

Women in Special Operations: A Battle for Effectiveness Amidst the Pursuit of Equality

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[The] Court has repeatedly recognized that neither federal nor state government acts compatibly with the equal protection principle when a law or official policy denies to women, simply because they are women, full citizenship stature—equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.

— Justice Ruth Bader Ginsberg¹

“Inherent differences” between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity . . . such classifications may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women.

— Justice Ruth Bader Ginsberg²

“SHE DOES NOT BELONG HERE.” Five simple words. The five words that served as my introduction to the gendered occupation of military life. Despite the fact that I entered the United States Air Force Academy in the 25th class to accept women, it soon became abundantly clear that many of the traditional beliefs about a woman’s place in such an occupation persisted. The words were spoken, not by a seasoned officer set in his ways and the product of a different time, but by a fellow basic cadet. Further, they were not in response to an evaluation of my abilities as compared to my peers.

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1. United States v. Virginia, 518 U.S. 515, 532 (1996).
2. *Id.* at 533.

Instead, they were a cursory observation based solely on a stereotype and perhaps preserved by a culture accepting of such.

Fortunately, I do not believe that this was a pervasive—nor the majority—position of my fellow cadets. I am happy to report that even the particular cadet would later become my trusted comrade in arms. Yet, the experience heightened my awareness of the continued stereotype and served as only the first of many instances where I would endeavor to overcome such. As the roles available to women in the military continue to evolve and expand, military effectiveness requires that forces either overcome associated stereotypes, or otherwise validate them—and thus properly limit such an evolution.

Combat exclusion policies restricting women's roles may be a product of a bygone era; in theory, all positions in the U.S. military are now open to women.³ Yet, the actual integration of women into particular units—the Special Operation Forces (“SOF”)—remains illusory. In this Comment, I will answer the following question: “How can United States Special Operation Command (“USSOCOM”) effectuate the integration of women into SOF elite teams?” The answer I provide begins by briefly reviewing a history of women in the military, specifically in combat roles. I will address the organizational culture, policy decisions, and continued stereotypes that persist, despite the expanding role of women in the U.S. armed forces. In light of this historical context, I consider the official lifting of the combat exclusion for women, and the current methods of integration as they apply to SOF. Finally, I provide policy and legislative recommendations I believe are necessary to ensure unhindered integration of women into these roles, as well as their full acceptance as respected warriors.

I. Background

The military is recognized as a highly masculine, gendered occupation, as “optimal performance in combat (the defining military behavior) requires exhibition of behaviors that most people comfortably define as masculine.”⁴ The institution recognized this through traditional closure of positions to

3. Dep't of Def. & Joint Chiefs of Staff, *Elimination of the Direct Ground Combat Definition and Assignment Rule*, U.S. DEP'T OF DEFENSE (2013), <http://www.defense.gov/news/WISRJointMemo.pdf> [<https://perma.cc/G9TG-KUX5>].

4. Jessica Glick Turnley, et al. for The Joint Special Operations University's Center for Operations Studies & Research, *Special Operations Forces Mixed Gender Elite Teams*, vii, U.S. DEP'T OF DEFENSE (2014), <http://www.defense.gov/Portals/1/Documents/wisr-studies/SOCOM%20-%20JSOU%20Study%20on%20Special%20Operations%20Forces%20Mixed-Gender%20Elite%20Team3.pdf> [<https://perma.cc/GX9H-NHEB>].

women.⁵ Although women have served in every U.S. war since the Revolutionary War,⁶ the expansion of women's roles in the U.S. military was propelled mainly by personnel shortages. Women acted as nurses or filled administrative roles left by men who went down range into combat.⁷

The 1948 Women's Armed Services Integration Acts formally integrated women into the peacetime military after World War II. Their roles were constrained to those outside of "combat."

The Act did not specifically prohibit women from serving in combat positions on the ground, although that was Congress's intent: "Because the Army was unable to come up with an adequate, acceptable definition of combat, Congress elected to leave this matter to be sorted out by the Secretary of the Army so long as he clearly understood the intent of the Congress, which was no combat for women."⁹

The shift of societal constructs and norms in the 1970s, including the introduction of the all-volunteer force, led to a greater number of women choosing to serve in the military.¹⁰ By 1988, approximately half of all positions within the U.S. military were open to women,¹¹ and the Department of Defense ("DoD") created a formal combat exclusion—the "Risk Rule."¹² The rule stated that "risks of exposure to direct combat, hostile fire, or capture are proper criteria for closing non-combat positions or units to women, providing that the type, degree, and duration of such risks are equal to or greater than that experienced by combat units in the same theater of operations."¹³ The rule, meant to be a complete combat exclusion, instead allowed for differing interpretations of the subjective concept of "risk" in its application.¹⁴ One concept was clear, however: "it was men, not women, who

5. *Id.* at 17.

6. Martha McSally, *Women in Combat: Is the Current Policy Obsolete*, 14 DUKE J. GENDER L. & POL'Y 1011, 1013 (2007).

7. Thomas S. Szayna, et al., for RAND National Defense Research Institute, *Considerations for Integrating Women into Closed Occupations in the U.S. Special Operations Forces*, 11 U.S. DEP'T OF DEFENSE (2015), <http://www.defense.gov/Portals/1/Documents/wisr-studies/SOCOM%20-%20Considerations%20for%20Integrating%20Women%20into%20Closed%20Occupations%20in%20the%20US%20Special%20Operations%20Forces.pdf> [https://perma.cc/3M26-AP7C].

8. McSally, *supra* note 6, at 1022.

9. *Id.* at 1022–23 (quoting JEANNE HOLM, *WOMEN IN THE MILITARY: AN UNFINISHED REVOLUTION* 121 (1993)).

10. Szayna, *supra* note 7, at 11.

11. MEGAN MACKENZIE, *BEYOND THE BAND OF BROTHERS: THE U.S. MILITARY AND THE MYTH THAT WOMEN CAN'T FIGHT* 24 (2015).

12. *Id.*

13. *Id.* at 24–25.

