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## Effects Of The E.R.A. On The U.S. Armed Forces

*Testimony to the Subcommittee on the Constitution, Committee on the Judiciary  
1 November 1983*

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It is an honor to be asked to testify at these hearings on the likely consequences of the passage of the Equal Rights Amendment. In the remarks that follow I shall focus exclusively on the likely effects E.R.A. would have on the ability of our armed forces to perform their wartime missions. I may sum up my argument in the following set of propositions:

(1) E.R.A. would require the imposition of sex-blind criteria throughout the military; in particular, it would require the abolition of the combat exclusion policy. It would send women *en masse* into combat.

(2) This step would be one without precedent in our history; today, the American people remain strongly opposed to sending women into combat.

(3) No other nation has adopted in peacetime, policies which would send women into combat on the scale which E.R.A. would force upon us. Indeed, very few states have ever sent female soldiers into combat, and none have persisted in the practice.

(4) There are many and strong reasons to think that a policy which would force us to send women into combat would sap the fighting effectiveness of our military forces; in the event of war it would needlessly cost young men and women their lives.

I will treat each of these propositions separately. Limitations of time preclude a discussion of other aspects of how E.R.A. would affect the military — in the matter of pregnancy, for example, or personnel turnover — but I shall gladly address these issues later, if you wish.

### **Proposition #1: E.R.A. Means the End of Combat Exclusion**

There is little dispute that E.R.A. would lead to

mandatory draft registration of women as well as men, and, in the event of a resumption of the draft, application of conscription to both sexes. Such has been the view of virtually all proponents of E.R.A. On the matter of combat exclusion, however, there has been somewhat more dispute.

The combat exclusion policy varies from service to service. In the Navy and Air Force it rests on legislation; in the Army it depends on a regulation which states that women are not authorized to serve in certain types of units (i.e., infantry, cannon artillery, armor, combat engineer, low altitude air defense, and on helicopters). Combat exclusion closes certain military occupational specialties or MOS's (those listed above) to women; it also closes other specialties because of the high likelihood they have of indirectly forcing women to engage in combat. If Congress wished, it could abolish any combat exclusion policy now; it has chosen not to do so.

There are overwhelming grounds to think that E.R.A. would force the armed forces to jettison all gender-based distinctions, including the combat exclusion policy. When E.R.A. first passed the Senate in 1972, Senator Sam Ervin attempted to add to it a stipulation excluding women from combat. That effort was defeated by a vote of 71 to 18; an amendment to exclude women from the draft was defeated by a similar margin. These votes seem to suggest that the *Yale Law Journal* article, "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," is correct in holding that "Women will serve in all kinds of units and they will be eligible for combat duty."<sup>1</sup>

Other statements by authoritative supporters of E.R.A. can be brought in support of this view. More to the point, however, is the argument raised by Professor Jeremy Rabkin of Cornell University: E.R.A. would set discrimination on the basis of sex on the same level as discrimination on the basis of race — it would make the

former as utterly illegitimate as the latter is today. If this is the case, and I believe that it is, then no military policy based on sexual differences could be maintained, particularly combat exclusion.

### **Proposition #2: This Step Would Be Unacceptable to the American People**

As it is, the percentage of women in the armed forces today (about 9 percent) is far higher than it was even during the height of World War II, when hundreds of thousands of women volunteered for various types of military service. This has come about in large part because of a desire on the part of successive Administrations to maintain a two million man force without a draft. Nonetheless, as we all know, mandatory male draft registration was reintroduced under the Carter Administration and has been continued until the present. Various attempts were made in Congress and the courts to require that women as well as men register for the draft; as Gallup polls have continuously demonstrated, however, most Americans, though favoring draft registration (and even, by a narrow margin, a reinstatement of the draft), oppose registration of women. One poll, however, conducted in the summer of 1981 revealed that 59 percent of those surveyed said that they "approved the Supreme Court ruling that women cannot be drafted." Only 36 percent disapproved of this rather distorted rendition of the Supreme Court's holding.

