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STRANGERS AT HOME

VIETNAM VETERANS SINCE THE WAR

Edited by

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THE CASE FOR VETERANS' PREFERENCE

DEAN K. PHILLIPS

> The National Organization for Women oppose(s) any state, federal, county, or municipal employment law or program giving special preference to veterans.

The above resolution, which indiscriminately opposes *all* veterans' preference laws, was adopted by the National Organization for Women (NOW) at their 4th Annual Convention in September 1971. At that time, American soldiers were still dying on the battlefields of Indochina. This resolution was printed in the 1973 NOW publication "Revolution: Tomorrow is NOW." A proposed modification drafted in consultation with this author by the individual who chaired NOW's committee on Women in the Military was ignored at the 9th Annual NOW Convention in 1976. This proposal would have supported Veterans preference for disabled veterans and more limited preference for non-disabled veterans. A legislative aid from NOW's Washington, D.C. office advised this author that the ". . . 1971 NOW veterans preference resolution has not been rescinded or modified and still represents NOW's official

This chapter is for Don MacMillan, Len Gilmer, and Dennis Rhoades. With special appreciation to Ed Lukey, Tom Kiley, and Guy McMichael. It is not the official Veterans Administration position, nor does it reflect VA opinion.

position." A proposed change similar to that submitted in 1976 was (at the request of the Federally Employed Women) resubmitted and again ignored at the October 1979 NOW Annual Convention and December board meeting.

During the past three generations, the United States has become involved in World War II, Korea, and Vietnam. Those who served on active duty during these three armed conflicts at the very least experienced a disruption in life style, generally from two to four years at very low pay,[1] and at worst were disabled or killed. In fact, 523,000 American military personnel died and more than 2.7 million were disabled during that period. Due to several factors, the casualties of these wars were suffered almost exclusively by men. One major factor was that while the military often had to draw its infantry, armor, and artillery soldiers from draftees, women have been completely exempt from the draft. Two other apparent factors include statutes, regulations, and policies limiting the percentage of women comprising the armed forces and more restrictive enlistment standards for women. Consequently, more than 98 percent of America's 30 million veterans are men. Any examination of the validity of veterans' preference in civil service employment and how it has or has not discriminated against women should be considered within this framework.

Until 1972 the number of Military Occupation Specialities (MOS) available to women has been highly restricted and women have been subject to higher standards for enlistment. For example, men have been required to meet only those standards established for the particular MOS for which they enlist, sometimes not requiring a high school degree. On the other hand, women must have either earned a high school degree or passed a comparable equivalency examination.

However, in order to determine whether the extreme language of the aforementioned 1971 NOW resolution can be justified, a review of efforts of American women to enter the military (particularly during time of war) must be considered. During World War II, when the United States had an available manpower pool about half as large as that during Vietnam, 16.5 million Americans served on active duty—350,000 of whom were women. The role of women was exclusively limited to noncombat jobs, although those women stationed in Europe lived in the same conditions as noncombatant men and suffered the same casualty rates as noncombatant men (0.5 percent). Following World War II, the number of women on active duty dropped from 266,000 (2.2 percent of 12.1 million personnel) in 1945 to 14,000 or 1 percent of the 1.4 million total strength in 1948.[2]

In 1948 Congress passed legislation that precluded women from comprising more than 2 percent of total active duty strength. This statute remained on the books until 1967 when it was repealed by PL 90-130.

When the Korean War broke out, very few women attempted to enlist in the armed forces. A 1977 Department of Defense Background Study reports:

> With the advent of the Korean war, an unsuccessful effort was made to recruit some 100,000 women to meet the rapidly expanding manpower requirements. Young women just were not interested in serving, perhaps because of the unpopularity of that war at the time. Between 1948 and 1969, even including nurses, the percentage of women in the military never exceeded 1.5 percent and averaged 1.2 percent of the total active strength.[3]

At the time of the escalation of the Vietnam War in 1964 the percentage of women on active duty was less than 1 percent of the total military strength. It would appear that again women generally were not interested in entering the military. Despite the fact that Congress lifted the 2 percent statutory bar in 1967, women did not reach 2 percent of total active duty strength until mid-1973,[4] six years later. American ground troops had been pulled out of Vietnam in March of that year. Undoubtedly, the low percentage of women in the military during Vietnam might be in part attributed to the unpopularity of the war and enlistment standards that were more strict for women. Another factor was that prior to 1972 only 35 percent of all enlisted MOSs were opened to women. That year a Pentagon decision resulted in over 80 percent of MOSs opening to women by 1976.

Currently, major restrictions on the recruitment of and duties assigned to women in the U.S. military establishment are not explicitly incorporated in federal law. According to the conclusions of a 1977 Brookings Institution study, it is the current policies established by the individual military services themselves that limit opportunities for women.[5] A reading of the July 22 and September 1, 1977, hearings before a subcommittee of the Joint Economic Committee of the U.S. Congress indicates that despite the fact that most MOSs are now opened to women, females comprise only 6.6 percent of active duty personnel, and long-range armed forces plans call for the percentage of women serving on active duty to be about 10 percent of our total strength.[6] The Department of Defense reports active duty women were 19,000 in 1964; 25,000 in 1968; 117,000 in 1978; and the goal for FY 1984 is 208,000.[7] The Brookings study refers to surveys indicating that, in general, neither female nor male members of the armed forces appear to oppose the concept of assigning women to combat units or aboard naval combat vessels. However, the report concludes that "many of the

women who endorse a combat role for women do not appear to want such a role for themselves."[8] Nevertheless, women have correctly concluded that their preclusion from assignment to combat vessels under 10 U.S.C. 6015 had adversely affected their chances for career advancement and in 1978 a class-action suit in which the American Civil Liberties Union represented female Navy personnel was successful in overturning the statute that had limited assignment of women to hospital ships and transports [*Owens* v. *Brown*, 455 F. Supp. 291 (1978)].

Regardless of the various factors that resulted in very few women serving on active duty during the Vietnam War, the fact remains that the brunt of the "blood and guts" years of the Vietnam era was borne by men. During the decade that has become known as the Vietnam era, the manpower pool was double that of World War II when nearly 25 million young men were of draft age. Over 9.3 million ultimately served on active duty and 3.1 million in Vietnam.

An extensive and well-researched study done in conjunction with Ralph Nader's Center for the Study of Responsive Law concluded that the soldiers who fought in Vietnam were hardly drawn at random from the general population.[9] Student draft deferments grew by 900 percent between 1951 and 1966[10] and were primarily utilized by middle class youths who had the money and life style conducive to college. Hence, much of the fighting in Vietnam was done by the working class and urban poor who were less able to utilize that legal dodge.

In 1965 many youths were enlisting in the military service as a means of upward social mobility that they could not find in civilian life,[11] only to find themselves carrying a rifle. By 1965 one soldier of every six killed in Vietnam was a draftee. However, as the scope of the war became more prolonged and manpower needs increased, Americans became aware of the fact that enlistment in the infantry, armor, or artillery increased the odds of being wounded or killed. Consequently, increasingly fewer men enlisting in the armed forces requested combat arms MOSs. Since the armed forces had to rely on the draft to meet manpower needs in the combat arms, draftees began to shoulder an ever-increasing load of the fighting. By 1966 one of every five Americans killed was a draftee. In 1967 and 1968 more than one of every three American soldiers who died was a draftee. By 1969 and 1970 draftees suffered more than 40 percent of total U.S. casualties in Vietnam and 60 percent of U.S. Army combat deaths. Draftees comprised 54 percent of those wounded in 1969.[12] By 1970 less than 5 percent of individuals enlisting requested that they be trained for infantry, armor, or artillery.[13] That year 57 percent of Army casualties were draftees.[14] Enlistees who had not requested any specific MOS or duty station, and had been sent to Vietnam in combat arms slots, comprised 30 percent of the 1970 casualties. Thus nearly 90 percent of U.S. casualties that year

were suffered by individuals who had not requested combat arms training or Vietnam duty. The casualty rate for draftees is illustrated in Tables 18.1 and 18.2.

Because of advances in medical techniques and the courage of helicopter medivac pilots and crews, Vietnam veterans survived crippling wounds that would have been fatal due to shock or loss of blood in previous wars. Thus, the percentage of Vietnam soldiers suffering amputation or disabling injury to their legs or feet was 300 percent higher than in World War II and 70 percent higher than in Korea.[15]

Casualty rates were disproportionately higher for blacks who enlisted for combat arms MOSs earlier in the war and for their younger

TABLE 18.1: Army Draftee Casualties as a Percentage of Total Army Enlisted Casualties, 1965–70

	Killed in Action	*Wounded*
1965	28	24
1966	34	35
1967	57	58
1968	58	57
1969	62	54
1970	57	57

Source: "Extension of the Draft and Bills Related to the Voluntary Force Concept and Authorization of Strength Levels," Hearings before the Committee on Armed Services, House of Representatives, 92d Cong., 1st sess., February 23-25, March 1-5, 9-11, 1971.

TABLE 18.2: Army Draftees Killed in Action as a Percentage of Total Army Enlisted Killed in Action for Selected Occupational Groupings, 1965–70

	Infantry	*Armor*	*Artillery*	*Medical*	*Helicopter Crews*
1965	29.0	30.0	27.3	45.0	9.1
1966	34.6	30.6	35.9	44.1	28.8
1967	60.6	49.5	50.4	52.9	36.8
1968	63.5	49.6	59.5	50.4	21.0
1969	68.8	50.0	59.5	50.8	18.6
1970 1st half	69.4	42.1	55.4	54.2	23.7
Cumulative	60.1	49.5	55.1	50.4	22.6

Source: "Extension of the Draft and Bills Related to the Voluntary Force Concept and Authorization of Strength Levels," Hearings before the Committee on Armed Services, House of Representatives, 92d Cong., 1st sess., February 23-25, March 1-5, 9-11, 1971.

brothers who were later drafted while many of their predominantly white counterparts were safe in college under the mantle of the student draft deferment. Blacks comprised less than 5 percent of college enrollments in 1965.[16] Department of Defense reports indicate that between January 1961 and April 1975, 57,505 American soldiers died in Vietnam.[17] While blacks averaged about 9.3 percent of total active duty personnel in 1965–70,[18] they suffered 7,241 or 12.6 percent of the deaths—35.5 percent in excess of their percentage of the U.S. armed forces and 30 percent in excess of their presence in Indochina. (During the Vietnam fighting, blacks comprised 10 percent of U.S. armed forces in Southeast Asia.) Disproportionately high casualty rates for Spanish-surnamed soldiers have also been reported.[19]

The unusually high casualty rates for minorities during Vietnam in part can be attributed to Project 100,000, which the Department of Defense implemented in October 1966. Under this program, more than 300,000 men whose intelligence induction tests scores were between the tenth and thirtieth percentiles were no longer determined ineligible for induction. Thirty-seven percent of these Project 100,000 men were sent to the infantry units in Vietnam. During the first years of the program, 225,000 men were admitted into the military under the modified mental standards, but only 7.5 percent of them received remedial education. Reportedly, more than 41 percent[20] of this group were black; more than 40 percent of the Project 100,000 men were given combat-related assignments in infantry, armor, or artillery; and half of the Army and Marine contingent went to Vietnam. By the time they were an average of 18 months into their period of service, the Project 100,000 men had been decimated—10 percent were either killed, wounded, or received less-than-honorable discharges.[21] For political reasons, the 1 million-member force comprised of the Reserves and National Guard was not called to active duty to serve in Vietnam. The activation of 3 percent of that force occurred in 1968, but those individuals were mainly support troops. Understandably, there were long waiting lists to enter the Guard and Reserve units—at the end of 1968, the waiting list for the Army National Guard exceeded 100,000. Only 1 percent of the National Guard Reserve soldiers were blacks.[22]