14. *Id.* at 25.

were fulfilling the ‘riskiest’ roles in war.”¹⁵

The policy objectives engendered in the Risk Rule were not a response to a particular problem. “The rule was not created in response to indicators that women were not able to fill combat roles, examples of women failing to complete their jobs, proof that women were distracting men from accomplishing military missions, or research showing women required protection from combat.”¹⁶ It was merely a formal enactment of the *idea* that women should be prohibited from combat roles.¹⁷

The Risk Rule became increasingly operationally obsolete in the post-Cold War era, and corresponding non-linear battlefield.¹⁸ For example, in 1989, nearly 800 women were deployed to Panama in “combat support” positions as part of Operation Just Cause.¹⁹ During the Persian Gulf War, over 40,000 women were deployed, and two serving in combat support jobs were captured as Prisoners of War (“POWs”).²⁰ The participation of women in these particular conflicts prompted renewed dialogues and debate concerning the place of women in the military.²¹ An important response to this recognition was the 1992 Defense Authorization Act, which repealed the law that prohibited women from flying combat aircraft, and left the decision to the DoD’s discretion.²² The Act also created the Presidential Commission on the Assignment of Women in the Armed Forces, tasked to evaluate the roles of women in the military—particularly combat roles.²³

Although the Commission recommended continued exclusion of women in ground combat, it did recommend that combat ships be open to women,²⁴ formalized in the 1994 Defense Authorization Act.²⁵ Furthermore, “upon the passing of this Act, the United States no longer had any law restricting women from serving in any positions or units in the military. All restrictions were (and continue to be) a matter of DoD policy, albeit with Congressional reporting mechanisms and oversight.”²⁶ In 1994, the DoD also rescinded the Risk Rule, stating “the rule no longer applied, since, based

15. *Id.*

16. *Id.*

17. *Id.*

18. *See* McSally, *supra* note 6, at 1028.

19. *Id.* at 1025.

20. *Id.*

21. MACKENZIE, *supra* note 11, at 26.

22. McSally, *supra* note 6, at 1026.

23. MACKENZIE, *supra* note 11, at 26.

24. McSally, *supra* note 6, at 1026.

25. *Id.* at 1026–27.

26. *Id.* at 1027.

on experiences during Operation Desert Storm, everyone in the theater of operations was at risk.”²⁷ The direct result of these and similar policy changes was a substantial increase in the number of positions open to women.²⁸

Despite transforming public perceptions and contributions of women during war, “the DoD clung to the combat exclusion.”²⁹ However, the wars in Afghanistan and Iraq extinguished its practical applicability,³⁰ and were a pivotal watershed regarding the integration of women.

The wars in Afghanistan and Iraq presented a less predictable, nonlinear battlefield with asymmetric threats that could potentially expose female soldiers to combat. Because of this, assignment policy became less effective at excluding women from combat situations, and in practice women were participating in foot patrols, as well as convoy escort missions that came under fire.³¹

In response to this increased exposure to combat, in 2005, the House Armed Services Committee Chairman proposed a bill which would have “blocked the assignment of women to thousands of positions previously open to them, and in which they were already serving.”³² The Army opposed the bill,³³ confirming its desire to allow women to serve in these roles. And in 2010, when asked about allowing women in combat, the Army Chief of Staff stated, “I believe it’s time we take a look at what women are actually doing in Iraq and Afghanistan.”³⁴

II. Combat Roles Opened to Women

On January 24, 2013, the Secretary of Defense and Chairman of the Joint Chiefs of Staff published a memorandum eliminating the 1994 Direct Ground Combat Definition and Assignment Rule (“DGCDAR”), effectively removing the formal barrier to assignment of women to units and positions with primarily ground combat missions.³⁵ The announcement required that all previously closed positions be fully integrated by January 1, 2016, with the development and implementation of validated, gender-neutral

27. Szayna, *supra* note 7, at 21.

28. *Id.*

29. MACKENZIE, *supra* note 11, at 27–28.

30. *Id.* at 42.

31. Szayna, *supra* note 7, at 22.

32. *Id.*

33. *Id.*

34. *Id.*

35. DEP’T OF DEF. & JOINT CHIEFS OF STAFF, *supra* note 3.

occupational standards.³⁶ This decision reflected the ongoing realities of the current conflicts in Iraq and Afghanistan, and the inherent difficulty of excluding women from combat once they were broadly integrated into the military.³⁷ Further, the memo provided:

Any recommendation to keep an occupational specialty or unit closed to women must be approved first by the Chairman of the Joint Chiefs of Staff, and then by the Secretary of Defense; this approval authority may not be delegated. Exceptions must be narrowly tailored, and based on a rigorous analysis of factual data regarding the knowledge, skills and abilities needed for the position.³⁸

The elimination of DGCDAR fueled public debate and resulted in the production of a variety of studies considering the impact of integration of women into these roles.³⁹ In the end, although the Marine Corps asked for a partial exception in some areas, Secretary of Defense Ash Carter confirmed that there would be no exceptions.⁴⁰

Thus, over 230,000 positions in the U.S. armed forces are now open to women “able to meet occupation-specific, gender-neutral standards of performance.”⁴¹ While the majority of these positions are ground combat units in the Army and Marine Corps, the decision also opened SOF positions—the focus of this paper. Comprised of elite individuals and units whose core activities “entail that SOF operate in small, geographically isolated, self-contained teams for lengthy periods of time, often covertly, in austere conditions, and in extremely dangerous operational environments.”⁴² Due to the unique SOF mission, integration of women into these units poses distinct issues and potential barriers to continued effectiveness.

III. SOF-Specific Concerns

Modern-day SOF was created under the Cohen-Nunn amendment to the 1987 National Defense Authorization Act, in recognition that the organization of SOF was unique.⁴³ USSOCOM is a unified combatant command, comprised of all of the special forces personnel from across the services (Army, Navy, Air Force and Marines). It is the only unified

36. *Id.*

37. Szayna, *supra* note 7, at 11.

38. DEP'T OF DEF. & JOINT CHIEFS OF STAFF, *supra* note 3, at 1-2.

39. See Szayna, *supra* note 7; Turnley, et al., *supra* note 4.

40. Ash Carter, Sec'y of Defense, *Remarks on the Women-In-Service Review* (Dec. 3, 2015), <http://www.defense.gov/News/Speeches/Speech-View/Article/632495/remarks-on-the-women-in-service-review> [https://perma.cc/V7PY-EPUG].

