

# CMR REPORT

CENTER FOR MILITARY READINESS POLICY ANALYSIS

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## *Why American Servicewomen are Serving at Greater Risk*

### WOMEN IN LAND COMBAT

#### *When Did the Rules Change?*

On March 23, 2003, three enlisted women serving with the 507<sup>th</sup> Transportation Unit of the 3<sup>rd</sup> Infantry Division in Operation Iraqi Freedom were captured or reported missing. Skilled Special Operations Forces and Marines, who found Pfc. Jessica Lynch with the help of an Iraqi citizen who risked his own life to save hers, rescued the severely injured soldier nine days later. Spec. Shoshana Johnson and four other captives were later found in northern Iraq and returned home. Pfc. Lori Piestawa, a young single mother, was found among the dead, in a shallow grave, near the hospital where Jessica was brutalized.

Many Americans are wondering how this could happen. Why were the women serving so close to an infantry division ordered to invade Iraq in the earliest days of the war? Why were the women so vulnerable to capture and likely abuse as prisoners? Wouldn't it have been better to assign an all-male unit in close support of the hard-charging 3<sup>rd</sup> Infantry Division at that particular time and place? And whatever happened to the laws exempting women from land combat?

The answer is that there are no such laws—only a few statutory reporting requirements and Defense Department regulations that were revised in 1994 with little notice, congressional oversight, or public understanding of what the consequences of the changes would be. During the administration of President Bill Clinton, in response to feminist demands, Defense Department officials embarked on a vast social engineering project that was fraught with potentially dangerous consequences.<sup>1</sup>

There was no military need for the three brave enlisted women, two of them single mothers, to be put at *unequal* risk of capture, abuse, or death at the hands of Iraqi Fedayeen thugs. The reason they ended up as prisoners of war had less to do with national defense priorities than it did with political correctness taken to an extreme.

During most of the 1990s, with the exception of a single hearing before the Senate Armed Services Committee on June 18, 1991, Congress neglected its oversight responsibilities on this issue. Instead, members have tried to gain political points by posturing and pretending to support women in the military, while refusing to pay them the more genuine compliment of taking seriously policy issues that directly affect women. This is especially true of enlisted personnel, who outnumber female officers by more than five to one.

In the aftermath of the 1991 Tailhook sex-abuse scandal, feminist activists in the Pentagon, Congress, and the media were allowed to push a careerist agenda, with little regard for the effect on enlisted soldiers such as Spec. Shoshana Johnson, Pfc. Lori Piestawa, and Pfc. Jessica Lynch. The dramatic stories of these women should encourage a long-overdue serious review of policies affecting all women in the military.

## ***Laws Regarding Women in Combat and the DoD Risk Rule***

After the Vietnam War and establishment of the All-Volunteer Force in 1973, numbers of female recruits increased from 2% to 9% during the Gulf War, reaching an average of 15% at the present time. In 1948 Congress enacted two laws exempting women from mandatory service on combatant aircraft (10 USC 8549) and ships on combat missions (10 USC 6015).

Congress found it difficult, however, to write an all-encompassing statute exempting women from land combat, because no one could predict what Army combat might be like in the future. The matter was therefore left to the discretion of the Secretary of the Army, *“so long as he clearly understood the intent of the Congress, which was no [land] combat for women.”* (Emphasis in original) <sup>2</sup>

To help standardize assignments of women for non-combat positions in the armed forces, the Department of Defense established the DoD “Risk Rule” in 1988. The purpose of the regulation was to make it possible for the majority of women to volunteer for military service without being forced to serve in units operating in or near the front lines. The Risk Rule read as follows:

*“[R]isks of direct combat, exposure to hostile fire, or capture are proper criteria for closing non-combat positions or units to women, when the type, degree, and duration of such risk are equal to or greater than the combat units with which they are normally associated within a given theater of operations.”*

Though not a perfect standard, the Risk Rule reflected the prevailing view that female soldiers should not be needlessly exposed to risk of capture while serving in close proximity with close combat units such as the infantry, armor, and field artillery.

It also reflected the majority view of enlisted women who have long opposed involuntary assignments in or near close combat units. A 1998 General Accounting Office report, quoting a Rand study, found that only 10% of female privates and corporals agreed that *“Women should be treated exactly like men and serve in the combat arms just like men.”* <sup>3</sup>

## ***The Presidential Commission and Post-Gulf War Policy Changes***

Shortly after completion of the Persian Gulf War in 1990-91, Congress passed a legislative amendment, sponsored by then-Rep. Patricia Schroeder (D-CO), which repealed the law exempting women from combat aviation. Congress simultaneously established the 15-member Presidential Commission on the Assignment of Women in the Armed Forces, which was directed to conduct a comprehensive study of all aspects of the women in combat issue in all of the services.

Throughout 1992, while the study continued, the administration of George H. W. Bush refrained from making regulatory changes in policy. <sup>4</sup> The commission conducted numerous hearings, scores of field trips, and gathered testimony from combat experts and leaders of all military ranks and in many related fields.