Despite the fact that the agony of Vietnam was suffered almost entirely by men, and a disproportionate percentage of minority men, treatises on sex discrimination often ignore perhaps *the most blatantly sexist policy* in our nation's history: the limitation of the drafting of those who will die and be crippled in combat exclusively to the male sex. A case in point is a lengthy sex discrimination law school text released in 1975.[23] The text quotes a woman whose complaint ignored the plight of Project 100,000 soldiers:

> Military service benefits, especially for the young with limited education or training, accompany the responsibility. Since October 1966, some 246,000 young men who did not meet the normal mental or physical requirements, have been given opportunities for training and correcting physical problems, while such opportunities are not open to their sisters.[24]

The editors give only the briefest attention to the hardship suffered by those who served in combat in World War II, Korea, and Vietnam or the loss of time suffered by those who served in noncombat roles during those wars, much less the gruesome plight of Project 100,000 soldiers. Ironically, upon their release from active duty, very few veterans find that their military training has prepared them to assume many civilian jobs. A 1969 Bureau of the Budget Report, limited to those veterans who secured employment, found that only 12 percent had used skills or training gained in the military.[25] A 1973 Veterans Administration study reported that less than half of the veterans surveyed received any technical or academic training while on active duty. Of those veterans who had received training, only 29.6 percent indicated that their training was helpful in obtaining a civilian job. Individuals who entered the military with less than a high school degree (for example, Project 100,000 people) fared even worse: "About half as many of the veterans with 1 to 11 years of schooling received technical or vocational training in the service as those who had a high level of education attainment.[26]

A blatant misunderstanding of Project 100,000 was demonstrated in a January 1979 civil action filed against ten federal agencies by Sears, Roebuck and Company. Sears apparently attempted to prevent the federal government from enforcing affirmative-action statutes and regulations. Sears claimed that the government created a disproportionately white male management segment of the population, in part, through its military institutions—the subjection of only males to the draft and the limitation on the percentage of women permitted in the armed forces. Sears alleged that training and education in the military and subsequently under the GI Bill has been exclusively utilized by males. Incredibly, Sears cited Project 100,000 as an example of the army turning "into the nation's largest school."[27] This suit was dismissed May 15, 1979, for failure on the part of Sears "to present a justiciable case or controversy."

During the Vietnam era, men argued unsuccessfully before federal courts that Congress' exemption of women from the draft denied men the "equal protection" guaranteed them under the Constitution. In all five cases the men were ultimately unsuccessful as the courts ruled that

the subjection of only males to the draft was rationally related to a legitimate power of government—to raise and support armies under Article I, section 8 of the Constitution.[28]

THE VETERANS' PREFERENCE ACT OF 1944

In June 1944, the month allied paratroopers and infantry soldiers made the Normandy landings at tremendous human cost, the 78th Congress passed PL 359: The Veterans' Preference Act of 1944. In addition to breaking new ground for veterans, this law codified the various statutory, regulatory, and executive-order provisions that had already been in existence.

Among its several sections, the act provided for an addition of five points to the civil service test scores of nondisabled war veterans. Ten points were added to the passing test scores of disabled veterans, and compensably disabled veterans were then placed at the head of the civil service register. Ten points were also granted to widows and wives of severely disabled veterans. Although the points could not be used for promotions, they could be used more than once. This procedure applied to government jobs other than some positions in the excepted service where no examinations are given (for example, scientists) or the positions of guards, elevator operators, and custodians where veterans were granted absolute preference. In addition, the "rule of three" provided that if a veteran were among the top three applicants for a particular job with a government agency, in order to bypass the veteran and select a nonveteran, the agency was required to receive written permission from the Civil Service Commission. Veterans were also granted certain job retention rights over nonveterans with similiar status and performance records in the event of a reduction in force. Additionally, due process rights in cases of disciplinary action, such as dismissal or suspension from civil service jobs, were granted veterans, widows, and wives of severely disabled veterans. After some debate, what was to become PL 359 passed the House and ultimately the Senate with only one negative vote. A reading of the statute and the legislative history that includes the Hearings, House, and Senate Reports,[29] and a review of excerpts from the *Congressional Record* during the period immediately prior to the passage of the act, indicate that although readjustment appeared to be a major concern of Congress, it was clearly the intent of Congress to place no restriction on the number of times an eligible individual could utilize veterans' preference. Nor did Congress set a date after which a veteran could no longer exercise veterans' preference. However, for the positions of guards, elevator operators,

messengers, and custodians, the preference was to extend for the duration of the war and for a period of five years following the conclusion of the war. Congress had the authority to permit this particular preference to continue, and it is still implemented at this writing.

The hearings indicate that the proposed legislation was nearly universally embraced. However, the National Civil Service Reform League and the League of Women Voters urged that points not be added to the test score of an eligible veteran, widow, or wife of a severely disabled veteran unless the score was a passing one.[30] N. P. Alifas, president of District 44, International Association of Machinists, introduced a statement that urged the bill not be passed. While he did not claim the veterans' preference law might adversely affect women as a class, Alifas warned of "having the population divided into two rival camps for the next couple of generations." He further warned that the proposed legislation "go[es] so far in giving preference to ex-servicemen and women . . . that American citizens without military service may as well seek other employment if now in the [civil] service and refrain from making application for government positions in the future."[31] After some effort Alifas was able to persuade the chairman of the Senate Committee on Civil Service to include his written testimony on the record.

While Congress ended five-point preference for post-World War II veterans, it later granted five-point preference to those nondisabled veterans who served on active duty during the Korean War. Ten-point preference was retained for veterans disabled even during peacetime and that policy exists to this day. Individuals entering the military between 1955 and 1966 were not eligible for five-point preference. However, five points were granted nondisabled veterans (PL 89-554, September 6, 1966) upon the expansion of the Vietnam War. In September 1967 Congress provided the five-point preference retroactively for nondisabled veterans who served during the years 1955-67 [PL 90-83(6)(B)]. The granting of this five-point preference to those entering active duty was not terminated until the passage of PL 94-502 in October 1976. Hence, Congress responded to the Vietnam War by extending five-point eligibility to individuals who served during the nearly 22-year span between 1955 and 1976. Thus, far more than the 9.3 million who served during the Vietnam era, including 3.1 million who served in Vietnam, were eligible for the five-point preference. Additionally, while theoretically not in the job market, nondisabled veterans who served during the Korean War and World War II remain eligible for five-point preference.

As the Vietnam War drew to a close, an increasing number of

women's organizations called either for an end to or a reduction of veterans' preference. A 1975 study by the Women's Program Committee of the Denver Federal Executive Board reviewed the effects of the Veterans' Preference Act of 1944.[32] While grossly understating the plight of draftees by observing that "those drafted into military service may have suffered disruptions in their normal life style, . . ." the study concluded that veterans' preference had an adverse effect on the employment prospects of women since less than 2 percent of America's 30 million veterans are females. Reportedly nonveteran females accounted for 53 percent of the Civil Service certifications but only 44 percent of the selections, while veteran males accounted for only 27 percent of those certified but 34 percent of those selected for Civil Service jobs. The study pointed to a 1974 Civil Service Commission report on handicapped veterans who indicated that of 199,592 veterans studied who were receiving ten-point veterans' preference, only 10 percent were coded as handicapped under the Civil Service Commission's criteria for reporting physical impairment.[33] From this, the Women's Committee study concluded that many veterans receiving ten points as being disabled were not significantly adversely affected by military service. The study pointed out that to be eligible for ten-point preference a veteran need only establish the present existence of a service-connected disability or be receiving compensation, disability retirement, benefits, or pension based on a public statute. The fact that such disability need not be suffered as the result of combat wounds was illustrated with the example of a veteran whose ten-point disability preference was reportedly the result of the loss of an eye while playing handball. The Denver study further reported that the average number of active duty years served by male veterans studied that received preference points was 16.7 years, thus implying that many veterans enjoying preference points were not first-term enlistees or draftees but retired career officers and noncommissioned officers.[34]

The adverse effects of veterans' preference on women in federal hiring were later cited in a comptroller general's report to the Congress in 1977 in which examples of federal civil service registers "blocked" by veterans were cited.[35] This report recommended that Congress consider limiting veterans' preference to a one-time use and/or imposing a time limit for use of veterans' preference. These recommendations were based on responses received by the General Accounting Office from numerous government agencies.

The report also revealed that the same agencies reported using "questionable procedures to obtain women who cannot be reached on the CSC (Civil Service Commission) registers." Specific examples included:

Writing job descriptions to fit the qualifications of particular (nonveteran female) applicants.

Listing jobs with CSC as "intermittent" employment to discourage veteran applicants.

Requesting and returning certificates unused until veterans who are blocking the register have been hired by another agency or for other reasons are no longer blocking the register.[36]

On October 4, 1977, Alan K. Campbell, chairman of the U.S. Civil Service Commission, testified before the House Subcommittee on Civil Service and stated that veterans' preference had seriously impaired the employment prospects of women in the 2.8 million-member federal civil service.[37] He reported that veterans comprise 25 percent of the national labor force but hold down about 50 percent of the federal jobs.

On May 22, 1978, during hearings before the House Committee on Post Office and Civil Service, Chairman Campbell reported that barely half of veterans hired by the federal government in 1977 were Vietnam-era veterans:

> Finally, in relation to the specifics of the impact of veterans' preference, not only on women but on veterans competing with veterans, 45 percent of the veteran hires last year were veterans who served before Vietnam. That means that the Vietnam veteran today is competing with the pre-Vietnam veteran for jobs, and obviously at a disadvantage because of the greater experience the older veteran has.[38]

No information was presented by Campbell to indicate how many of the pre-Vietnam veterans hired had served between 1955 and 1964.

In the years following the passage of PL 359, nearly all 50 states and many local governments have adopted veterans' preference policies that vary widely in scope from "absolute" preference as in Massachusetts and New Jersey to minimal five- or ten-point "one time" use preference in Colorado. Often the preference is similar to federal preference that could be placed roughly in the middle of a degree-of-preference continuum. When challenged in the federal district and circuit courts and the U.S. Supreme Court, all of these statutes have ultimately been upheld as constitutional.

It might appear that the Civil Rights Act of 1964 would provide an effective vehicle for establishing a *prima facie* case of discrimination against women through the use of statistics. This would then shift the burden to the defendant (government) to justify its practice of extending preference to veterans—particularly in those jurisdictions where

such preference is absolute. However, in enacting Section 712 of the Civil Rights Act of 1964 [42 U.S.C., Section 2000(e), et seq.], Congress specifically exempted veterans' preference from attack under the act: "Nothing contained in this subchapter shall be construed to repeal or modify any federal, state, territorial, or local law creating special rights or preferences for veterans."

As a result, the Civil Rights Act has generally not been an avenue of approach for those who would challenge veterans' preference. Two more recent exceptions may or may not indicate a new trend. One exception resulted when a nonveteran female attorney successfully utilized Title VII of the Civil Rights Act in alleging sex discrimination with respect to the Veterans Administration's longstanding policy of submitting only names of veterans for appointment to membership of the Board of Veterans Appeals, *Krenzer* v. *Ford*, 429 F. Supp. 499 (1977). The court held that the policy of total exclusion of nonveterans was not created by statute and, therefore, the court did not permit the exemption under section 712 when it ruled in favor of the plaintiff. The VA did not request that this decision be appealed.