41. Szayna, *supra* note 7, at 2–3.

42. *Id.* at 3.

43. *Id.* at 68.

command that maintains both its own mission and budget authority, providing all SOF personnel with special operations-specific training and equipment.⁴⁴ “USSOCOM . . . is unique in that it performs Service-like functions and has responsibilities and authorities akin to those of Military Departments.”⁴⁵

Furthermore, SOF command structure utilizes small, cohesive units to accomplish highly-specialized missions. “SOF tactical units such as Army Rangers and Special Forces groups, Navy SEAL teams, Marine Corps Special Operations teams, and Air Force Special Tactics teams require tactical skills to maneuver undetected, engage in small unit combat, and forcibly subdue, capture, and detain resisting enemy personnel.”⁴⁶ Elite physical capabilities are required to perform operational missions. For example, small units are required to perform as follows:

[T]o patrol long distances (>10km) with packs of food, water, and ammunition weighing 50 pounds or more over almost any terrain in any weather, day or night. The tactical mobility for these SOF operations includes activities such as static line parachuting, high-altitude-high-opening (HAHO) free fall parachuting, helicopter fast roping or rappelling, helicopter ladder recovery, rock climbing, climbing over walls and fences, long range (>50nm) small boat maritime transits, surf passage, gear portages, and combat dives (>4nm), while carrying weapons, ammunition, body armor, batteries, radios, scopes, and other tactical gear. Team members must be prepared to carry any wounded member of the team or wounded detainee as well as documents or computers found on the target. Because SOF tactical units are small, every member of these teams, from the officer leading the patrol to the medical, weather, crew or communications personnel, must be prepared physically to maneuver and fight alongside the rest of the team or they risk becoming a liability, slowing maneuvers through contested terrain, and compromising the mission.

The central concern of USSCOM is to ensure continued mission effectiveness, as integration of women into SOF presents various concerns including physical standards and unit cohesion, deemed essential to high performing teams.⁴⁷

The decision to open these roles to women was met with 85% of the current force in staunch opposition.⁴⁸ Although there were many expressed, the main concerns were that standards would be lowered and unit cohesion would suffer—both resulting in decreased mission effectiveness.⁴⁹ These

44. Turnley, et al., *supra* note 4, at 63.

45. Szayna, *supra* note 7, at 3.

46. *Id.* at 68.

47. *Id.* at 3.

48. *Id.* at 94.

49. *Id.*

attitudes have mirrored those of previous integration efforts to African American and openly gay and lesbian personnel:

The debates that surrounded previous integrations of excluded groups were a highly contentious component of political discourse in the United States, dating back at least to the 1940s. The debates centered on two main challenges: (1) questions regarding the sufficiency of the physical or mental abilities of members of the excluded group to cope with the tasks assigned to the unit, and (2) the impact of the entry of the excluded group on the cohesion, trust, morale, discipline, and the general efficient functioning of the unit.⁵⁰

Thus, the precise inquiry is whether the SOF mission is sufficiently unique to validate these concerns.

A. Standards

Each of the SOF service components have a highly-competitive assessment and selection process.⁵¹ Once selected, personnel face a “lengthy, sometimes years-long, grueling training” regimen before being placed into units.⁵² The extraordinary standards for selection into each SOF service component are designed to match the extreme physically demanding nature of SOF operations.⁵³ As a result, SOF personnel maintain physical abilities akin to elite athletes.⁵⁴ Additionally, “standards are also a major factor in establishing and maintaining perceptions of competence, which is important for cohesion.”⁵⁵ In fact, these standards are arguably fundamental to SOF identity, as “passing through the highly physically demanding accession and selection process constitutes a rite of passage for SOF personnel and contributes to the sense of common identity.”⁵⁶ As an illustration, the historical attrition and voluntary withdrawal rates are between 40% and 80%.⁵⁷

It is true that, on average, men are stronger than women. Women tend to be “shorter in stature, have less muscle mass, and weigh less than men.”⁵⁸ Gender difference research shows that “men, on average, score better on tests

50. *Id.* at 11.

51. *Id.* at 47.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. McSally, *supra* note 6, at 1029 (quoting PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES, REPORT TO THE PRESIDENT: WOMEN IN COMBAT (1992) at 24).

of muscular strength and cardiovascular (i.e. aerobic) endurance compared to women. However, men and women do not differ on tests of movement quality such as flexibility and balance.”⁵⁹ In addition, there are women who will attain extraordinarily high scores and “average gender differences can be misleading when decisions are being made about individuals.”⁶⁰

An argument based on the physical limitations of women was used to keep women out of fighter aircraft in the early 1990s, and was proved wrong by at least forty-nine women who “completed fighter pilot training successfully, and . . . have flown long, demanding combat missions for Operations Southern Watch, Northern Watch, Desert Fox, Allied Force, Enduring Freedom, or Iraqi Freedom.”⁶¹ Not only have Air Force women successfully flown these missions, they have been recognized for outstanding performance, earning sixteen Distinguished Flying Crosses in Iraq and Afghanistan since 2001.⁶² “Critics who claimed that women do not have the strength and stamina to be fighter pilots in combat have been proved wrong by women’s actual performance.”⁶³

Integrating women into SOF forces should not come at the expense of military effectiveness, nevertheless military effectiveness requires the most qualified candidate for the job is selected, regardless of gender.⁶⁴ Even though the differences between elite women and men are likely to be lower than that of the general population, “to the extent that SOF specialties require high levels of strength, power, and aerobic endurance, the proportion of eligible female candidates would be expected to be considerably lower compared to the eligible population of male candidates.”⁶⁵ In similar fashion, the number of women fighter pilots remains lower than that of their male counterparts, yet this does not diminish the contributions of women to the fighter pilot community—and to the overall effectiveness of U.S. military operations.