More significantly, crushing majorities have *always* opposed the notion that women should be *eligible* for combat duty, let alone *required* to participate in it. In a March 1980 Gallup poll, only 21 percent of the population surveyed thought that women should be "eligible" for combat roles if any kind of draft were required. The wording of the survey question implied that women would not necessarily be obliged to serve in combat, but rather be allowed to volunteer to do so. In other words, this meager percentage does not even reflect the true import of an abolition of the combat exclusion policy, which would require female draftees to participate in combat. *Never*, to my knowledge, has much more than a third of the American public ever supported the notion of women participating in combat. I would also note parenthetically that larger percentages of women oppose female conscription than do men; in the 1981 poll referred to above, 64 percent of women (as opposed to 53 percent of men) opposed drafting women.

### **Proposition #3: The Proposed Abolition of Combat Exclusion Is Without Precedent**

Only in the direst emergency, when a nation has already suffered terrible human losses, when the home territory has been invaded, and when the threat of national extinction is at hand, do we find large-scale conscription of women for combat. The Russians drafted large numbers of women during World War II, sending some (by no means all, probably not even most) to the front — where they do not seem to have made a powerful impression on their German enemies. After the war the Soviets stopped drafting women, and today the So-

viet Army has scarcely any female soldiers. Although Soviet women have long participated in a host of activities "untraditional" in Western eyes — industrial labor, for example, or medicine — the Soviet military leadership has refrained from incorporating them into the standing forces of the Soviet state.

The case of Israel, a democratic state with, if anything, a more egalitarian heritage than our own, is even more to the point. From the founding of the first Jewish settlements at the beginning of this century through the 1948 Israeli War of Independence, women served in the underground Jewish militia. For a brief time, combat units of the Israel Defense Forces (IDF) contained men and women; by the end of that war, however, when the acute manpower and strategic crisis of the opening stages had been overcome, women returned to vital but nonetheless non-combat roles.

Today, Israel drafts on the order of fifty percent of its women for a two-year tour of duty. These conscripts serve in the equivalent of our old Women's Army Corps, the *Cheyl Nashim*. Although trained in basic weapons handling, they do not serve in combat units, and are carefully excluded from front line positions — indeed, the IDF made some effort at the beginning of the 1973 war to evacuate as many women as possible from exposed bases in the Sinai in order to lessen their exposure to combat. Women do not, as in the American Army, have military occupational specialties which are likely to place them on the front lines, even if they are not "combat" specialties *per se*.

We thus have two countries which have had experience with women in combat, which maintain substantial and powerful military establishments, and which work from ideologies sympathetic to the use of women in combat. Neither sends women into combat today, nor would seem to have serious plans to do so in the future. In view of these facts, it is evident that an American decision to sweep away all gender barriers in the armed forces would constitute an experiment in military organization of unprecedented proportions.

### **Proposition #4: An End to Combat Exclusion Would Damage the Armed Forces**

Military organizations have functions and requirements utterly different from those of civil organizations such as businesses, educational institutions, or government bureaucracies. In the words of the greatest student of war:

"War is a special activity, different and separate from any other pursued by man. . . . No matter how clearly we see the citizen and the soldier in the same man, how strongly we conceive of war as the business of the entire nation . . . the business of war will always remain individual and distinct."<sup>2</sup>

We must not judge military organizations by the standards we apply to their civilian counterparts, for the task of military organizations is incomparably the more difficult to prepare men to suffer and endure — and to inflict yet greater suffering and privation on an enemy. War calls forth from those who participate in it levels of physical and emotional exertion quite unparalleled in the civil-

ian realm, and for its successful conduct requires group cohesion and morale equally extraordinary. It is clear that women can serve and do serve successfully at all levels of employment in the American business corporation, university, or governmental bureaucracy. Such, however, cannot be the case for the armed forces.

As numerous combat historians (such as General S.L.A. Marshall) and sociologists (such as Edward Shils and Morris Janowitz) have observed, military effectiveness rests primarily on the cohesiveness of small groups of soldiers. The relationships among these small groups — be they in a rifle squad, a team of combat engineers, or gun crew — take on enormous importance for those who belong to them. In the final analysis, soldiers keep their courage in the midst of danger not because they make realistic estimates of their predicament, and not even out of a sense of patriotism; rather, they overcome their fear because of their sense of brotherhood with those about them, their fear of “letting down” their buddies on the one hand, and their desire to preserve and protect them on the other.

