recruit. If the combat exclusion were eliminated and the military allowed more women to serve, being in the military would not be so rare and perhaps many more women would consider a career in the military as a viable opportunity. In this way, the costs of recruiting "high" quality women may increase.

116. Yigal Allon, *The Making of Israel's Army* 32-33 (1970).

117. Nira Yuval-Davis explains that:

The belief concerning women's equality in the Israeli army leans heavily on women's military activities during the pre-state period, and even then it was largely a myth. In the early period, the sexual division of labour was much less crystallized and consistent, but it nevertheless existed. The illusion of equality then is due to two central facts: (a) in the pre-state period there were no separate female units; (b) and the nature of the military struggle before and during the 1948 war was such that the most essential feature of

ants.¹¹⁸ Israeli women now rarely hold guns after basic training and they parachute only to build morale.¹¹⁹ Furthermore, the Israeli Defense Forces do not have any female generals.¹²⁰ Women in the Israeli Army, like those in other armies, now serve in positions that the military considers within women's capacity. Their service in these positions releases men for frontline service.¹²¹ Their positions, like women's positions in the American Army,¹²² are mainly clerical, switchboard, and social service positions.¹²³

Women's supporting role in the Israeli military and other armed forces has involved more than just freeing men to fight. For example, the Roman army that attacked Jerusalem 2,000 years ago viewed its female members as providers of general services and maintenance including sexual "services."¹²⁴ Women's military role has not changed considerably during the past 2,000 years. Although the modern Israeli Army does not specifically state that its female members are freely available for sexual services, it does exploit women sexually. The Israeli women's corps is called "Chen," which means "charm,"¹²⁵ and implies that female soldiers are seducers, not fighters. One commentator describes another way the Israeli armed forces sexually exploit women:

While the subject of explicit sexual relations is formally ignored, implicit sexual relationships are formally encouraged. A central demand from the women in the army is to 'raise the morale' of the male soldiers and to make the army a 'home away from home.' Already during the basic training of women, they are coached to emphasize their feminine characteristics and their neat appearance, receiving cosmetic guidance to help them in this respect. In the

the sexual division of labour in the military could not be fulfilled—that is, keeping women in the 'rear' and men in the 'front'. . . .

The female roles in Zahal [Israeli Defense Forces] today are basically roles which belong to the 'rear' as women are legally banned from the 'front' war zones.

Nira Yuval-Davis, *The Israeli Example*, in *Loaded Questions*, *supra* note 3, at 74-75.

118. Lesley Hazleton, *Israeli Women: The Reality Behind the Myths* 138 (1977).

119. *Id.* at 22.

120. *Id.* at 24. In contrast to some American military services, however, Israel trains women to be combat instructors. Rogan, *supra* note 47, at 286-87. See *supra* notes 73, 95 and accompanying text.

121. Hazleton, *supra* note 118, at 138-39.

122. See *supra* notes 92-98 and accompanying text.

123. Hazleton, *supra* note 118, at 138.

124. Nira Yuval-Davis, *Sexual Division of Labour*, in *Loaded Questions*, *supra* note 3, at 31.

125. Yuval-Davis, *supra* note 117, at 76.

words of a Zahal Army official, 'Chen adds to Zahal the grace and charm which also makes it a medium for humanitarian and social activities.'¹²⁶

Some Israeli women are "proud of their much-vaunted contribution to morale."¹²⁷ They do not view their role as soldier-like. Rather, their role is to spoil male soldiers. They bring sandwiches and coffee to men in the fields, deliver men's mail from home, and otherwise contribute to the "social quality" of the Army.¹²⁸ As one commentator suggests, the "Chen" of the Israeli Army turns women into dolls instead of soldiers.¹²⁹

The American military also views women as morale-boosters¹³⁰ and sexual objects rather than as soldiers. The American military both implicitly and explicitly exploits women's sexuality in at least three distinct ways. First, it portrays soldiers' wives and girlfriends as morale-boosters. Before women's integration into the Air Force Academy, for example, the Academy's publications conveyed the message to its students that the sole function of wives and girlfriends was to help men become better soldiers.¹³¹ Men were told that they needed "a girl's smile" to get through basic training.¹³² Second, the military denies that military women are actually women. In the same publications that taught military men that wives and girlfriends were morale-boosters, the Air Force taught all military personnel, including its female auxiliary members, that basic cadet training in the military made "men."¹³³ These teachings conveyed the message to women that they could succeed in the military only if they denied their female sexuality and became male. Even though the Air Force Academy has since revised its publications, the military's message is still the same—women must behave like "men" to succeed in the military. A third way that American military men exploit women's sexuality is by feminizing men they consider inadequate. For example, some military men who have experienced combat, describe those who have not and are therefore not *real* military men, as

126. *Id.*

127. Hazleton, *supra* note 118, at 146.

128. *Id.*

129. *Id.* at 151.

130. White male soldiers have also viewed Black male soldiers as morale-builders. White male soldiers have appraised Black male soldiers as possessing "a fund of jokes, antics, and so forth which . . . keep the unit amused." Social Research and the Desegregation of the U.S. Army 85 (Leo Bogart ed. 1969).

131. Stiehm, *supra* note 44, at 66.

132. *Id.*

133. *Id.*

"titleless WACs," "cherries" and "virgins."¹³⁴

The combat exclusion allows the military's sexual exploitation of women to continue unquestioned. Some men who conclude there is no historical or biological reason for the combat exclusion still refuse to advocate for women in combat because it would destroy their view of women.¹³⁵ Historian John Laffin states:

A woman's place should be in the bed and not the battlefield, in crinoline or terylene rather than in battledress, wheeling a pram rather than driving a tank. . . . One of the great inducements to the end of a war is the intense desire of men to return home to woman and bed. If a man is to have women at war with him, if he is to think of women as comrades-in-arms rather than as mistresses-on-mattress the inducement disappears. In the first place he can have what he needs without going home and in the second he is apt not to feel the need. Many a serviceman has said to me plaintively, 'I think of these damned Wrens (or W.A.A.F.'s or A.T.S.'s or what have you) as mates; I can't four-letter-word my mates.' If this does not seem to be consistent with stories of servicewomen's immorality and promiscuity I can only say that figures prove that in all the women's services illegitimate births and abortions are much lower, than in civilian life.¹³⁶

Men do not want women in combat because women in combat would force men to evaluate their own sexuality. As it is, men like Laffin view all women as morale boosters and sexual objects. Military women are forced to conform to male standards, but they will always be subordinate to military men because they can never be real men.

The combat exclusion both creates and legitimates the lower status of military women. Since military women are not allowed to fight, they are ranked lower, paid less, and relegated to the role of supporting military men.

C. The Exclusion Harms All Women

The combat exclusion affects all women. It reinforces women's political powerlessness in many different ways. Armed forces historically have been the source of state power because governments depend for their survival on the monopolization of coercive force.¹³⁷ Anthropologists note that persons who are

134. *Id.* at 274 n.1.

135. See *infra* notes 274-304 and accompanying text.

136. Laffin, *supra* note 12, at 185.

137. Cynthia Enloe, *The Military Model*, in *Loaded Questions*, *supra* note 3, at 25.

part of the monopolized "coercive force" also hold political power in the society.¹³⁸ Since women officially are not allowed to participate in the military's primary function of fighting, they are relegated to secondary roles in the military.¹³⁹ In these secondary roles, women never act as a significant part of the "coercive force." Thus, the combat exclusion severely restricts women's access to the sources of state power.

Evidence also suggests more direct connections between the combat exclusion and women's political powerlessness. Historically, women have rarely had access to even "democratic" weapons, weapons that any individual warrior could produce and use, regardless of technical education.¹⁴⁰ The sexual division of labor in many societies "reserved the role of the warrior to the male of the species, and disproportionately so."¹⁴¹ This division increased as weapons became more sophisticated and societies became even more socially stratified,¹⁴² even though weapons that were more dependent on technology than on physical strength could have enabled more women to participate in the military.¹⁴³

Women's participation in revolutionary armies documents that women's access to weapons is directly related to women's political power.¹⁴⁴ Revolutionary groups in Nicaragua,¹⁴⁵ Guatemala,¹⁴⁶ and Zimbabwe¹⁴⁷ use women's presence in combat

138. *Id.*, Ali Mazrui, *Military Technology and the Masculinity of War: An African Perspective*, 26 *Impact Sci. on Soc.* 71, 72 (1976).

139. *See supra* notes 105-136 and accompanying text.

140. Mazrui, *supra* note 138, at 73.

141. *Id.* at 72.

142. *Id.* at 73.

143. *Id.*

144. Patty Walton, *The Culture in Our Blood*, 8 *Women: J. Liberation* 39 (1981).

145. For discussion about women's roles in the Nicaraguan revolution, see Margret Randall, *Sandino's Daughters: Testimonies of Nicaraguan Women in Struggle* (Lynda Yanz ed. 1981); *Up in Arms: Women in the Nicaraguan Revolution*, 8 *Women* 6-11 (1981); Joyce Olson, *Mujeres en la Revolucion* [*Women in the Nicaraguan Revolution*], 41 *N. Country Anvil*, Oct.-Nov. 1982, at 4-7; Lucina Kathmann, *Women in Arms: What's Happening in Nicaragua*, 12 *New Directions for Women* 1 (Nov.-Dec. 1983). The theme familiar to all these accounts is how women's access to arms helps them raise their status in their community. These women feel combat has liberated them from their traditional lifestyles and given them more personal and political power.

146. Today's revolutionary guerrillas in Guatemala:

no longer believe the brave elite with only the briefest contact with the people can carry out insurrection in the name of the people. Instead they support the theory of a people's revolutionary war. According to this theory, the war will be a long one based on mass organization. This means the guerrillas fight in such a way as to incorporate the population into their organizations as well as ally

to advance women's political power. These revolutionary groups recognize that when women are in combat, women learn skills that may enhance their power. In addition, men's perceptions of women and women's self-perceptions change. The Guatemalan, Nicaraguan, and Zimbabwean revolutionary experiences indicate that women's acceptance in combat has led to greater political and social rights.¹⁴⁸ However, it may be too early to conclude that this process will continue. Other revolutionary movements, such as the Chinese revolutionary movement¹⁴⁹ and the Israeli independence movement¹⁵⁰ initially used women in combat, but quickly relegated women to non-combat roles.

The combat exclusion limits the political and personal power of women in everyday life. First, the exclusion implies that female citizens' work is not essential to national security. Second, American society views military service as a basic obligation of citizenship which women are not allowed to fulfill.¹⁵¹ All women's opportunities for military service are limited by

with existing groups. They do not initially fight battles for national power, but to gain and secure the ability to organize a base among the people.

Guatemala in Rebellion: Unfinished History 259-60 (Jonathan Fried, Marvin Gettleman, Deborah Levenson & Nancy Peckham eds. 1983).

The movement offers a "different world of human relationships between men and women. . . ." *Id.* at 261. Maria Lupe, a Guatemalan woman, describes how this different world includes women in combat and in political work. When she first joined the guerrillas, she left her children with neighbors. She later returned for her children and lived with them and the guerrillas in the mountains. She used weapons. She recounted how villagers mistrusted male guerrillas when they went to the villages to buy supplies, "but if the women also went, the villagers saw that women were participating too, and carried weapons as the men did." The struggle against discrimination meant women and men did everything. Women were in combat; men were in the kitchen. Marie Lupe, *Up In the Mountains Everything is Different: Perspective of a Subsistence Agriculturalist*, in Guatemala in Rebellion, *supra*, at 273-76. See also Statement of the Guatemalan National Revolutionary Unity, *The Revolution Will End Our People's Repression*, in Guatemala in Rebellion, *supra*, at 287.

147. See World Conference of the United Nations Decade for Women: Equality, Development and Peace, UN Doc. A/Conf. 94/5, *The Role of Women in the Struggle for Liberation in Zimbabwe, Namibia and South Africa* 4-5 (July 1980) [hereinafter cited as United Nations Doc.].

148. See *supra* notes 145-47 and accompanying text.

149. Women in the Chinese Army of 1962, 13 years after the revolution, were stretcher-bearers, cooks, and orderlies. In 1962, reports show no women combatants in the regular army. Edgar O'Ballance, *The Red Army of China, A Short History* 212-13 (1962).

150. See *supra* notes 116-129 and accompanying text.

151. United States v. MacIntosh, 283 U.S. 605, 609 (1931) ("The willingness to bear arms is an essential qualification for citizenship.")

their exclusion from the draft.¹⁵² Even military women's opportunities for military service are limited.¹⁵³ The combat exclusion prevents women from accomplishing their civic obligations. At the same time women are often trivialized because they do not fulfill these duties. Third, the combat exclusion is used to justify limiting women's participation in civilian activities, especially in certain occupations. For example, people use the combat exclusion to justify their opposition to women working as firefighters and police patrol officers.¹⁵⁴

The combat exclusion further limits the power of civilian women by enhancing the risk that they will be victims of personal violence. The exclusion, in trying to "protect" women from military violence, teaches everyone that women are too frail and weak to handle violent situations.¹⁵⁵ A man who believes the military's message that women are weak and unaggressive will be more likely to attack a woman. A woman who believes the military's message will be less likely to train to fight or defend herself.¹⁵⁶ Conversely, a man who believes that a woman could be a combat soldier might be less likely to attack her.¹⁵⁷

152. *Rostker v. Goldberg*, 453 U.S. 57 (1981). See *supra* notes 82-91 and accompanying text.

153. See *supra* notes 58-104 and accompanying text.

154. One fire chief flatly stated, "It's tradition. . . . Women don't go to war and women don't fight fires. . . ." Karen Stabiner, *The Storm Over Women Firefighters*, N.Y. Times, Sept. 26, 1982, §6 (Magazine), at 105.

In the past, male police officers believed that women were too weak and too emotional to withstand the strains of street patrol duty. They believed that women could not command citizen respect and would place their male partners in dangerous situations. Catharine Higgs Milton, et al., *Women in Policing* (published proceedings of a Police Foundation conference in Washington, D.C., May 28-30, 1974). Police duty, like combat duty, was viewed as a man's task. Men believed that women should be used—if at all—only in areas away from the "violence and sordidness of everyday police work." Peter Horne, *Women in Law Enforcement* 70-71 (2d ed. 1980). In his book, Horne compared police work with other dangerous jobs and concluded that women should be able to be police patrol officers since "female warriors and soldiers have fought and died in battle." *Id.* at 105-07.

155. So the Supreme Court believed in 1977. "A woman's relative ability to maintain order in a male penitentiary . . . could be directly reduced by her womanhood. [Male] inmates . . . would assault women guards because they were women." *Dothard v. Rawlinson*, 433 U.S. 321, 335 (1977) (Court upheld a regulation prohibiting women from holding prison guard positions requiring "close physical proximity" to inmates).

156. *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 166-67. Cf. Murray Straus, *Wife-Beating: How Common and Why*, in *Family Violence: An International and Interdisciplinary Study* 34-50 (John Eekelaar & Sanford Katz eds. 1978).

157. The following scene was depicted in a recent television movie: Two women were walking out of a bar. Two men followed and propositioned the wo-

The combat exclusion fosters other harmful views of women. The military's view that women are objects for men's sexual gratification reinforces men's belief that women are sex objects. The view that women are sex objects, combined with the view that women are weak, makes women doubly vulnerable to violent sexual attacks. There is a relationship between men making war on nations abroad and making war on women's bodies at home.¹⁵⁸

D. The Exclusion Harms All Men

The combat exclusion harms men by placing on men a disproportionate share of the risk of capture and death. Although the combat exclusion does not actually protect women from combat,¹⁵⁹ it does at least limit women's military presence. Thus, the exclusion makes men significantly more likely to bear combat risks. Men also bear 100% of the risk of being drafted, since the United States Supreme Court has held that the combat exclusion justifies limiting selective service registration to men.¹⁶⁰

The combat exclusion unfairly burdens men as a group in other ways. For example, in the event of a military draft, even men who believe in non-violent conflict resolution and abhor militaristic values would be pressured to fight. Conversely, even women who wish to fight would be excluded from a draft and from combat. Men who do not wish to fight would suffer, solely because they are men, if they refuse to participate in the military or in combat.

Finally, the combat exclusion fosters harmful views of men. The exclusion reinforces society's belief that men are violent, aggressive, and unfit to care for children.¹⁶¹ This view of men inhibits society's ability to see that men as men might have other positive qualities. Although imposing stereotypes

men. The women turned, said a few words and pulled out their identification badges showing that they were guards at San Quentin, a maximum security correctional institution in California. The men spun on their heels and walked away. *Women of San Quentin*, a made-for-TV movie aired in Madison, Wisconsin on WMTV 15 (NBC) on Sunday, Oct. 23, 1983. The hazardous duties of correctional institution guards, like police patrol officers and firefighters, are often compared with those of combatants. See Horne, *supra* note 154, at 105-07.

158. Karen Shaw, Liz Reiley, Cynthia Edwards & Betsy Getaz, *Will the Circle Be Unbroken: Women's Pentagon Action*, 8 Women: J. Liberation 19 (1981). See also *supra* note 155.

159. See *supra* notes 44-49 and accompanying text.

160. *Rostker v. Goldberg*, 453 U.S. 57, 79 (1981).

161. See *infra* note 303 and accompanying text.

concerning the combat exclusion often has significantly more beneficial consequences for men than women, the effect is ultimately harmful to both.

E. The Exclusion Harms the Military and Society

The combat exclusion harms both the military and society. The exclusion harms the military because the military does not benefit from those women who would perform well in combat.¹⁶² The military cannot employ some women's special physical¹⁶³ and leadership¹⁶⁴ strengths—strengths that could increase its combat effectiveness.

The exclusion harms society, as any discrimination against more than half of its members must. In particular, even during periods of voluntary military service, society loses the strength of women who want to serve in combat positions. During periods of compulsory military service, society loses the strength of men who may not want to serve and whose talents could be better utilized elsewhere.

The combat exclusion may also cause society to lose the potential to decrease the amount of armed conflict in the world. Some researchers have concluded that women generally are more concerned than men are about preserving relationships¹⁶⁵ and resolving conflicts peacefully.¹⁶⁶ Recent public opinion polls and news articles show that women more strongly support peace and oppose militarism than do men.¹⁶⁷ Relying on this type of evidence, some anti-militarist feminists¹⁶⁸ believe

162. See *infra* notes 350-57 and accompanying text.

163. See *infra* notes 394-99 and accompanying text.

164. See *infra* notes 461-69 and accompanying text.

165. See, e.g., Gilligan, *supra* note 2, at 16.

166. *Id.* at 38-44. Studies of female police patrol officers' performance show that women handle certain situations, such as domestic violence, much better than their male partners. Horne, *supra* note 154, at 101. They are able to defuse violent situations in which men escalate the violence. *Id.*

167. For example, during the Selective Service System Hearings, *supra* note 44, many women testified in opposition to the draft. Pollsters have noted a "gender gap" when measuring women's and men's opinions about President Reagan's performance in office. The Wall Street Journal, for example, reported one woman's view of why women support the President less than men do:

'I do not think Ronald Reagan is sensitive to women's needs,' Mrs. Jeffries says. She lists his opposition to abortion and the Equal Rights Amendment but quickly moves to broader themes. 'He's more inclined to work with business and to work with bombs than to work with us. . . . They're masculine things that men have been brought up to be strong in. Ronald Reagan is a man's man.'