B. Cohesion

Cohesion is considered fundamental to unit effectiveness in the military,⁶⁶ and critical in combat situations. A former Army Chief of Staff defined cohesion as, “the bonding together of soldiers in such a way as to

59. Szayna *supra* note 7, at 49.

60. *Id.* at 50.

61. McSally, *supra* note 6, at 1031.

62. *Id.* at 1031.

63. *Id.*

64. *Id.* at 1030.

65. Szayna, *supra* note 7, at 53.

66. Szayna, *supra* note 7, at 67.

sustain their will and commitment to each other, the unit and mission accomplishment, despite combat or mission stress.”⁶⁷ Contemporary analysis goes beyond this general view of cohesion as a general bond between unit members, recognizing two distinct forms of cohesion—task cohesion and social cohesion.⁶⁸

Social cohesion refers to the nature and quality of the emotional bonds of friendship, liking, caring and closeness among group members. A group is socially cohesive to the extent that its members like each other, prefer to spend their social time together, enjoy each other’s company, and feel emotionally close to one another.

Task cohesion refers to the shared commitment among members to achieving a goal that requires the collective efforts of the group. A group with high task cohesion is comprised of members who share a common goal and who are motivated to coordinate their efforts as a team to achieve their goal.⁶⁹

While social cohesion represents the often romanticized view of military culture as a “band of brothers,” many studies indicate that task cohesion is actually the ingredient indispensable to performance.⁷⁰ “The relationship between task cohesion and task performance appears to be interdependent and mutually reinforcing.”⁷¹

Research also suggests that high levels of social cohesion can have negative effects on team performance, such as when people begin to prioritize social relationships (e.g. friendship) over job performance.⁷² Another potential downfall is groupthink, where “members’ striving for unanimity override their motivation to realistically appraise alternative courses of action,” leading to poor decision making.⁷³ This is particularly concerning in the SOF environment. Moreover, such cohesion can be negative “when a unit develops values, attitudes, beliefs and norms contrary to the organizations,” resulting in, for example, a soldier’s failure to report an inappropriate act. Finally, hypermasculinity—“expressions of extreme, exaggerated, or stereotypic masculine attributes and behaviors”—is a concern for all-male groups with very high levels of social cohesion.⁷⁴ Although hypermasculinity can be a positive indicator of unit readiness, it is also associated with violent and criminal behavior, such as rape.⁷⁵

67. Turnley, et al., *supra* note 4, at 40.

68. *Id.* at 42.

69. *Id.*

70. *Id.* at 43–44.

71. Szayna, *supra* note 7, at 78.

72. Turnley, et al., *supra* note 4, at 45–46.

73. *Id.* at 46.

74. *Id.* at 47.

75. *Id.*

The historical exclusion of women from combat forces, on the grounds that integration would disrupt unit cohesion, was not based on reliable data. For instance, when considering the effect of integrating women into combat forces, the 1992 Presidential Commission stated that “there are no authoritative military studies of mixed-gender ground combat cohesion, since available cohesion research has been conducted among male-only ground combat units.”⁷⁶ Therefore, the studies were based on interviews with males who had never served with women in their units,⁷⁷ and were, arguably, merely opining about what the effect on cohesion would be. Similar concerns were expressed when considering the integration of African Americans into these units, as well as the integration of women into combat aviation units; experience has proven these concerns to be entirely false.⁷⁸ There are no studies on the effect integration has on unit cohesion in mixed-gender elite teams to support those concerns.⁷⁹ At the onset, however, over 80% of current SOF members expect a decline in cohesion.⁸⁰ “With military readiness at stake, we should not let prejudicial, racist or sexist attitudes drive our policies.”⁸¹

Despite the unique nature and immense importance of these highly-specialized units, there is no reason to think that the mere introduction of women, who are fully capable of performing the mission, should disrupt operational capability.

IV. “Is the Juice Worth the Squeeze”

In a recent survey regarding the integration of women into SOF teams, a common question among current SOF operators was “is the juice worth the squeeze?”⁸² Ultimately, the question remains as to the purpose of the integration efforts, which some believe will come at a large future cost to manpower, mission effectiveness, and budget.⁸³ As one special operator commented, “[t]his is a political thing. This is people in Congress . . . It’s some congressmen trying to make equal rights for women. Whether anyone in this room wants to say it or not, that’s what I think we all think.”⁸⁴ In his defense, there has been little to no rhetoric articulated by the DoD regarding

76. McSally, *supra* note 6, at 1035.

77. *Id.*

78. *Id.* at 1035, 1039.

79. *See* Turnley, et al., *supra* note 4, at 47.

80. Szayna, *supra* note 7, at 120.

81. McSally, *supra* note 6, at 1035.

82. Szayna, *supra* note 7, at 153.

83. *Id.*

84. *Id.* at 157.

a capability gap that would be filled by allowing women into these roles. The general combat exclusion policy became obsolete as women served and excelled in ground combat roles. The same cannot be said, however, for women in SOF roles, as no woman has ever officially served in one. When considering the current contributions of women to the SOF mission, the impact of not allowing full access, and the array of possible future contributions, there remains little doubt that the benefits far outweigh the costs.

A. Current Contributions: Cultural Support Teams

Women have played a critical support role to SOF units in both Iraq and Afghanistan. In recognition of the limitation all-male teams faced in accessing women and children among local populations, both the Army and Marines created women-only enabler formations.⁸⁵ Starting in Iraq in 2003, the military utilized female soldiers to overcome important cultural barriers in order to effectively search hostile areas for weapons and evidence of insurgent activities.⁸⁶ These ad-hoc teams, the “Lionesses,” filled a critical void in the heat of war, but received minimal training.

