CMR Report

Center for Military Readiness Policy Analysis

AUGUST 1994 ★★★★★ Number 6

Women in Land Combat

INCREMENTAL STEPS + "CONSISTENCY" = RADICAL CHANGE

On July 29, 1994, Under Secretary of Defense for Personnel and Readiness Edwin Dorn announced that Defense Secretary William J. Perry had approved of unprecedented plans to assign Army and Marine Corps women in or near land combat units. The Department of Defense (DoD) Risk Rule, which was designed to prevent women in non-combat positions from being assigned close to the front lines, is also being eliminated in order to open up new "career opportunities" for women.

These plans are scheduled to go into effect on October 1, 1994, even though DoD claims that it does not have to comply with statutory reporting requirements that were enacted last year as part of the 1994 Defense Authorization Act.

The Pentagon's news release stressed "career opportunities" for women, as if the armed forces were nothing more than a government-sponsored jobs program, but did not mention that the new assignments would be made on an involuntary basis. This drastic change in "working conditions" is likely to have a negative impact on recruiting and retention.

Nor did the announcement explain how women will be judged qualified for any of the newly opened positions, many of which are physically demanding, especially in time of war or unexpected emergencies. As long as women were exempt from assignments in or near close combat units, the lack of objective tests to match individuals to physically demanding jobs was not a major problem. But now that the rules are changing, the armed forces are totally unprepared to define the word "qualified," except by establishing even more double standards to accommodate women.

Documents released at the July 29 Pentagon news conference indicated that women are supposed to be assigned to Army air cavalry units, even though air cavalry helicopters deploy in close tandem with armored units for purposes of reconnaissance before the front line. If this unprecedented change is accepted, "consistency" will logically lead to the opening of units with similar missions, such as special operations helicopters. (The original June 1 memorandum signed by Army Secretary Togo West indicated that inclusion of women in 100% of combat units was the most "desired" goal.)

Some bridge and combat engineer enlisted positions are also scheduled to be opened to Army women, along with the field headquarters of units such as combat engineer battalions, armored cavalry regiments, air defense artillery battalions, Special Forces Group, and special operations aviation regiments. A set of documents obtained by CMR several days after the Pentagon news conference indicated that Army infantry and armor brigade headquarters are also among the jobs to be opened to women.

CMR also learned that in addition to opening up the command elements of the Marine Air/Ground Task Force (MAGTF) and Marine Expeditionary Units (MEU), the Marines plan to assign women in the formidable categories of Explosive Ordnance Officer and Technician as well as Engineer Officer/Combat Engineer.

The Pentagon has yet to explain how female soldiers assigned to field headquarters units, which deploy in close proximity with the troops, would add more in the way of readiness and command "flexibility" than male soldiers who can serve interchangeably in combat units under the headquarters' command.

As reported in CMR's July 18 *SITREP*, the Army's original radical plan, approved by Secretary West on June 1, had been sent confidentially to CMR and immediately exposed to the national media. In the ensuing storm of controversy, the plan was abandoned. The new plan is not much better, however, because it advances the same agenda in incremental steps. Incremental change in a radical direction is every bit as dangerous, because once principle is compromised and priorities are skewed, moves to enforce "consistency" do the rest.

Because of the far-reaching military, legal, and social effects of these plans to put women in or near close combat units, and in view of statutory requirements that have yet to be complied with, Congress has a clear responsibility to review and

analyze what the Defense Department intends to do. The following is a partial listing of issues that must be explored and evaluated before implementation begins on October 1, 1994:

A. Re-Defining Land Combat

Definitions of Combat, as of January 1, 1993

For the various services, the definition of "direct" or "close" combat" has always been clear, and based on the realities of battle for each of the services. The 1992 Presidential Commission on the Assignment of Women in the Armed Forces found that for many years, the Army has defined "direct combat" as: "*...engaging an enemy with individual or crew-served weapons while being exposed to direct enemy fire, a high probability of direct physical contact with the enemy, and a substantial risk of capture. Direct combat takes place while closing with the enemy by fire, maneuver, or shock effect in order to destroy or capture, or while repelling assault by fire, close combat, or counterattack."* (AR 600-13)

The Marine Corps has defined combat as follows: "*For assignment purposes, direct combat action is defined as seeking out, reconnoitering, or engaging in offensive action."* (MCO 1300.8P) Air Force and Navy combat definitions are similar, with the Navy adding that *"The normal defensive posture of all operating units is not included in this definition."*