At the end of the process a majority of presidential commissioners voted to reinstate the law exempting women from combat aviation, and to retain then-current regulations regarding special operations, land combat, and most combat ships. The commission also recommended continuation of the DoD Risk Rule, and compiled a wealth of information and testimony on a wide variety of related issues, such as human physiology, military law, unit cohesion and social interaction, training options, and the consequences of long-term family separation.

On the same November day that the commission voted, however, President Bush lost his bid for re-election. Within months, the Clinton Defense Department began to adopt policies that had been strongly opposed by the presidential commission.

In 1993 Congress was preoccupied with then-President Bill Clinton's demand that professed homosexuals be allowed to serve in the military. There were no full-scale House or Senate hearings on the extensive findings and recommendations presented in the report of the presidential commission on women in combat. That fall, however, Congress quietly approved legislation to repeal the law exempting female sailors from involuntary duty on combatant ships.

### ***“Risk of Capture” Factor Dropped, Direct Ground Combat Redefined***

Major policy changes began almost immediately. In January 1994, then-Secretary of Defense Les Aspin issued new regulations that eliminated the DoD Risk Rule, and thereby authorized the exposure of women in support units to the same risk of capture as men in close combat units.

At the same time, Secretary Aspin redefined Direct Ground Combat (DGC) units by eliminating the key phrase *“substantial risk of capture.”*

Aspin's new policy announcements did not mention that the new assignments would be made on an involuntary basis. Instead, they were billed as career enhancers, even though military women have been promoted for decades at rates equal to or faster than men.<sup>5</sup>

Prior to January 1, 1993, the definition of “direct” or “close” combat was always clear and based on the realities of battle for each of the services. The 1992 Presidential Commission found that for many years, the Army 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—Emphasis added)

The Marine Corps 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 were similar, with the Navy adding that *“The normal defensive posture of all operating units is not included in this definition.”*

Secretary Aspin's new definition of close combat replaced the DoD Risk Rule and pointedly omitted the phrase *“substantial risk of capture”* in the definition of close combat. Implementation of the DoD Risk Rule varied in different circumstances, but it is reasonable to expect that if the language quoted above were still in place during Operation Iraqi Freedom, an all-male maintenance support unit, rather than a gender-integrated one, would have been assigned to operate with the 3<sup>rd</sup> Infantry Division in the early days of the war.

The new “rule” and “definition” of combat announced on January 13, 1994 read as follows:

- 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 combat definition permitted some restrictions on the assignment of women, described by Secretary Aspin as follows:

- *Where the Service Secretary attests that the costs of appropriate berthing and privacy arrangements are prohibitive;*
- *Where units and positions are doctrinally required to physically collocate and remain with direct ground combat units that are closed to women;*
- *Where units are engaged in long range reconnaissance operations and Special Operations Forces missions; and*
- *Where job related physical requirements would necessarily exclude the vast majority of women Service members.*<sup>6</sup>

These exceptions were reasonable, but they still drew criticism from the Defense Advisory Committee on Women in the Services, a tax-funded, Pentagon-based feminist advocacy group. The 35-member DACOWITS committee, largely composed of civilian women, pointedly ignored the advice of combat experts, and pushed for even more radical goals, such as the assignment of women to MLRS field artillery, submarines, and special operations helicopters similar to those portrayed in the film *Black Hawk Down*.<sup>7</sup>

### ***Congress Allows DoD to Circumvent the Law***

As CMR wrote at the time, controversial policy announcements from Defense Secretary Aspin and his successor, William J. Perry, violated statutory reporting requirements that were enacted in 1993 in Section 542 of the 1994 Defense Authorization Act. That law, titled "*Special Rule for Ground Combat Exclusion Policy*," directed 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]<sup>8</sup>

In the Report accompanying the legislation, the House Armed Services Committee also expressed a laudable intention that, unfortunately, did not materialize. (HR 103-200, p. 283)

*"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."*

On July 28, 1994, Defense Secretary William Perry wrote an arrogant letter to the Chairmen and Ranking Members of the Senate and House Armed Services Committee, claiming that: "*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 because many direct land combat positions such as Army Special Forces, Rangers, and Navy Special Forces (SEALS) still remained closed to women, the terms and legislative history of the law *simply did not apply*.

Secretary Perry's letter made it clear that the Defense Department had no intention of complying with the statutory mandate and intent that Congress be informed of the effect of any changes on women's exemption from Selective Service obligations. Nor did the administration provide any explanation of how women would be judged qualified for any of the newly opened positions—many of which were known to be physically demanding especially in time of war.<sup>9</sup>

It is most unfortunate that the 103<sup>rd</sup> Congress failed to have hearings on the Presidential Commission report in 1993, and subsequent Congresses did not hold the Clinton Defense Department accountable for its failure to comply with the law.<sup>10</sup>

Feminist activism in the Pentagon, combined with indifference and inattention by most members of Congress, resulted in a change of “working conditions” for military women—most of whom wanted nothing to do with involuntary assignments in or near previously closed combat units.