Team Lioness started by accompanying the all-male units into the local area on their missions to search local houses for weapons and information about the insurgent activities going on in and around Ramadi The all-male units would enter the houses first and gather the men found inside the house in one room and the women and children in another room. The male soldiers would then search the men, while the Lionesses would stay with and search the women⁸⁷

Teams quickly learned that they could also help calm tense situations, and gather intelligence, by merely revealing that they were women.⁸⁸ The Lionesses would take off their helmets, and “the local women would then calm down, and as they waited, would start talking to them and sharing valuable information about suspected insurgents or insurgent activities.”⁸⁹

As the capabilities of these support teams became known, all-male units began requesting their assistance.⁹⁰ “By late 2008, the Lioness teams were supporting a wide variety of other missions, including providing security at election sites, doing foot patrols and ‘knock and talks’ in the communities, and assisting with searches of local women attending various types of

85. *Id.* at 195.

86. Shelly S. McNulty, *Myth Busted: Women are Serving in Ground Combat Positions*, 68 A.F. L. REV. 119, 130 (2012).

87. *Id.* at 131.

88. *Id.*

89. *Id.*

90. *Id.* at 137.

community meetings.”⁹¹ Despite the then existing ban on women serving in combat, it soon became apparent that these women were serving on the front lines, as their missions were capable of transitioning from a search operation to semi-urban combat.⁹² The direct result of the prohibition on women combat, despite the operational reality, was that these women were inadequately prepared. To form Lioness teams, women were often pulled from a desk job.⁹³ Unfamiliar with different techniques and even terminology on the battlefield, they learned in the midst of these demanding circumstances,⁹⁴ a situation far from ideal. As the need developed, both in Iraq and evolving operations in Afghanistan, the Lioness program formalized into what are now the Army’s cultural support teams (“CSTs”) and the Marine Corp’s female engagement teams (“FETs”), which consist of females attached to combat units.⁹⁵

In addition to traditional ground combat units, SOF forces began requesting the use of CSTs, recognizing that the all-male units missed out on critical intelligence and social influence due to their inability to engage the female populace of Afghanistan.⁹⁶ However, the SOF cultural support specialists were subject to a specific assessment, selection, and SOF training.⁹⁷ If a candidate is selected from the five-day assessment, known as the “100 Hours of Hell,”⁹⁸ they attend a six week cultural training course prior to deployment with a SOF team.⁹⁹ Compare this with the lengthy, years-long training the male members of SOF forces are given.¹⁰⁰ These women are expected to serve alongside of SOF forces in the theatre—exposed to the same threat environment—but are given significantly less training and preparation.

These women’s contributions to the SOF mission has not gone unrecognized, as even current operators, a vast majority of whom are opposed to the integration of women, observed that a potential positive impact “is that women could enhance some missions including intelligence, surveillance, reconnaissance, as well as provide access to populations denied

91. *Id.*

92. *Id.* at 132.

93. *Id.* at 137.

94. *Id.* at 133.

95. Szayna, *supra* note 7, at 53.

96. Heidi M. Steele, *Ashley’s War: The Untold Story of a Team of Women Soldiers on the Special Ops Battlefield*, ARMY LAW 48 (2016).

97. See *About the Cultural Support Program*, U.S. ARMY SPECIAL OPERATIONS COMMAND, <http://www.soc.mil/CST/about.html> (last visited Dec. 1, 2016) [<https://perma.cc/H8WW-7JEY>].

98. Steele, *supra* note 96.

99. *Cultural Support Program*, *supra* note 97.

100. Szayna, *supra* note 7, at 47.

to male SOF members.”¹⁰¹ As one Marine remarked, “I think we are selling ourselves short by not opening it up to the best individuals. There are some positives. In some countries, two gorilla, tattooed men would look suspicious. But me and [a woman] walking down the street holding hands would not. It opens up new possibilities.”¹⁰² This information, taken from a survey of current SOF forces across all services and pay grades, established that there was wide support expressed for these teams.¹⁰³

Regardless of the acknowledged usefulness of CSTs, survey participants caveated that these teams should remain separate entities that can be pulled when needed, rather than integrating the women into the SOF units themselves.¹⁰⁴

The CSTs are successes. Build them up as a tool. But not in the team room unless it is necessary. Then it is a completely different dynamic. Shape capabilities better in support MOSs rather than organic. Right now, CSTs are without a career path, used late, underutilized, no MOS [military occupational specialty]. But we can use them. But in an ODA [special operations operational detachment alpha]—it’s a terrible idea (W-2, Special Forces).¹⁰⁵

Many of the operators indicated that the CSTs were evidence that SOF was already integrated, and that females contributed to the mission in this way. Maintaining these separate units avoids the perceived disruption of cohesion and morale.¹⁰⁶ Although SOF units are currently open to women, the use of CSTs is also likely to continue—especially considering the expected matriculation rate of women into SOF units.

B. Career Progression

The exclusion of women from combat units has career implications, as combat experience is highly valued in promotion reviews.¹⁰⁷ Furthermore, downstream effects of such an exclusion go beyond promotion rates.

Think of the situation at NASA where membership in the organization’s elite unit, the astronaut corps, was a function of sex acting as a proxy for gendered behavior. Women could not belong because they could not fly fighter jets because military positions were closed to women because it was not appropriate for women to fight.¹⁰⁸

101. *Id.* at 150.

102. Szayna, *supra* note 7, at 53.

103. *Id.* at 193.

104. *Id.* at 151.

105. *Id.*

106. *Id.* at 154.

107. Turnley, et al., *supra* note 4, at 59.

108. *Id.*

The ability of women to serve in these roles affects their success not only in the military, but outside of the military as well. It is impossible to know the full range of post-military preferences that women are denied by the mere fact that they are excluded from these units. Consider a resume of a prior SOF member applying to be a firefighter, or on a SWAT team, etc., and how that might influence his chances of being hired.

One special operator suggested: “Here’s how you can solve the problem without losing the support of the guys: take CST, make it part of SOF—but for women only. They will get to do stuff, in the same places, but without the green beanie” (E-6, Special Forces).¹⁰⁹ In *United States v. Virginia*, when considering the integration of women into Virginia Military Institute (“VMI”), the Court was persuaded by “those qualities which are incapable of objective measurement but which make for greatness in a school, including position and influence of the alumni, standing in the community, traditions and prestige.”¹¹⁰ A separate institution created for women as an alternative to VMI did not satisfy equal protection because, ultimately, it did not possess the qualities “incapable of objective measurement.”¹¹¹ Similarly, a separate CST force comprised entirely of women would not come with the same level of prestige and alumni support characteristic of the SOF field.