Wall St. J., May 6, 1982, at 1, col. 1. See also sources listed *supra* note 3.

168. I borrow the term "anti-militarist feminists" from Sara Ruddick, *supra* note 24, at 477.

that using women in combat would create a "peaceful" army. This army would fight "only the most necessary and clearly just battles," fight "as humanely and briefly as possible," and in its fighting do "nothing to increase chances of escalation to more destructive conventional weapons or to nuclear arms."¹⁶⁹ This ideal female or female-led army, like Maxine Hong Kingston's mythical woman warrior's army, would resolve conflicts peacefully, reconcile differences with the enemy and restore human connections and community.¹⁷⁰ Its goals would not be the male military goals of death, destruction, and winning.

F. Conclusions

Elimination of the combat exclusion would not necessarily end its harmful effects. Elimination would eradicate the structural barriers to women's equality within the military, but it would not necessarily eliminate those attitudes toward women that created and now perpetuate the combat exclusion. Even without the combat exclusion, the military might still discriminate against women, just as it discriminates against minority men by keeping disproportionate numbers of them in lower-ranked positions and by not stopping racist military decision-making.¹⁷¹ Eliminating the combat exclusion would not guarantee social equality for women, just as increasing opportunities for Blacks in the military has not led to civilian social equality for Blacks. The military is a strong influence on society but it is not the only one.

169. *Id.* at 474.

170. *Id.*

171. Racial integration of the military has shown that the elimination of structural barriers in itself does not guarantee the same treatment of, for example, Blacks and whites. Since official integration in 1948 a disproportionate number of Black male soldiers participated and died in combat. Hoiberg, *supra* note 109, at 225. In Vietnam, 46% of the men in combat were not white, had less than a high school education, and came from low socio-economic backgrounds. Only 14.1% of the men in combat were white men with some college background. Peter Bourne, *Men, Stress and Vietnam* 45 (1970). In Vietnam, all U.S. Blacks constituted 9.8 percent of all U.S. military forces, 20 percent of combat forces, 25 percent of front-line combat leaders, and 14.1 percent of those killed in action." Bogart, *supra* note 130, at 2 n.1. (citing N.Y. Times, May 1, 1968). As a result of this disparity, the Pentagon ordered a cut-back in the number of Black soldiers in front-line actions. *Id.* (citing N.Y. Times, April 29, 1968). In the All-Volunteer Army, an average of about 38% of the recruits are Black men. *Selective Service System Hearings* (testimony of Maj. Gen. J. Miluo-Roberts), *supra* note 44, at 121. Some Black leaders view these statistics and question the military's image as a model of successful integration. They point "to the disproportionately high percentage of Negroes in combat infantry units as evidence of discrimination and 'genocide.'" Bogart, *supra* note 130, at 2.

Finally, elimination of the exclusion would not necessarily create a peaceful or feminine military, even assuming that women's and men's ideas about militarism are inherently different. The military is a masculine institution.¹⁷² Men have developed it, defined its goals, and controlled its operation. The military trains not just fighters, but "men"; it exploits and fosters male pride.¹⁷³ Many women who volunteer for military service probably accept the fundamentally masculine ideology of the military. Women who do not accept the masculine norms when they enlist sometimes conform to the male military standards in order to succeed, just as some Black male soldiers have to conform to dominant white standards.¹⁷⁴ Equality in the military means women wearing pants, not men wearing skirts. At least initially, those women who will be promoted to high military rank will probably be those who accept and perpetuate the military's male ideology.

Elimination of the combat exclusion may not eradicate all social or military discrimination against women, but that does not justify our acquiescence in the decision of the military, the Congress, and the President¹⁷⁵ to keep women out of combat. The exclusion's extensive harmful effects on women, on men, on the military, and on society mandate its elimination. Eliminating the combat exclusion is a necessary beginning, not an end, to equality in all spheres for women.

II. The Combat Exclusion: Mythology as Policy

A. Overview

Opposition to women in combat runs deep and comes from both women and men. Because of this deep-seated opposition, the debate over women in combat is more than a debate over facts and figures. Proponents of the exclusion equate women's participation in combat with the destruction of womanhood, manhood, and American society. Proponents believe that the division of labor between non-combat and combat service is

172. Ruddick, *supra* note 24, at 478.

173. See *supra* notes 133-34 and accompanying text.

174. Bogart, *supra* note 130, at 119.

175. President Reagan has consistently supported the combat exclusion. On September 17, 1983, the President "gave his blessing to proposed changes that would eliminate sexual distinctions in 47 federal statutes." He declined to "adopt proposed changes in 11 other laws that 'tend to favor women,' the White House said, including laws that exempt women in military schools from combat training. . . ." Gov't Research Corp., Nat'l. J., Sept. 17, 1983.

a natural division of labor between women and men.¹⁷⁶ They believe that the use of weapons is "as uniquely male as child-rearing has been female."¹⁷⁷ Phyllis Schlafly, notorious opponent of women's equal rights, equates women in combat with men sinking "so low" that they are willing to send daughters and sisters and wives out to fight for them.¹⁷⁸ In Congressional testimony, Schlafly's representative agreed with General William Westmoreland's statement that "'any man of gumption doesn't want women fighting the battles of this country.'"¹⁷⁹ Proponents of the combat exclusion claim that its elimination would destroy the way people think about women and men in society as well as in the military. In a society which defines male adulthood in terms of combat service, recognizing and allowing women full participation in combat would undermine many men's definition of maleness. Men could no longer claim that they protect women. They would have to redefine their social roles to include more peacetime activities as symbols of male adulthood.

An effective argument for eliminating the combat exclusion cannot simply dismiss as "irrational" the arguments that stem from these deeply held beliefs about the nature of women, men, and human relationships.¹⁸⁰ Some of these arguments are uninformed. Others are the product of nineteenth and twentieth century American ideas about the social roles of women and men. New information and the exploration of the political, social, and historic origins of societal beliefs helps people to reformulate their ideas. Reformulation of ideas does not start with imagining the way women and men should relate, but with observing how we actually relate in society today. From such observation about social relationships, one can draw conclusions about how women and men could relate in the military if the combat exclusion were eliminated. This information shows that the participation of women in combat will not result in many of the harms proponents fear. At the same time, wo-

176. Yuval-Davis, *supra* note 124, at 35.

177. Stiehm, *supra* note 44, at 2.

178. *Registration Hearings* (testimony of Kathleen Teague speaking for Phyllis Schlafly), *supra* note 56, at 104.

179. *Id.*

180. One observer recently attributed much of the reason for the defeat of the Equal Rights Amendment to the failure of the amendment's supporters to understand that these types of arguments are very persuasive and that many people believe them. Deborah Rhode, *Equal Rights in Retrospect*, 1 *Law & Inequality* 19, 26-32, 48-49 (1983).

men in combat will help improve women's and men's relations in society.

In the previous section of this article, I discussed positive reasons for eliminating the combat exclusions. Those reasons addressed the need to remedy the harmful effects of the exclusion. In this section, I respond to arguments advanced against the participation of women in combat. Here I present negative reasons for change — if the arguments against women in combat are not valid, women should participate in combat. Understanding the source of fears about women in the military provides us with the opportunity to find ways to address those fears that do not harm society as the combat exclusion harms women, men, and society.

Proponents of the exclusion often begin the debate with the argument that women never have participated in combat. Many women and men believe that war always has been and always will be the province of men. "The ancient tradition against the use of women in combat," writes one journalist, "embodies the deepest wisdom of the human race."¹⁸¹ The corollary to this view is that peace is a female activity and men do not participate in it.

The proponents' first argument produces a second set of arguments. Since people believe that war is exclusively male, they define war as men protecting women.¹⁸² Protecting women is not just a military goal. Opponents of the Equal Rights Amendment, for example, often invoke this argument as a social goal. They see the "draft exemption," which rests on the combat exclusion,¹⁸³ as one of "the most significant benefits that the ERA would jeopardize."¹⁸⁴ By excluding women from combat positions, people hope to protect women from death, violence, sexual aggression, and the risk of capture.

The risk of capture figures prominently in discussions of

181. Gilder, *supra* note 58, at 46.

182. Rogan states: "Male soldiers have always thought of women as small and weak, the people whom wars are fought to protect. Female deaths in combat imply a failure to protect, and therefore a failure of masculinity." Rogan, *supra* note 47, at 296. See also *infra* notes 255-56 and accompanying text.

183. See Rhode, *supra* note 180, at 26; Nadine Cohodas, *House Judiciary Committee Approves ERA*, 41 Cong. Q. Weekly Rep. 2395 (1983) ("The most emotional committee debate came over proposals that sought to exempt women from military combat duty and the draft."); Nadine Cohodas, *ERA Still in Subcommittees But House May Vote This Year*, *id.* at 2124-25 ("The issue of women and the military—which was used effectively by ERA opponents to block ratification of the previous amendment—will be debated anew this year.").

184. Rhode, *supra* note 180, at 48.

women in combat.¹⁸⁵ The Defense Department's General Counsel testified before Congress that he feared the capture of women in wars where the

opposing side does not have the same reverence for women and does not hold them in [the] esteem that our society does, that the capture of women and the resultant political advantage gained by the captors, in the minds of the people, will be significantly different from what it would be in the case of men.¹⁸⁶

The General Counsel assumed that "the enemy" would treat female captives differently than male captives and that its treatment of women necessarily would be worse than the way American society treats women.

Shielding women from violence is an idea found in other arguments against women in combat. Some feminists agree with anti-feminists such as Phyllis Schlafly that women should not be taught "to kill and to be brutal and victorious in combat."¹⁸⁷ Schlafly translates this idea into an argument for retaining the traditional social order that keeps "our women . . . feminine and human enough to transform our servicemen into good husbands, fathers, and citizens upon their return from battle."¹⁸⁸ Feminists translate the same idea into a desire to change the social order, to bring about a world that values peace.¹⁸⁹

In contrast to arguments based on fears of what the enemy will do to female combatants, many people feel that women should not be in combat because the participation of women in combat might increase military sexual violence.¹⁹⁰ The rate of rape by military men of military women in the United States military is twice as high as the rate of rape in civilian society.¹⁹¹ Relations between military women and military men also contain a high degree of unchecked sexual harassment. More than one woman has complained that military women "are expected to respond favorably to the sexual

185. *Service Academy Hearings* (testimony of Martin R. Hoffman, General Counsel of the Department of Defense), *supra* note 26, at 69.

186. *Id.* at 76.

187. *Registration Hearings* (Schlafly Statement), *supra* note 56, at 103. See also *supra* note 3. See *infra* notes 203-24, 230-54, 272-304 and accompanying text.

188. *Registration Hearings* (Schlafly Statement), *supra* note 56, at 103.

189. See Enloe & Chapkis, *supra* note 3, at 4-7; Merryfinch, *supra* note 3, at 51; Wynner, *supra* note 3, at 9.

190. See *infra* notes 315-16 and accompanying text.

191. Ine Megens & Mary Wings, *The Recruitment of Women*, in *Loaded Questions*, *supra* note 3, at 47.

demands of their peers and superior officers."¹⁹² Women who refuse "face a daily tense atmosphere of harassment. Often their promotions are mysteriously delayed or deliberately rejected, the reason given as due to poor attitude and unwillingness to get a [sic] along with co-workers."¹⁹³ The military views women as providers of sexual services to male soldiers.¹⁹⁴ These arguments were summarized by Air Force Lieutenant General A.P. Clark in his Congressional testimony opposing the appointment of women to the service academies:

For this nation to open combat roles to our women, short of a dire emergency . . . offends the dignity of womanhood and ignores the harsh realities of war. Military history, the lessons of which again we ignore at our peril, my own personal experiences in combat, in prisoner of war camps, and in command of units convince me that fighting is a man's job and should remain so. Those who press to inject women in combat roles grossly underestimate the physical, the mental, and the emotional stresses of combat in all its implications, including capture by the enemy. In my view Sherman was right: 'War is hell and you cannot refine it.' To seek to do so to accommodate the pressures of social activism is to invite disaster in battle. Our potential enemies would rejoice to see us make the tragic error of exposing American women to capture in combat. I firmly believe that this situation would inevitably weaken our national resolve in war.¹⁹⁵

This second set of arguments forms the backdrop for arguments that women's presence in combat would destroy combat effectiveness.¹⁹⁶ People believe that women lack the physical strength to be combat soldiers,¹⁹⁷ become pregnant and destroy combat readiness,¹⁹⁸ are not aggressive enough to become soldiers,¹⁹⁹ and would detrimentally effect men's performance by decreasing group cohesion.²⁰⁰ People also believe that women's presence in combat positions would send a message of weakness to the enemy,²⁰¹ and that women make poor military

192. Linda Haynes, *Why Women Join the Military*, Off Our Backs, July 1981, at 17.

193. *Id.*

194. See *supra* notes 124-36 and accompanying text.

195. *Service Academy Hearings* (testimony of Lt. Gen. A.P. Clark), *supra* note 26, at 135-36.

196. See *infra* notes 332-36 and accompanying text.

197. See *infra* notes 337-99 and accompanying text.

198. See *infra* notes 400-15 and accompanying text.

199. See *infra* notes 316-31 and accompanying text.

200. See *infra* notes 416-48 and accompanying text.

201. See *infra* notes 449-57 and accompanying text.

leaders.²⁰²

While all these arguments reflect deeply held beliefs of those who oppose women in combat, none of the arguments is based on any absolute biological, cultural, or historical evidence that women cannot or do not serve in combat. Those who oppose the participation of women in combat assume that women and men as groups have certain immutable characteristics that have applied to all women and men throughout history. The only immutable difference between women and men, however, is that women have uteruses and vaginas while men have penises and prostate glands. None of the arguments against women in combat are based on these biological differences.

B. Mythology Versus Reality

Arguments against women in combat are ultimately arguments about the proper role of women in society. Placing the arguments in their historical and social context reveals that they are based on a series of complex myths. When the facts are examined and the myths destroyed, the arguments against women in combat lose their vitality.

Few of the arguments against women in combat are new. Nearly all have been raised to exclude women from other professions in which women now function well or even predominate. Women were, for example, once seen as unable to function in clerical positions. The *Ladies Home Journal* in 1900 instructed women that they could not do clerical work because they were "naturally incompetent to fill a great many of the business positions which they have sought to occupy. . . . The fact is that not one woman in a hundred can stand the physical strain of the keen pace which competition has forced upon every line of business today. . . ."²⁰³ The article proclaimed an "alarming tendency among business girls and women to nervous collapse," and that in times of pressure "women clerks were found to be either necessarily absent or they invariably gave out."²⁰⁴ Women were also seen to lack "executive ability." They could, for example, not be sent out "at all hours of the night" if they were working for newspapers.²⁰⁵ Just

202. See *infra* notes 458-69 and accompanying text.

203. Margery Davies, *Woman's Place is at the Typewriter: The Feminization of the Clerical Labor Force*, in *A Radical America Pamphlet* 14 (1974).

204. *Id.*

205. *Id.* at 15.

as some people consider the participation of women in combat unnatural, the *Ladies Home Journal* considered women's positions as secretaries or clerical workers unnatural.²⁰⁶ "God had made her a woman and never intended her for the rougher life planned out for man, and each step she took proved this uncontrovertible fact to her."²⁰⁷ Ironically, so many clerical workers are now women that clerical work is considered "women's work."²⁰⁸

In 1841, people considered women's minds too weak to withstand the stresses of studying Greek and Latin at Oberlin College.²⁰⁹ Women were denied equal access to programs in such fields as forestry, law, and medicine in the land-grant colleges because these fields were not considered appropriate for women in the nineteenth century.²¹⁰ Women were denied the right to vote because they were believed to be infantile and irrational.²¹¹ During the struggle for the vote, women's exclusion from politics was justified (like women's current exclusion from combat) on grounds that women needed protection. Excluding women from voting supposedly protected women from the turbulence and corruption of politics.²¹² Women needed protection because they were considered the "higher form of life, more refined and sensitive than man."²¹³

Similarly, until recently, women were barred from professional fields such as police patrol duty and firefighting, where

206. *Id.*

207. *Id.*

208. In 1982, 99% of secretaries were women. Bureau of Labor Statistics, U.S. Dept. of Labor, Bulletin 2168, *Women at Work: A Chartbook 10* (April 1983). Nearly 80% of clerical workers today are female. Women's Education Resources, University of Wisconsin-Extension, *The Status of Clerical Workers: A Case for Pay Equity 5* (1981). In 1869, 97.5% of all clerical workers were male. Davies, *supra* note 203, at 2.

209. Kathryn Heath, *The Female Equation*, 10 *Am. Ed.*, Nov. 1974, at 21.

210. *Id.* at 22. See, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1873) (Supreme Court denied women access to the legal profession).

211. A minister of the day explained:

[T]he excessive development of the emotional in her nervous system ingrafts on the female organization a neurotic or hysterical condition which is the source of much of the female charm when it is kept within due restraint. In moments of excitement, it is liable to explode in violent paroxysms. Every woman therefore carries this power of irregular, illogical and incongruous action and no one can foretell when the explosion will come.

Debby Woodroffe, *Sisters in Struggle 1848-1920*, 16 (1971) (available in the Women's Studies Reading Room, Helen C. White Library, University of Wisconsin, Madison, Wisconsin).

212. Barbara Sicherman, *American History (Review Essay)*, 1 *Signs* 461, 470 (1975).

213. Woodroffe, *supra* note 211, at 17.

working conditions resemble combat. Arguments against the participation of women in these fields, like arguments against women's participation in other male-dominated fields, resemble the arguments advanced against women in combat. Both police work and firefighting traditionally have been male jobs. Both involve physically demanding work that many women and men cannot do. Both involve contact with dangerous people and volatile situations. Both involve situations where partners have to work as a team. In both professions, women have performed well. In some instances women have actually improved the overall quality of the work.²¹⁴

By the 1960's, patrol work was the only all-male aspect of police work. Police officers viewed patrol work as inherently "man's work."²¹⁵ Male officers believed that women were not physically or emotionally able to handle patrol work and that women should be protected from "the violence and sordidness of everyday police work."²¹⁶ Men viewed women as unable to be patrol officers because women were "too weak, or too emotional to handle the tasks of patrol officers."²¹⁷

Studies of police performance demonstrate that women not only perform well as patrol officers, but they have actually improved police work. Women are less likely to exhibit conduct that the public finds objectionable and are more effective than men in defusing potentially violent situations.²¹⁸ One police study shows that male patrol officers with female partners make better decisions about when to fire guns and fire more accurately than those with male partners.²¹⁹ The attitudes of police instructors can affect the success of women's integration into the police force. For example, less demanding treatment of women can spur the resentment of male recruits and blatant hostility can demoralize female recruits.²²⁰ Hostility toward women on patrol, like hostility toward women in combat, stems from male officers' fear of changing the masculine nature of police work. The integration of women into patrol work requires male officers to confront the threat to their image as gun-toting men of action. When women do the job, the job no longer auto-

214. See *infra* notes 218-25 and accompanying text.

215. Horne, *supra* note 154, at 70-71.

216. *Id.* at 71.