Another exception occurred February 5, 1979, when the federal judge for the Northern District of Illinois held that the Chicago Regional Office of the Veterans Administration and the U.S. Civil Service Commission had violated the rights of women and black Veterans Administration employees under Title VII of the Civil Rights Act.[39] Claims adjudicators had been hired from a special Civil Service list comprised mainly of white Vietnam-era veterans with college degrees. The court held that the federal government had gone beyond any legal authority it had been granted by Congress—despite the exemption in section 712 of the act. The Solicitor General denied the VA request that this case be appealed.

THE MASSACHUSETTS CASE

The Massachusetts statute was the subject of a landmark June 5, 1979, decision rendered by the U.S. Supreme Court, 442 U.S. 256 (1979). The constitutionality of that statute was upheld by a vote of 7 to 2. The statute provides that all disabled and nondisabled veterans with passing test scores must be ranked ahead of nonveterans even if the nonveteran scored higher on the competitive examination. This is far more absolute than the five- and ten-point federal preference statute. On March 29, 1976, this case first gained national attention as *Anthony* v. *Massachusetts*, 415 F. Supp. 485 (1976) when a three-federal-judge panel voted 2 to 1 to declare that the "absolute" Massachusetts preference was unconstitutional in that it denied women equal protection of the law as guaranteed by the Fourteenth Amendment.

While the lower court acknowledged that the Massachusetts statute "was not enacted for the purpose of disqualifying women from receiving civil service appointments, . . ."[40] it held that the current formula was too severe and recommended a "point system" similar to that utilized by the federal government as acceptable alternative.[41]

Because of the constitutional question involved, the Massachusetts attorney general appealed the district court decision directly to the U.S. Supreme Court. On October 11, 1977, the U.S. Supreme Court, by a vote of 6 to 3, vacated the lower court order and remanded the case back to that court with specific instructions (46 *U.S. Law Week* 3237–38). These instructions directed the lower court to apply the *Washington* v. *Davis*, 426 U.S. 229 (1976) doctrine, which held that in order to prove a claim of invidious discrimination under the equal protection argument, a plaintiff must prove that there was an actual intent to discriminate on the part of the legislature when it enacted a statute that resulted in an adverse impact upon a particular class.

Since in its March 1976 decision the lower court had conceded that the Massachusetts legislature had not intended to discriminate against women when it passed its veterans' preference statute, it appeared that upon remand the lower court would apply *Washington* v. *Davis* in a manner that upheld the constitutionality of the veterans' preference statute.

However, on May 3, 1978, in its application of the *Washington* v. *Davis* doctrine, the lower court ruled 2 to 1 that the Massachusetts legislature intended to discriminate in passing an absolute veterans' preference statute. The two member majority justified this conclusion by claiming that since 98 percent of veterans are male and only 2 percent are female, the legislature "intended" to injure the employment interests of women in passing an "absolute" veterans' preference law [*Feeney* v. *Massachusetts*, 451 F. Supp. 143 (1978)].

In June 1978 the attorney general of Massachusetts appealed this latest decision and in October 1978 the U.S. Supreme Court agreed to hear the case. After seeking input from the general counsels of numerous government agencies,* the Solicitor General of the United States filed a 42-page amicus brief with the U.S. Supreme Court in December

*Editors' note: As the special assistant to the VA general counsel, Mr. Phillips was actively involved in the preparation of a November 1978 memorandum in which the VA encouraged the Solicitor General of the U.S. to file a brief urging the U.S. Supreme Court to uphold the constitutionality of the Massachusetts veterans' preference statute. While

1978. This brief defended the general concept of veterans' preference and requested that the U.S. Supreme Court uphold the constitutionality of the "absolute" Massachusetts veterans' preference statute, observing that

> in many respects, military gender distinctions operate to the disadvantage of men, not in their favor. Conscription extends only to men, and only men are sent into combat. Thus, all women in the military have entered the service voluntarily, while many men have not. We recognize, of course, that seemingly preferential treatment is not always benign, and that women as well as men may suffer because of gender distinctions in the military. Nonetheless, in significant respects, men have plainly been disadvantaged by the gender distinctions established by the military. The district court's assumption that the veterans' preference perpetuates a form of discrimination against women is therefore not altogether accurate.

The Solicitor General further contended that the lower court's distinction between "purpose and intent" was illusory and that it could not properly conclude the Massachusetts preference statute's adverse effect on women was intended by the legislature. (In its prior decision the lower court conceded that the legislature intended to benefit veterans rather than to injure women.) The Solicitor General later permitted four separate government agencies each represented by a female general counsel (Equal Employment Opportunity Commission, Department of Labor, Department of Defense, and Office of Personnel Management) to file a subsequent amicus brief in February 1979. The brief, while taking no position on the validity of the Massachusetts statute, attempted to draw a distinction between the "absolute" preference formula of Massachusetts and the more moderate federal formula. Oral arguments were heard February 26, 1979 (47 *U.S. Law Week*, 3579-80).

It is ironic that the mantle of the equal protection clause of the Constitution that had been denied those men who tried to prove in court that the draft was sexist during the Vietnam War was now being utilized by nonveteran women who claim that some forms of veterans' preference deny them equal protection of the laws. Because sex, unlike race, has been held not to be a "suspect" classification by the Supreme Court, men attempting to avoid the draft utilizing the aforementioned equal protection argument were able to convince the courts to apply

the VA memorandum was not supportive of lifelong "absolute" preference for nondisabled veterans as a policy issue, it warned that the striking down of such a statute from a constitutional standpoint would ultimately render less absolute forms of preference vulnerable to future constitutional challenge.

only the "rational basis" test in their cases. Thus the government had to prove only that the drafting of exclusively men was reasonably related to the accomplishment of a legitimate power of government—raising and maintaining the armed forces. Under the "strict scrutiny" test, which the courts apply if the plaintiff claims denial of equal protection by government action on the basis of race (a suspect classification), the government is held to a considerably tougher standard: It must prove that its classification must be necessary to promote a compelling government interest. Since the Massachusetts veterans' preference statute recently at issue is neutral on its face (and because sex has not yet been held to be a suspect classification),[42] it is not surprising that in applying *Washington* v. *Davis* the U.S. Supreme Court found the Massachusetts statute did not deny women equal protection of the law.

Combat veterans in particular were angered at the rather cavalier reference to the draft laws made by the lower court in *Feeney*: "women have always been ineligible for the draft."[43] Rather than concluding that women have always been *ineligible* for the draft, that court would have been more accurate in stating that women have never been *subjected to* the draft. This is particularly so in light of the high casualty rates of draftees in Vietnam. The lower court also stated that "from 1948 until 1967, women were prohibited from making up more than 2 percent of the total personnel in the armed forces."[44] That court ignored the fact that after the 2 percent statutory bar was lifted in 1967, women in 1968, 1969, 1970, 1971, and 1972 still failed to comprise even 2 percent of the armed forces, while many of their male counterparts were faced with a most onerous task in Indochina. NOW and nine other organizations filed a 27-page amicus brief with the U.S. Supreme Court addressing *Feeney* and claiming that "women's participation in the military had been severely limited throughout American history." However, the fact remains that most women did not seek enlistment in the military during the Korean and Vietnam Wars and, hence, belated cries of denial of equal protection, particularly from NOW, have a hollow ring. In fact, a June 1, 1979, letter from the director of Freedom of Information and Security Review of the Department of Defense reported that *from 1964 to 1971 women filed no lawsuits in any of the 94 federal district courts claiming that restrictive statutes, regulations, or policies injured their employment opportunities by making it more difficult for them to enlist in the military. During the entire Vietnam War* (1964–73) no such suits were filed against the Departments of the Army or Navy and only two such suits were filed against the Department of the Air Force during the later stages of the war (1971 and 1972) and women's organizations did not participate as plaintiffs in either suit.

A review of previous court decisions with respect to challenges to

veterans' preference statutes gave a rather clear indication that the Supreme Court would uphold the constitutionality of the Massachusetts statute.[45] Future efforts to modify veterans' preference statutes will probably be limited exclusively to legislative action.

ADMINISTRATION EFFORTS TO MODIFY THE FEDERAL LAW

With the exception of eliminating life-long preference for veterans retiring with the equivalent rank of major or above (PL 95-454, section 307) the administration effort to modify veterans' preference during the 95th Congress was unsuccessful. Under that proposal, as originally presented in March 1978, nondisabled Vietnam-era veterans would have been limited to a one-time use of the preference, which would have to have been utilized within ten years after separation from active duty. That would have immediately eliminated the eligibility of about one-half of those who served during the Vietnam era and two-thirds of those who actually served in Indochina. Major veterans' organizations argued that this would violate an implied contract the government made with those who served on active duty during time of war. While they did not think this reasoning could apply to those veterans seeking federal employment who served on active duty from January 1955 to September 1966 and were "grandfathered" in under the Vietnam-era amendments to the Veterans Preference Act of 1944, many Vietnam-era veterans knew that World War II and Korean War veterans had been provided the opportunity to use preference points more than once with no time limit. For that reason some thought it unfair that Vietnam-era veterans should be limited to a one-time use that must be exhausted within ten years after separation. In June 1978 the time limit was changed to 15 years by the House Committee on Post Office and Civil Service. On September 11, 1978, the House of Representatives rejected the administration proposal to modify veterans' preference by a vote of 222 to 149. The House then voted 281 to 88 to retain veterans' preference in federal civil service in its current form. It would appear that an effort to modify veterans' preference prospectively in the event of another war rather than retrospectively may fare more successfully in the Congress.

It appears unlikely that any substantial modification of the Veterans Preference Act of 1944, as amended, will be enacted by the 96th Congress. In May 1978, Campbell reported that barely half of the veterans hired in federal service in 1977 were Vietnam-era veterans. By implying that Korean War and World War II veterans comprised nearly half the veterans hired that year, he justified the administration

modification efforts as in the best interests of Vietnam-era veterans. However, subsequent to the defeat of that measure, Campbell reported different conclusions in May 1979: "We found that Vietnam Era Veterans accounted for 71 percent of all the veterans hired [in federal government] in fiscal 1978. In calendar year 1976 that rate was 68 percent."[46]

While there have been some more recent efforts on the part of the Department of Defense to expand the role of women in the military, the fact remains that DOD's goal calls for women to comprise no more than 10-11 percent of military personnel by FY 1984. Effective October 1, 1979 the policy was modified so that the disparity in Army enlistment standards has been considerably narrowed. (The attrition rate for women, though still higher than for men has dropped significantly since a 1975 directive which no longer permitted automatic discharge upon pregnancy.) Effective Oct. 1, 1979, the Army enlistment standards were modified so that they are virtually the same for men and women. The impetus for the liberalization of this policy was at least in part a court challenge by the American Civil Liberties Union.[47]

DÉJA VU: REGISTRATION FOR THE DRAFT

At the same time the assertion that veterans' preference denies women equal protection was under review by the U.S. Supreme Court, the House Armed Services Committee reported favorably 30 to 4 in May, 1979, on proposed legislation (HR 4040 sections 812-815) that if enacted as written would have required that *only men* register for the draft. While this provision was later killed by a House vote of 252-163, a similar measure (S. 109) was reported favorably 12 to 5 by the Senate Committee on Armed Services on June 19, 1979. If enacted, as written S. 109 also would have required that only males register for the draft. At this writing S. 109 has not yet faced a full Senate vote. Although there was public notice of the House and Senate Armed Service Committee hearings on this matter, a review of the witness lists, Committee Reports, and Hearing transcripts indicates that no womens' organizations offered oral or written testimony before these committees claiming that women should be "eligible for the draft" from either an equal employment opportunity or equal responsibility point of view.[48] It is the opinion of this writer that if this proposed legislation is enacted and men are subject to the draft, numerous lawsuits will be filed by them claiming that the subjection once again of only men to draft registration denies them equal protection of the law. In a case decided subsequent to the Vietnam War, the U.S. Supreme Court

established a three-tiered test redefining the standard for violations of the equal protection clause in sex discrimination cases.[49] Accordingly, in the opinion of this writer, it is now an open question whether men would be successful if they filed suits challenging the constitutionality of any future legislation that continues to exempt women from draft laws. If such suits are filed and prove successful, the issue of whether the Equal Rights Amendment would require women to face any future draft laws would then be a moot question.