C. Equal Protection

The opening of all positions to women is an important, defining characteristic of the U.S. military’s organizational culture. Allowing roles to remain closed perpetuated the stereotype that women were inferior, or at the least, unfit for the defining roles of the military occupation. Following the concerns about standards, team cohesion, and physical abilities, the greatest concerns expressed among survey participants related to improper sexual relationships and female medical issues.¹¹² These arguments are generally based on inaccurate information, overbroad generalizations, and the refusal of responsibility.

Equal protection has its place in this argument. In *U.S. v. Virginia*, the Court declared, “state actors controlling gates to opportunity, we have instructed, may not exclude qualified individuals based on ‘fixed notions concerning the roles and abilities of males and females. Equal protection principles, as applied to gender classifications, mean state actors may not rely on “overbroad” generalizations to make judgments about people that are

109. Szayna, *supra* note 7, at 194.

110. *United States v. Virginia*, 518 U.S. 515, 557 (1996).

111. *Id.* (quoting *Sweatt v. Painter*, 339 U.S. 629, 633 (1950)).

112. Szayna, *supra* note 7, at 116.

likely to perpetuate historical patterns of discrimination.”¹¹³ Accordingly, we simply cannot continue to exclude or otherwise hinder women’s ability to participate fully based on antiquated views about a woman’s place in society, perceived health issues, and alleged detrimental effects on cohesion. The following sections highlight often discussed concerns of women in the battlefield, include recent the remarks of current SOF personnel voicing these concerns, and explain why such concerns are largely unfounded, or at least capable of remedy.

i. The Military “Culture” and a Woman’s Place

Women are very protective. They nurture kids. Will a woman return fire and kill a child insurgent fighter? In Iraq, we were 10-15 kilometers ahead of the element. The female coalition soldiers would not return fire because there were kids in the crowd. It will happen in the ODA because women are protective creatures (E-5, Special Forces).¹¹⁴

This argument focuses on the perceived role of women as “nurturers” and mothers. Not only is this view a stereotype, it fails to take into account the current role women are already playing in the war effort. “Female officers have already proven they’re mentally tough enough for war. Though they’ve been blocked from ground combat jobs for decades, some women have found themselves in the line of fire for years in the Middle East, where the distinction between front lines and rear support is murky.”¹¹⁵ It also fails to consider that the women who pursue SOF jobs, in particular, are more likely to fully understand the operational realities in which they will be faced.

ii. Sexual Assault and Harassment

If I was to say to X, stop being a pussy, that would be classified as a sexist comment, and then I’d have to worry about political correctness. Just like if I were to say, ‘stop being gay.’ I don’t mean it in a degrading way, but now I have to worry about offending someone (O-3, MARSOC).¹¹⁶

We don’t have the time or patience to deal with thinking about how we walk, or talk around females. It’s not part of our nature. It will definitely impact the timeliness of our jobs, our state of mind, and the complete surrounding in the teams. We are expected to be misogynistic. That is our job (E-7, SEAL).¹¹⁷

113. *Virginia*, 518 U.S. at 541–42.

114. Szayna, *supra* note 7, at 159.

115. Samantha Michaels, *Soldiers Blow Up 5 Myths About women in Combat*, MOTHER JONES (Jan. 11, 2016, 6:00 AM), [http://www.motherjones.com/politics/2015/12/female-officers-break-down-myths-about-women-at-war_\[https://perma.cc/AD5M-BUGG\]](http://www.motherjones.com/politics/2015/12/female-officers-break-down-myths-about-women-at-war_[https://perma.cc/AD5M-BUGG]).

116. Szayna, *supra* note 7, at 162.

117. *Id.*

We're trying to get rid of rape and sexual assault, but now we are going to put Melissa right in the front lines [in the Marine infantry units]? You have knuckle dragging dudes there, and have them get back from combat, and then she takes a shower. You can't say, 'let's go forward with this, we'll bring down sexual assault by doing this' [E-6, MARSOC].¹¹⁸

The nature of these arguments focus on the masculine nature of the military occupation, and somehow rationalizes behavior we would not accept in any other circumstance. "If the U.S. military has a sexual predator in the ranks, he or she should be identified, punished, and removed from the team."¹¹⁹ Regardless of whether there is a female in his unit, a male sexual predator "will come in contact with other women—combat support personnel, enemy and innocent civilians—who may be victimized."¹²⁰ Do we want our special operators to be tough? Yes. Do we want our special operators to be incapable of controlling their sexual impulses—whether the victim be a foreign national or a member of his own unit? Absolutely not.

iii. Fraternization

I deal with 21-30-year-old guys in my unit. Half of them are single, getting in trouble and chasing women on weekends. It is hard enough to keep them focused. Now I would have to deal with this within the unit and we haven't even gotten to mission preps and execution yet (E-6, AFSOC).¹²¹

The men who join the SEALs are physical by nature and not so cerebral, so some may break down on deployments and cheat. There's already enough drama amongst the wives (O-3, SEAL).¹²²

The U.S. military is a *professional* fighting force, and all members are upheld to a high set of standards, including the Uniform Code of Military Justice ("UCMJ"). Every individual should be held to a personal standard of integrity, duty, and responsibility. Women should not be prohibited from pursuing a specific career based on the possibility that attraction between team members may surface. Task-oriented leadership as well as a prohibition on inter-unit relationships should be effective at curbing distracting relationships. Finally, the UCMJ (and its prohibition on unprofessional relationships as well as adultery)¹²³ is an effective deterrent and method of dealing with inappropriate relationships.

118. *Id.* at 163.

119. McSally, *supra* note 6, at 1038.

120. *Id.*

121. Szayna, *supra* note 7, at 164.

122. *Id.* at 166.