217. See Women in Policing, *supra* note 154, at v., Horne, *supra* note 154, at 70-71, 104-05.

218. Horne, *supra* note 154, at 101.

219. Christina Johns, *Female Partners For Male Police, the Effect on Shooting Responses*, 6 Crim. Just. Behav. 327, 333-34 (Dec. 1979).

220. Women in Policing, *supra* note 154, at 19.

matically confers the status of the "real man" or promises "masculine comraderie."²²¹ No evidence suggests that changes in men's self-images due to women's participation in police work have affected men's job performance. Rather, male police officers appear to have adjusted to defining themselves in their profession as good police officers, rather than as "real men."

The integration of women into firefighting has followed a similar pattern. Those who practice firefighting often call it "combat."²²² In the past, male firefighters relied on the combat exclusion to justify their exclusion of women from firefighting. In one man's words, "[w]omen don't go to war and women don't fight fires. . . . Firefighters are the last bastion of something that used to be called chivalry, and is now called chauvinism."²²³ After lengthy legal battles, courts ordered fire departments, like police departments, to develop tests that were job-related and that did not discriminate against women.²²⁴ Some women have successfully obtained positions in fire departments and evidence shows that female firefighters, like police patrol women, perform well.²²⁵

Arguments against the participation of women in combat are not new. They have been used to oppose women's entry into other traditionally male fields. Analysis reveals that these arguments do not justify the exclusion of women from combat any more than they justified the exclusion of women from clerical work, law, medicine, police work, or firefighting.

In the following discussion I refer to these arguments for the combat exclusion as myths. Although many of the arguments have a basis in fact, they serve more to explain why a certain cultural phenomenon—the combat exclusion—exists than they do to provide an intellectually respectable justification for it. For example, the fact that some women can become pregnant has evolved into the myth that all women in combat positions would become pregnant.²²⁶ The fact does not justify the myth. Women's ability to become pregnant is not synonymous with their being pregnant; simply because some women may become pregnant does not mean all women should be ex-

221. *Id.* at 32-33.

222. Stabiner, *supra* note 154, at 101.

223. *Id.* at 105.

224. *Id.* at 101-02.

225. See Capital Times (Madison, Wis.), Aug. 30, 1982, at 1, col. 1; *id.*, Sept. 1, 1982, at 1.

226. See *infra* notes 400-15 and accompanying text.

cluded from combat positions. Similar reasoning flaws the other arguments supporting the combat exclusion.

1. Myth: *The Exclusion is Historically Inevitable*

Many people,²²⁷ including Justices of the United States Supreme Court,²²⁸ believe that women have never participated in combat in any significant way. They use this belief to justify the combat exclusion: if no country has ever allowed women to participate in combat, why should the United States? People hold this belief because women's contributions in military history have largely been ignored. Although Americans may learn of a few outstanding women who have served in the military,²²⁹ they seldom learn the real extent of women's participation in combat. Historical records contain extensive evidence of women's participation in combat. Women's actual history invalidates the long-held belief that women have never been soldiers.

During the American Revolution, women served in the military by masquerading as men.²³⁰ During the Civil War, women saboteurs, scouts, and couriers served in both the Union and Confederate armies.²³¹ "They blew up bridges, cut telegraph wires, burned arsenals and warehouses, and helped prisoners and slaves escape."²³² One historian estimates that hundreds of women disguised themselves as men in order to fight in the Civil War.²³³ American women have also been combatants in non-traditional military roles. Women pioneers, for example, defended their homes against other new settlers and Native Americans.²³⁴

227. See, e.g., Gilder, *supra* note 58, at 46; Stiehm, *supra* note 44, at 57, 294; Rogan, *supra* note 47, at 73.

228. *Rostker v. Goldberg*, 453 U.S. 57, 77 n.12. (1981) ("No major country has women in combat jobs in their standing army.").

229. See *supra* notes 7-13 and accompanying text.

230. Holm, *supra* note 8, at 4.

231. *Id.* at 5-6.

232. *Id.* at 6.

233. *Id.*

234. Women pioneers are often cited as a prime example of American women's participation in combat. Rep. Pat Schroeder testified:

If you look at the early wars of the West, you will find that women have always done their part. . . . Starting in 1802, women were right there in the combat zone. They were doing laundry and that type of thing, but they were there and subject to fire and everything else. Women were put out there and received the same benefits that enlisted people received.

American Enterprise Institute (AEI), *How Should the U.S. Meet Its Military Manpower Needs?*, AEI Public Policy Forum 28 (1980); *Service Academy Hearings*, *supra* note 26, at 25.

Recent historiographical work on American pioneer women suggests that

Ancient history also records women's experiences as combatants. Herodotus reported long ago that women in African Zaveces drove war chariots and that the Scythian women of classical Greece were so "warlike" that they inspired the legend of the Amazons.²³⁵ In the Niger and Chad, traditional Hausa territory, women "founded cities, led migrations and conquered kingdoms."²³⁶ More recently, mid-nineteenth century Dahomeian women formed a large part of the King's army; six thousand women fought during the kingdom's last battle in 1851.²³⁷

Women from several countries served as combatants during World War II. More than 800,000 Soviet women served in positions that were comparable to what the American military currently labels as combat positions.²³⁸ Soviet women reportedly served at the front lines as "tank crew members, machine gunners, snipers, and members of artillery crews," as well as in other industrial-military capacities.²³⁹ They formed three all-female pilot regiments and the majority of Komosol, the Communist youth organization.²⁴⁰ They were snipers and scouts with the partisan forces, served in air defense units, and did demolition work.²⁴¹ Women also fought in the British, Yugoslavian, and German armies during World War II.²⁴² In 1948, women comprised about fifteen percent of the Haganah, the Israeli independence army, and participated in all forms of guerrilla warfare.²⁴³

Women's participation in combat continues today. The Netherlands recently opened combat positions to women in the

accounts of pioneer women's battles may be exaggerated, since the wars that are often considered integral to the image of the American West may not have been as frequent as some would believe. Julie Roy Jeffrey, *Frontier Women: The Trans-Mississippi West 1840-1880* 55, 61 (1979). See also Glenda Riley, *Frontierswomen: The Iowa Experience* 110, 116, 117-18 (1981). Pioneer women did fight and use guns, but not to the extent that the stories suggest. More instances involved fending off drunken white settlers' attacks than defending pioneer settlements against Native American attacks. See Riley, *supra*, at 116, 118. Most threats of Native American attacks were rumors. Joanna Stratton, *Pioneer Women: Voices from the Kansas Frontier* 110-11, 115-16 (1981).

235. Laffin, *supra* note 12, at 15-16.

236. *Id.* at 16.

237. *Id.* at 47-51.

238. Binkin & Bach, *supra* note 12, at 124-25.

239. *Id.*

240. *Id.*

241. *Id.*

242. For a discussion of women's combat experiences, see Laffin, *supra* note 12, 10-14, 62-69 (British), 70-72 (Russian), 72-75 (Yugoslavian), 76 (German), 76-77 (Israeli), 77-79 (Vietnamese).

243. See *supra* notes 116-17 and accompanying text.

Royal Netherlands Navy, Army, and Air Force.²⁴⁴ Women who meet certain qualifications can still enlist as soldiers, sailors, and petty officers in the Soviet Union's military.²⁴⁵

In addition to fighting in traditional military units, women have been combatants in nearly every modern revolutionary guerilla movement.²⁴⁶ Maxine Hong Kingston's woman warrior was not totally correct in her assumption that Chinese society would not tolerate her. Women fought in the nineteenth century Chinese rebellions²⁴⁷ and in the early period of the Red Army.²⁴⁸ Women in Vietnam formed part of the Viet Cong guerrilla army where they also served as commanders.²⁴⁹ Both of Zimbabwe's liberation armies began to train women to be soldiers in 1973. One of these armies, the Zimbabwe African People's Union (ZAPU), had trained more than 2,000 women by 1979.²⁵⁰ Women in Namibia serve in the Southwest African People's Organization (SWAPO) in combat positions as well as in education, health, welfare, and intelligence gathering positions.²⁵¹ In Central America, women form a major part of the Nicaraguan Sandinista army. They serve as armed combatants and in other military roles.²⁵² Women are also combatants in the Guatemalan revolutionary army.²⁵³

Women have been combatants throughout history. This pattern will not change. Rather, society's ignorance of women's participation in war must change. Several historians²⁵⁴ are beginning to recognize that women have served in combat roles throughout history and throughout the world. Once American society begins to recognize women's presence in combat, the combat exclusion will lose much of its mythological power.

244. Update of Status of Women in the Services, Royal Netherlands Navy—Royal Netherlands Army—Royal Netherlands Air Force (1981) [unpublished manuscript available from the *Law & Inequality Journal*, University of Minnesota Law School, Minneapolis, Minnesota 55455].

245. Herbert Goldhamer, *The Soviet Soldier, Soviet Military Management at the Troop Level* 10 (1975).

246. See *supra* notes 145-50 and accompanying text.

247. Binkin & Bach, *supra* note 12, at 97 (quoting Jane Record & Wilson Record, *Sex Roles and the State: A Comparison of the Chinese and American Appearances* (paper presented to the American Sociological Association, San Francisco, Cal., (Aug. 1975)).

248. O'Ballance, *supra* note 149, at 212-13.

249. Rogan, *supra* note 47, at 300-01.

250. United Nations Doc., *supra* note 147, at 7.

251. *Id.* at 11.

252. See *supra* note 145.

253. See *supra* note 146.

254. See Binkin & Bach, *supra* note 12, at 5; Laffin, *supra* note 12, at 10-14.

2. Myth: *The Exclusion Protects Women*

The myth that the combat exclusion protects women is based on the notions (1) that women are not exposed to violence in everyday life, and (2) that the label "non-combatant" protects women from violence. Both notions are false. Women constantly face violence both in civilian society and in the military. Civilian women are raped, beaten, and murdered by strangers, friends, and lovers. American military women are regular victims of violence. American military men rape their female comrades twice as often as male civilians rape women.²⁵⁵ If men were concerned about protecting women from violence, they would not hurt the women they purport to protect. Whatever protection military men offer women is only protection from the "enemy." No one protects women from their protectors.

During actual wartime, neither civilian nor military women are protected from the violence of war.²⁵⁶ The World Wars fought in Europe "visited far greater hardship on the civilian population" which was "largely untrained and unprotected women and children" than on the military forces which were supposedly protecting the women and children.²⁵⁷ Nor does the label "non-combatant" protect military women from battlefield violence. Nurses, the largest contingent of military women, are designated "non-combatants."²⁵⁸ Nevertheless, they experience as much violence, bloodshed, and fighting as "combat" soldiers. In Vietnam, for example, some nurses were trained to use weapons to defend against the combat dangers of their positions.²⁵⁹ Even when the nurses were not involved in combat, bodies returning from the jungle confronted them with war's destruction.²⁶⁰ Like combat soldiers, nurses had to "shut off their own reactions to the carnage surrounding them."²⁶¹ They had to be fast, efficient, and compassionate.²⁶² Women in medical units have been subject to enemy fire. They landed on the Italian beaches in World War II.²⁶³ Many have been killed.²⁶⁴

255. See *supra* note 191.

256. See *supra* notes 44-49 and accompanying text.

257. *Registration Hearings* (NOW Statement), *supra* note 56, at 157.

258. See *supra* notes 46-47 and accompanying text.

259. Rogan, *supra* note 47, at 274.

260. Susan Sweetnam, *Women Veterans—A Different Road Home From Vietnam*, *Christian Sci. Monitor*, July 16, 1981, at B14, col.1.

261. *Id.*

262. *Id.*

263. Laffin, *supra* note 12, at 69.

264. *Id.*

The fact that many women, both civilian and military, have been killed in wars destroys the myth that the combat exclusion protects women from war.

The fear that women will be exposed to the risk of capture correlates with the myth of protection that surrounds the combat exclusion. Those who fear that women will be captured forget that women are exposed to the risk of capture during wartime, whether or not they are labeled "combatants."²⁶⁵ Furthermore, closer analysis reveals that fear of capture is based in large part on racist assumptions about the nature of the "enemy" captor. The underlying assumption is that the "enemy" will treat female captives more harshly than male captives.

Historians trace Americans' fear of "enemy" capture of women to pioneers' alarming accounts of their experiences as prisoners of Native Americans. These captivity narratives frequently focused on women and described Native Americans as a fiendish, cruel, and violent race.²⁶⁶ Narrators appealed to their contemporaries' voracious appetites for sensationalism. One historian describes this appeal:

Readers were given their fill of sensationalism, but much of the dramatic impact of the tales stemmed from the uncertain fate of the women captives. Would they survive their experiences by losing their femininity altogether? Would they lose their purity by either rape or rape disguised as marriage to an Indian? Evidence on the sexuality of Indian men was only thinly concealed.²⁶⁷

Narrators assumed that white men were more "civilized" and less sexually violent than "red" men. The racist assumptions that fostered the narratives and the narratives themselves, characterized as historical facts, have fostered Americans' fear of enemy armies capturing women.

The treatment of American military women, together with the military's connection of modern warfare and male sexual prowess,²⁶⁸ suggests that fears of the male "enemy" reflect the fear that enemy men will use against American women the same "values" that the American military inculcates in American men. Before suggesting that the "enemy" will treat female captives more harshly than male captives, American men should begin to examine how their own treatment of women relates to their fear that the "enemy" will treat women worse.

265. See *infra* notes 269-70 and accompanying text.

266. Jeffrey, *supra* note 234, at 20.

267. *Id.*; See also Laffin, *supra* note 12, at 78-79.

268. See *supra* notes 125-36 and accompanying text.

Actual experience negates the basis of both men's fears about the enemy and men's fears about women's capacity to endure captivity. For example, sixty-seven female nurses serving in the Philippines during World War II were captured at Bataan and Corregidor. They were prisoners of war (POWs) for nearly three years at a Japanese POW camp in the Philippines.²⁶⁹ The nurses reported that the Japanese were astonished to see them among the 79,500 men who surrendered, and were embarrassed by the women's presence. The nurses felt that they withstood the POW experience much better than the men, even though they, like the male POWs, suffered from the aftereffects of the experience.²⁷⁰ More recent simulated prisoner of war situations also document women's ability to withstand capture.²⁷¹

The combat exclusion does not protect women from violence or the risk of capture. It only excludes official recognition that women are exposed to violence and survive. Social policy makers should not allow the myth that the exclusion protects women from violence to obscure women's reality of struggle and survival.

3. Myth: *The Exclusion Protects the American Family*

People often fear that women's participation in combat would destroy the American family.²⁷² This fear is then used to justify the combat exclusion. The two myths I have just discussed are embedded in the "family" justification for the combat exclusion. The justification rests, however, on additional erroneous assumptions. The argument for the "family" justification is as follows: first, the American nuclear family of man, woman, and child forms the basis of American society. Anything perceived as a threat to the family is a threat to American society. Second, women are guardians of this family life. Only women are family caretakers and transmitters of values of goodness to each generation's family members. Third, violence and evil correlate with one another. Men's exposure to vio-

269. Rogan, *supra* note 47, at 266.

270. *Id.*

271. One Air Force Academy exercise is called SERE (Survival, Evasion, Resistance, Escape). One part of SERE is a mock POW compound experience, "a part of the exercise designed to produce substantial psychological stress through deprivation and interrogation." Although the administration worried about how the women would perform, the supervising officer concluded that "[t]hey really did well in SERE, even in the POW compound." Stiehm, *supra* note 44, at 264.

272. See *supra* note 14 and accompanying text.

lence in combat, for example, makes them more evil or less good than unexposed women. Family homes are presumed *not* to be places of violence and all combat positions are presumed *to be* places of violence. In other words, people argue that since women are responsible for American society by transmitting goodness, through family life, they should not be exposed to the violence of combat. If exposed, women would transmit violence and evil rather than goodness to children and the family foundation of American society would crumble.

Some of the assumptions underlying the fear that women in combat would destroy the American family are simply untrue. Most obviously, not all women in combat would have children. Thus, the family justification does not apply to these women. Another empirically false assumption is that women are only exposed to violence through what the military calls "combat." As recognized throughout this paper, women experience violence in civilian and military life.²⁷³

We can trace some of the assumptions underlying this fear to ideas about women that developed during the late eighteenth and nineteenth centuries. These ideas, known as the "cult of true womanhood," were used to justify keeping women at home and out of the workplace.²⁷⁴ The ideal woman was a living enshrinement of piety, purity, domesticity and submissiveness.²⁷⁵ The "true" woman "made her home a safe haven from the sordid world of business and politics that engaged her husband and from which she was excluded."²⁷⁶ She was, in her separate sphere, the "moral redeemer and culture bearer."²⁷⁷ The "cult of true womanhood" cast aside older traditions that supported strong women who contributed to their families' economy.²⁷⁸ The cult replaced these traditions and gave women new moral and "decorative functions" along with "subjugation to domesticity."²⁷⁹ The corollary to the "cult of true womanhood" was the "cult of true manhood." Men were expected to show "aggression, vulgarity, hardness, and rationality"²⁸⁰—all business and military traits. Understanding how the "cult of true womanhood" developed and then eventually

273. See, e.g., *supra* notes 44-49, 255-64 and accompanying text.

274. The term "workplace" refers to a place of work outside the home.

275. Sichertman, *supra* note 212, at 470.

276. *Id.*

277. *Id.*

278. *Id.*

279. Ann Gordon, Mari Jo Buhle & Nancy Schrom, *Women in American Society: An Historical Contribution*, July-Aug. 1971, at 27.

280. *Id.*

lost its popularity leads to a better understanding of the assumptions underlying the fear that women in combat will destroy the American family.

In American history, the "cult of true womanhood" did not exist to any great degree before the industrial revolution of the late eighteenth and nineteenth centuries. Before the industrial revolution, and particularly during colonial times, American women were not considered delicate or non-violent. Women did not have the same legal or political status as men,²⁸¹ but they did have a significant role in both families and workplaces. They served society as midwives and amateur doctors; they guarded their families and homes against attack.²⁸² Women printed and published newspapers, managed tanneries, kept taverns, and engaged in almost every other colonial occupation.²⁸³ In frontier society, women had to be economically productive. Few families could afford to have women who were merely decorative. Frontier men did not respect women who might faint at the sight of blood or who could not handle weapons in self-defense.²⁸⁴ In town and country, women were expected to know how to fire muskets in case of attack by man or animal.²⁸⁵

Throughout the industrial revolution, women's role as workers outside the home gradually decreased while women's political and economic situations worsened. Industrial ethics defined "work" as masculine and all work became unsuitable for a "lady." Even vegetable gardening was considered inappropriate for women. A lady could plant flowers, but not onions.²⁸⁶ Society began to view women more as "mothers" than as "workers." Whereas during the sixteenth century mothers and fathers were co-partners in rearing children, in the seventeenth century mothers began to do more and more of the labor of child rearing. By the nineteenth century the mother was "unequivocally accepted in this role."²⁸⁷ Historians suggest that women's role changed to justify the displacement of women from work outside the home to unvalued work inside the

281. At the time of the American Revolution, women had the right to vote in New Jersey. After the New Jersey legislature in 1807 heard charges that married women were participating in elections, it disenfranchised all women. DePauw, *supra* note 8, at 54.