NOTES

1. Soldiers at pay grade E-3 received the following monthly salaries (which include combat pay) while in combat zones: 1944, $76; 1952, $144.37; and 1968, $193.70. *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items Their Purpose and Legislative Background*, Department of Defense, Third Quadrennial Review of Military Compensation, Office of the Secretary of Defense, August 1976.

2. Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), *Use of Women in the Military—Background Study*, May 1977.

3. Ibid.

4. Ibid, Table I.

5. Martin Binkin, and Shirley J. Bach, *Women in the Military*. (Washington, D.C.: Brookings Institution, 1977).

6. "The Role of Women in the Military," Hearings before the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee, 95th Cong., 1st sess., July 22 and September 1, 1977.

7. *America's Volunteers*, A Report on the All-Volunteer Armed Forces, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Washington, D.C., December 31, 1978, p. 70.

8. *Women in the Military*, op. cit., p. 52, footnote 38

9. Paul Starr, *The Discarded Army: Veterans After Vietnam*. (New York: Charterhouse, 1973).

10. Lawrence M. Baskir and William A. Strauss, *Chance and Circumstance: The Draft, the War, and the Vietnam Generation* (New York: Knopf, 1978), p. 22.

11. A. S. Albro, *Civilian Substitution—Studies Prepared for the President's Commission on All-Volunteer Armed Force*, Study No. Five, November 1970.

12. "Extension of the Draft and Bills Related to the Voluntary Force Concept and Authorization of Strength Levels," Hearings before the Committee on Armed Services, House of Representatives, 92d Cong., 1st sess., February 23-25, March 1-5, 9-11, 1971.

13. "Defense Report/Draftees Shoulder Burden of Fighting and Dying in Vietnam," *National Journal*, August 15, 1970.

14. 1971 Hearings before the Committee on Armed Services, op. cit. p. 172.

15. *The Discarded Army*, op. cit., p. 54.

16. 113 Cong. Rec. 10000 (1967) (remarks of Congressman Hawkins).

17. Department of Defense, *U.S. Casualties in Southeast Asia by Grade and Military Service*, unpublished, December 31, 1978.

18. U.S. Bureau of the Census, *Statistical Abstracts of the United States 1977*, 98th ed., p. 368, Table 587.

19. Dr. Ralph Guzman, *Mexican American Casualties in Vietnam. The Congressional Record*, Vol. 115, October 8, 1969, pp. 29292-93.

20. *Chance and Circumstance*, op. cit., p. 129

21. Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs), *Project One Hundred Thousand: Characteristics and Performance of 'New Standards' Men*, December 1969.

22. *Chance and Circumstance*, op. cit., p. 49

23. Barbara Allen Babcock et al., *Sex Discrimination and the Law-Causes and Remedies*, (Boston: Little, Brown, 1975).

24. Ibid, p. 177.

25. Bureau of the Budget, *A Survey of Socially and Economically Disadvantaged Veterans*, November 1969.

26. Veterans Administration, Office of Controller, *Readjustment Profile for Recently Separated Vietnam Veterans*, conducted by the Department of Veterans Benefits, June 1973.

27. *Sears, Roebuck and Company* v. *Attorney General of the United States et al.*, Civil Action 79-0244 filed January 24, 1979, dismissed May 15, 1979, in the U.S. District Court for the District of Columbia, p. 18.

28. *United States* v. *St. Clair*, 291 F. Supp. 122 (1968); *Suskin* v. *Nixon*, 304 F. Supp. 71 (1969); *United States* v. *Cook*, 311 F. Supp 618 (1970); *United States* v. *Dorris*, 319 F. Supp. 1306 (1970); and *United States* v. *Reiser*, 394 F. Supp. 1060 (1975), *rev'd* 532 F. 2d 673 (9th Cir. 1976).

29. "Preference in Employment of Honorably Discharged Veterans where Federal Funds are Disbursed," Hearings Before the Committee on Civil Service, U.S. Senate on S. 1762 and H.R. 4115, May 19 and 23, 1944; "Extension of Preference to Veterans who Desire to Compete for Positions in the Federal Service," Report No. 1289 to accompany H.R. 4115 by the House of Representatives, March 27, 1944; "Extension of the Draft and Bills Related to the Voluntary Force Concept and Authorization of Strength Levels," Hearings before the Committee on Armed Services, House of Representatives, 92d Cong., 1st sess., February 23-25, March 1-5, 9-11, 1971.

30. "Preference in Employment of Honorably Discharged Veterans," op. cit. pp. 34 and 68.

31. Ibid, p. 63-64.

32. Federal Women's Program Committee, Denver Federal Executive Board, *Veterans' Preference Act Study—A Review of the Discriminatory Aspects of the Veterans' Preference Act of 1944, as amended*, Spring 1975.

33. Ibid, pp. 6-7.

34. Ibid, pp. 17-18.

35. Comptroller General of the United States, *Conflicting Congressional Policies: Veterans Preference and Apportionment* v. *Equal Employment Opportunity*, Report to Congress, September 29, 1977.

36. Ibid, p. 20.

37. "Hearings before the Subcommittee on Civil Service," Committee on Post Office and Civil Service, House of Representatives, October 4-5, 1977.

38. "Hearings before the Committee on Post Office and Civil Service House of Representatives, 95th Cong., 2d sess. on H.R. 11280 March 14, 21; April 4, 5, 6, 11, 12, 28; May 8, 12, 15, 22, and 23, 1978. "Civil Service Reform" Serial No. 95-65 at page 785.

39. *Jeanette Thompson et al.* v. *Administrator of Veterans Affairs et al.*, U.S. District Court, Northern District of Illinois 74-C-3719.

40. *Anthony* v. *Massachusetts* at 495.

41. Ibid, at 496.

42. In two cases a plurality of the U.S. Supreme Court justices did rule that sex was a suspect classification: *Frontiero* v. *Richardson*, 411 U.S. 677 (1973) and *Schlessinger* v. *Ballard*,

498 U.S. 419 (1975). In the former case, the court held unconstitutional a government policy denying certain benefits to the dependents of female armed forces personnel readily available to male personnel. In the latter case the majority opinion upheld a Department of the Navy statute mandating the separation from active duty of the male plaintiff for twice failing to be promoted within a nine-year period while similarly situated female officers had 13 years in which to secure promotion before mandatory separation. The court found that restrictions upon sea duty for women had provided them with fewer promotional opportunities.

43. *Anthony* v. *Massachusetts* at 490.

44. Ibid, at 489.

45. Subsequent to *Washington* v. *Davis*, three equal-protection challenges to veterans' preference legislation have been unsuccessful: *Branch* v. *DuBois*, 418 F. Supp. 1128 (1976); *Bannerman* v. *Dept. of Youth Authority*, 436 F. Supp 1273 (1977); *Ballou* v. *State, Department of Civil Service*, 372 A.2d 333 (App. Div. 1977), *aff'd*, 75 N.J. 365, 382 A.2d 1118 (1978).

Prior to *Washington* v. *Davis*, equal-protection attacks on the federal Veterans' Preference law were unsuccessful: *White* v. *Gates*, 253 F.2d 868, *cert. denied*, 356 U.S. 973 (1958); and *Colemere* v. *Hampton*, N.C. 72-72 (D. Utah, October 11, 1973).

Additionally, the federal act has been enforced by the U.S. Supreme Court without any suggestion of possible constitutional infirmity. *Hilton* v. *Sullivan*, 334 U.S. 323 (1948).

Constitutional attacks on state veterans' preference statutes have likewise been unsuccessful: *Koelfgen* v. *Jackson*, 355 F. Supp. 243 (1972), *aff'd mem.* 410 U.S. 976 (1973); *Feinerman* v. *Jones*, 356 F. Supp. 252 (1973); *Rios* v. *Dillman*, 499 F. 2d 329 (5th Cir. 1974).

46. Statement of Alan K. Campbell, director, Office of Personnel Management, before the Committee on Veterans' Affairs, U.S. Senate at Oversight Hearings with Regard to Veterans' Employment Programs and Policies, May 23, 1979, at page 8.

47. *Breaman* v. *Brown*, Civil Action 79-0512 filed February 15, 1979, in the U.S. District Court for the District of Columbia.

48. While not concerning themselves with disadvantages men as a class have been subjected to because of this nation's draft laws, several women's organizations have (particularly since the end of the Vietnam War) gone on record requesting the expansion of employment opportunities for women in the military. See testimony before the Military Personnel Subcommittee of the House Armed Services Committee, November 16, 1979 by the ACLU's Women's Rights Project, the Federally Employed Women, and the Women's Equity Action League. Also see "The Role of Women in the Military" Hearings before the Subcommittee on Priorities and Economy in Government of the Senate Economic Committee, 95th Congress, 1st Session, July 22 and September 1, 1977.

49. *Craig* v. *Boren*, 429 U.S. 190 (1976).

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE ATTORNEY GENERAL
JOHN W. Mc CORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

February 25, 1980

Dean K. Phillips
1700 Sherwood Hall Lane
Alexandria, Virginia 22306

Dear Dean:

I have just finished reading the final draft of your illuminating chapter written for "Strangers at Home: Vietnam Veterans Since the War". Thank you once again for your note of special acknowledgment.

It has occurred to me that I have never provided you with a similar written "thank you" for your personal involvement in the Feeney case. Presenting that case to the Supreme Court of the United States was deeply satisfying, but the effort was certainly made easier by the ready availability of crucial statistics not only from your agency, but from your personal writing. Equally important to the Commonwealth's success was the amicus brief filed by the Solicitor General. That brief reinforced many of the arguments I made to the Court and was certainly of material assistance to the Commonwealth's defense of our veteran preference statute. I know that you and your agency were instrumental in convincing the Solicitor General to file that brief and, on behalf of the many veterans whose interests I represented before the Court, I thank you for your active role of advocacy.

As you know, the Feeney case has been appealed to the Supreme Court once again. This time the appeal raises only a single discrete procedural issue and I think it unlikely that the Court will note probable jurisdiction. In the event the Court does note jurisdiction, however, I am confident I can count on you for assistance once again. Thanks.

Very truly yours,

Thomas R. Kiley
First Assistant Attorney General

TRK/vb

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

PUBLIC AFFAIRS

June 1, 1979
Ref: CORR 79-160

Mr. Dean K. Phillips
1700 Sherwood Hall Lane
Alexandria, Virginia 22306

Dear Mr. Phillips:

This is in response to your Freedom of Information Act request dated May 12, 1979, for information on the number of cases "filed between August 4, 1964 and March 28, 1973, against the government by women claiming that more stringent standards existed for women that wanted to enter the military service".

Each Military Department has reviewed its litigation subject files for the period covered by your request. The Army and Navy report that their records do not reflect the filing of any such cases during the period in question. The Air Force reports two cases: Callahan v. Laird, Civ. No. 71-500M (D. Mass., filed 1971), dismissed as moot, (Dec. 1974); Howard v. Nixon, Civ. No. 16834 (N.D. Ga., filed 1972), dismissed voluntarily by plaintiff, (July 1973).

We hope this information will be of assistance to you.