### ***Incremental Steps + Consistency = Radical Change***

The new rules led to many controversial changes, including the assignment of women to previously all-male positions such as air cavalry helicopters, combat engineers, and some bridge and combat engineer enlisted positions. The Army also opened to women the brigade headquarters of combat units such as the infantry and armor, even though field headquarters units deploy in close proximity with the troops.

Officials did not explain how it would improve readiness and command flexibility if women were assigned to the brigade field headquarters of the infantry and armor, but not to smaller battalion units under the command of the headquarters. As CMR noted at the time, in a smaller, more flexible force in which roles and missions are constantly changing, readiness logically would be improved by assigning soldiers to combat unit headquarters who are more experienced, versatile, and deployable—not less so.

The Marines announced that they would include women in the formidable categories of Explosive Ordnance Officer and Technician, Engineer Officer/Combat Engineer, and the command elements of the Marine Air/Ground Task Force (MAGTF) and Marine Expeditionary Units (MEU).

One of the most controversial changes affected Army air cavalry helicopters. As CMR wrote at the time, air cavalry helicopters deploy in close tandem with armored units for purposes of reconnaissance before the front line. Hundreds of helicopters on such missions were shot down during the Vietnam War, and surviving crewmembers frequently were captured. In Operation Iraqi Freedom, two male pilots on such a mission were captured after their helicopter was brought down.

None of that mattered to careerist female officers and the civilian women of DACOWITS, who saw the opening of air cavalry helicopters as an opportunity to demand more incremental changes. To achieve “consistency,” they argued, women should be allowed to fly extremely hazardous missions on Special Operations Forces helicopters.<sup>11</sup> Implementation of such a policy change could have complicated missions and cost lives in the dangerous missions that had to be accomplished efficiently during the War on Terrorism in Afghanistan and Iraq.

## Conclusion

In 1994 the Defense Department confirmed that under the new rules women would be assigned involuntarily to support positions involving greater risk. Recruiters also acknowledged that there would be no special effort to inform female recruits that the rules had changed. This raises questions about the principle of “informed consent” among women at the time of recruitment.

It is regrettable that in a matter as important as this, Clinton-era Pentagon officials resorted to sophistry and deliberate evasions of congressional oversight laws in order to enact sweeping rule changes affecting military women. Inattentive members of Congress allowed the Pentagon to yield to the demands of a few at the expense of the many. As a result of all these changes, women are serving at greater risk, even in support units.

In the aftermath of Operation Iraqi Freedom, the American people must think about the consequences of these policy changes, and decide whether they are acceptable. At times the nation has no choice but to send men to defend America in combat. We do have a choice about sending young women, including single mothers, to fight our wars. In a nation and culture that respects women, close combat on an equal basis with men is not a step forward for women, it is a step backward for civilization. **CMR**

## Endnotes:

1. The only statutes remaining on the books require the Pentagon to give sufficient notice to Congress of any plans to assign women to submarines or land combat units that are currently all-male.
2. Jeanne Holm, *Women in the Military: An Unfinished Revolution*, Novato, CA: Presidio Press, 1982, pp. 118-119.
3. General Accounting Office, *New Opportunities for Women*, 1998, Table 6.5, p. 91. Also *Washington Times*, “Women in No Rush to Enter Combat,” Sept. 29, 1998.
4. During the presidential commission’s study, military personnel at all levels were free to express candid opinions and present data from the Gulf War that contradicted Rep. Schroeder’s ardent advocacy of women in combat. An Executive Summary that explains why a majority of commissioners voted against the use of women in combat aviation is posted on [www.cmrlink.org](http://www.cmrlink.org), under Issues/Women in Combat.
5. Data presented by the various services to the DACOWITS at its Spring 2000 meeting, Washington D.C.
6. Memorandum from Secretary Les Aspin, “Direct ground Combat Definition and Assignment Rule,” Jan. 13, 1994.
7. Defense Secretary Don Rumsfeld allowed the charter of the 50 year-old DACOWITS to lapse in February, 2002. A smaller committee with the same name but a new and more useful charter was established a few weeks later.
8. 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*) on behalf of young male plaintiffs, was conditioned upon the fact that women are not used in combat positions. The Supreme Court noted that since Congress had decided that women were not needed in combat units, male-only draft registration was constitutional.
9. 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. Nine years after the rules changed, the armed forces have yet to establish objective qualifying standards. Instead, flexible or gender-normed standards, measuring “equal effort” instead of results, are used to ensure “success” for women in training.
10. When Defense Secretary Perry implemented new rules that were clearly different from policies in effect on January 1, 1993, the date stipulated in the law, he opened up to women almost 81,000 previously closed positions. Pre-1994 ground combat exclusion policies, to which the DoD Risk Rule was tied, closed the same 81,000 positions prior to January 1, 1993. Therefore, since the ground combat regulations and associated rules clearly changed since that date, Congress had the constitutional right and responsibility to insist that the Defense Department comply fully with statutory reporting requirements.
11. In a June 1, 1994, memorandum that was obtained by CMR and quickly retracted, then-Army Secretary Togo West indicated that inclusion of women in 100% of combat units was the “most desired” goal.

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