This phenomenon, known in the jargon of social psychology as “male bonding” and particularly well-depicted in movies such as *The Deerhunter* or *The Big Red One*, crucial to military effectiveness, is threatened by the intervention of disturbing factors such as romantic or sexual attachments or jealousies.<sup>3</sup> In the conditions of campaigning — conditions of prolonged physical misery and psychological stress — nothing is more important for the success, indeed the survival, of an army than the cohesiveness of its small groups. It is the quality that gave the outnumbered and in some respects under-equipped British Commandos, Paratroops, Guards, and Gurkhas their victory over superior numbers of dug-in Argentine soldiers in the Falklands last year; it is the quality that allows the Israelis to hold at bay forces many times their number; it is the quality that all good armies everywhere seek to create and maintain.<sup>4</sup>

What motivates men to fight? In a recent article favoring the use of women in combatant units the author admits the following:

“Let me offer an additional explanation for men’s resistance to allowing women in combat units. I conjecture that there is a psychological differentiation between the ‘real world’ and combat that enables some men to survive the enormous psychological stress of combat. One survives by preserving a mental picture of the normal world back home to which one will return from the horror world of combat. One is engaged in an elaborate game (albeit one with very high stakes) and when the game is over, one can go home to an intact world. One of the major components of the world back home is women, ‘our women,’ who are warm, nurturant, ultra-feminine, and objects of sexual fantasy. Women (at least ‘our women’) are not part of war. Indeed, one of the reasons for fighting is to protect our women and the rest of what is in that image of the world back home. If we allow these women into combat with us, then this psychological differentiation cannot be maintained, and we lose this psychological defense.”<sup>5</sup>

The author lamely concludes, “If these speculations are accurate, I do not know precisely what effect women in combat would have on combat unit cohesion.” These are not, in fact, mere speculations, but a statement of sociological fact, confirmed by empirical studies of soldiers’ morale.<sup>6</sup>

Military organizations make conscious use of masculinity — appeals to it and indeed at times exaggerations of it.<sup>7</sup> We observe this in the marching cadences of a platoon of troops, the psychological and physical challenges of basic training, indeed the everyday language of sergeants talking to young privates. It occasionally strikes us as tasteless or vulgar, but it performs an invaluable service in welding groups of young men into units of proud, aggressive, and competent soldiers.

The question of physical capacities, therefore, though an important one, is in some respects beside the point. There are, no doubt, some women capable of marching twenty miles a day with an eighty-pound rucksack, manhandling an anti-tank missile, or hauling the body of a wounded comrade to safety. The wholesale incorporation of women into units of all kinds, however, will rip the fabric of cohesion at a number of points, and in combat, that can mean the difference between life and death.

I hasten to add that many uniformed women have in the past and will continue in the future to play an honorable and useful, indeed, a vital role in our nation’s defense. This has been the experience of our country and others in direr straits, such as Israel. There are many military positions for which women are as well or perhaps on average better suited than men. But it is, I believe, clear that many military jobs should be confined to men, that women should be integrated into military units only with the greatest of care, and that the E.R.A.’s abolition of gender-based criteria in the armed forces would be an unmitigated disaster.

## Conclusion

Throughout these hearings you have heard or will hear how the Equal Rights Amendment will affect the legal and financial status of various institutions. Many of the consequences will be serious, but there will be those who will consider the cost or inconvenience inflicted worth the goal of complete sexual equality. Similarly, in the military realm, the price of the Equal Rights Amendment will include the expense of cumbersome draft procedures, the personnel turbulence caused by pregnant soldiers, or the inconvenience of measures to preserve privacy in the field. But here the price of the Equal Rights Amendment will encompass an infinitely greater cost, the most precious of all commodities, the lives of young American men and women.

## NOTES

<sup>1</sup>Brown, Emerson, Falk, and Freedman, “The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women,” 80 *Yale Law Journal*, 968, 969, 973, 978.

<sup>2</sup>Carl von Clausewitz, *On War*, Michael Howard and Peter Paret trans., (Princeton: Princeton University Press, 1976), Book III, Chapter 5, p. 187.