Sincerely,

Charles W. Hinkle

Charles W. Hinkle
Director, Freedom of Information
and Security Review

National Organization for Women, Inc.
425 13th Street, N.W. Suite 1048 Washington, D.C. 20004 • (202) 347-2279

July 29, 1979

Dean K. Phillips
1700 Sherwood Hall Lane
Alexandria, Virginia 22306

Dear Mr. Phillips:

I have received your letter asking whether the September, 1971 resolution concerning veteran's preference has been rescinded or modified.

The resolution has not been rescinded or modified and still represent's NOW's official position.

Sincerely,

Phyllis G. West

Phyllis G. West
Legislative Aide

REVOLUTION: Tomorrow is NOW

This is a summary of NOW's existing resolutions and policies by issue. It can be used to acquaint Chapter members with NOW's policies prior to the National Conference. Use this in conjunction with the workbook for action you received earlier to hold pre-Conference discussions with your Chapter. Only if all members are well acquainted with existing policies can we move forward at the 1973 Conference to devise strategy to implement these policies, as well as making any new policy we might need.

INDEX

3. All chapters develop employment conferences on employment problems to implement NOW policy on equal opportunity in employment and disseminate information on problems in opportunity for employment and promotions, wages, hours, working conditions, protective laws, fringe benefits. (Pension, leave, etc.) (Dec., 1968)
4. Chapters should work with local labor unions, particularly when many union members are women, to get ideas and enlist support for joint action. Chapters should also contact other women's organizations (BPW, National Council of Women, Negro Women's groups) to attempt to use group pressure to combat sex discrimination in employment. (Dec., 1968)
5. Urge expansion of service occupations such as shopper service, wardrobe tenders, development of "practical mothers" (like practical nurses) etc. (Oct., 1966)[
6. Offer career counseling to all women. (Mar., 1970)

F. Talent Banks

Develop Executive banks of able women so when employers indicate willingness to hire women, but claim they can't find qualified women, NOW can supply them with names. (Dec., 1968)

G. Women in Business

1. Encourage and support the formation of businesses for women and women in business. (Mar., 1970)
2. Provide information on securing Small Business Administration loans and obtaining government contracts available to minority businesses. (Mar., 1970)
3. Encourage and suggest procedures for women who wish to pool money to form economic co-ops for businesses, etc. (Mar., 1970)
4. Urge repeal of state and local laws which deny women the same freedoms, conditions and privileges as men have for borrowing money, owning real estate, and operating businesses. (Mar., 1970)
5. That NOW develop lists of business and professional women and businesses owned by women on national and local levels and disseminate these for the purpose of encouraging support of the businesses or practices of such women. (Sept., 1971)

H. Age Discrimination

Campaign against age discrimination, which operates as a particularly serious handicap for women re-entering the labor market after rearing children, and which is imbued with the denigrating image of women viewed solely as sex objects in instances such as the forcing of airlines stewardesses to resign before the age of 32. (Oct., 1968)

I. Veteran's preference

That NOW oppose any state, federal, county, or municipal employment law or program giving special preference to veterans. (Sept. 1971)

J. Income Tax, Social Security and Retirement

1. Eliminate tax provisions which discriminate against single persons;
2. child care deductions, as above.
3. Revise social security laws to eliminate discrimination against divorced women and working wives. (See also Marriage and the Family)
4. Revise retirement and pension plans to eliminate sex discrimination. (Dec., 1968)
5. Demand that OFCC, EEOC and Wage and Hour Division prohibit employers from discriminating against women by issuing immediate rulings requiring employers to provide equal contributions and equal benefits in all fringe programs, including retirement. (Sept., 1971)
6. Amend the Social Security Act to provide benefits to husbands and widowers of deceased and disabled women workers under the same conditions as they are provided to wives and widows, and to provide more equitable retirement benefits for families with working wives. Guarantee husbands and children of women employees of the Federal Government the same fringe benefits provided for wives and children of male employees. Provide tax deductions for child-care expenses incurred in the home. (April, 1971 board meeting)

K. Report of the Women and Volunteerism Task Force, October, 1972

1. NOW's standpoint on volunteerism.

The 1971 NOW Conference passed the following resolution:

that NOW distinguish between (1) voluntary activities which serve to maintain women's dependent and secondary status on the one hand, and (2) change-directed activities which lead to more active participation in the decision making process;

that NOW seek to raise the consciousness of women engaged in these volunteer activities, so that they use their "volunteer power" in an effort to change policies detrimental to the interests of women.

NOW thus makes a rough dicotomy between *service volunteering* and volunteering for change. NOW encourages the latter kind which is in essence citizens' participation in the democratic process.

Justice Backs Veterans' Job Law; White House Aides Upset

By Kathy Sawyer
Washington Post Staff Writer

Over the objections of some White House aides, the Justice Department yesterday filed a legal brief with the Supreme Court contending that laws that give veterans a preference in government jobs are constitutional.

News of the department's position stirred indignation among women's groups and some federal officials who have fought to have such preferences curtailed.

Throughout the debate over civil service reorganization, earlier this year, President Carter had called for rutbacks in the lifelong job preferences extended to 30 million veterans, a group that is 98 percent male and 92 percent white. That issue was the only minor one the president lost when Congress approved the historic civil service legislation in October.

Several White House aides spent the weekend trying to talk the office of the solicitor general out of filing the brief, or at least into modifying it substantially because they feel it does not accurately reflect the president's views, White House sources said. The offices of Stuart Eizenstat, Carter's top domestic policy adviser, counsel to the president Robert Lipshutz and Sarah Weddington, Carter's adviser on women's issues, were doing the "dickering" for the White House, the sources said.

Deputy Solicitor General Frank H. Easterbrook, who wrote the brief, said his office views the brief as "completely supporting the president's position."

The real question here," he said, "goes to who's in charge here: the president and the Congress, or the judicial branch? We're saying it's not the courts . . If somebody is going to change these statutes, it should be the president and the Congress."

The Justice Department filed the brief as a friend of the court in the case of Helen B. Feeney, a former Massachusetts state employe who was stymied in her attempts to change jobs when veterans were given preference over her.

A U.S. court in Massachusetts last spring ruled that the state's veterans preference statute was unconstitutional because it "deprives women of equal protection of the law."

The Justice Department brief has been in the works since Oct. 10, when the Supreme Court agreed to hear the case. Easterbrook said. He and other government sources said the brief had been circulated widely for comment and that certain changes had been made along the way in response to the concerns of the White House and other agencies.

"I assume the President could have instructed us not to file the brief," Easterbrook said. However, he noted also that one of the articles of impeachment against President Richard Nixon contained the argument that the president was "trying to tell the Justice Department what to do."

The 38-page Justice Department brief states that the U.S. "has an interest in participating in the case in order to defend those portions of the federal veterans preference laws that might be affected by the court's ruling."

If the court finds in favor of Massachusetts, it could jeopardize the whole range of U.S. benefits given to veterans in housing, education and numerous other categories, according to Easterbrook and other officials.

The Justice Department argument, as summed up in the brief, is that the state did not "purposefully discriminate against women" in enacting the statute and that "only purposeful discrimination violates the equal protection clause" of the Constitution. Moreover, the brief contends that governments have legitimate reasons for adopting veterans' statutes.

Any discrimination resulting from the statute, however unintentionally, is partly a result of women's exclusion from the military, the brief states, adding that "it is by no means clear that the restrictions on women's participation in the military are unconstitutional."

Sometimes, the brief said, "military gender distinctions operate to the disadvantage of men, not in their favor."

Although the brief upholds the constitutionality of the concept of veterans preferences, Easterbrook said, it does not hold that all veterans preference statutes necessarily are constitutional.

A number of executive branch officials, including several women, and women's group leaders said over the weekend that they were dismayed to learn of the brief's thrust.

"It's absurd to have these people in the solicitor general's office taking a position opposite to that of the president," said Judith Lichtman, executive director of the women's Legal Defense Fund.

Some sources suggested the solicitor general's office is developing a "history of differing with the administration position, and they cited previous Supreme Court cases—one involving the snail darter and the Bakke case, involving so-called reverse discrimination—in which this had occurred.

Easterbrook and other government sources responded that such disagreements "happen all the time," as part of standard operating procedures.

Thursday, December 7, 1978 THE WASHINGTON POST

Carter Still Upset By Veterans' Rule

By Kathy Sawyer
Washington Post Staff Writer

President Carter, displeased by a Justice Department brief that appeared to conflict with his views on veterans preference laws, said yesterday that he still believes such laws should be curtailed.

The brief, filed Monday with the U.S. Supreme Court, said that such laws, which grant preferential job treatment for veterans, are constitutional.

Carter had sought to curtail the preferential rights for able-bodied veterans while increasing them for the smaller numbers of disabled and Vietnam era veterans.

When he learned about the brief on Monday, one administration official said, the president was concerned not so much with its substance but with the likelihood that, through headlines and "15-second news broadcasts" it would be misinterpreted as a change in the administration's position.

Neither the president nor Attorney General Griffin Bell was aware of the brief's contents until Monday, the day the U.S. solicitor general's office filed it, according to officials of both the White House and the Justice Department.

"There has been a problem with the solicitor general's office not consulting with the people who ought to know," one administration official said.

"There is a degree of independence in (that office) that is of concern among White House aides," said another.

In a statement issued yesterday through White House press secretary Jody Powell, Carter said the attorney general has advised him that "the Justice Department brief in no way conflicts with the president's policy on veterans preference in federal employment."

Carter went on to say that a federal law granting preferential job treatment for nondisabled veterans "unduly interferes with employment opportunities for women and minorities and with efficient and businesslike management."

The reason the Justice Department brief does not conflict with the president's position is that it merely upholds the constitutionality of the concept of preferential job treatment for veterans. The brief thereby reasserts that it is the president and Congress, not the courts, who must make any changes in the laws, according to officials of both the White House and the Justice Department.

Also yesterday, the Justice Department said that Bell had invited women's rights groups to submit a legal memorandum on the case, which involves a challenge to a Massachusetts veterans preference law by a woman who consistently was passed up for job opportunities in favor of veterans. Bell said he would consider that memorandum "in evaluating any possible government options for further participation in the case."

The White House had helped set up a meeting yesterday morning between Bell and representatives of the women's groups, which have fought for modifications in the veterans preference laws, officials said.

"I'm not confident, but I'm hopeful, that Justice would be persuaded (by the memo) to reevaluate its position," said Judith Lichtman, who represented the Women's Legal Defense Fund at the meeting.

Bell, concerned about the lack of notice to himself on the brief, yesterday asked Solicitor General Wade H. McCree to give him "the same notice he gives to other agencies" when requesting comments on any legal action, according to Justice Department spokesman Terry Adamson.

"The attorney general must then bear the responsibility for any communication with the White House, as he deems necessary," Adamson said.

Officials at both the White House and the Justice Department emphasized their desire to "insulate" the solicitor general's office from undue political influence.

STARS AND STRIPES -- THE NATIONAL TRIBUNE
April 26, 1979
page 2

Phillips Tells VES Supreme Court Will Uphold Veterans' Preference

The United States Supreme Court will probably uphold the constitutionality of the "absolute" Massachusetts veterans' preference statute in a landmark decision sometime in June or July according to Dean K. Phillips, an attorney and former vice chairman of the Colorado Board of Veterans' Affairs.

Phillips, at the invitation of the Deputy Assistant Secretary of Labor for Veterans Employment Dr. Dennis R. Wyant, addressed the 1979 Veterans Employment Service annual training conference in Phoenix, Arizona on April 10, 1979 on the matter of Veterans' Preference.

Phillips reported that the Massachusetts case [Feeney v Commonwealth] would turn on whether the State Legislature intended to discriminate against women as a class when it enacted the veterans' preference statute at issue. He reported that on March 29, 1976, the lower court, in originally ruling 2-1 that the statute denied women equal protection of the law (as provided for in the 14th amendment to the Constitution), conceded that the Massachusetts preference law "...was not enacted for the purpose of disqualifying women from receiving civil service appointments..."