123. McSally, *supra* note 6, at 1032.

iv. Health Issues

I think PMS is terrible, possibly the worst. I cannot stand my wife for about a week out of the month for every month. I like that I can come to work and not have to deal with that (E-6, SWCC).¹²⁴

When women first were in combat arms in Iraq and Afghanistan, there were women who were not able to properly take care of their hygiene for a set amount of time. They got sick. A woman's job, or purpose in life, isn't to go do what we do—kill and all. It's to nurture. We sleep in the mud. A woman goes through that, it's going to create so many problems on her body (E-6, MARSOC).¹²⁵

These arguments are based mainly on misinformation and over-generalizations about women's health issues. The argument fails to consider that women in various professions across the world are able to manage their jobs through monthly cycles, and severe symptoms affect only a small number of women. Furthermore, there are methods available to suppress menstruation if necessary, with hormonal contraceptives.¹²⁶ Finally, the argument fails to recognize that men's bodies are also unpredictable.¹²⁷

v. Pregnancy

If she gets pregnant, she'll leave the team. Men don't leave the team. What if the Team Sergeant is a woman? Or the medic? Whatever cohesiveness is gained in training is lost, especially if the woman is in a key leadership position (E-7, Special Forces).¹²⁸

This argument fails to take into account the pride and concern regarding their units and position qualified women may take. A study on women's effect on readiness found, "women officers and senior enlisted personnel try to time their pregnancies to have the least effect upon the unit—e.g. not before a scheduled deployment."¹²⁹ The exceedingly dedicated women able to qualify for these highly specialized units are likely to have a similar motivation. "Women who make the choice to serve in a combat role are not the type of women to malingering and get pregnant just to avoid a deployment."¹³⁰ Secondly, it also fails to consider that studies show that "lost time to the military for pregnancy is small compared with time lost for men's

124. Szayna, *supra* note 7, at 167.

125. *Id.*

126. Michaels, *supra* note 115.

127. Megan MacKenzie, *Men's Unexpected Erections are a Liability on the Battlefield (and Other Ways Men's Bodies put Female Soldiers at Risk)*, DUCK OF MINERVA (Dec. 15, 2015), <http://duckofminerva.com/2015/12/mens-unexpected-erections-are-a-liability-on-the-battlefield-and-other-ways-mens-bodies-put-female-soldiers-at-risk.html>. [<https://perma.cc/3GX5-Y637>]

128. Szayna, *supra* note 7, at 168.

129. McSally, *supra* note 6, at 1045.

130. Michaels, *supra* note 115.

disciplinary issues and addictions.”¹³¹ There are many reasons why a service member may miss time, and while pregnancy is one of them, it is not the only reason.

D. Future Contributions: Unknown

The current implementation strategy has, at its core, a commitment to maintaining the current standards, and not succumbing to any political pressure, or otherwise by implementing a quota system, for example.¹³² Therefore, the mere opening of these positions to women does not force integration. Rather, it simply widens the pool of available candidates, and provides an opportunity and a goal, which women are now able to pursue. In order to get the best team, all qualified applicants should be considered. The truth is, we have no true indication of how women will perform in these roles. While we can speculate as to their effect on team cohesion and potential disruptions to the current nature of operations, we cannot fully understand the limitations, or perhaps even the increased capabilities, mixed-gender, elite teams would offer.

V. What Is Wrong with the Current Implementation Strategy: Its Open, What More Do They Want?

A. Create the Rhetoric of “Why”

“If you can show me how putting women in there is going to make that mission easier to accomplish, then I’ll support it all day long. But if you tell me it’s about making people feel better about themselves, or as a social experiment, I’ll never support it.”¹³³ Organizational culture is fostered by leadership example. Women in CST roles are already filling a critical need in the SOF operational missions. It is true that the current conflict may not mirror all future battles, and the need for women to transverse cultural barriers on the battlefield may not always exist. However, for the foreseeable future, the need is great. Furthermore, the current method of attaching CSTs to SOF units should be unacceptable to a military that demands strategic planning and over preparation. If it is true that we, as a society, are less willing to accept women in body bags,¹³⁴ then why are we deploying them into SOF environments with six weeks of cultural training instead of the years’ worth of preparation their male counterparts receive? Why are we

131. *Id.*

132. *See* Carter, *supra* note 40.

133. Szayna, *supra* note 7, at 138.

134. McSally, *supra* note 6, at 1041.

putting women into SOF? Because they fill a critical need. And this need should be articulated from the top in order to diffuse speculation and foster cooperation.

B. Dispel Myths

As we go forward in the integration process, leadership at all levels must work to ensure that antiquated views on “the way women are” have no bearing in the operation of today’s fighting force. Women have surpassed expectations, traversed barriers, and made extraordinary contributions to the war effort. The view of the military as a “man’s” world needs to be adjusted. In order to accomplish this, misinformation and overgeneralizations about pregnancy, health, and the like, must be addressed in the form of education or policy. Ultimately, these myths must be dispelled in order to create acceptance of women in these specialties and ease integration. Finally, a zero tolerance environment for sexual assault must be enforced. It is no longer sufficient for a male to claim he was merely “acting like a man” in a highly masculine occupation. Rather, task cohesion should be a priority and social cohesion among team members should be fostered through trust—both in the form of competence and mutual respect.

C. Equalize Standards

Standards should not be artificially lowered to allow the matriculation of women—no men OR women desire that result. True, gender-neutral standards are required for successful integration. The perceived competency of the women who pass through the process depends on the maintenance of these standards, as well as enforcement by the leadership that such standards were upheld. “And, if women are perceived as competent, integrating women into SOF units is less likely to adversely affect unit cohesion.”¹³⁵ However, continual evaluation and reassessment of the standards must be accomplished to ensure their neutrality.

Prior to the final implementation date of January 1, 2016, every SOF assessment, training, and operational standard was reviewed by a third party and resulted in validation as occupationally relevant and gender-neutral.¹³⁶ In simple terms, all of the existing criteria for qualification into these elite forces were confirmed as job-related, and even though developed with the

135. Szayna, *supra* note 7, at 225.

136. See U.S. DEP’T OF DEF., *Memorandum for Sec’y of Def.: US Special Operations Command Implementation Plan for the Integration of Women* (Jan. 13, 2016), http://www.defense.gov/Portals/1/Documents/pubs/WISR_Implementation_Plan_SOCOM.pdf [<https://perma.cc/4W7Z-LDLR>].

intention that women would never perform these tasks, they were deemed gender-neutral. Although the current standards may adequately measure a *man's* ability to perform mission functions, more research needs to be accomplished to determine whether adaptations of both equipment and performance standards may allow women to perform mission tasks at these elite levels—perhaps not in the same manner as men, but nonetheless be equally effective in predicting job performance.