282. *Id.* at 52.

283. Gordon, Buhle & Schrom, *supra* note 279, at 22.

284. DePauw, *supra* note 8, at 52.

285. *Id.*

286. Gordon, Buhle & Schrom, *supra* note 279, at 28.

287. Sicherman, *supra* note 212, at 469.

home. The role change also justified the denial of women's right to vote in a society that otherwise proclaimed itself liberal and egalitarian.²⁸⁸ Liberal philosophers somehow had to justify men's continued domination of women.²⁸⁹

Remnants of the "cult of true womanhood" still exist today. People who believe that women's proper place is in the home capitalize on the notion that women are society's moral redeemers. They are not alone. Some anti-militarist feminists characterize women as the non-violent gender.²⁹⁰ Some feminists express the view that women will create a revolution of peace since women's hands are "clean from the blood, profit, and power with which men have ruled the world."²⁹¹ They believe women could create a peaceful army.²⁹² In the alternative, some feminists argue that women should be exempt from any duty to serve in the military, since women have a claim to moral superiority.²⁹³ An article written by feminists criticizes these views because they translate oppression into "a virtue of transforming proportion."²⁹⁴ Those who hold this opinion "not only [accept] a view of the past in which women were outside of history, but also [assert] that now, and in the future, that condition . . . will be the basis for their entrance into history."²⁹⁵ The image of women derived from the "cult of true womanhood" is a reflection of women's historical oppression.

Placing the image back in its historical context can help people today relieve their fears and understand that the image no longer applies to American women—if it ever did. Today's average family is not the family that the "cult of true womanhood" reveres. Today, women are involved in many activities besides taking care of their families. Even in the nineteenth century, working class women worked outside their homes as

288. Susan Miller Okin, *Women and the Making of the Sentimental Family*, 11 Phil. & Pub. Aff. 65-88 (1981).

289. *Id.*

290. See *supra* note 3. Numerous statistics support the observation that men are more violent than women. Most crimes, for example, are committed by men under age 20. Half of all persons arrested in 1981 were under the age of 20 and four-fifths of those arrested were men. Ninety percent of all arrestees for violent crimes in 1981 were male, 10% were female; 79% of all arrestees for property crimes were male, 21% were female. Serious juvenile offenders are predominantly male. U.S. Dept. of Justice, Bureau of Justice Statistics, Report to the Nation on Crime and Justice 31, 33 (1983).

291. Gordon, Buhle & Schrom, *supra* note 279, at 8.

292. Ruddick, *supra* note 24, at 477.

293. See *supra* note 3.

294. Gordon, Buhle & Schrom, *supra* note 279, at 8.

295. *Id.*

well as took care of their families.²⁹⁶ Today, the average American working woman is married, has two children and will spend about thirty-four years of her life employed outside her home.²⁹⁷ During 1982, more than half of all women were working or looking for work.²⁹⁸ During 1983, nearly half of all mothers with young children worked outside their homes.²⁹⁹ The percentage of minority women working and raising children is even greater. In 1979, three-fourths of all minority women were either the sole support of their families or had to work to bring their families' annual incomes over \$7,000.³⁰⁰ Only seven of every 100 families even remotely fit the "ideal" image of a wage-earning father, a home-making mother and two children.³⁰¹ Any notion that women work only as family caretakers is false.

When women are not at home with their children, who is teaching children "non-violent" values? Obviously, children today, like children in the past, do not learn values only from their mothers. They learn values from their peers, from their childcare providers, and from their fathers. Even if mothers were all working only in their homes, children would still learn about violence from other sources.³⁰²

If women are the only transmitters of "good" values, then logically men should not be involved with raising children. Such a conclusion demeans men and directly contradicts some American leaders encouraging childrearing roles for men. Former President Gerald Ford, for example, recently urged men to discard traditional notions that childcare is solely a mother's concern. Parenting "has to be fully shared by mother and father."³⁰³

296. *Id.* at 36. See generally Alice Kessler-Harris, *Women Have Always Worked: A Historical Overview* (1981) and Joan Jensen, *With These Hands: Women Working on the Land* (1981).

297. The Status of Clerical Workers, *supra* note 208, at 5.

298. Women at Work, *supra* note 208, at 4.

299. Jennifer Roback, *Torn Between Family and Career? Give Birth to a Business*, Wall St. J., Nov. 14, 1983, at 24, col 3.

300. One out of every five minority women workers was the head of a household. Working Women, National Association of Office Workers, *Minority Women Office Workers Today: Where We Stand 2* (1979) (available at the Women's Studies Reading Room, Helen C. White Library, University of Wisconsin-Madison).

301. The Status of Clerical Workers, *supra* note 208, at 6.

302. L. Rowell Huesmann, Leonard Eron, Rosemary Klein, Patrick Brice & Paulette Fischer, *Mitigating the Behaviors by Changing Children's Attitudes About Media Violence*, 44 J. of Personality & Soc. Psych. 899, 899-900 (1983).

303. Gerald Ford, *Child Care is for Everybody*, Parade Mag., Oct. 23, 1983, at 15. Men are becoming more active in caring for their children. Recent surveys

Assumptions underlying the fear that women in combat would destroy the American family are false. No valid basis exists for assuming women's alleged lack of exposure to combat protects children from exposure to violence. No evidence suggests *women's* exposure to violence leads to the teaching of violent values to children. Evidence does suggest, however, that children can and do learn violence from sources other than their mothers.³⁰⁴

4. Myth: *The Exclusion Protects Military Women from Sexual Abuse*

People fear that the participation of women in combat will result in greatly increased sexual contact between military women and men. They fear sexual responses may detract from military responsiveness. They fear "the roar of hormones during long months at sea"³⁰⁵ will override military goals and that if two people of opposite sexes are in a foxhole, one will end up pregnant.³⁰⁶ Many wives of Navy men have strongly opposed military women's assignment to shipboard positions, fearing their husbands would be unfaithful if women worked aboard ship.³⁰⁷ Similarly, many people have accused the military of being tolerant of "immoral sex."³⁰⁸ These fears are not unique to arguments opposing women in combat. People with similar fears have opposed women's entry into many professions.³⁰⁹

Underlying all of these fears is the assumption that men cannot control their sexuality if women are in combat. The assumption results from beliefs that combat is a sexual battle between two virile men. If combat is about male sexuality perhaps women should not engage in it. If combat is not about male sexuality, but rather about national security, and combat provokes uncontrollable male sexual responses, then men, not women, should be excluded from combat.

show that male attitudes toward women's "proper place" are changing. A "large majority" of young Americans surveyed (ages 19-37 years) preferred an "equal" marriage "in which both spouses share responsibility for work, homemaking and childrearing." Most women and men "disagreed with the notion that 'a woman's place is in the home'" *Capital Times* (Madison, Wis.), Dec. 7, 1983, at 10, col. 1. Single male parents are also becoming more involved in childcare. *N.Y. Times*, Nov. 27, 1983, § E at 16, col. 2 (Midwestern edition).

304. See *supra* notes 255-70, 302 and accompanying text.

305. Gilder, *supra* note 58, at 46.

306. See *infra* note 314.

307. Binkin & Bach, *supra* note 12, at 94.

308. See, e.g., *Registration Hearings* (Schlafly Statement), *supra* note 56, at 103.

309. Horne, *supra* note 154, at 150.

Fears regarding increased sexual activity in the military stem from two contradictory views of women. The first, a product of the nineteenth century "cult of true womanhood," portrays women as pure and chaste and men as corrupt.³¹⁰ This view portrays women as beings without sexuality.³¹¹ The second view, a twentieth century one, defines women as beings who are only and always sexual.³¹² An extension of this view is that women are too sexual, too seductive to be trusted with national security.

Regardless of who is the "corruptor" and who the "corrupted," both views define women and men in terms of how they relate to each other sexually. Indeed, people who fear increased sexual activity inaccurately presume that women and men can only relate to each other sexually. Interviews with police³¹³ about their everyday experience show that women and men can work together without having sexual involvement detract from their job performance.³¹⁴ One police study shows that women's presence actually helps, not harms, male job performance.³¹⁵ A fear without empirical basis diminishes when reality is faced. The myriad of women and men working together effectively belies the "increased sexual activity" justification for excluding women from combat positions.

People also fear that women's participation in combat will mean increased sexual violence against women. Sexual violence against military women, however, does not warrant excluding women from combat positions any more than high rates of sexual violence in civilian society warrant the legal exclusion of women from civilian jobs or the streets. Both civilian and military women are subjected to men's sexual violence everywhere, not just in combat positions. Rather than excluding women from combat positions, the military should take responsibility for the sexual violence in all its ranks. At

310. See *supra* notes 274-301 and accompanying text.

311. Gordon, Buhle & Schrom, *supra* note 279, at 50.

312. *Id.*

313. Horne, *supra* note 154, at 150-51.

314. Capt. Kathy Whitecraft, 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. You can feel good about somebody and have it be friends.

Rogan, *supra* note 47, at 219.

315. See *supra* notes 218-21 and accompanying text.

minimum, the military should educate military men to give women the same "respect" military personnel invoke for women when arguing for the combat exclusion.

If people fear that the participation of women in combat would cause increased sexual violence against women, they must believe that the combat exclusion somehow protects women from male violence. Yet the combat exclusion offers no such protection. On the contrary, excluding women from combat may enhance a perception that women are not able to defend themselves, thereby fostering sexual violence against women.³¹⁶ Ironically, the participation of women in combat might actually decrease the high incidence of violence against women since men may be less prone to attack their comrades-in-arms.

5. Myth: *The Exclusion Protects the Military from Passive Incompetents*

Commentators point to two theories of women's aggression to argue that women should not be in combat. The first theory states that women are aggressive enough to fight, but cannot control their aggression. Anthropologist Margaret Mead, for example, has suggested that women should not fight because they do not control their aggression.³¹⁷ Research contradicts Mead's theory. Biological studies have confirmed the opposite of Mead's theory in most cases. In primates, the group of animals closest to human beings, the male — not the female — is subject to uncontrolled outbursts of violence.³¹⁸ Young males are not considered reliable enough to take part in troop protection because they "often take unnecessary chances and thus jeopardize their lives."³¹⁹ The second theory states that women are not aggressive enough to fight. Women, therefore, should only fight in "defensive" wars. Women's actual participation in combat in guerrilla and terrorist movements is accounted for because these movements are considered "defensive." Furthermore, proponents of this theory claim that it accounts for women's participation in combat in "offensive" wars: women have been permitted to fight in "defensive" posi-

316. See *supra* notes 155-58 and accompanying text.

317. Mead, *supra* note 15, at 107-08.

318. Paul Simonds, *The Social Primates* (1974) at 96-97. Cf. Roger Johnson, *Aggression in Man and Animals* 98 (1972). (In bees, wasps, praying mantises, spiders, hamsters, black eagles and some deep sea fish, the female is the more aggressive.)

319. Simonds, *supra* note 318, at 159-60.

tions in "offensive" wars.³²⁰

The distinction between "offensive" and "defensive" wars makes little sense. First, every modern nation justifies its warfare by stating that it fights to "defend" its ideas or territory. Nations have departments of "defense," not "war departments." Warring nations make no real distinction between "offensive" and "defensive" warfare. Second, whatever distinction there is becomes further confused because historically men, not women, have determined whether women will fight in "offensive" or "defensive" positions.³²¹ Men often have placed women in "offensive" positions, behind the front lines, only when the situation was desperate—and therefore what men call defensive.³²²

Finally, even if women were not aggressive enough, their lack of aggression is due more to social and cultural conditioning than innate characteristics.³²³ Much evidence shows that women learn not to display aggression because our society does not tolerate female aggression.³²⁴ For example, studies of two-year-olds show that boys and girls "hit, scream and cry with approximately equal frequency,"³²⁵ but four-year-old boys hit more than four-year-old girls.³²⁶ This difference is a result of boys being "less strongly punished for physical aggression" than girls.³²⁷ Thus, boys do not learn to inhibit physical aggressive responses as completely as girls do.³²⁸

More important than whether particular arguments about aggression are true is whether the assumption underlying those arguments has any merit. The most disturbing aspect of all discussions of women's aggression or lack of it is the underlying assumption that individual displays of violence (aggression) directly translate into effective soldiering. In fact, the opposite is true. Wars "are not caused by soldiers who desire

320. Mead, *supra* note 15, at 90-91. Quester relies on the example of women's participation in British air defense units during World War II. Quester, *supra* note 39, at 81-82.

321. See *supra* notes 105-36 and accompanying text.

322. Goldman, *supra* note 88, at 11.

323. Walton, *supra* note 144, at 41; see also L. Rowell Huesmann, et. al., *Mitigating the Imitation of Aggressive Behaviors by Changing Children's Attitudes About Media Violence*, 44 J. of Personality and Soc. Psych. 899 (1983).

324. Horne, *supra* note 154, at 112; Straus, *supra* note 144, at 40.

325. Paul Henry Mussen, John Janeway Conger and Jerome Kagen, *Child Development and Personality* 378 (4th ed. 1974).

326. *Id.*

327. *Id.*

328. *Id.*

to kill."³²⁹ Most soldiers fight "only because they are ordered to do so, and if given a choice most would prefer safety well behind the front lines."³³⁰ If we really believe that the most violent individuals made the best soldiers, why don't we recruit our troops from jails and prisons housing the most violent members of our society? Clearly, we look for other qualities in our soldiers.³³¹

6. Myth: *The Exclusion Preserves Combat Effectiveness*

The myth that women's participation in combat would harm combat effectiveness encompasses all the other myths. Combat effectiveness is a general term that describes how well a military unit carries out its goal of fighting and winning wars. "Combat effectiveness" encompasses more than the ability to win a war. It is a military term of art that includes factors that affect men's combat performance. These factors include both measurable factors, such as degrees of physical strength, and unmeasurable factors, such as political and psychological attributes.³³² Military sociologist Sam Sarkesian divides "combat effectiveness" into three major areas—readiness, cohesion, and credibility. His first concept, readiness, is the level of the unit's technical proficiency. The unit members' physical abilities, for example, are factored into this score.³³³ The next concept, cohesion, is the "attitudes and commitment of individual soldiers to the integrity of the unit, the 'will' to fight, and the degree to which these are in accord with societal values and expectations."³³⁴ The final component of combat effectiveness is the military's overall credibility as a fighting force.³³⁵ Education, socio-economic status, good leadership, and soldiers' previous relationships also contribute to overall combat effectiveness.³³⁶

329. Johnson, *supra* note 318, at 2.

330. *Id.*

331. See *infra* notes 332-368 and accompanying text.

332. Sam Sarkesian, *Introduction: Combat Effectiveness*, in *Combat Effectiveness*, *supra* note 109, at 9-11.

333. *Id.*

334. *Id.*

335. *Id.*

336. See generally Hoiberg, *supra* note 109. According to Hoiberg, education relates directly to combat effectiveness. *Id.* at 215. Some commentators have criticized the use of educational achievement to predict combat success. See, e.g., Gilder, *supra* note 58, at 30, 44. Evidence contradicts this criticism.

I do not extensively discuss the education factor. I have attempted to limit this discussion to the factors of combat effectiveness that people argue women lack. Presently, women entering the military are likely to be better educated than men entering the military. I presume the military can afford to screen out many more "undesirable" women than it can men due to its limited number of

To determine whether women's participation in combat would decrease combat effectiveness, I now examine the following components and their relationship to that issue: (1) women's physical strength; (2) women's child bearing capacity; (3) women's effect on group cohesion; (4) male response to female leadership; and (5) women's effect on enemy perceptions.

a. Myth: *All Women Lack Physical Strength*

Most people respond to the suggestion that women serve in combat with three words: "upper body strength." The military measures "physical capacity" in terms of upper body strength.³³⁷ This measurement suggests most women have less physical capacity than most men.³³⁸ People who believe the "physical strength" justification against women's participation in combat argue that since most women have less upper body strength than most men, no woman can fight effectively. Women's inability to fight would weaken the military physically, and as a result, more people would be killed.³³⁹ While the argument's first premise is supported by some evidence, the argument's conclusion is not.

Even the United States Army has concluded that women's lack of upper body strength should not exclude all women from combat. In the Army's most recent report on policies toward women in the Army,³⁴⁰ the Army did not relate its discussion of physical strength to its exclusion of women from combat posi-

openings for women. I also presume that the military considers women's proportionately higher educational levels advantageous. For more information regarding women's educational levels in the military, see Binkin & Bach, *supra* note 12, at 20-21, 75; *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 158.

337. WITA, *supra* note 5, at 2-13. The Army occasionally uses measures of strength other than upper body strength. *Id.* at 2-15. However, it ignores those measures and bases its "physical demand categories" solely on upper body strength. *Id.* at 2-13.

338. *Id.* at 2-14.

339. See *Registration Hearings*, *supra* note 56, at 105, where Kathleen Teague, representing Phyllis Schlafly, testified:

Our young women have a constitutional right to be treated like American ladies, with the respect and chivalry that ladies are accorded in the Judeo-Christian culture, and which women, wives, mothers, and widows are accorded under our fabric of American family law. . . . It is a self-evident truth that the entire experience of recorded history teaches that battles are not won by using female troops. The draft registration of women would send a tremendous signal of weakness to the world. It would tell the world that we are reducing the combat-readiness of our troops to the physical strength of the average female. . . .

340. See generally WITA, *supra* note 5.

tions. In fact, the Army consistently distinguished combat positions from positions requiring physical strength. At least some women, the Army reported, could perform even those jobs requiring the *most* upper body strength.³⁴¹

The Army did not link upper body strength to combat eligibility because upper body strength is unnecessary in most combat jobs. As many have noted, combat has become increasingly technological and concomitantly has required less physical strength.³⁴² Military institutions no longer measure military success by a fighter's ability to wield a club or axe, throw a boomerang or spear, or dislocate an opponent's jaw.³⁴³ Physical strength is "irrelevant to success" in flying fighter planes.³⁴⁴ The Navy, for example, employs female pilots to fly the same type of aircraft from which the Air Force excludes women.³⁴⁵ Operating a B-52 bomber, a minuteman missile, or a modern battleship may be no more difficult than driving a car with power steering.³⁴⁶ Admiral Mack has testified that due to the development of military technology, there are no Naval combat jobs that women could not perform as effectively as men.³⁴⁷ Furthermore, only approximately sixteen percent of Air Force jobs require heavy physical activity.³⁴⁸ The lack of any necessary relationship between physical strength and most combat functions refutes the argument that women's supposed lack of physical strength should exclude all women from all combat jobs.

Not all women, as the Army recognizes,³⁴⁹ are "too weak" to perform even the most strenuous jobs. Assume for the moment that some combat jobs require upper body strength and that these jobs fall into the category of the most strenuous jobs.³⁵⁰ At least five percent of all women would still physically

341. *Id.* at 2-36.

342. See *supra* notes 79-80 and accompanying text.

343. Mazrui, *supra* note 138, at 71.

344. Sara Ruddick, *Women in the Military*, in 1 Center for Phil. & Pub. Pol'y 4 (1981).

345. *Service Academy Hearings* (testimony of Rep. Schroeder), *supra* note 26, at 28-29.