Significant Changes in the Definition of Combat

But the Army and Marine Corps directives announced this past July 29 are based on a new definition that for political reasons disregards certain realities of war. Here is the new "rule" and "definition" of combat that was announced by former Defense Secretary Les Aspin on January 13, 1994:

> *A. Rule. Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground, as defined below:*
>
> *B. Definition. Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel. Direct ground combat takes place well forward on the battlefield while locating and closing with the enemy to defeat them by fire, maneuver, or shock effect.*

The new "rule" shown above is slated to replace the Defense Department's "Risk Rule." Since 1988, the DoD Risk Rule has excluded women from positions in which the risk of exposure to direct combat, hostile fire or capture is equal to or greater than that associated with combat units in a given theater of operations.

The new "rule" and definition of combat constitute a significant departure from previous policy.

The New Definition: What's Missing?

The Pentagon's new definition of land combat deletes phrases referring to "seeking out, [and] reconnoitering" the enemy and "a substantial risk of capture." There is no military justification for omitting these key elements from the definition of combat.

By means of this contrived paper definition, and by citing the 1991 repeal of the laws exempting women from combat aviation, civilian Pentagon authorities are attempting to justify the assignment of women to units, such as air cavalry, which routinely provide close reconnaissance of the enemy over the same ground and in close tandem with armored cavalry units. The new, "improved" definition also opens field headquarters units that command the most combat-oriented units in the Army. (See list above.)

The problem is that the operational requirements, physical demands and risk of capture associated with each of these units cannot be eliminated by a stroke of the Defense Secretary's pen. Changes in the definition of combat cannot change the realities of the battlefield.

B. Legislative Intent: The Need for Congressional Oversight

Statutory Requirements re Land Combat and Legal Consequences

The 1994 Defense Authorization Act (P.L. 103-160, November 30, 1993), which included a provision repealing women's exemption from combatant vessels in **Section 541**, also addressed the issues of land combat, Selective Service obligations, and qualification standards for women.

In particular, **Section 542** of that law, under (b), *"Special Rule for Ground Combat Exclusion Policy,"* directs that *"not less than 90 days before any such change is implemented,"* the Secretary of Defense must provide Congress with :

> *(A)* "*a detailed description of, and justification for, the proposed change to the ground combat exclusion policy [as in effect on January 1, 1993]; and*
>
> *(B) a detailed analysis of legal implication of the proposed change with respect to the constitutionality of the application of the Military Selective Service Act to males only."* [Subsections (3) and (4), emphasis added]

In the Report accompanying the legislation, the House Armed Services Committee also indicated that:

> *"The committee plans to exercise close oversight on these or any other planned changes to the assignment policy for women, particularly if these changes could result in women serving in units whose mission requires routine engagement in direct combat on the ground."* (HR 103-200, p. 283)

Is the Defense Department Above the Law?

In a July 28 letter to the Chairmen and Ranking Members of the Senate and House Armed Services Committee, which was not released at the July 29 news conference, Defense Secretary William Perry wrote *"We do not believe a report is required under the provisions of Section 542(b) of the 1994 Defense Authorization Act."*

In his letter, Secretary Perry maintained that because most of the assignment changes being implemented were related to the lifting of the DoD Risk Rule, and many direct land combat positions such as Army Special Forces, Rangers, and Navy Special Forces (SEALS) still remain closed to women, the terms and legislative history of the law *simply do not apply.*

But for several reasons, it is disingenuous and irresponsible for the Defense Department to argue that it is, in essence, above the law.

1) Secretary Perry's unilateral declaration that the law doesn't apply assumes that Congress had both the new definition of direct ground combat and the rescission of the Risk Rule in mind when it enacted the reporting requirements in question.

But the Secretary has opened almost 81,000 previously closed positions to women, and has proposed new rules that are clearly different from ground combat policies in effect on January 1, 1993, the date stipulated in the law. Obviously the previous ground combat exclusion policies, to which the DoD Risk Rule is tied, also closed the 81,000 positions in question prior to January 1, 1993.

Therefore, since the ground combat regulations and associated rules clearly have changed since January 1, 1993, Congress has the constitutional right—indeed, the solemn responsibility—to insist that the Defense Department comply fully with statutory reporting requirements.

2) Assigning women in or near close combat units could end young women's exemption from Selective Service registration and a future draft.