The case had then been appealed to the U.S. Supreme Court which ruled on October 11, 1977, that the lower court had not proven intent to discriminate. The Supreme Court then vacated the lower court order and remanded the case back to the lower court, instructing it to rule on whether Massachusetts had intended to discriminate against women in passing the statute. The Supreme Court cited Washington v Davis as a guideline which stood for the proposition that a neutral statute resulting in a disproportionate impact on a protected class is not denying that class equal protection of the law unless it can be proven that the legislature actually intented that the legislation be discriminatory.

The lower court held on May 3, 1978 that the Massachusetts legislature had intended to discriminate against women in passing the statute and once again ruled that it denied women equal protection. The lower court cited as evidence that the state legislature intended to discriminate the fact that 98% of America's veterans are males. It reasoned that an "absolute" form of veterans' preference would discriminate against females as a class. The court further wrote that women had been precluded by statute from comprising more than 2% of the military from 1948-1967.

Dean K. Phillips

Phillips pointed out that the 2% statutory bar was lifted by Congress in 1967 but that women had not comprised 2% of the military until 1973—six years later. He reported that women were subjected to higher enlistment standards and had 65% of MOS's closed to them until 1972. However, women filed no lawsuits from 1964—1971 alleging that higher enlistment statutes, regulations, and policies denied them equal employment opportunity in enlisting in the military.

Phillips also pointed out that men had been victims of "perhaps the most sexist institution in the country's history—the draft, which was used to select only men to be killed and crippled in combat."

Phillips reported that the draft was used to secure combat arms personnel for Vietnam in the late 1960's and early 1970's as very few men enlisted for combat arms. By 1969 Phillips reported that 82% of U.S. Army casualties were draftees. He further reported that the casualty rate for Blacks exceeded their percentage of Vietnam forces by 30%. He also took issue with language in the lower court ruling in 1976 which read the "...women have always been ineligible for the draft." Phillips asserted that more correct language would have stated that women were never subjected to the draft.

Phillips, who served in Vietnam in 1967-68 with a paratroop reconnaissance platoon, stated that the military currently was comprised of only 6.6% women and that long range plans called for women to make up only 10-11% of the military. He expressed concern that for those MOS's that do require considerable physical strength women have not been judged on the basis of individual ability but have been excluded as a class. Under the Civil Rights Act of 1964 private industry is required to have examinations certified as job related. He did state that a 1978 class action suit filed by Navy women [Owens v Brown] in Washington federal court was successful in overturning a statute that had limited assignment of women to hospital ships and transports.

In closing remarks, Phillips stressed the difference between constitutional questions and policy questions with respect to veterans' preference legislation and expressed a concern that if the Massachusetts statute were declared unconstitutional, then less absolute forms of preference might be subject to the same fate.

On June 5, 1979 (Massachusetts v. Feeney 442 U.S. 256) the U.S. Supreme Court voted 7 to 2 to uphold the constitutionality of veterans preference.

Dean K. Phillips
December 20, 1980

Addendum to the
VETERANS PREFERENCE CHAPTER

o Page 345. Women now comprise more than 10% of active duty military personnel.

o Pages 359-360. Several key developments have occurred since I completed this Chapter in December 1979.

o The Soviet Union's invasion of Afghanistan resulted in President Carter's 180 degree turn on the issue of draft registration. In 1979 he opposed suggestions that we return to the draft. In February 1980 President Carter recommended to the Congress that young men and women be required to register for the draft. During the resultant debate before the Congress, "feminist" groups varied on whether women should be subjected to draft registration. For the first time since the final stages of World War II, the issue of drafting women was no longer just the subject of cocktail party prattle - there was actually a possibility that it could become policy.

The past policy of NOW and most other feminist organizations had heretofore been to take a "low profile" on the issue of the draft. (Congressional Quarterly, April 21, 1979). Pressed by the February 1980 Carter announcement, "feminists" in their thirties and forties who avoided service during Korea and Vietnam were now publically stating that it was acceptable to them if the young women of the 1980s faced draft laws and military service. Often this inconsistency was not well received by the 20-year old women who were so generously thrust into the role of "equality of responsibility" by their once reluctant older sisters.

o The Congress did fund the President on June 12, 1980, for the renewal of an all-male draft registration only. On July 2, 1980, President Carter issued Presidential Proclamation Number 4771 providing for the commencement of Selective Sevice registration on July 12, 1980, of males born in 1960 and 1961.

On July 18, the 3rd Circuit Court of Appeals voted 3-0 to declare the proposed male only draft registration unconstitutional in that it denied men equal protection of the law. Goldberg v. Rostker, 49 LW 2066, 8 Military Law Review 2343, July-August 1980. U.S. Supreme Court Justice Brennan exercised on July 19th his authority to set aside the 3rd Circuit order pending review of the full U.S. Supreme Court (49 LW 3013 U.S.).

It is my opinion that before July 1981 the U.S. Supreme Court will uphold the constitutionality of the male only draft by a substantial margin - perhaps by a vote as one sided as 8-1 or 9-0. The court will reason that the Congress under Article I, Section 8 of the Constitution has broad discretion in its charge of raising and maintaining an armed forces and that limiting the draft to males falls within that discretion.

In my opinion, there is a deep need for draft registration. During Vietnam, 10% of the U.S. Armed Forces were Blacks and 12.6% of U.S. casualties were Blacks. However, over 30% of today's U.S. Army troops are Blacks (40% in the combat arms), and the casualty rate for Blacks could run as high as 40% if we got into a shooting war now. If we returned to a draft with no student deferments, a more representative cross section of American youth would fill the ranks of the U.S. Armed Forces and the burden of defending the interests of our nation would be more evenly distributed. As it is, only 50% of U.S. Army enlistees during FY 1980 had a high school degree or its equivalency.

Our "friends" from the National Organization for Women (NOW) testified March 19, 1980, before the Committee on Armed Services of the United States Senate with respect to the Department of Defense Authorization for appropriations for Fiscal Year 1981 (S.2294).

While acknowledging that she was ". . .not a military expert. . ." the NOW representative drew conclusions that only an expert would be qualified to make - she opposed draft registration on the grounds that "We have a volunteer armed service in place which is working . . ." (If 30% to 40% casualties for Blacks in the event of a war is "working", then NOW doesn't appear as sensitive to the plight of Blacks as their leadership would have us think.) However, if a draft were instituted, the NOW representative stated that women should be included. This "on the record" statement favoring the drafting of women if men were drafted contradicted more spontaneous comments attributed to NOW representatives during the previous month when President Carter first announced his plan to require both young men and women to register. At that time the informal position of some feminists was said to be - no drafting of females until the ERA was ratified. (Interestingly, during the past three years every major poll has indicated that a significantly higher percentage of women oppose the ERA than men.)

THE WASHINGTON POST
FEBRUARY 1, 1980 page 1

O'Neill: Congress Will Not Pass Registration of Women for Draft

By Michael Getler
Washington Post Staff Writer

House Speaker Thomas P. (Tip) O'Neill Jr. (D-Mass.) publicly cautioned President Carter yesterday not to propose registration of women for the military draft, warning that such a move would not make it through Congress.

"As I read the Congress," the speaker told reporters on Capitol Hill, "it wouldn't go . . . it would be anathema around here" and the White House would be "better off" dropping the idea.

On the other hand, he said, he senses a "strong feeling" in Congress favoring registration of men.

The president is scheduled to make known next week if he wants some 16 million women between the ages of 18 and 26, as well as a roughly similar number of young men, to register for a possible draft.

If O'Neill's assessment is correct, it would mean there is virtually no chance to include females in draft registration, because Congress would have to provide authority.

In another development yesterday, women representing almost a score of women's rights, civil rights and anti-war groups from around the country gathered in Washington and said at a press conference that they were opposed to registration of either men or women and claimed that women had the political power to stop such a move.

"Women have always led antiwar movements, and we must speak out now against efforts to get us into another war," warned former member of Congress Bella Abzug, who was dropped last year as a White House adviser on women's issues and is now president of "Women USA."

The parade of speakers to the press conference podium demonstrated, according to Gloria Steinem, editor of Ms magazine, that this wasn't an attempt to present a nice, neat statement but rather was meant to show the depth of feeling around the country against registration, the draft and military solutions to current problems.

Though Steinem and others found it ironic that women might be drafted before they even gained their "Constitutional rights" under an Equal Rights Amendment to the Constitution that is still unadopted, the tone of the speakers was predominantly antiwar.

"What we need is Amtrak, not MX," said 74-year-old Maggie Kuhn, head of the "Grey Panthers," in a reference to the nation's rail system and a new Pentagon missile system, respectively.

Hilda Mason, a D.C. city councilwoman, said the trouble in the Persian Gulf was really "an economic struggle to preserve corporate wealth, rather than a threat to the people," and she wondered "what ever happened to that man who came to the White House with a bible in his hand."

Rep. Patricia Schroeder (D-Colo) did not attend the conference but submitted a statement saying that putting money for the draft instead into beefing up the National Guard and Reserves would send a much clearer signal to Moscow than "just compiling a list of American youth."

Schroeder said the president's decision to ask for registration was made by only a small group in the White house, was contrary to the advice of experts, and "not one top Selective Service or Defense Department official was brought into the decision."

While the United States unquestionably has key interests in the Persian Gulf, she said our allies' interests are greater. Yet, the United States is going ahead with registering youth "without asking any aid from the countries who stand to lose the most if oil shipments are interrupted—Japan and Europe."

A number of women said the draft should be invoked only if the United States were "attacked."

"Look," Abzug said at the close, "the purpose of this press conference is to make clear we are concerned about what is happening in this country . . . the hysteria, the return to the Cold War, the use of the draft and registration for political purposes to help fan the flames."

Though she condemned the Soviet moves in Afghanistan, she said events there and in Iran are not justification for the president's shift from a policy of self-reliance in energy to what she called an "immoral new Cold War campaign that would sacrifice American lives to back up our dependence on foreign oil and the shamelessly profiterring American oil monopoly."

THE WASHINGTON POST 2-14-80
page A-7

O'Neill Declined Award, Favors Registering Women

Associated Press

House Speaker Thomas P. (Tip) O'Neill Jr. (D-Mass. said yesterday that he turned down an award from an Orthodox Jewish group that mistakenly believed he opposed registering women for military service.

"I'm in favor of registration" of young men and women for the draft, O'Neill told reporters.

The impression that he opposed registering women was apparently caused by O'Neill's previous statements that Congress opposed the idea and would reject a registration plan if recommended by President Carter. Carter has since submitted the proposal to Congress.

O'Neill yesterday repeated his as- "overwhelmingly" in Congress.

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 1981

HEARINGS

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2294

TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 1981, FOR PROCUREMENT OF AIRCRAFT, MISSILES, NAVAL VESSELS, TRACKED COMBAT VEHICLES, TORPEDOES, AND OTHER WEAPONS AND FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR THE ARMED FORCES, TO PRESCRIBE THE AUTHORIZED PERSONNEL STRENGTH FOR EACH ACTIVE DUTY COMPONENT AND THE SELECTED RESERVE OF EACH RESERVE COMPONENT OF THE ARMED FORCES AND FOR CIVILIAN PERSONNEL OF THE DEPARTMENT OF DEFENSE, TO AUTHORIZE THE MILITARY TRAINING STUDENT LOADS, AND FOR OTHER PURPOSES

PART 3

MANPOWER AND PERSONNEL

FEBRUARY 19; MARCH 6, 10, 12, 17, 18, 19, 21; APRIL 2, 1980

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DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 1981

WEDNESDAY, MARCH 19, 1980

U.S. SENATE,
SUBCOMMITTEE ON MANPOWER AND PERSONNEL,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

STATEMENT OF JUDY GOLDSMITH, VICE PRESIDENT-EXECUTIVE, NATIONAL ORGANIZATION FOR WOMEN, INC.