346. Conversation with Renee Rubin, retired United States Air Force Reserves officer, in San Francisco, Cal. (Apr. 21, 1982); Quester, *supra* note 39, at 88.

347. *Service Academy Hearings* (testimony of Admiral Mack), *supra* note 26, at 112.

348. Binkin & Bach, *supra* note 12, at 81-82.

349. See *supra* note 341 and accompanying text.

350. WITA, *supra* note 5, at 2-13.

qualify for these jobs.³⁵¹ After the Air Force's first year of testing "functional categories" for non-combat jobs, the Air Force similarly concluded that one-fourth of all Air Force women were able to meet its toughest physical standard, lifting seventy pounds to a height of six feet. Just as the failure of some men to meet physical standards does not justify excluding all men from some positions, the performance of some women does not justify excluding all women.

"Average" military women also measure up to military standards of physical performance. Virtually all Air Force women, for example, meet the moderate Air Force physical standard.³⁵² Furthermore, women have performed well in every combat-like situation in which they have been tested.³⁵³ At

351. *Id.* at 2-14.

352. Binkin & Bach, *supra* note 12, at 81-82.

353. NOW reported at the Selective Service System Hearings on various tests of women combatants:

A. *Women Content in Units Force Development Test (MAX WAC)*

Purpose: To test the effect of placing women in combat support and combat service support units.

Exercise: 72 hours under normal field conditions.

Results: The performance of men and women with no prior civilian experience and equal military training was equal.

The units' effectiveness was not impaired by presence of up to 35 percent women soldiers. Note: 35 percent was the maximum tested in this particular exercise; there is no evidence it is the actual "maximum."

B. *REFORGER Exercises (Return of Forces to Germany exercise)*

Purpose: To test the performance of enlisted women in extended field situations.

Exercise: A 30-day field exercise involving 1½ weeks of war games in Germany. Ten percent of the combat support and combat service support units were comprised of women.

Results: Women's skills were as good or better than the males. Women had the stamina and endurance to maintain performance standards in the field equal to those of men. Women were highly proficient. Women were highly motivated.

C. *Navy U.S.S. Sanctuary*

Purpose: To test the effectiveness of women at sea.

Exercise: Sixty enlisted women served on board the U.S.S. Sanctuary.

Results: Women performed every shipboard function with the same ease, expertise and dedication as men. Morale was high. Response of male and female soldiers was favorable.

D. *Operation Bold Eagle*

Purpose: A guerrilla warfare and airborne assault exercise.

Exercise: One hundred and fifty women and 4,000 men participated.

Results: Women were exposed to the same hardship in the field as men and they performed very well.

E. *Army Human Engineering Lab Test*

Purpose: To test the ability of women to operate 105 and 155mm artillery howitzers.

Exercise: Thirteen women office workers participated in a three-week physical training program and were then assigned to the

least one woman, like some men, has received a perfect score on the ROTC advanced training test.³⁵⁴ Women also perform well as part of a combat unit. The Army conducted two field tests simulating combat conditions, MAX-WAC and REFWAC,³⁵⁵ both designed to assess the impact of various numbers of women on unit performance. The Army concluded that women in combat units were as effective as all male units.³⁵⁶ Women have also performed adequately in pugil stick fighting and the assault course at the Air Force Academy.³⁵⁷

In determining whether women can perform in combat, the military and Congress should not, as the military does not with men, look at individual women's failures as evidence of the entire gender's inability to meet military standards. Rather, the military should look to the success of well-trained women, just as it looks to the success of well-trained men, to determine whether some women will perform effectively.³⁵⁸ The evidence that many women pass combat function tests and many men fail them shows that size, strength, and other physical characteristics, *not gender*, determine how well a woman or man will perform in combat.³⁵⁹

"heaviest, noisiest job in the army." They loaded and fired the howitzers and met in a tough rate-of-fire test of four rounds a minute for three minutes, then one round a minute for the 155mm and 10 rounds a minute for three minutes for the 105, followed by three rounds a minute on the same weapon.

Results: The women were rated "professional, outstanding, and phenomenal."

Selective Service System Hearings (NOW Statement), *supra* note 44, at 160.

354. Rogan, *supra* note 47, at 65-66.

355. Holm, *supra* note 8, at 257.

356. *Id.* at 257-58.

357. Stiehm, *supra* note 44, at 167-68.

358. The following is an excerpt from the *Service Academy Hearings*, *supra* note 26, at 139:

[Mr. Charles Wilson (Rep. Cal.)] When Admiral Mack was here last week, in connection with the presentation of the Navy, he indicated that he had no fears that there were a sufficient number of qualified women in the country who could do just as well as men at the Academy under the present curriculum; that all men are not qualified to perform at the Naval Academy in the same manner as those who are selected.

Would you agree that this could be true with the Air Force Academy also, General Clark?

[General Clark] I certainly agree with Admiral Mack that the average man would have great difficulty in successfully completing our four-year program.

I think there would be a few women who probably could do it.

359. Stiehm reports that before women's entry into the Air Force Academy, every basic cadet training squad had "a weak or small man" who could not perform some of the tests. The other cadets would help him. Women, however, were summarily excluded from these same tests because they were deemed

Poor military leadership has contributed to the inaccurate perception that women cannot pass physical tests. Leaders in the Army and Air Force Academies who were opposed to women's integration into the service academies have shown how poor leadership can ensure women's failure. These military men have fostered the belief that brute strength determines whether a person is a good soldier, despite evidence against a correlation between physical strength and performance in most combat positions.³⁶⁰ The mirage about the necessity of brute strength has distorted the reality that upper body strength is only one of six Army enlistment criteria.³⁶¹ Military officials have tried to make the mirage concrete by controlling how women's physical prowess is characterized. The military has continually tested women in categories in which men excel. These tests purportedly have proven women's inadequacies. At West Point, for example, military research on combat effectiveness sought to determine whether or not women "[could] overpower [men] in sustained hand-to-hand combat."³⁶² One West Point leader noted that the physical tests exaggerated the importance of "physical prowess" as a leadership characteristic.³⁶³ The Air Force Academy has similarly emphasized women's physical inadequacies. It continues to train soldiers with M-1 rifles which many women have found difficult to use. M-1 rifles, however, are totally unrelated to Air Force duties.³⁶⁴ The Air Force Academy has greatly emphasized such physical attributes even though these attributes officially comprised only one-tenth of the Academy's "whole person" admission formula.³⁶⁵

Military leaders have thwarted rather than aided military women's effectiveness. In addition to overemphasizing brute strength, military leaders have contributed to the perception

too small and weak to perform the tests successfully. Stiehm, *supra* note 44, at 175.

360. Rogan, *supra* note 47, at 69.

361. The Army uses the "PULHES" whole-person formula for their enlistment criteria. The formula stands for:

- P Physical Capacity or Stamina
- U Upper Extremities
- L Lower Extremities
- H Hearing and Ear
- E Eyes
- S Psychiatric

Army Regulation 201, *supra* note 75, at 1-10.

362. *Id.*

363. Rogan, *supra* note 47, at 69 (quoting General Goodpastor, the Superintendent of West Point).

364. *Id.* at 46.

365. Stiehm, *supra* note 44, at 125-26, 150-52.

that women lack physical strength by not allowing women to participate in several physical activities considered essential to combat training.³⁶⁸ In contrast, even those men who had difficulties in these activities were obliged to participate.³⁶⁷

To integrate women into the military effectively, military trainers should initially make problem training exercises less strenuous without decreasing the exercises' effectiveness as combat training.³⁶⁸ Military leaders could also ensure that tasks requiring upper body strength are not unnecessarily difficult. For example, the military could lessen the difficulty of lifting one heavy tool box by providing two smaller ones.³⁶⁹ Women could use weapons that are lighter but just as effective.³⁷⁰ Women could receive remedial physical training similar to that which some men receive.³⁷¹ Finally, the services should re-evaluate the requirements for both combat and non-combat positions, so that people can be placed in the positions for which they are best suited. Standards for combat positions should employ functional, not gender-based criteria.³⁷²

Women's entry into the military has facilitated, rather than necessitated, many major changes in basic training.³⁷³ To integrate women into the military effectively, leaders should

366. For example, women were not permitted to box or wrestle. *Id.* at 156-157.

367. Stiehm remarks:

'Combatives' [a series of required physical education courses] seems to be the special case that incorporates both contact and competition. They also comprise a will to dominate, not just to win. Combatives involve a special psychology, for they almost explicitly serve as 'trials by ordeal.' They are not just a test of 'doing better'; they show who *is* better. In military combat one's purpose is to beat, to defeat, to overpower; and in P.E. male cadets are explicitly taught controlled forms of combat.

Some men cadets do not want to box, and wrestling produces a number of injuries. Yet the academy insists on the importance of each man's being tested in a 'fight'. . . . Again, however, there was no debate at all about putting women in boxing or wrestling: the idea was unacceptable. . . . While some staff believe boxing and wrestling are more important than ever because there has been a decrease in the number of cadets who remember 'fighting' as they grew up, none believed such skills were important to women.

Id.

368. If the Air Force Academy wanted to train women to climb walls, it could make the walls lower. At Annapolis Naval Academy, for example, all short male cadets are able to use a stool to climb the testing wall. *Id.* at 155.

369. *Id.* at 152.

370. Binkin & Bach, *supra* note 12, at 17.

371. Hoiberg, *supra* note 109, at 222.

372. The Air Force Academy has already changed its athletic classifications from gender-based to functional. Stiehm, *supra* note 44, at 129-30.

373. The Air Force Academy's coaches' close examination of basic training due to women's entry enabled coaches to document their suspicions that basic

clarify that distinction. For example, the Air Force Academy recently removed bayonet training from basic cadet training.³⁷⁴ Some military sources reported the change resulted from an incident where a female cadet cut her finger during bayonet training.³⁷⁵ The actual reason, however, as top administrators had noted since the 1950s, was that bayonet training "was an absurdity for the Air Force."³⁷⁶

Factors other than poor leadership by military men have also promoted the mirage that women lack physical strength. Women's relative lack of experience in using their physical strengths critically affects some women's performance in certain physical tests. Navy studies have shown that women's occasional poor shipboard performance resulted from their lack of knowledge about how to use their tools and bodies efficiently; it was not a result of their lack of strength.³⁷⁷ Women at the Air Force Academy had difficulty completing one part of an obstacle course which required "making a running leap, grabbing a rope, and swinging across a water hazard."³⁷⁸ They "fell into the water 'in extremely hazardous ways, never before seen with men cadets.'" ³⁷⁹ The results at first suggested that women had difficulty with this exercise due to their low centers of gravity.³⁸⁰ Coaches later determined, however, that women had difficulty because they "just did not know how to swing and release."³⁸¹ Once taught to swing and release, women's performance improved.³⁸² The military had "never thought of [such tasks] as needing to be taught."³⁸³ Many women simply have not received the physical training that men have. Most women tested in today's military did not have opportunities similar to men in school athletics.³⁸⁴ Thus, women are not as physically conditioned as men when they are tested. Many test results that ostensibly prove that women are "physically inadequate" reflect poor training and conditioning rather than immutable characteristics.

training actually resulted in all cadets' physical deterioration instead of their physical strengthening. *Id.* at 167.

374. *Id.* at 250.

375. *Id.*

376. *Id.*

377. Hoiberg, *supra* note 109, at 230.

378. Stiehm, *supra* note 44, at 199.

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.* at 167 n.n.

383. *Id.*

384. Rogan, *supra* note 47, at 66.

Comparisons between similarly trained and conditioned women and men dramatically change test results. The Air Force Academy recently began training women to do push-ups and pull-ups, exercises the academy previously believed women were unable to do.³⁸⁵ By the end of the training, women were able to do them.³⁸⁶ The physical education staff concluded that women's previously low pull-up scores were "probably more related to 'cultural deprivation' than they were to 'physiological limitation.'" ³⁸⁷ According to some anthropologists, "primitive" societies do not have the disparities between the sexes in power, courage, and endurance that are found in "civilized" societies where such disparities are regarded as organic sexual differences.³⁸⁸ As contemporary society places greater emphasis on women's athletics and gives greater recognition to women's physical abilities, the gap between women's and men's physical performances closes and the process of eliminating the "cultural deprivation" begins. Both civilian and military athletic records demonstrate this phenomenon.³⁸⁹

Poor equipment also causes women to fail physical performance tests. To prove women slow men's progress, outside observers often rely on reports of the straggling female soldier with tears in her eyes who must be carried to the finish of a long day's hike.³⁹⁰ The image overlooks the most probable cause of the woman's tears. Until recently, Army women wore boots "designed for nurses standing on concrete floors and not for the vigorous life of a trainee. . . ." ³⁹¹ Running in these boots caused "shin splints, fallen arches, blisters, stress fractures, and muscle spasms." ³⁹² When the boots caused foot injuries, one observer reported, "the men, who did not understand the boot problem, would jeer or complain, so the women often kept going until they were dangerously vulnerable because they had lost all strength." ³⁹³ When women's uniforms handicap their performance, the test results reflect the uniforms' deficiencies, not women's physical attributes.

385. Stiehm, *supra* note 44, at 168.

386. *Id.*

387. *Id.* at 168-69.

388. Rogan, *supra* note 47, at 72-73 (quoting Robert Briffault, *The Mothers: A Study of the Origins of Sentiments and Institutions* (1927)).

389. See Jane Gross, *Women Athletes Topple Sports Myths*, N.Y. Times, Aug. 12, 1984, § E, at 22, col. 1; Stiehm, *supra* note 44, at 150-51, 160 n.w.; Rogan, *supra* note 47, at 65-66.

390. See Helen Rogan, *Women at Arms*, Life, Sept. 1981, at 66.

391. Rogan, *supra* note 47, at 61.

392. *Id.*

393. *Id.* Women stopped wearing these painful boots in 1979. In May 1982,

Present military standards of "physical strength" overlook many aspects of women's physiques that may be advantageous to the military. Women have two-thirds the leg strength and the same amount of abdominal strength as men.³⁹⁴ The military could incorporate this fact into its job assignment policies and assign women to positions which require leg and abdominal strength rather than upper body strength. In addition, the small size of many women may actually make some combat jobs easier. Small women can fit into planes, ships, tanks and other vehicles that are becoming increasingly crowded with technical equipment.³⁹⁵ Women's lower centers of gravity³⁹⁶ may prove beneficial in some types of combat, such as leg wrestling.³⁹⁷ Other physical characteristics may make women better able than men to survive in difficult situations.³⁹⁸ Women have more acute hearing. Their sexual organs are better protected from injury. They are more buoyant and better able to withstand cold because of their additional fat layers. They burn energy more efficiently because they can burn fat, thereby increasing their staying power. They cool their bodies more efficiently because they have sweat glands all over their bodies instead of having them concentrated in a few places.³⁹⁹

Focusing on women's strengths illustrates women's physical capabilities for performing in combat. These particular strengths coupled with the actual performance of today's military women affirm women's ability to perform effectively in combat positions. The combat exclusion cannot be justified on the distorted perception that all women lack the physical strength necessary to be combat soldiers.

b. *Myth: Soldiering and Childbearing are Mutually Exclusive*

The fear that pregnant women will decrease combat effectiveness filters through nearly every argument against women in combat. When the Air Force Academy integrated women

the Army changed all soldiers' basic training shoes to athletic shoes because Army boots caused too many injuries. *San Francisco Chron.*, May 3, 1982, at 1.

The Army is also attempting to correct other design problems in Army fatigues, helmets, vests, and fieldpack harnesses. Rogan, *supra* note 47, at 230-31.

394. Rogan, *supra* note 47, at 65.

395. *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 159.

396. Stiehm, *supra* note 44, at 150 n.d.

397. Rogan, *supra* note 47, at 68.

398. *Id.*

399. *Id.*

into its structure, its files on "the pregnancy problem"⁴⁰⁰ were reportedly measurable in feet, not inches.⁴⁰¹ Perhaps the gender of the people drafting reports about women's performance in the military causes this overwhelming concern with pregnancy. After all, those drafters are usually men, who have never been pregnant or borne children.

People fear that some soldiers' ability to bear children will decrease combat effectiveness. This fear is often based on beliefs that if some soldiers bear children the military will inefficiently utilize its female officers⁴⁰² or that pregnant military women will leave their units shorthanded.⁴⁰³ Ironically, until quite recently, the military's policies—not pregnancy or women's responses to it—virtually guaranteed that childbearing would disrupt a woman's military career. As recently as 1975, some military services required women to leave the service when they became pregnant.⁴⁰⁴ In 1975, the Defense Department issued a new policy that "separations" due to pregnancy

400. Only childbearing, not parenthood, is sex-based. More than four-fifths of the military's single parents are men. Rogan, *supra* note 47, at 257.

401. Stiehm, *supra* note 44, at 208-09.

402. Rep. Treen (La.) testified in the *Service Academy Hearings*, *supra* note 26, at 116:

[To Admiral Mack] I was wondering whether you'd give [women] maternity leave, or send the husband out to the fleet so that he could be there when [the baby] was born.

I don't intend to be entirely humorous here. I think that I'm trying to point to the problem, that you don't have this problem, of course, during Academy life, or you wouldn't have it with a woman because she's prohibited from marrying, just as a man is. But once she gets out into the service as a career, the woman bears children, and that's a natural phenomenon. . . . But it seems to me that we do, by the very fact that women will be bearing children, have this problem, that it will derogate to that extent from the full utilization of our career officers. That is going to have to be taken care of in some way if it happens.

I personally am opposed to utilizing women in combat. . . .

403. Mrs. Elaine Donnelly testified at the *Registration Hearings* (Schlafly Statement), *supra* note 56, at 100-01:

I am greatly concerned about the unique problems that would be greatly compounded if the percentage of women were doubled, tripled, or quadrupled by means of a draft. News reports in recent weeks have shown that the high rate of pregnancy among servicewomen—about 15 percent per year—has an effect on combat readiness. The women who take advantage of the "early out" option for pregnancy do not have a problem, but the units that are left shorthanded do have a problem, as many generals have said. Then there are mobility problems associated with the high percentage of single parents in the armed services, some of whom have had to take their children with them on alerts because of the shortage of baby sitters.

404. Holm, *supra* note 8, at 300-01.

and parenthood would be voluntary.⁴⁰⁵ The Army resisted the new policy, even in wake of a judicial decision striking down a similar form of the old policy.⁴⁰⁶ The Army attempted to evade this decision by trying to prove that pregnant women and women with children "would lose an inordinate amount of time away from their duties for pregnancy and sick leave."⁴⁰⁷ The facts did not substantiate the Army's claims.⁴⁰⁸ In 1981, some branches of the armed services considered returning to the old pregnancy policies and discharging single parents.⁴⁰⁹ At the present time, military policy places no restrictions on pregnant military women beyond the command that they follow their doctor's orders and notify officials of their decision involving whether or not to request a leave from service.⁴¹⁰

Proponents of the combat exclusion often believe placing women of childbearing age in combat positions would result in extraordinarily high rates of absenteeism among those women. This belief has no factual basis. Women use some military time for childbearing, but the total amount of time "lost" for this purpose is actually less than the amount of time men lose for other reasons, not counting injuries. In 1980, Navy women lost only about half the number of days that Navy men lost.⁴¹¹ Navy men lost many more days than Navy women due to alcohol abuse, drug abuse, and unauthorized absences.⁴¹² Navy men's loss of days due to desertion was almost double Navy

405. *Id.* at 301-02.