The Supreme Court's decision to uphold the male-only Selective Service system, which was challenged in 1981 by the American Civil Liberties Union *(Rostker vs. Goldberg)*, was conditioned upon the fact that women are not used in combat positions. The Supreme Court noted that since Congress had properly decided that women were not needed for combat obligations after extensive hearings in 1979 and 1980, male-only draft registration was constitutional.

But the reporting requirement included in the 1993 law implies recognition of the fact that as Congress *backs away* from the proposition that women are "not needed" to provide combat power for the armed forces, the legal justification for male-only registration becomes significantly weaker.

In an August 25 letter addressed to Senate and House Armed Services Committee leaders, Campbell Law School Associate Professor and retired Army Col. William A. Woodruff pointed out that *"Defining one's way out of addressing the significant issue, as the Secretary of Defense has done here, could significantly weaken a legal defense of the current male-only draft registration system the next time it is challenged in court."*

3) The third troubling aspect of this situation involves the broader issue of congressional oversight responsibility.

Reporting requirements are a legitimate way for Congress to exercise its constitutional oversight authority, but when a legal requirement is enacted but not enforced, Congress' authority is significantly undermined.

Professor Woodruff points out that if Congress is not serious about compliance with its own reporting requirements, it should not get upset when executive branch officials are inadequately responsive to congressional inquiries:

"Accepting less than what a reasonable reading of the reporting requirement would demand sets the stage for a game of seeing just how little needs to be provided. For the sake of the institution and its constitutional role in a system of checks and balances, it would be better for Congress to omit any reporting requirement, rather than establish one and allow

agencies to ignore it or circumvent it in such an obvious fashion."

C. Legislative Intent: Occupational Performance Standards

In his July 28 letter, Secretary Perry did not even acknowledge, much less comply with, Section 543 of the 1994 Defense Authorization Act. In particular, the law states that changes in occupational standards may only be implemented 60 days after they are reported to Congress, and that the Secretary of Defense:

(1) shall ensure that qualification of members of the Armed Forces for...[a particular] career field is evaluated on the basis of common, relevant performance standards, without differential standards or evaluation on the basis of gender; and

(2) may not use any gender quota, goal, or ceiling except as specifically authorized by law; and

(3) may not change an occupational performance standard for the purpose of increasing or decreasing the number of women in that occupational career field.

Furthermore, the House Report accompanying the legislation clearly states that the Defense Department should follow the recommendation of the Presidential Commission on the Assignment of Women in the Armed Forces that:

"...specific, gender-neutral occupational physical requirements [be established] for any occupational field open to both male and female members of the armed forces, for which muscular strength and endurance and cardiovascular capacity are relevant to the performance of duties in that field." (HR 103-200, p. 282)

The Defense Department is defying this section of the law in several ways. For one thing, the Army declared on July 27 that *"the Army intends to integrate basic training at all basic training installations,"* but includes no details on how qualifications will be determined for newly-opened positions—many of which are known to demand significant muscular strength, endurance and cardiovascular capacity, especially under wartime conditions. This raises a number of concerns, for example:

- The policy represents a return to practices that were tried during the Carter Administration, but were unsuccessful. Co-ed basic training was tried at Fort Jackson and several other Army bases in 1977, but the experiment was ended in 1982 because men were not being challenged enough physically.
- If co-ed basic training is re-introduced at Army training bases, logic and a concerted drive for "consistency" will inevitably extend the same policy to Marine basic training—an experiment that was tried in 1977 and ended in 1978 due to lowered expectations for men, and excessive injuries among women.
- The assignment of women to field headquarters of combat units such as infantry and armor will probably require changes in training or occupational standards, but DoD does not specify what they are.

Finally, contrary to the terms of the law, the policy clearly suggests that implied numerical quotas will be used to promote "opportunities" for women, even if double standards must be used to accommodate women in non-traditional jobs.

Conclusion:

In the next edition of *CMR Report*, the Center for Military Readiness will highlight many of the questions that Congress must ask before the Pentagon's plans to assign women in or near combat units, on an involuntary basis, are allowed to go into effect. These questions must focus on the actual wartime requirements of physical strength, deployability, recruiting and retention, morale and discipline, plus cultural issues that cannot be ignored by a civilized society.

There is no realistic way that the above questions, and many more, can be asked, answered, and properly evaluated by Congress prior to the October 1, 1994 deadline for implementation of the Pentagon's plans. It is precisely for this reason that Congress must enforce existing statutory reporting requirements, and insist that the Defense Department suspend all plans for implementation pending careful congressional review.

Since nothing less than national security and the lives of servicemen and women are at stake, no other issue should be assigned higher priority.

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