Ms. GOLDSMITH. Thank you very much, Mr. Chairman.

I am pleased to appear before you to address the question of draft registration of women.

As vice president-executive of the National Organization for Women, the largest national organization dedicated to the eradication of sex discrimination, I am representing over 100,000 women and men in this country who are committed to equality for women.

The National Organization for Women opposes a reinstatement of the draft registration, and since a registration serves no other purpose than as a preparation for a draft, we are also saying that we oppose the draft. We oppose it strongly, and we oppose it for both men and women.

We have a volunteer armed service in place which is working, and which could work even better, if present discriminatory practices were eliminated which prevent full utilization of those women already in the military and those who seek a career within it.

If the objective is really to increase the number of people capable of being mobilized in a short period of time and to improve the quality of the national defense, the easiest way to accomplish that without increasing the war atmosphere in the world and without involuntarily disrupting the lives of young people is to remove those discriminatory restrictions. Without those practices, women recruits would be in far greater supply and of a higher caliber than additional male recruits. Under existing practices, female numbers are depressed to a current 8 percent of the Armed Forces. The current discriminatory practices are based upon outmoded concepts of both women's role and combat.

If a draft and registration are instituted, NOW believes they must include women. As a matter of fairness and equity, no draft or registration that excluded one-half of the population in 1980 simply on the basis of gender could be deemed fair. It would also ignore the outstanding record of women in military service.

Women recruits are performing well in diverse military occupational groups. They have a consistently higher educational level than their male counterparts. They do better on military entrance tests, their retention rate is higher, and they lose less time from duty than

men, even including pregnancy as a factor. They also generally present less discipliary problems.

Women have served, and in combat situations. During World War II, 200,000 women served, often under hostile fire. They received Purple Hearts. And they were taken as prisoners of war. They served in Korea, and they served in Vietnam. Playing the language game of classifying an army nurse or Women's Air Service pilot as noncombatant does not change the fact that they are in combat. Moreover, they served at greater risk to themselves because they have not had adequate combat training. And, in tests of combat effectiveness done by the military, women have performed as well as men, and sometimes better.

Lest you think that in saying this we are glorifying combat, or women in combat, let me assure you that we are not. We want neither our young women nor our young men exposed to combat. We tell you that women are as effective in combat because it is so widely and erroneously believed to be untrue, and because that supposed inability is the basis of the sex discrimination restrictions that limit women in the military and indeed throughout society.

Those who oppose the registration and draft for females say they seek to protect women, but omission from the registration and draft ultimately robs women of the right to first-class citizenship and paves the way to underpaying women all the remaining days of their lives.

Discrimination against women in the military depresses opportunities, career paths, training and benefits for women. The military provides thousands of jobs, training programs, and educational opportunities which are, for the most part, presently closed to women. Military pay which is, on the average, some 40 percent higher than female civilian pay, could be the only way out of poverty for countless young women.

Discrimination against women in the military also costs this Nation literally billions of dollars a year. The Army, for example, spends $3,700 to recruit a high quality male, while the cost of recruiting a high-quality female is only $150.

Under the present discriminatory system, women are at a considerable disadvantage in the military. Nevertheless, they will be increasingly called upon to serve. Why? Because they are needed. Because the pool of available young men will decline 25 percent in the next dozen years. Because women today are an essential part of our Nation's work force and are a key part of the trained and trainable technical pool of young people required to operate a modern military.

In closing, let me reiterate and emphasize that our goal is not to see women in combat. It is not to see men in combat. In particular, we strongly oppose either of them being compelled to serve through a draft.

However, this Nation must recognize realities. In the past we have deluded ourselves that women were protected from the ugliness of war. They were not. They have served, they do serve, and as each day passes, the likelihood of their serving, in every capacity, as volunteers or draftees, increases.

Reality has ended the debate about whether women will serve in the military. They must, but at what cost to themselves?

I thank you.

Senator NUNN. Thank you very much, Ms. Goldsmith.

Senator Warner, I believe, has to leave. I will defer to him for questions.

Senator WARNER. Thank you, Mr. Chairman.

Again, Ms. Goldsmith, we are grateful to you for taking the time to come and express forthrightly the views of your organization. I read it carefully, and I wonder if I might ask you, you recognize now that this exclusion of women from combat is a form of discrimination.

Ms. GOLDSMITH. Yes.

REMOVING DISCRIMINATION

Senator WARNER. Recognizing reality, as you say, if we go to a draft, then do you want that discrimination removed so that in every respect women are treated coequally with men from the very day of induction through all types of combat?

Ms. GOLDSMITH. That is correct. I agree with your earlier statement that it is unreasonable to say that you must have equity in the registration process, but that you are going to stop it somewhere along the line. We would like to see the combat bar removed, whether there is a draft or not.

Senator WARNER. Thank you.

Senator NUNN. Does that same answer apply to having 80,000 females drafted as opposed to 570,000 males? Would you agree with that kind of selective process based on the determination of military needs?

Ms. GOLDSMITH. We are talking about the discrepancy between the 80,000 and the 570,000 that was referred to earlier?

Senator NUNN. Right.

Ms. GOLDSMITH. Yes.

Senator NUNN. The administration's plan for first 650,000 people in an emergency would be to take in about 570,000 males and about 80,000 females, and really what I am asking is your opinion on that, the equity——

Ms. GOLDSMITH. I do not think there is any way that can be seen as equitable. I do not know what kind of logistical or specific technical needs the Army may have that may determine what numbers they take, but the organizational position is that the sexes must be treated equally in any governmental action.

Senator NUNN. What about a test of physical or mental capability for combat that would not be related to gender? Would you go along with that?

EXPERIENCE AND COMMONSENSE

Ms. GOLDSMITH. Oh, certainly. We must assume that the military uses both its vast experience and commonsense in assigning people to appropriate positions. Certainly, there are some women who would not be qualified for certain positions, combat or otherwise. Certainly, there are some men who would not be qualified for those same positions. It must be based on individual ability, capability.

Senator NUNN. Even if it came out nine to one?

Ms. GOLDSMITH. If the test were a reasonable, justified test, and that is the way it came out, yes.

Senator NUNN. Senator Exon?

Senator EXON. Ms. Goldsmith, thank you very much for your testimony. There are parts of your testimony that I agree with wholeheartedly. There is discrimination in the armed services today. We have been involved in some of that, in trying to straighten it out. I happen to represent this Armed Services Committee on the Board of Visitors, so to speak, which is the controlling agency at West Point. I have been to West Point. I am just pleased to report that the Commandant of West Point and all of the officers there, after being quite skeptical, are very high on the women that we have at West Point today, and the graduates that are coming out of that institution have been written up, and lots of publicity has been received. We have some excellent women up there taking part in the role that women must play.

I would agree generally with the statistics that you have here regarding the role of women, that women are going to have to play if we become involved in hostilities or a state of war once again. That part of your testimony is well taken, and certainly I would just say that I think to take an old institution like the armed services, that have been male oriented, right or wrong, for years, and it is very, very difficult to make these changes, but I think significant strides are being made.

FUTURE ROLE FOR WOMEN

I for one feel that the future role women are going to play is a very key one, both in a peacetime armed services and a semipeacetime armed services which is the role I think we are in right now, and they are going to play a key role if we find ourselves in a full wartime situation once again. Do you agree with the statement that one of the other witnesses made today, that was quite shocking to me? That witness testified—Before I ask that question, I would say one of the difficulties we have had at West Point, of course, is the law we now have where women are not allowed to begin combat positions, so that does limit, and that is discrimination in a sense.

Now, I happen to feel that, going back, I happen to feel that that is discrimination that is needed. Do you agree that the only real test as to who should be in the battlefield situation are the physical and mental aptitudes of individuals, regardless of sex.

Ms. GOLDSMITH. I am not a military expert, and I do not know what kinds of determinations are used to assign people, but I think that whatever they are, they must be on the basis of ability. I do not think that gender ought to or can enter into it reasonably, justifiably. Defense of one's nation is a citizen's responsibility. I can't see how that can know gender. Women have defended this country from the time the Nation was settled. Women were pioneers in the West, and carried guns, and defended their lands and their families. Women have done that. Women can continue to. And I know that there is an emotional resistance to the idea of women in combat. I think perhaps we need to see that in a fuller perspective, and see that combat is a terrible thing for people. Certainly it would be terrible to see women in body bags.

I have an 8-year-old daughter. I do not have a son. She is not of draft age, and I'm an optimistic person, but not so optimistic that I think we will have reached world peace in the next 10 years. I know it is possible that she could be subject to that. I do not want her to. If I had a son, I can't imagine that I would feel any differently, and I think that we must, particularly in a world where women are reasonably assuming a just position of equality, I can see no justification—I see, in fact, an intolerable chauvinism that says it is acceptable for young men to go off to battle, to war, to be taken prisoners of war, to be maimed and to be killed, and not women. I don't want anyone to be exposed to that, obviously, but I think it is clear that defense is a citizen's responsibility.

Senator EXON. I would certainly agree with you that defense is everybody's responsibility. I guess maybe to put it in perspective, the way I see it, and without trying to be overdramatic about it, I am just talking about the actual situation, I have sons and daughters, and I have grandsons and granddaughters. Maybe it is only natural for fathers and grandfathers to be overly protective of their daughters and granddaughters than their boys.

I would just say that getting down to the crux of the situation, if I were depending for the survival of our Nation on who could best handle a bayonet in a combat situation, I would just have to feel that my sons and grandsons would be in a better position to do that than my daughters and granddaughters.

Now, I suspect there are some people who are not going to agree with me on that, but I happen to feel that very sincerely, and it is very difficult for me to accept this theory that women—it isn't anything that they are less capable, but there are more things that women can do better than men, and men can do better than women, but one of them is not handling a bayonet in my opinion.

Ms. GOLDSMITH. If I could just please respond to that briefly, I appreciate the basis of your feelings. I understand that. But no one has disagreed here today that women are essential to the military, and that they will serve. People have talked generally in terms of women serving on a volunteer basis, as opposed to being drafted, but women will serve. They will be in the military. If there is armed conflict, they will be involved, and they will serve at a disadvantage because they will be serving without adequate combat training, although they will be in countries where armed conflict occurs.

There were women in Vietnam who were not designated combat, but who were clearly subject to the same kinds of jeopardy, and I would prefer to see a woman designated combat and have adequate combat training.

I could say also just as a footnote to this that I would like to see the same kinds of concern for the safety of women in the civilian society, where rape occurs once every 8 minutes, and 1 out of every 4 married women is an abused spouse. Yes, I appreciate the concern for the welfare and the safety of women. I would like to see it extended to the civilian world. I would also like to see it extended to men.

Senator EXON. Thank you, Ms. Goldsmith.

Thank you, Mr. Chairman.

Senator NUNN. I certainly concur on that last point. I think the statistics on rape and beating are deplorable in our society. I do not know what the answer is, but I certainly share your concern on that. I have visited several homes taking care of women who have been victimized. I have great identification with that problem.

One footnote. Women who are going in on a volunteer basis today are being trained for combat. They are not going into combat arms, but they are being trained in the combat arena in all of the services.

Ms. GOLDSMITH. In all of the services?

Senator NUNN. That is my understanding.

Mr. GOLDSMITH. If there is some way I could get access to that in a formal format, I would appreciate it.

Senator EXON. I would just interject there to back that up; at West Point, for example, women cadets there do everything that the male cadets do. The report we get back is that they are pretty tough soldiers.