406. *Crawford v. Cushman*, 531 F.2d 1114 (2d Cir. 1976) (Marine Corps' policy requiring the discharge of pregnant Marines violates their due process rights).

407. *Holm, supra* note 8, at 302-03.

408. *Id.*

409. *Id.* at 303.

410. *Hoiberg, supra* note 109, at 230.

411. *Registration Hearings* (NOW Statement), *supra* note 44, at 88.

412. The following table compares lost time for enlisted men and women in the Navy:

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

Id. See also *Hoiberg, supra* note 109, at 227-29. These statistics on absenteeism due to pregnancy and childbirth resemble rates of absenteeism in police work. *Horne, supra* note 154, at 135.

women's loss of days due to pregnancy and abortion.⁴¹³ Statistically, women are less likely than men to be absent from their military positions even though women, and not men, bear children.

Factors other than the relatively high rate of male absenteeism have misinformed the combat exclusion proponents who are concerned about childbearing military women. Misguided attitudes towards childbearing itself distort reality and perpetuate myths about military women's effectiveness. Comparing childbearing to other causes of absenteeism reveals the myth makers' mistaken characterization. The major causes of men's absences—desertion, drugs and alcohol—are undesirable societal activities, events we hope are not common in most men's lives. Furthermore, good planning cannot control the frequency, timing and disruptive effect of these activities. Childbearing is unlike deserting, heavy drinking or abusing drugs. It is not a disease. It is a desirable societal activity, an event common to many women's lives. It can be controlled in large part. Both women and men plan for it. Women and men can prevent it by abstaining from intercourse or using birth control. Pregnancy can be terminated by abortion if a woman so chooses.⁴¹⁴ Absences due to childbearing can be planned.

Unlike physical disabilities due to sudden injuries, the military could treat childbearing as a regularly occurring natural phenomenon that affects a given class of soldiers. Just as the military has a rotation policy to ward off battle fatigue,⁴¹⁵ so could it develop a contingency rotation plan for pregnant military women. The military should treat childbearing as a positive event. If the military can devote hours of work and reams of paper to studying the "pregnancy problem," it surely could devote as much time and energy to developing a sensible policy that takes into account the normal life process of pregnancy.

c. *Myth: Women and Men Fail to Work Together in Combat*

Proponents of the combat exclusion argue that women's participation in combat will detrimentally affect men's performance in combat by decreasing "group cohesion." One military

413. *Registration Hearings* (NOW Statement), *supra* note 44, at 88.

414. Abortion may be a difficult solution not only because some women do not consider it an option, but also because Congress no longer permits abortions in military hospitals. Hoiberg, *supra* note 109, at 227.

415. See *supra* notes 63-69 and accompanying text.

sociologist defines group cohesion in terms of interpersonal attraction, functional integration, and normative integration in a group.⁴¹⁶ He breaks these factors down into the level of personal affection and trust between people in the group, the degree to which the group is homogenous in ethnicity, race, occupation, age, and background, and the degree to which the group will grow together under stress.⁴¹⁷

Military experts theorize that group cohesion contributes more to combat effectiveness than soldiers' individual physical characteristics.⁴¹⁸ Researchers attribute the post-1969 decline in the Army's combat effectiveness in Vietnam to new Army policies that decreased group cohesion and increased combat stress.⁴¹⁹ The new policies changed leadership style from a "gladiator" role, in which the leader was actively involved in encouraging soldiers in combat, to a managerial role. In part, this "managerial role" probably stemmed from the military's new policy of assigning officers to only six months of command duty.⁴²⁰ Not only were officers rotated out of command duty just as they acquired expertise and familiarity with their assignments, but officers and enlisted soldiers "did not stay together long enough to create a feeling of belongingness and pride and to establish a relationship of trust so essential for effective leadership."⁴²¹ The Army also instituted a rotation policy that placed rank-and-file soldiers in combat for only twelve months.⁴²² That policy separated "buddies" too quickly for them to form cohesive groups.

The "group cohesion" argument against women in combat rests on two questionable assumptions. It assumes that group cohesion occurs *before* a group enters combat. It also assumes that only all-male groups can be cohesive.

Military sociologists studying group cohesion have concluded that the first assumption is invalid. They have determined that combat produces group cohesion not that group cohesion produces effective combat.⁴²³ For the purposes of

416. Stephen Wesbrook, *The Potential for Military Disintegration*, in *Combat Effectiveness*, *supra* note 109, at 266 (Table 8-1).

417. *Id.* at 266-67.

418. Hoiberg, *supra* note 109, at 233-34; Stiehm, *supra* note 44, at 292. See Bourne, *supra* note 171, at 22 (group cohesion lowers combat stress), 41-45, 75.

419. Hoiberg, *supra* note 109, at 233.

420. Guenter Lewy, *The American Experience in Vietnam*, in *Combat Effectiveness*, *supra* note 109, at 102-03.

421. *Id.* at 103.

422. *Id.* at 102.

423. Hoiberg, *supra* note 109, at 232-34.

combat effectiveness, group cohesion lasts only as long as the experiences that form it.⁴²⁴ According to these studies, women's participation in combat would not disrupt pre-existing group cohesion if women were an integral part of the combat groups when the groups first formed. Experience in the Israeli Army and soldiers' reports from guerrilla and terrorist groups support this theory. Reports on women's combat experiences show that combat draws women and men together to achieve common goals.⁴²⁵ It does not pull them apart by accentuating their differences.⁴²⁶ As the U.S. Army experience with racial integration has shown, actual combat experience, more quickly than any other factor, diminishes prejudices.⁴²⁷

Data also fail to support the assumption that only all-male groups can be cohesive. This assumption is based on the notion that men "bond" with men but that women do not bond with other women or with men. Evidence refutes this notion.

Sociological data reveal that women form strong bonds with each other.⁴²⁸ Women's actual combat experience shows that in all-female units, women formed groups with a special kind of mutual support.⁴²⁹ Military leaders have observed bonding among women, but instead of encouraging it as they would male bonding, they punish it. Judith Stiehm, who studied women's integration at the Air Force Academy, has documented the punishment meted out to women who bond instead of being aggressive and competitive. She reported that during one track meet, the Air Force women were doing well.⁴³⁰ The women, "instead of running to exhaustion for optimum times, . . . engaged in a brief snowball fight, then ran with their slowest sister, and with joyous unity ran across the finish line hand-in-hand—the whole team tying for first place."⁴³¹ While this type of group spirit might be useful in battle, the Air Force did not see it as useful. Air Force personnel thoroughly reprimanded the women and removed them from the team.⁴³² Ironically, the military discourages bonding among women and then

424. Bourne, *supra* note 171, at 41-43.

425. United Nations Doc., *supra* note 147, at 35-36.

426. Binkin & Bach, *supra* note 12, at 91.

427. Bogart, *supra* note 130, at 132-33.

428. Elise Boulding, *Women as Integrators and Stabilizers*, in *Women and the Social Costs of Economic Development*, *supra* note 99, at 120.

429. Goldman, *supra* note 89, at 11.

430. Stiehm, *supra* note 44, at 170.

431. *Id.*

432. *Id.*

excludes women from combat because in its view they cannot bond.

In addition to the evidence that women can bond with one another, other evidence shows that men and women can bond with each other to form effective teams. Some male police officers, for example, who initially resisted working with female partners now request them.⁴³³

Conceding that women can bond with each other and with men, some people still raise two concerns about women in combat and group cohesion. First, some people worry that women will destroy group cohesion because men will compete against women instead of fighting the enemy. Second, some people worry that women's presence will distract men because men will want to protect women from injury, death and capture.

Observers of athletic competitions at the integrated military academies have raised the concern that the participation of women causes men to compete against women in their own group rather than against their opponents. In military athletics, men claim that they feel more pressure to beat women than to beat men⁴³⁴ and that this pressure affects their athletic performance.⁴³⁵ From such comments, some observers postulate that male soldiers may divert their attention to competing against their female comrades-in-arms rather than focusing on fighting the enemy during war.⁴³⁶

These men's feelings are real, but they should not preclude women from participating in combat. These feelings are typical reactions to "tokenism." Tokenism occurs when a dominant group (here, men) is forced to accept token numbers of a subordinated group (women). The men's reactions do not necessarily reveal a gender-based problem. One sociological study on the effects of tokenism describes similar types of behavior occurring among women when men were integrated into primarily women's groups, among whites when Blacks were integrated into white groups, and so forth.⁴³⁷ The study reveals that dominant groups are suspicious of new groups and constantly test them. It suggests that as more women enter the military and participate in combat, men will grow accustomed

433. Women in Policing, *supra* note 154, at 21.

434. Stiehm, *supra* note 44, at 176-77, 293.

435. *Id.* at 57-58.

436. *Id.* at 241-42.

437. Rosabeth Moss Kanter, *Some Effect of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women*, 82 Am. J. Soc. 976 (1977).

to their presence and men's self-conscious behavior will end.⁴³⁸ Reports of women's combat experience in both Nicaragua⁴³⁹ and Zimbabwe⁴⁴⁰ demonstrate how men grew to accept the participation of women in combat,⁴⁴¹ or at least stopped paying uncalled for attention to it. To help men adjust to women's participation in combat the military has had to provide and should continue to provide special training for men similar to the race-consciousness training that the military initiated for white men to facilitate integration of Black men into a military dominated by whites.⁴⁴² Good leadership can also train men to treat women as partners and competent soldiers. As long as leaders continue to emphasize women's presumed weaknesses⁴⁴³ and as long as men relate male sexuality to men's domination of women, military men will continue to compete against military women to the detriment of men's combat effectiveness. This problem is men's problem, not women's. It does not justify women's exclusion from combat.

The second concern about whether women might destroy group cohesion is a slight variation on the first. The second argument posits that women's participation in combat will cause men to be more concerned about protecting women from injury, death, or capture than about fighting the enemy. This argument reflects the assumptions that women are the protected and men, the protectors.⁴⁴⁴ Proponents of this argument focus on some men's concern about women's injuries incurred in basic training.⁴⁴⁵ Emphasizing women's injuries, while not publicizing men's injuries, harms women in the community because women appear less able and more vulnerable than men. Some military men also make life difficult for many military women by demeaning women for what the men perceive as lack of ability to perform,⁴⁴⁶ sexually harassing women, and raping them.⁴⁴⁷ If men were truly concerned about protecting women, their actions would show it. Concern over some women's basic training injuries appears misdirected when placed in the context of constant harassment.

438. *Id.*

439. See *supra* note 145 for sources regarding the Nicaraguan revolution.

440. United Nations Doc., *supra* note 147, at 3-4.

441. *Id.* at 35-36.

442. Stiehm, *supra* note 44, at 224-27.

443. See *supra* notes 359-76 and accompanying text.

444. Cf. *supra* notes 44-56, 155-58, 255-64 and accompanying text.

445. Stiehm, *supra* note 44, at 168.

446. See *supra* notes 390-93 and accompanying text.

447. See *supra* notes 190-95 and accompanying text.

If one accepts the argument that women do detract from men's performance, one should not necessarily conclude that women should not be in combat. As one commentator stated:

Some argue . . . that women inevitably provoke chivalrous behavior and that this cannot be tolerated in combat for reasons of safety and morale. . . . The thrust of all these arguments is that women should not be in combat because, if they are there, men function poorly. If this is the case, the problem would seem to lie not with the women but with the men, or with the group leader who lacks the ability to fuse a heterogeneous group of individuals into an effective, purposeful unit. Again, does the problem really lie with the stimulus or with the response?⁴⁴⁸

If the real problem with women in combat is men's inability to adjust to women's presence, men, not women, should be excluded.

d. *Myth: Women in Combat Invite Enemy Attack*

Opponents of women's participation in combat argue that even if women are capable of fighting, and even if women in combat do not hinder combat effectiveness in other ways, women's presence would still decrease combat effectiveness because of military enemies' reaction to women's participation in combat. These opponents argue that America's enemies would perceive our military as weak because women "are" weak.⁴⁴⁹ They also argue that male enemy soldiers would not surrender to female soldiers.

Past military behavior disproves the argument that an enemy perceives an army as weak because it has women in combat. One side generally ignores women's participation in combat on the other side. Viet Cong women participated in combat,⁴⁵⁰ but their enemy, the American military, certainly did not publicize that fact. The American military neither publicized the fact to show that the Viet Cong were weak nor to inspire male American soldiers to fight harder against the Viet Cong. The American military also does not publicize the pres-

448. Judith Stiehm, *Women and the Combat Exemption*, 10 Parameters, J.U.S. Army War C. 53-54 (June 1980).

449. Kathleen Teague, representing Phyllis Schlafly testified:

It is a self-evident truth that the entire experience of recorded history teaches that battles are not won by using female troops. . . . [Using women would be sending] a tremendous signal of weakness to the world . . . that we are reducing the combat-readiness of our troops to the physical strength of the average female.

Registration Hearings, *supra* note 56, at 105.

450. Rogan, *supra* note 47, at 273; Arlene Eisen, *Women and Revolution in Viet Nam* 94-118 (1984).

ence of Soviet women in combat⁴⁵¹ to show that the U.S.S.R. is weak. Nor does our military publicize the fact that Nicaragua's Sandinistas and the Guatemalan rebels, both of whom the U.S. government considers enemies, have women in combat.⁴⁵² Like the American military, other countries have not capitalized on women soldiers in their enemies' combat units to show that their enemies' armed forces are weak. Perhaps the combat-exclusion opponents' racist assumptions about enemy militaries, rather than facts or history, create their fears about women in combat.⁴⁵³

One commentator argues that publicizing the presence of women combat soldiers sends a message of strength, not weakness, to an enemy. Drawing on the view of women as peace-makers and conveyors of all that is good in society, this commentator argues that women convey a message of seriousness. Nations with women in combat positions are serious about the moral virtue of their cause. Otherwise, these countries would not be willing to sacrifice the morality-holders of their societies.⁴⁵⁴

Supporters of the combat exclusion also argue that women's participation in combat might hinder combat effectiveness because male enemy soldiers will not surrender to female soldiers. In particular, one often hears that the reason Israel no longer allows women in combat is that the Arabs would not surrender to women.⁴⁵⁵ Research indicates this belief is yet another manifestation of racism.⁴⁵⁶

If the participation of American women in combat sends any message to anyone, that message will be the one the American government chooses to send. If the American military publicizes women's weaknesses, the enemy, like the American public, will probably perceive the military as weak. If it publicizes women's strengths, the enemy will probably perceive the military as strong. If the government uses women as symbols of the righteousness of its position, the enemy may also be persuaded that the American armed forces will fight harder. If

451. See *supra* notes 238, 245 and accompanying text.

452. See *supra* notes 145-46.

453. See *supra* note 265-71 and accompanying text.

454. Quester, *supra* note 39, at 90-91.

455. Hazleton, *supra* note 118, at 140.

456. I uncovered only one account that even mentioned men's reactions to surrendering to women. That account described how a male commander in a Nicaraguan town initially refused to surrender to a female Sandinista commander. The woman prevailed in the end. Warren Hoge, *Nicaraguan Women: Equals in Battle, Not in Home*, N.Y. Times, Jan. 11, 1982, § B, at 8, col. 2.

the American military simply employs women as a regular part of a fighting force, women would probably "no longer communicate any special intensity of commitment," and the enemy would have to "read the grammar of combat" from the troops' actual performance.⁴⁵⁷

e. Myth: *Women Are Poor Leaders*

One final myth is advanced in favor of the combat exclusion. According to this myth combat experience would make some women eligible for leadership positions, but these women would make poor leaders because men would refuse to obey their orders. A parallel argument, that white soldiers would never follow Black commanders' orders, was raised to oppose racial integration of the military.⁴⁵⁸ Such thinking simply enforces the status quo. Since the military has given few women leadership roles, military men are not accustomed to obeying military women. Since military men are not accustomed to obeying military women, military men would not obey any woman in a leadership position. An argument based on conjecture should not define military policy. More important, the military should not deny leadership positions to qualified women to accommodate male prejudices.

The military's racial integration and police patrol units' gender integration demonstrate that men would obey female leaders. During racial integration military authorities found that the same white soldiers who stated they would not obey Black commanders actually did obey them.⁴⁵⁹ Similarly, some

457. Stiehm, *supra* note 448, at 54.

458. Bogart, *supra* note 130, at 83, 154-55.

459. *Id.* at 275-76. One ambulance company commanding officer demonstrated the ability of leaders to influence attitudes toward integration:

Then we got eight replacements, all colored. The adjutant got an idea that it wouldn't do to have mixed teams—there are two drivers per ambulance—and that he couldn't place a Negro and a white driver in the same ambulance. So he switched my whole set-up all around, and had the colored drivers all placed on ambulances together. When I got back and saw what had happened, I blew up. What an asinine stunt to pull. Here's eight new men, new to the job, never drove ambulances before, and he wants them to go out by themselves. Hell, they never would have been able to do it. . . . I tore up his schedule and worked it over, so now every one of the new drivers is teamed up with a veteran. . . . Some of the boys are from the South, some from the North. . . . Maybe one of the white boys would pass some remark, but the colored boy would give it right back to him, and that ended it. Before long, there wasn't any sign of uneasiness—it's kind of hard to stage a fight in the front seat of an ambulance—and now they take each other in stride.

people argued that male police officers would never obey women. In fact, police recruits do obey female instructors.⁴⁶⁰ A study of female and male police executives concluded that female police executives, as a group, exhibited more strength of leadership than did male police executives.⁴⁶¹ The study found female police executives more emotionally independent, more verbally and intellectually assertive, and able to exercise greater flexibility than male executives.⁴⁶² Men scored higher than women only in the category of persistence.⁴⁶³ Women and men did not differ in their drive for achievement, initiative, self-confidence, extroversion, and social skills.⁴⁶⁴

Military experience also demonstrates that women can be effective leaders. Women serve as leaders in guerrilla armies⁴⁶⁵ and have served as leaders in the U.S. Air Force Academy.⁴⁶⁶ At the Academy, women and men followed women leaders. Problems occurred only when male leaders refused to allow the women to lead.⁴⁶⁷ In 1974, six women officers were "lent" to an all-male squadron.⁴⁶⁸ Although their ability to lead was unquestioned, "higher-ups" who learned of the loan "abruptly terminated" it. The male leaders then issued a policy statement that "women were not to train men."⁴⁶⁹ The military's leadership problem is not poor female leaders, it is poor male leadership. If sexist leaders are permitted to hinder change, the military will not effectively employ women leaders.

C. Conclusion

Myths underlying the combat exclusion may seem convincing because they sometimes support common observations and beliefs. However, when we analyze the sources of arguments, fears, beliefs, the assumptions on which they are based, and the evidence that supports or refutes them, we can understand the mythology surrounding the combat exclusion. Since

Id. at 110.