Congress' instructions to military departments regarding the validation of operational standards was twofold: standards must "(1) accurately predict performance of actual, regular, and recurring duties of a military occupation, and (2) [they must be] applied equally to measure individual capabilities."¹³⁷ Arguably, the first instruction was complied with, and all current standards were validated as predicting performance of operational requirements—at least for the men currently occupying those positions. The second standard is more important to ensure gender-neutrality. Consider the following example:

While the number of pullups a man can do might be predicative of his ability to conduct the operational task, a woman who is unable to do a certain number of pull-ups may also be able to successfully rappel out of the helicopter using different techniques or muscle groups. In this case the pull-up test might be predictive for a man, but another test, such as a rope climb, might be more predictive for a woman. Under the two criteria above, the services would be required to demonstrate both that rappelling from a helicopter is a regular requirement for the occupational specialty, and that the pull-up standard is an accurate measure of a servicemember's ability to achieve that task regardless of gender.¹³⁸

What the second criteria is concerned with is the possibility of predictive bias, which "occurs when the test is a better indicator (i.e. predictor) of future job performance consisting of the job tasks for one subgroup compared to another."¹³⁹ In the example above, success on a pull-up test was a better indicator of a man's ability to rappel from a helicopter than it was predictive of a woman's ability (just because a woman cannot do 20 pull-ups—the testing standard—doesn't mean she cannot rappel from a helicopter—the operational standard). In order to account for predictive bias, it is essential to continually reassess testing standards, especially those where the percentage of women passing the test is significantly lower than that of men.¹⁴⁰

137. Kristy Kamarck, *Women in Combat: Issues for Congress*, Congressional Research Service, 19, 20 (Dec. 13, 2016), <https://fas.org/sgp/crs/natsec/R42075.pdf> [<https://perma.cc/2YPA-CPGB>].

138. *Id.* at 20.

139. Szayna, *supra* note 7, at 217.

140. *Id.*

As an illustration, the current Navy SEAL and SWCC Physical Standards Validation Report conducted in response to the Congressional directive states that selection standards can be validated if they demonstrate “a plausible link between selection practices and occupational requirements.”¹⁴¹ However, there is no mention, throughout the report, about equalizing standards.¹⁴² This isn’t completely surprising because there have been no women submitted to the tests in order to form a basis for predicative bias. However, it is a reminder that these standards must be continually reassessed, especially as women begin to matriculate in the assessment process.

Finally, included in this category is the requirement that we ensure equipment and uniforms, optimized for the female body type, are made available. Furthermore, as women begin to perform these jobs, more research should be conducted to determine what battlefield tools can be modified for women to enhance performance.

Conclusion

It was a Tuesday—the day that I renewed my commitment to serve, and the day that would unquestionably shape my life’s course in countless ways. On Tuesday morning, September 11, 2001, I was a freshman at the United States Air Force Academy. I was eighteen. I had entered the Academy with a genuine desire to “serve my country,” but having spent my formative years in a time of peace, I had no idea what that really meant. The Air Force Academy, like other military academies, allows students to attend for two years before making a “commitment.” Generally speaking, if you leave within the first two years, there are no penalties, and any academic credits earned can be transferred to another college. What this means is I could have walked away—then and there. Faced with an almost certainty that upon my graduation our country would be at war, and the reality that I would be called to play my part, I could have transferred. Instead, after watching the twin towers disintegrate amongst the crowds of terrified people, I chose to stay and defend my country against such acts.

That Tuesday, I witnessed real fear and trepidation. Over the next year, many of my fellow cadets did choose to leave, at least in part due to the war-time mission that would inevitably confront a 2nd Lieutenant after graduation. These cadets were both men and women. However, a majority

141. Karen Kelly, Ph.D. & Jason Jameson, . *Navy Sea, Air and Land (SEAL) and Special Warfare Combatant-craft Crewman (SWCC) Physical Standards Validation Report*, 10, <https://www.noexperiencenecessarybook.com/5YDXb/navy-seal-and-swcc-physical-standards-validation-report2-pdf.html> (last visited Apr. 26, 2017) [<https://perma.cc/7Z6R-78XE>].

142. *Id.*

of my classmates—both men and women—chose to stay. With a renewed commitment and dutiful purpose driving us onward, we prepared for what lie ahead. Looking back, I don't think any of us could have predicted that fifteen years later we would still be entrenched in this same conflict. Nor could we have adequately prepared ourselves for the toll of war—the demanding operational tempo and deployments that tore up families, and most of all, the countless brothers and sisters in arms who gave the ultimate sacrifice.

Those of us who made the decision to stay all had something in common—we embraced the core value of “Service Before Self.”¹⁴³ We came from different backgrounds, representing different races, religions, colors, creeds, ancestries, national origins, and *genders*. We were united in a common goal—to become the future generation of leadership in the world's premier fighting force. I dare to say that a majority of us humbly accepted our commission with great pride and an overwhelming sense of the immense responsibility we had been given.

The future of the U.S. Armed Forces and continued reputation as the premier fighting force in the world depends on our ability to advance and take full advantage of our capabilities—without limiting our perspective by ancient notions of societal roles. War is an evolving beast, and our flexibility in adapting to current operational realities is critical to continued success. Furthermore, our society has evolved to recognize that the degradation of women has no place in even the masculine, gendered occupation of military life. In this context, equal protection is not merely an ideal by which we strive to satisfy some moral obligation, it is a recognition that diversity brings strength.

143. U.S. AIR FORCE, <https://www.airforce.com/mission/vision> (last visited Mar. 19, 2017) [<https://perma.cc/WT3Z-Z88P>].