(Continued on page 4)

# Impact Of ERA On The Military From The Pro-ERA View

The following interpretation of ERA's impact upon the military was given by Antonia Chayes, former Undersecretary of the Air Force during the Carter Administration. Ms. Chayes was selected by ERA proponents as the person best equipped to represent them on this subject at a November 1, 1983 Senate hearing. This summary was prepared by the Subcommittee Chairman, Senator Orrin Hatch.

- (1) *Principle* — Under the ERA, all gender-based distinctions in military law and policy would have to be eliminated.
- (2) *Draft* — The present system of draft registration, limited to males, would be unconstitutional under the ERA. Restoration of past systems of draft, limited to males, would also be unconstitutional.
- (3) *Deferments* — Deferments from the draft on the basis of gender-based distinctions, such as motherhood, would be unconstitutional.
- (4) *Combat* — The current "combat exclusion" for women in the military would be unconstitutional. No occupational category or position could be denied to females under the ERA.
- (5) *WACS* — Sex restricted units such as the former WACs, the Army Nurse Corps, and so forth, would be unconstitutional under the ERA.
- (6) *Military Service* — No gender distinctions could be made by the military services with regard to such matters as recruitment, ROTC eligibility, enlistment standards, age, parental consent, education, and so forth.
- (7) *Pregnancy* — The ERA would require that pregnancy of females in the service be treated as a "disability."
- (8) *Academies* — The military academies would have to admit males and females on an equal basis.
- (9) *Standards* — Mental and physical standards in the military that resulted in fewer qualifying females than males would have to be "justified" and "relevant" and "demonstrably related" to job performance. ("I would ask whether 40 pushups or 60 pushups are required to do most jobs.")
- (10) *Affirmative Action* — The ERA allows "affirmative action" programs for women in the military. "Preferential treatment" programs, such as relaxed promotional standards for females, would be compatible with the ERA.
- (11) *Discipline* — Disciplinary problems in the military created by placing men and women together would not justify their segregation.
- (12) *Discrimination* — Discrimination in the military, under the ERA, will be defined, at least in part, on the basis of the "effects" or "disparate impact" model of discrimination, rather than on the basis of the purpose or intent of an alleged discriminator.

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## PROFESSOR COHEN'S NOTES (continued)

<sup>3</sup>Romantic or sexual relations can disrupt other organizations as well. See Eliza G.C. Collins, "Managers and Lovers," *Harvard Business Review* 61:5 (September/October 1983): 142-153. The author contends that these relationships are so inherently destructive to an organization that the member of the couple "least essential to the company or both have to go." If romantic relationships require such drastic reactions in the civilian world, how much greater the problem in military organizations, which make far greater demands on one's time and emotional commitment. Consider too the fact that military organizations simply cannot afford to move people around because of the vagaries of love.

<sup>4</sup>On the British in the Falklands, see Max Hastings and Simon Jenkins, *The Battle for the Falklands* (New York: W. W. Norton, 1983); on the Israelis see Y. Harkabi, "Basic Factors of the Arab Collapse During the Six Day War," *Orbis* (Fall of 1967); Samuel Rolbant, *The Israeli Soldier* (New York: Thomas Yoseloff, 1970), pp. 157-165; on cohesion generally see S.L.A. Marshall, *Men Against Fire* (New York: William Morrow, 1947), pp. 138-156, see also the Shils and Janowitz article cited below.

<sup>5</sup>Mady Wechsler Segal, "The Argument for Female Combatants," in Nancy Loring Goldman, ed., *Female Soldiers — Combatants or Noncombatants?* (Westport: Greenwood, 1982), p. 278.

<sup>6</sup>See Edward Shils and Morris Janowitz, "Cohesion and Disintegration in the Wehrmacht," reprinted in Edward Shils, *Center and Periphery: Essays in Macrosociology* (Chicago: Chicago University Press, 1975), pp. 355-6. When the physical survival of German soldiers' families was threatened, soldiers were more likely to desert; conversely, the greater the sense that they were defending those families, the greater the will to fight. Another way of substantiating the same point is to look at the effects on morale of mail from home, particularly mail from mothers, girlfriends, or wives.

<sup>7</sup>*Ibid.*, p. 351-2, 359-360, 365; see also the remarkable discussion in Glenn Gray, *The Warriors: Reflections on Men in Battle* (1959; New York: Harper, 1970), pp. 59-97, a chapter entitled "Love: War's Ally and Foe".

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