460. Women in Policing, *supra* note 154, at 19. Black and Hispanic officers were more willing to accept female instructors than were white officers. *Id.* at 18.

461. *Id.* at 28.

462. *Id.*

463. *Id.*

464. *Id.* at 72-73.

465. United Nations Doc., *supra* note 147, *passim*; see also *supra* notes 145 and 456.

466. Stiehm, *supra* note 44, at 204.

467. *Id.*

468. *Id.*

469. *Id.*

myths should not be the basis of social policy our understanding can redirect misguided fears and transform social harms.

No historical imperative dictates that women should never participate in combat. Women have always fought in wars and their actual experience in combat demonstrates that women can fight effectively.⁴⁷⁰ Women's participation in combat will not increase women's exposure to violence because the combat exclusion does not shield women from violence but rather helps perpetuate women's experience as victims of sexual violence. Nor would the participation of women in combat destroy American family life or harm the military by increasing sexual promiscuity. Women are not inherently unaggressive. Most important, their participation in combat would *promote* combat effectiveness as measured by physical strength, group cohesion, effect on the enemy, and leadership. When we carefully analyze the myths surrounding elimination of the combat exclusion we learn that women in combat will enhance rather than endanger national security.⁴⁷¹

The largest obstacle facing women in the military is not the myths about women's performance in combat. Rather, it is current military leadership. Instead of fostering attitudes that would ease women's integration into the military services,

470. Historian Nancy Loring Goldman has studied the role of women in combat. She concluded:

[N]o one can ever measure the *effectiveness* of a particular fighting element in a wholly scientific way. But perceptions are recorded and can be reported: Commanders everywhere have praised the performance of their own women in combat when it occurred, however much they would have preferred to have fighting men instead of fighting women.

Goldman, *supra* note 89, at 11.

471. Congressional representatives testified:

[Rep. White] The military is not a proving ground for social experiments. . . . We pay huge sums each year to train and equip a military force to protect this Nation's security, principally by deterring conflict. In supporting the military though, we don't want to pay more than is required to provide for an adequate national security posture.

Registration Hearings, *supra* note 56, Markup Session, at 125.

[Rep. Holt] [T]here is just absolutely no need to include women in this registration that we are proposing.

The issue is not whether women are capable of serving as effectively as men. . . . They have demonstrated their skills and their leadership and their patriotism while in uniform. . . . It certainly is not that women are being deprived of equal professional and career opportunities.

The military is a unique institution, and I think that this committee has got to take into consideration that national security must be the final arbiter of our military policies.

Id. at 127.

many in the military, like some officers in the police and fire departments, have opposed women's integration into the service academies.⁴⁷² They have over-emphasized "male" traits that are unrelated to combat, but which make women feel inadequate and uncomfortable. They have overprotected women and prevented women from demonstrating their full capabilities. They have fostered sexist attitudes on the academy campuses. Military leaders announced women's arrival at the Air Force Academy not as new Air Force cadets, but as attractive ladies, with a "foot in the door, . . . a slender leg, hopefully attached to an attractive torso, topped by a comely face."⁴⁷³ Until male military officers begin to accept women in the military and in combat, the myth that military women are not as competent as military men will persist.

III. Women in Combat: Methods for Change

The social meaning attached to the biological differences between women and men have produced laws and policies excluding women from combat positions. The critical issue that policymakers must resolve is not whether women and men are different, but whether the significance attached to biological differences should continue to govern military policy. The following discussion outlines judicial and legislative methods for eliminating the combat exclusion.

A. Judicial Change

1. Characterizing the Injury

A judicial challenge requires a plaintiff or a class of plaintiffs⁴⁷⁴ to have "standing"⁴⁷⁵ to sue.⁴⁷⁶ At least four classes of

472. Stiehm, *supra* note 44, at 18-25.

473. *Id.* at 250-51. Stiehm reports that women were shown movies that glorified soldiers in battle performing tasks for which women were ineligible. They were told, by the Air Forces' only woman general, "look like a girl, act like a lady, think like a man, and work like a dog." *Id.*

474. Pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), a class action suit challenging the combat exclusion would have to show that injunctive or declaratory relief for the class as a whole is appropriate; that there are common questions of law and fact which predominate over questions affecting only individual members; and that a class action would be superior to other available methods for the fair and efficient adjudication of the controversy.

475. The Supreme Court recently articulated six criteria to determine whether a plaintiff has standing to sue. The first three criteria are "constitutional" requirements. First, the party seeking standing must show that she or he has personally "suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." Second, the plaintiff must show a causal relationship between the alleged illegal action and the injury. Third, the

plaintiffs would have standing to challenge the combat exclusion.⁴⁷⁷ Military women's claims most obviously fit the standing requirements since the combat exclusion explicitly harms them. The combat exclusion is an important cause of women's inferior status in the military. As a result of the combat exclusion, military women are ranked lower, paid less, and relegated to the role of supporting military men. Female veterans suffer in the civilian job market because most military positions available to women train them for civilian jobs that are low-paying and low-skilled. In addition, women are less able than men to take advantage of veterans' preference hiring.⁴⁷⁸ A judicial remedy mandating the elimination of the combat exclusion would remove a major structural barrier to military women's advancement.

Civilian women would also have standing to challenge the combat exclusion. Although a civilian woman might have more

plaintiff must show that a favorable decision would likely redress the injury. These three criteria constitute the "injury in fact" test. *Allen v. Wright*, 104 S. Ct. 3315, 3324-25 (1984); *Valley Forge Christian College v. Americans United for Separation of Church and State*, 102 S. Ct. 752, 758-59 (1982).

The final three considerations are rules of judicial self-restraint or "prudential" considerations. The plaintiff must show (1) that she or he is not asserting a "generalized grievance" that many people share; (2) that she or he asserts her or his own interests rather than a third party's interests; and (3) that the interest the plaintiff seeks to protect is within the "zone of interests" that the statutory or constitutional guarantee regulates. *Allen*, 104 S. Ct. at 3324; *Valley Forge*, 102 S. Ct. at 760; *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979); *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *Data Processing Service v. Camp*, 397 U.S. 150, 153-54 (1970).

476. A federal employee, such as a soldier, cannot sue the U.S. government on the grounds of sex discrimination as can many other employees under Title VII of the Civil Rights Act of 1964. See Title VII § 701 (b)(1), 42 U.S.C. § 2000e(b)(1) (1978).

477. A plaintiff challenging the combat exclusion probably could not show standing simply by asserting only that her or his injury is the same as the injury that all similarly situated people suffer. *Gladstone*, 441 U.S. at 100; *Warth*, 422 U.S. at 499. This observation may be true even when important public policy is based on distinctions which bear no substantial functional relationship to the performance of the jobs at issue. An individual plaintiff must show that she or he was "personally denied 'equal treatment' by the challenged discriminatory conduct." *Allen*, 104 S. Ct. at 3327.

Some may argue that no plaintiff challenging the combat exclusion falls within the "zone of interest" that the Constitution protects. This argument assumes only Congress and the military have power to determine military personnel matters. The Supreme Court has implicitly rejected such an argument. See *Rostker v. Goldberg*, 453 U.S. 57 (1981); *Schlesinger v. Ballard*, 419 U.S. 498 (1975); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963). See also *Owens v. Brown*, 455 F. Supp. 291, 299-303 (D.D.C. 1978).

478. An equal protection challenge to the combat exclusion based only on this injury may fail. See *Personnel Adm. of Mass. v. Feeney*, 442 U.S. 256 (1979) (veteran's preference hiring does not violate the equal protection clause).

difficulty than a military woman persuading a court of the causal relationship between the combat exclusion and her injury, the relationship exists. Because the military must reinforce traditional ideas about women to maintain the combat exclusion, the exclusion promotes a destructive image of all women. The exclusion perpetuates the image that women are incapable of protecting themselves. It contributes to the risk of violence against women. It also implies that women are not essential to national security. Women receive the message that they are second-class soldiers and second-class citizens.

Military and civilian men would have standing to challenge the combat exclusion based on two types of injury. First, the exclusion forces men to bear a disproportionate share of onerous civic duties. Military men are burdened with the responsibility for fighting wars and, according to the military, are the persons who most often risk death and capture. Men must register with the Selective Service and will be drafted in the event of war. If they do not, they risk losing financial aid for their college education.⁴⁷⁹ Second, just as the combat exclusion fosters a harmful view of women, so does it foster a harmful view of men. The combat exclusion fosters the image that men are naturally aggressive and violent.

All women and men would have standing to challenge the combat exclusion, since the combat exclusion injures all women and men in specific and identifiable ways. Once the plaintiffs meet the standing requirement, they must convince the court that the exclusion has unconstitutional effects. The most promising grounds for a constitutional challenge to the combat exclusion are that the combat exclusion denies both genders equal protection of law.⁴⁸⁰

479. *Selective Service System v. Minnesota Public Interest Research Group*, 104 S. Ct. 3348, 3357-58 (1984).

480. The Fifth Amendment of the Constitution guarantees both due process and equal protection of the law. U.S. Const. amend. V. See *Schlesinger*, 419 U.S. at 500 n.3 (1975).

Litigants might demonstrate that the combat exclusion denies them due process of law under the Fifth Amendment. The due process clause protects certain "substantive aspects of liberty" against governmental restriction. *Kelley v. Johnson*, 425 U.S. 238, 244 (1976). Among the recognized "fundamental liberties" that the due process clause protects are the right to pursue a profession (*Ludtke v. Kuhn*, 461 F. Supp. 86, 96 n.7 (S.D.N.Y. 1978)); the right to vote and to have one's vote counted (*Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (citing *Ex parte Yarbrough*, 110 U.S. 651 (1889)); *United States v. Mosley*, 238 U.S. 383 (1915)); and the freedom of personal choice in marriage and family life (*Zablocki v. Redhail*, 434 U.S. 374, 393 (1978) (Stewart, J., concurring)).

The Supreme Court and some commentators have recognized that military and combat service are fundamental civic obligations. See *supra* note 151 and

2. Equal Protection Challenges

The Supreme Court has established that classifications based on gender must meet a two-pronged test to withstand constitutional scrutiny. First, the government must show a "legitimate and 'exceedingly persuasive' justification" for the discriminatory legislation. Second, the government must demonstrate a "direct, substantial relationship" between the classification and the important governmental objectives it purports to serve.⁴⁸¹ A court must evaluate gender-based distinctions "free of fixed notions concerning the roles and abilities of males and females."⁴⁸²

When challenged, the government will argue that the combat exclusion serves three governmental objectives. First, the government excludes women to assure combat effectiveness and thereby maintain national security.⁴⁸³ Second, the government excludes women to promote administrative convenience and save money. Third, the government protects both wo-

accompanying text. Women challenging the combat exclusion could argue that fulfilling these civic obligations is a fundamental liberty. Since the combat exclusion denies women the opportunity to fulfill this obligation, the exclusion denies women a fundamental liberty.

If a woman successfully raises this due process claim, the state must show that its interests supporting the abridgement of the woman's fundamental liberty outweighs the woman's interest in exercising that right. *Zablocki*, 434 U.S. at 393 (Stewart, J., concurring). The standard of scrutiny is high. The government's interests must be sufficiently supported and closely tailored to withstand this judicial scrutiny. *Ludtke*, 461 F. Supp. at 98.

481. *Heckler v. Mathews*, 104 S. Ct. 1387, 1398 (1984). As originally set forth in *Craig v. Boren*, 429 U.S. 190, 197 (1976), this standard became the "middle tier" standard of review. "Strict scrutiny," the toughest standard of review, applies when a classification is based on immutable characteristics which bear no relationship to individual merit or need. The two-pronged test changes under strict scrutiny. First, a classification must serve compelling governmental interests. Second, the classification must be a necessary means of achieving the compelling governmental interests. *University of California Regents v. Bakke*, 438 U.S. 265, 305 (1978). These tests apply to both women and men. The exclusion harms men, for example, by promoting the belief that all men are violent and unfit to be parents. See *supra* notes 159-61 and accompanying text.

The "strict scrutiny" approach is more appropriate for any gender-based classification because gender is an obvious, immutable personal characteristic. Gender is a "visible characteristic determined by causes not within the control of the individual. It bears no relation to ability to contribute to or participate in society." *Hewitt v. State Accident Ins. Fund Corp.*, 294 Or. 33, ___, 653 P.2d 970, 977 (1982). See also *In Interest of Baby Girl K.*, 113 Wis. 2d 429, 467, 335 N.W.2d 846, 865 (1983) (Shirley S. Abrahamson, J., dissenting). Even under the intermediate scrutiny test, the combat exclusion is unconstitutionally harmful and without beneficial effects.

482. *Heckler*, 104 S. Ct. at 1398, 1400; *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724-25 (1982).

483. See *supra* notes 332-36 and accompanying text.

men⁴⁸⁴ and the mother-centered family by excluding women from military combat positions.⁴⁸⁵

Courts are likely to characterize the first objective, maintaining national security, as an "important" or "exceedingly persuasive" governmental objective.⁴⁸⁶ The legitimacy of this objective does not save the combat exclusion from a constitutional challenge. The objective must bear a direct and substantial relationship to the means chosen to accomplish it. The combat exclusion, the chosen means, is not directly and substantially related to furthering the goals of national security.

To say that the government maintains national security by excluding women from the military's combat positions is to say that women would destroy combat effectiveness. As I have demonstrated, most women can perform most combat duties because most duties are unrelated to upper-body strength.⁴⁸⁷ Women can be trained to fight.⁴⁸⁸ Some women can participate in even the most physically demanding types of combat.⁴⁸⁹ Women, when given the opportunity, are extremely effective leaders.⁴⁹⁰ Having women in combat could send the "right" message to the enemy.⁴⁹¹ The military can plan for pregnancy like it plans for off-board and front line relief positions.⁴⁹² The military's own tests show that women perform very well in combat-type situations.⁴⁹³ Other evidence of women's participation in combat-like professions also demonstrates that some women are just as able as some men to perform in those occupations.⁴⁹⁴ A gender-based combat exclusion is simply not functionally related to the objective of maintaining national security.

The second objective the government might advance to justify the combat exclusion is administrative convenience. Initially, the government might concede that not all women combatants would hinder combat effectiveness. The government would then argue, however, that a screening process would be too cumbersome to administer since so few women would qual-

484. See *supra* notes 255-65, 305-16 and accompanying text.

485. See *supra* notes 272-304 and accompanying text.

486. See, e.g., *Owens v. Brown*, 455 F. Supp. 291, 305 (D.D.C. 1978).

487. See *supra* notes 342-48 and accompanying text.

488. See *supra* notes 377-89 and accompanying text.

489. See *supra* notes 340-41, 350-51 and accompanying text.

490. See *supra* notes 458-69 and accompanying text.

491. See *supra* notes 450-57 and accompanying text.

492. See *supra* notes 401-15 and accompanying text.

493. See *supra* notes 352-57 and accompanying text.

494. See *supra* notes 214-25 and accompanying text.

ify for combat positions. This argument fails to satisfy even the first part of the constitutional test.

"Administrative convenience" is not recognized as a legitimate, "important," or "exceedingly persuasive" governmental objective. The Supreme Court has declared unconstitutional many gender-based classifications designed to further administrative convenience. In *Reed v. Reed*,⁴⁹⁵ the Court struck down a state statute that preferred men over women to act as estate administrators even though the Court implicitly recognized that most women probably were less qualified than most men to be estate administrators.⁴⁹⁶ In *Caban v. Mohammed*,⁴⁹⁷ the Court determined that, although most unwed fathers do not participate actively in caring for their children, a state could not prevent unwed fathers from caring for their children only because the state found it easier to assume that unwed fathers would be less interested in their children than unwed mothers would be.⁴⁹⁸ The Court has applied this same reasoning to cases involving military regulations. In *Frontiero v. Richardson*, the Court held unconstitutional a military regulation requiring that women, but not men, prove their spouses were dependents in order to qualify for certain benefits.⁴⁹⁹ The Court conceded that "husbands are still far less likely to be dependent on their wives than vice versa,"⁵⁰⁰ but declared that the assumption did not justify the classification.⁵⁰¹ Administrative convenience is not as important as the constitutional right of equal protection under law.

The third objective the government will advance, protection of women and the mother-centered family, also fails the first part of the constitutional test. This stated objective has considerable political support.⁵⁰² Purportedly protective objectives, often termed "benign" discrimination, are not automati-

495. 404 U.S. 71 (1971).

496. Commenting on *Reed v. Reed*, the Supreme Court said, "[W]e can conjecture that in *Reed*, Idaho's apparent premise that women lacked experience in formal business matters (particularly compared to men) would have proved to be accurate in substantially more than two percent of cases." *Craig v. Boren*, 429 U.S. 190, 202 n.13 (1976).

497. 441 U.S. 380 (1979).

498. *Id.*

499. 411 U.S. 677 (1973).

500. *Craig v. Boren*, 429 U.S. 190, 202 n.13 (1976); *Frontiero v. Richardson*, 411 U.S. 677, 688-90 (1973).

501. *Craig*, 429 U.S. at 202 n.13.

502. See *supra* notes 272-304 and accompanying text.

cally shielded from judicial scrutiny.⁵⁰³ The courts will still inquire "into the actual purposes underlying the statutory scheme."⁵⁰⁴ The courts will closely examine the combat exclusion to ensure that its real purpose or effect is not to reinforce the "stereotypes about the 'proper place' of women and their need for special protections."⁵⁰⁵ The government may rely on a regulation's compensatory purpose only "if members of the gender benefited by the classification actually suffered a disadvantage related to the classification."⁵⁰⁶ To pass constitutional review, benign classifications purportedly protecting women must accomplish two goals: they must actually benefit women and they must actually remedy a harm women suffer.

Under the Court's criteria, the combat exclusion is far from benign. First, the exclusion fails to benefit women.⁵⁰⁷ The exclusion fails to benefit women because it does not protect women from combat dangers. Military and civilian women risk the dangers of combat both in war and in peace. What the exclusion protects in theory does not comport with the practice of women's lives. Second, the exclusion fails to remedy a harm women actually suffer because the perceived harm is only a mirage based on mythology. The combat exclusion's purported protection is based on an idealized view of women's place in society. The ideal woman does not participate in war. She stays at home with her children, she conveys only good moral values to her children, and she needs protection from and by men. She is placed on a pedestal in the peace of domestic life, far above the dirty crowd of men dealing in politics, business, and war.⁵⁰⁸ This vision of the ideal woman is as unrealistic today⁵⁰⁹

503. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 728 (1982) (quoting *Weinberger v. Weisenfeld*, 420 U.S. 636, 648 (1975)).

504. *Id.*

505. *Orr v. Orr*, 440 U.S. 268, 283 (1979).

506. *Hogan*, 458 U.S. at 728. In *Hogan*, the Supreme Court described how supposedly benign discrimination actually harmed women. The Court rejected the argument that the university nursing school's female-only admissions policy had a "benign compensatory purpose." *Id.* at 730. It noted that by "assuring that Mississippi allots more to women than it does to men, MUW's admissions policy lends credibility to the old view that women, not men, should become nurses, and makes the assumption that nursing is a field for women a self-fulfilling prophecy." *Id.* Officials of the American Nurses Association in fact suggested that excluding men from nursing depressed women's wages. *Id.* at 729 n.15. Thus, "[t]o the extent that the exclusion of men has that effect, MUW's admissions policy actually penalized the very class the State purports to benefit." *Id.* at 730 n.15.

