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RELEASE: MARCH 3, 1981

THE GOVERNMENT'S BRIEF ON DRAFTING WOMEN

In the final hours of the Carter Administration, the Justice Department filed a brief in the U.S. Supreme Court asking the Court to reverse a lower federal court's ruling which had invented a new constitutional right no one had ever heard of before, namely, that men have a Fifth Amendment right not to be drafted unless women are also drafted. The case is Rostker v. Goldberg.

The main argument in the government's brief is that the principal purpose of conscription is "for combat replacements" and "to replace casualties," and "these areas of need for the most part are closed to women under current law and policy." Therefore, according to the government's brief, "the ineligibility of women to be assigned to combat positions" caused Congress to make a rational determination not to draft women.

The government's brief hangs almost its entire case on the combat argument, even though there are at least a dozen other excellent arguments for exempting women from registration and conscription. The question naturally comes to mind, what would the Justice Department's argument have been if the laws exempting women from combat assignment had been repealed in 1979?

One of our country's leading students of women in the military, Brig. Gen. Andrew J. Gatsis, USA (Ret.), in his 1978 and '79 speeches, exposed the radical agenda espoused by those who seek a sex-neutral military: (1) repeal the laws exempting women from combat in the fall of 1979, (2) force women and men to register for the draft in the spring of 1980, and (3) order the induction of women and men after Carter's assumed 1980 reelection.

The plan was based on slipping the combat change through Congress when the public was unconcerned since the only people affected would be volunteers. Then, when conscription affected large numbers, assignment to combat duty would be routine for all, and draftees could not complain.

Three years ago, Gen. Gatsis's prediction sounded far out. It was simply incredible to the American public in 1978 that women could either be drafted or assigned to combat.

(more)

In November 1979, the House Military Personnel Subcommittee suddenly scheduled four days of hearings on the Carter Administration proposal to repeal the laws that exempt women from military combat. Administration witnesses testified for repeal, arguing that servicewomen should have the "career advancement" available to those assigned to aircraft combat missions and to naval war vessels.

However, a variety of public-spirited experts took the trouble to oppose repeal. General William Westmoreland, commander of U.S. armed forces in the Vietnam War, and Admiral Jeremiah Denton (now Senator from Alabama), our highest-ranking POW, described what combat really is, and why it is no place for a woman. Menninger Foundation psychiatrist Dr. Harold Voth told how women in combat would destroy the bonding that takes place among men which is so essential for their courage to face danger and death together.

The House Armed Services Committee never reported out any bill to repeal the laws exempting women from combat assignment.

The Justice Department brief in Rostker v. Goldberg forces the conclusion on the reader that Gen. Gatsis was right on target in his speeches two and three years ago. If the laws exempting women from combat had been repealed, as the Carter Administration requested, the Justice Department would have then had no argument to defend the male-only draft or draft registration.

After confining itself to the single argument that women should not be drafted because they cannot legally be assigned to combat, the Carter Justice Department's brief deliberately undercut even this argument by making the gratuitous comment that the anti-combat laws might be repealed! In Footnote #23, the government's brief states, "There is more than an abstract possibility that the combat restrictions on women could be lifted at some future date," and then goes on to tell that the Pentagon "sought the full repeal" of the laws against women in combat.

The entire lengthy footnote is patently dishonest in omitting the fact that the House Armed Services Committee never even reported out a bill, thereby showing how unlikely it is that the Pentagon could get the repeal it sought. Footnote #23 indicates that the Carter Administration tried to lose its appeal in Rostker v. Goldberg, in deference to the views of President Carter, Defense Secretary Harold Brown, and Selective Service Director Rostker, all of whom are on record in favor of drafting women. (end)