507. See *supra* notes 44-56, 255-64 and accompanying text.

508. See *supra* notes 274-95 and accompanying text.

509. See *supra* notes 296-301 and accompanying text.

as it was in the past.⁵¹⁰ The combat exclusion, although purportedly benign, harms women by fostering stereotypes about them.

Not only does the exclusion fail to benefit women or to remedy a harm, but the exclusion itself harms women. The combat exclusion is not free of "fixed notions concerning the roles and abilities of males and females."⁵¹¹ Rather, it furthers "archaic and stereotypic notions about women."⁵¹² The Supreme Court has consistently declared unconstitutional state statutes predicated on such stereotypical images of women. For example, in *Orr v. Orr*, the Court held unconstitutional an Alabama statute providing that a court could order a husband, but not a wife, to pay alimony.⁵¹³ The statute was based on the state's preference for the traditional family model in which the wife is dependent on the husband.⁵¹⁴ The Court observed that "no longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas."⁵¹⁵ Women may choose to accept a traditional lifestyle, but cannot be compelled to do so. A statute or regulation is not benign if based on archaic and stereotypic notions about women. Such laws should not pass constitutional review.

No objectives the government might advance to justify the

510. See *supra* note 296 and accompanying text.

511. *Hogan*, 458 U.S. at 724-25.

512. The Supreme Court recently reiterated its disapproval of classifications based on archaic or overbroad generalizations:

In the context of reviewing state actions under the Equal Protection Clause, this Court has frequently noted that discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life. . . . These concerns are strongly implicated with respect to gender discrimination in the allocation of publicly available goods and services. Thus, in upholding Title II of the Civil Rights Act of 1964, . . . we emphasized that its "fundamental object . . . was to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" . . . 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.

Roberts v. United States Jaycees, 52 U.S.L.W. 5076, 5080 (July 3, 1984) (citations omitted). See also *supra* notes 155-58 and accompanying text.

513. 440 U.S. 268 (1979).

514. *Id.* at 279.

515. *Stanton v. Stanton*, 421 U.S. 7, 10 (1975) (*quoted in Orr v. Orr*, 440 U.S. 268, 279-80 (1979)).

combat exclusion meet constitutional standards. The combat exclusion does not further the government's interest in maintaining national security. Neither the "administrative convenience" objective nor the "protective" objective is constitutionally legitimate. Therefore, the combat exclusion denies women equal protection of the law as guaranteed by the constitution.

3. Deference to the Military

Whether the Supreme Court would apply the traditional gender-based discrimination standard of review in a case involving a challenge to the combat exclusion is not clear. In its most recent decision involving gender-based military classifications, *Rostker v. Goldberg*, the Court upheld the male-only selective service registration law.⁵¹⁶ In *Rostker*, the Court paid lip service to, but did not apply, the "important governmental interest/substantial relationship" standard. Instead, it applied a standard of "healthy deference" to congressional military judgments.⁵¹⁷ The Court observed that it usually accords great weight to the decisions of Congress.⁵¹⁸ With respect to military affairs, the Court felt it had to apply even greater deference because Congress has exclusive power to oversee the military.

Although noting that courts should not avoid "ultimate responsibility" to decide constitutional questions simply because the questions involve the military,⁵¹⁹ the Court in fact abdicated its responsibility. The "healthy deference" standard applied by the Court made the government's task in defending the challenged military regulation much easier. The government proved only that Congress did not act "unthinkingly" or "reflexively" when it adopted the gender-based registration

516. 453 U.S. 57 (1981). For discussions of *Rostker*, see Note, *Gender Discrimination in the Military: The Unconstitutional Exclusion of Women from Combat*, 17 Val. U.L. Rev. (1983); Note, *Rostker v. Goldberg—Upholding All-Male Draft Registration Plans*, 18 New Eng. L. Rev. 239 (1982); Note, *Rostker v. Goldberg: Women in the Military? Congress May Exclude Women from Draft Registration*, 9 Ohio N.U.L. Rev. 511 (1982); Linda Chait, *Women, War and Equality Since Rostker v. Goldberg*, 7 Women's Rts. L. Rep. 143 (1982); Note, *Constitutional Law—Gender-Based Discrimination—Separation of Powers—The Total Exclusion of Women From the Military Selective Service Act Does Not Violate Due Process*, 27 Vill. L. Rev. 182 (1981-82); Note, *Rostker v. Goldberg: A Step Backward in Equal Protection, or a Justifiable Affirmation of Congressional Power?* 9 Pepperdine L. Rev. 441 (1982).

517. *Rostker*, 453 U.S. at 66.

518. *Id.* at 66-67.

519. *Id.* at 67.

law.⁵²⁰ The Court found sufficient the fact that Congress had actually considered the gender-based distinction before adopting it.⁵²¹ Congress had determined that another discriminatory law existed—the combat exclusion—so it decided not to require women to register with the Selective Service.⁵²² Rather than examining the underlying basis of the discriminatory law, the Court placed its seal of approval on a second discriminatory law simply because Congress had knowingly created the second discrimination.

Rostker does not necessarily determine the fate of a judicial challenge to the combat exclusion. First, the *Rostker* plaintiffs did not challenge the constitutionality of the combat exclusion. The Court did not consider the exclusion's merits and the government did not argue in favor of the exclusion.⁵²³ The Court quoted from, but did not approve of, legislative reports justifying the combat exclusion.⁵²⁴ Second, the *Rostker* Court did not explicitly abandon the "important government interest/substantial relationship" standard of review; it simply did not apply that standard. The Court did not consider women and men similarly situated with respect to selective service registration because only men were subject to combat duty.⁵²⁵ Since the Court characterized women and men as not similarly situated, the Court did not reach the two-pronged gender test.

A court considering the constitutionality of the combat exclusion should apply the "important governmental interest/substantial relationship" standard of review.⁵²⁶ A critical component of the *Rostker* decision was the majority's decision that equal protection analysis did not apply because women and men were not similarly situated with respect to selective service registration. Women and men however, *are* similarly situated with respect to combat. Some women and some men can participate in combat without forcing the military to change any of its combat standards. Recognizing this similarity, the Court should apply the two-pronged test.

In the past, once the Court found equal protection analysis applicable, the Court did not simply defer to congressional

520. *Id.* at 72.

521. *Id.* at 76-78.

522. *Id.* at 77.

523. *Id.* at 77 n.13.

524. *Id.* at 77-78, 93 (Marshall, J., dissenting).

525. *Id.* at 78-79.

526. The Supreme Court most recently formulated this test as the "exceeding persuasive justification/direct, substantial relationship" test. Heckler v. Mathews, 104 S. Ct. 1387, 1398 (1984).

judgment in military matters. Rather, the Court balanced its policy favoring deference to military and congressional judgments against its duty to protect individual rights.⁵²⁷ In *Frontiero v. Richardson*⁵²⁸ and *Schlesinger v. Ballard*,⁵²⁹ both cases challenging the validity of military gender-based discrimination, the Court did not defer to military or congressional judgment. It applied an equal protection standard of review examining the classifications and their justifications. Similarly, in other cases, the Court did not defer to a military or congressional judgment, but examined the merits of the policies in question and applied well-established constitutional standards of review to resolve the issues presented.⁵³⁰ The Court has balanced the need to defer to the military and the duty to protect individual rights by examining military policies within the context of understanding that the military operates differently than civilian society.⁵³¹

Judicial deference to military and congressional judgment is particularly inappropriate in the case of the combat exclusion. The Court based its deference in *Rostker*, in part, on the Court's incompetence to decide military questions.⁵³² But the Court also determined that not registering women was closely related to Congress' purpose in authorizing registration filling combat positions. Given that women were barred from participating in combat at the time of the *Rostker* decision, the Court's reasoning is at best theoretically logical.⁵³³ The Court simply paid great heed to the fact that Congress had considered the issue and had come to a "rational" conclusion. The same considerations do not apply to the combat exclusion.

First, Congress did not act with considered rationality and expertise in determining that women should not participate in combat. Its original judgment, in 1948,⁵³⁴ that women should not participate in combat was a political judgment.⁵³⁵ The deci-

527. *Rostker*, 453 U.S. at 67.

528. 441 U.S. 677 (1973).

529. 419 U.S. 498 (1975).

530. See, e.g., *Greer v. Spock*, 424 U.S. 828 (1976).

531. *Parker v. Levy*, 417 U.S. 733, 756 (1974) ("... Congress is permitted to legislate both with greater breadth and with greater flexibility" when prescribing rules for the military than for civilians because military society differs from civilian society); *Greer*, 424 U.S. at 838 (first amendment applied differently on military bases than in other public places because the military's business is "to train soldiers not to provide a public forum").

532. *Rostker*, 453 U.S. at 65, 71.

533. *Id.* at 78-79.

534. See *supra* notes 27-28 and accompanying text.

535. *Holm, supra* note 8, at 113-19.

sion was not based on studies of women in combat. Since 1948, Congress has debated the combat exclusion several times. Its most recent debates about the exclusion occurred in 1980 when most of the currently available evidence about women's actual performance in combat was not yet available.⁵³⁶

Second, the Court can evaluate the evidence just as well as Congress to determine if the evidence supports the government's assertions that women in combat will destroy combat effectiveness. Like Congress, a court could read the military's reports of women's performance in combat-like tests. All of those tests have concluded that women can serve in combat.⁵³⁷ Indeed, a court is more competent than the military to review such evidence because most military personnel are biased against women in combat. Evaluating the evidence on women in combat requires no more expertise than making critical decisions affecting the operations of such major social institutions as schools, corporations, and prisons.⁵³⁸ The Court has intervened in the operations of the latter institutions when constitutionally necessary. It should not hesitate to prohibit discrimination in the military.

Third, the Congressional judgment to maintain the combat exclusion is not based on evidence about women's performance in combat. Rather, it is based on the same types of preconceived notions about women's and men's roles in society that the Court has consistently declared unconstitutional.⁵³⁹ For example, most people view the Equal Rights Amendment as directly related to the issue of women in combat. During the recent debate over the Equal Rights Amendment, one Congressman stated that he did not favor the Equal Rights Amendment because he did not want mothers with two or three children fighting.⁵⁴⁰ In other words, women should not fight be-

536. Studies that have been released since 1980 include WITA, *supra* note 5 (Army combat positions); Holm, *supra* note 8 (historical survey); Stiehm, *supra* note 44 (Air Force Academy); Rogan, *supra* note 47 (Army).

537. See *supra* notes 352-57 and accompanying text.

538. For example, the courts do not hesitate to interfere with the government's regulation of prisons. As of February 1983, courts had declared unconstitutional the entire prison systems of Alabama, Florida, Mississippi, Oklahoma, Rhode Island, Tennessee, Texas and all male penal facilities in Michigan. One or more facilities in 21 other states were operating under a court order or consent decree as a result of inmate crowding and/or the conditions of confinement. U.S. Dept. of Justice, Bureau of Justice Statistics, Report to the Nation on Crime and Justice 80 (1983).

539. See *supra* notes 508-15 and accompanying text.

540. House Judiciary Committee Approves ERA, 41 Cong. Q. 2395 (1983) (quoting Rep. Carlos J. Moorhead).

cause their place is in the home caring for small children. Such notions are inadequate justifications for finding statutes constitutional.⁵⁴¹ A court should not defer to these notions as grounds on which to base military policy.

Finally, the Court's principle of deference to the military is inapplicable to the combat exclusion.⁵⁴² The Court developed its deference standard in *Rostker* based on cases in which the Court previously had deferred to the military. The circumstances underlying these cases are radically different from the circumstances excluding women from combat positions. The Court's leading case on deference to the military is *Gilligan v. Morgan*.⁵⁴³ There the plaintiffs requested judicial review and continued judicial surveillance of the Ohio National Guard's activities.⁵⁴⁴ Judicial surveillance would have included an evaluation of the Guard's "training, weaponry and orders."⁵⁴⁵ Plaintiffs challenging the combat exclusion would not seek the type of day-to-day surveillance of military activity that the plaintiffs sought in *Gilligan*. A court would only determine whether creating broad exclusions based solely on gender conformed to constitutional requirements. The military would be free to develop other standards unrelated to gender to determine soldiers' daily placements.

A court should not simply defer to Congressional and military judgments that women should not be in combat. Women and men are similarly situated with respect to combat. A court has as much expertise in determining whether women should be combatants as Congress, and a court reviewing the constitutionality of the combat exclusion would only need to follow its traditional decision-making function in balancing the constitutional rights of individuals against the evidence advanced to justify abrogation of those rights. Finally, the legal concerns

541. See *supra* notes 272-304 and accompanying text.

542. Several commentators have also argued that the deference standard should not apply to selective service registration. See *supra* note 516.

543. 413 U.S. 1 (1973). The Court in *Rostker* also relied on *Orloff v. Willoughby*, 345 U.S. 83 (1953). In *Orloff*, an individual soldier effectively asked the Court to commission him as an officer. The Court viewed this request as too great an intrusion into the executive function. *Id.* at 90. Review of the combat exclusion would not require the Court to commission particular women as officers.

Other cases expressing a deference to the military are also inapplicable. In *Lichter v. United States*, 334 U.S. 742 (1948), the Court was concerned about reviewing military actions taken during total global warfare. *Id.* at 755. There the Court was reviewing excess profits from military contracts.

544. *Gilligan*, 413 U.S. at 6.

545. *Id.* at 5-6.

that underlie the *Rostker* "healthy deference" standard are not relevant to a case involving the combat exclusion. A court could and should determine that the combat exclusion denies both women and men equal protection of the laws.

B. Legislative Change

A legislative challenge to the combat exclusion is less likely to succeed than judicial challenge. Many legislators have already expressed their views that women should not be in combat. They dismiss "equity" or constitutional arguments for equality because they subrogate the importance of equality to what they view as military preparedness.⁵⁴⁶ In addition, legislators face re-election pressures from constituents whom they believe disapprove of women in combat.

To assure serious consideration of a proposal to eliminate the combat exclusion, the proposal must avoid other related issues involving gender-based discrimination. When Congress last considered the combat exclusion for example, congressional debate of the exclusion became entangled with discussions of the ERA, draft registration, and the draft.⁵⁴⁷ As a result, legislators who advocated including women in registration were reluctant also to support the elimination of the combat exclusion for fear that those who adamantly opposed the participation of women in combat would likewise adamantly oppose women's registration. Instead of considering the merits of the combat exclusion, many legislators avoided the combat issue because they did not consider it critical to the substantive debates at hand.⁵⁴⁸

546. For example, Rep. Holt testified: "You are talking about equity. I am talking about the military." *Registration Hearings*, *supra* note 56, at 20.

547. Whether or not registration meant a draft was a major issue in *Rostker*. Both dissenting opinions concluded that registration did not mean a draft, while the majority opinion concluded that registration did mean a draft. 453 U.S. 57, 83 (White, J., dissenting), 86 (Marshall, J. dissenting).

In 1980, many people viewed elimination of the combat exclusion as part of the anti-registration campaign since they connected the people opposing registration with the people promoting women in combat. This view was not entirely justified, but had some foundation in fact. NOW, for example, consistently opposed the draft and also consistently argued that women should be in combat. See *Selective Service System Hearings* (NOW Statement), *supra* note 44, at 19-21.

548. Rep. Schroeder, for example, testified that she did not think women and men should have separate training in the service academies, even though women could not be in combat. Furthermore, in response to the question whether she favored eliminating the combat exclusion in the legislative bill which opened the service academies to women, she answered: "No; I don't think we have to do that at all. I think you can deal with this bill without dealing with

Two major issues have been resolved since these legislative debates. Registration is now established and the Supreme Court has linked the issues of female registration and women's participation in combat.⁵⁴⁹ Resolution of these two issues eliminates them from debate on the question whether women should be combatants.

The time is ripe for renewed debate about the combat exclusion. In this debate, proponents of the exclusion's elimination must directly address the objections of some women and men to women's participation in combat.⁵⁵⁰ Arguments favoring the participation of women in combat will be most effective if proponents of change demonstrate not only that the exclusion harms women, men, and the military, but that women as a group should participate in combat because such participation will be beneficial to everyone—women, men, and the military. Women's participation in combat is a necessary good, not a hypothetical evil.⁵⁵¹

If properly presented and explained to the public, elimination of discriminatory structural barriers in the military may be a political asset instead of a political liability. Legislators should recognize that more and more women are joining the military as an alternative to civilian employment because of asserted equal opportunity employment in the military.⁵⁵² It is time to make that opportunity a reality.

Summary

The military's present exclusion of women from combat positions constitutes a serious denial of constitutional rights to women and men. The participation of women in combat is neither a new idea nor a uniquely American idea. Women throughout the world have been and continue to be able combatants. Chronic opposition to women in combat by most branches of the organized armed forces remains the most pow-

that law. I don't think anyone in the room wants to go out and do combat. . . ." *Service Academy Hearings*, *supra* note 26, at 28.

549. *Rostker v. Goldberg*, 453 U.S. 57 (1981).

550. *See generally* Rhode, *supra* note 180.

551. Competent female soldiers, for example, may eliminate the shortage of qualified male recruits in the all-volunteer forces.

552. Poor civilian economic conditions for women make the military an attractive employer for some women. Even though military officers earn less than male civilians, they earn much more than the average female civilian. Unlike the comparable situation in civilian society, women's and men's wages for the same jobs are equal in the military. Binkin & Bach, *supra* note 12, at 31-38. *See also* Hoiberg, *supra* note 109, at 227.

erful opposition to women soldiers. This opposition is particularly ironic in light of military studies which show that women can participate effectively in combat. The military remains one of the most formidable bastions of male dominance. Present policies unequivocally exclude women from power within the military.

Elimination of the combat exclusion will not end all military or civilian discrimination against women. No single action or law can eradicate women's inequality. Eliminating one barrier to equality necessarily and significantly promotes the economic, political and social equality of women. Eliminating the combat exclusion will also help create a society where women and men are not trapped by stereotypical roles. Finally, eliminating the combat exclusion will improve the American military. As a result of women's entry into defense work, the military has begun to apply a functional analysis to some job classifications.⁵⁵³ This military capability to determine the physical and mental skills required for the successful performance of any job has not yet been applied to all combat tasks. The presence of women in combat will force the military to develop functional classifications for all of its jobs. The military will then be in a position to hire the most able person, woman or man, for each job. The military would have the opportunity to explore new and possibly more effective combat techniques which utilize women's strengths and skills. The message to the American public and the rest of the world will be that *all* able-bodied persons, not just a segment of them, are available to defend the country as combatants.

Only after structural barriers to women in combat are removed will the attitudinal barriers to women's equality in the military and in society begin to end. When these barriers dissolve, all women might become true, not imaginary, women warriors. Their banners will be their own, their armies will accept their talents. They will find places serving and leading women and men as soldiers—as comrades. Until then, women must hide their hair beneath their helmets, their bodies beneath their khakis, and their voices beneath the battle.

553. WTTA, *supra* note 5. This study exemplifies one such attempt.