Ms. GOLDSMITH. Very good.

Senator EXON. I think that is generally true. We are training the women more and more, at least in the defensive combat role if not the offensive role.

Senator NUNN. Thank you very much, Ms. Goldsmith.

Our next witness is Rabbi Herman Neuberger, chairman of the Jewish coalition against women's draft. Rabbi Neuberger, we are happy to have you here.

Rabbi?

Armed Forces

DRAFT REGISTRATION—

Registration of males only for possible involuntary induction into armed forces discriminates between males and females in violation of Fifth Amendment.

Ordinarily, statutory classifications based on gender are unconstitutional unless they are substantially related to an important Government interest. This "important Government interest" test is the appropriate standard to apply in this case. Accordingly, it is the Government's burden to establish that the exclusion of females from registration for selective service promotes an important Government objective and is substantially related to the achievement of that objective. Despite the extensive record compiled in this case, the Government simply has not met this burden. This court has combed the record and the legislative history for purported justifications for the total exclusion of women from the Military Selective Service Act (MSSA), but find each proffered justification unconvincing.

The Government's principal argument may be summarized as follows: women cannot fill all positions in the armed services, especially combat positions; in a time of mobilization the primary need of the military services will be in combat-related positions and in support position personnel who can readily be deployed into combat; therefore, in order to maximize the flexibility of personnel management, women should be excluded from the MSSA. Further, the Government argues that we should defer to the congressional determination that this is the best way to run our armed forces.

Military opinion, however, backed by extensive study, is that the availability of female registrants would materially increase flexibility, not hamper it. The Department of Defense (DOD) estimates that in a time of military mobilization it would require approximately 650,000 inductees within the first six months, and it could advantageously use 80,000 women among these 650,000 inductees. The DOD's view is that women would be useful in a mobilization, though not necessary since there is a sufficient male population to supply the 650,000 inductees.

The projection of 80,000 female inductees in a time of mobilization reflects needs in addition to the 150,000 to 250,000 women who would already be in the services and takes into account the statutory and policy restrictions on women in combat, according to congressional testimony. As was further explained to Congress, the figure of 80,000 female inductees does not represent an estimate of the number of positions women could fill—i.e., noncombat and noncombat reserve positions—but represents the number of female inductees that would be of overall benefit to the effectiveness of a mobilization plan. The scenario envisioned is as follows: upon a military mobilization the immediate need would be combat troops; male inductees cannot be moved into basic combat positions until after 12 to 14 weeks of training, and considerably more for highly skilled combat positions; the only immediately deployable source of combat-trained manpower would be existing male personnel on noncombat assignment; the immediately deployable male military personnel are, to a substantial degree, in positions where they do clerical and typing work, nursing, and other similar jobs that in the civilian work force are disproportionately filled by women; the pool of female registrants would have a strong concentration of skills not largely available among the pool of male registrants; thus, inducted women could be moved into noncombat jobs with little or no training and release men for immediate deployment into combat. Inducted women could complete work left undone by the combat deployment of the men in noncombat units.

It is difficult to accept the inconsistent positions of Congress. Congress has continuously allocated funds to increase the number of women in the armed services. It is incongruous that Congress believes on the one hand that it substantially enhances our national defense to constantly expand the use of women in the military, and on the other hand endorses legislation excluding women from the pool of registrants available for induction.

The President, the Director of the Selective Service System, and DOD representatives informed Congress that including women in the pool of those eligible for induction would increase military flexibility. The record reveals that in almost any conceivable military crisis the armed forces could use skills now almost entirely concentrated in the female population of the nation. Congress itself has appropriated funds for the increased recruitment and use of women in the armed services.

The problem with the Government's argument is that the record before us proves that there already is extensive use of females in the military and that this utilization will substantially increase. The die is already cast for substantial female involvement in the military. Furthermore, the military does not lose flexibility if women are registered because induction calls for females can be made according to military needs as they accrue in the future. Though military flexibility might call for less use of female inductees than male inductees in a given crisis situation, it is the antithesis of "flexibility" to exclude women from the pool of registrants that could be called upon in a time of national need. Accordingly, the complete exclusion of women from the pool registrants does not serve impo governmental objectives and is substantially related to any alleg governmental interest. Thus, the MSSA unconstitutionally discriminates between males and females.—Cahn, J.

—USDC EPa (three-judge court); Goldberg v. Rostker, 7/18/80. (The effect of this decision has been stayed by U.S. Supreme Court Justice Brennan, acting in his capacity as Circuit Justice for the Third Circuit. See 49 LW 3013.)

The Rebirth of a 9-Year-Old Draft Case

This is the first in a series of occasional articles that will trace the course of one major case through this term of the Supreme Court.

By Fred Barbash
Washington Post Staff Writer

Nine years ago, while men were being drafted and killed in Vietnam, a Philadelphia judge dismissed a suit challenging the military draft. The action went largely unnoticed outside of town, for it was just another antiwar protest, one among thousands.

On July 18, 1980, a three-judge federal court panel ruled in the same case that draft registration was unconstitutional because it excluded women, sending the issue to the Supreme Court where it may produce a landmark ruling this term.

"Where in the devil," a Justice Department lawyer taken by surprise that July day commented, "did that ruling come from?"

The answer — how a nine-year-old relic of a case was reborn — is another strange tale of the legal system of how it is ruled by luck, as much as by judges, by accidents as well as by precedents.

The case dismissed nine years ago is indeed the same one that produced the July 18 ruling now before the Supreme Court. It started, its backers concede, without a prayer: both the facts and the law were against it. It hung on desperately, by a loophole, all that time, waiting for the facts and the law to change. By luck, they did. In the three-judge panel ruling, the case without a prayer didn't even sound close.

It owes much of its success to the government, which could have brought the case to trial before everything changed. Donald Weinberg, a lawyer for the draft eligible class of men represented in the suit, thinks he might have lost then. Instead, government lawyers, doing what law school students are taught to do for defendants, moved at every step along the way to avoid trial. Then, to make matters worse, the government provided the facts that convinced the judges that the all-male draft was unconstitutional.

The case, as it now stands, challenges the draft registration because it distinguishes between the sexes for no substantial reason. But when a group of draft-eligible war protesters began it on July 16, 1971, in U.S. District Court, sex discrimination was only a minor part, a way of achieving something else.

The suit originally was intended to end the Vietnam war. It challenged the draft as involuntary servitude (slavery), a violation of due process and of the right of free expression and as an illegal tool of an unconstitutional war.

Judge James H. Gorbey quickly dismissed the suit, sending it, he must have thought, to that same never-never land where most of the other antiwar suits were put to rest.

The plaintiffs appealed and on May 11, 1973, the 3rd U.S. Circuit Court of Appeals in Philadelphia agreed with Gorbey that most of the claims should be thrown out. One, the sex discrimination component, should be preserved, the court ruled, simply because there had been no prior rulings on which to base a dismissal. Gorbey then approved the sex discrimination count for consideration by a three-judge panel.

Had there been a trial at this point, it might have ended quickly. By 1974, for one thing, there was no draft. If there was no draft, there might be no case. Only an obscure provision of the 1949 draft law — making men previously deferred from the draft eligible until their 35th birthday — was used to keep it a barely live controversy.

But even if there had been a draft law still on the books, the nation's courts had never made it illegal to distinguish between men and women in the law. In 1974, legislatures and Congress could, with little justification, deny almost anything on the basis of gender. There was no legal precedent to throw out the draft, or anything else, because women were excluded.

But in a totally unrelated case (Craig Vs. Boren) in 1976, the Supreme Court changed all that. From then on, the court ruled, distinctions between men and women in the law would have to be "substantially related to an important government interest."

To judges, the new language was critical, just short of enactment of the Equal Rights Amendment. To the government, it was potentially devastating.

Government lawyers would now have to show that the exclusion of women from the draft by Congress was based on an important reason. Vague justifications, stereotypes, were no longer adequate. And the justifications for excluding women in the draft law were laced with stereotypes.

When Congress enacted the original draft legislation in 1949, as a judge in the 1980 case would describe it, there was "an aura of male chauvinism permeating congressional attitudes toward women in the military."

Here, for example, is Rep. James E. Van Zandt (R-Pa.) in 1948 discussing a reason for not letting women command men in the military. "There is a not a member of the House Committee on Armed Services," Van Zandt said during one hearing, "who has not received a telephone call or a call in person from enlisted men objecting to the idea of having to take orders from a WAVE officer. Put yourself in the position of an enlisted man and I am sure you will agree with them."

And here is then-Gen. Dwight D. Eisenhower expounding before a congressional committee on how the committee members did not have to worry about expenditures for pensions for women in the military. Few women will ever become eligible by serving their full 30 years, he said. "They will ordinarily — and thank heaven — they will ordinarily get married" and leave the service.

The antidraft lawyers dug up all the material from the 40s and put it in the record.

The government would still argue that the affairs of the military are exempt from the Supreme Court's new standard for reviewing distinctions based on gender. And even if the military was not exempt, there was still a substantial reason that could pass muster under the new standard: military flexibility.

"To replace combat-capable males with combat-barred females denies the military the flexibility it obtains through an all-male draft and conscription," the government argued.

Had the case gone to trial, instead of being delayed, there would have been little data available to the plaintiffs with which to dispute the government's argument. In the end, however, the government did their work for them.

It was the winter of 1979 and lawyer Weinberg recalls feeling pessimistic about the chances for keeping the case alive. There was still no draft and he felt the judges were skeptical about allowing the case to continue.

"You never know when the draft might be reinstituted," Weinberg recalls telling one of the judges during a private conference, trying anything to convince him the case was still relevant. "You never know when there might be some kind of invasion."

A few weeks later, in December last year, the Soviet Union invaded Afghanistan. President Carter announced reinstitution of draft registration and one of the judges joked to Weinberg: "You must have a pipeline to Brezhnev."

That saved the case. But it didn't make the case. That was left, once again, to the government. In the years of the case's delay, the utilization of women in the military increased dramatically, from 39,000 at the beginning to over 150,000 by 1979. The military was quietly studying female effectiveness and finding, for example, that properly trained women could load 95-pound shells into 155 mm howitzers just as effectively as men. The Army instructed field commanders to allow women full battlefield access in the event of war, removing many, though not all, of the old restrictions.

Finally, when the president proposed that women be included in the new draft, the administration hauled out top Pentagon officials to support this position before a skeptical Congress.

The "work women in the armed forces do today is essential to the readiness and the capability of the forces," Assistant Defense Secretary Robert B. Pirie told Congress. "It is in the interest of national security that, in an emergency requiring the conscription for military service of the nation's youth, the best qualified people for a wide variety of tasks in our armed forces be available. The performance of women in our armed forces supports the conclusion that many of the best qualified people . . . will be women."

This type of testimony would ultimately decide the case. And an extraordinary public admission by a Justice Department lawyer during those hearings would put the nail in the coffin.

Larry L. Simms, deputy assistant attorney general (he works for the agency arguing against the draft in Philadelphia), told members of Congress that the historical record — the male chauvinist comments in 1948 and 1949 — were so devastating that a whole new, after-the-fact record would be required to defend the all-male draft.

As a result of Simms' testimony, the judges decided it wasn't even worth exploring in depth the 1948 legislative history to find a reason for excluding women.

In their opinion, the three judges based their ruling in large measure on government testimony. Military experts had testified, they recalled, that women are necessary in the event of an emergency callup. They had testified that women have been "a success story" in the military.

"The principal reason the government proffers for a male-only registration," the court said, "is that it provides military flexibility. We therefore hold that the complete exclusion of women from the pool of registrants does not serve 'important governmental objectives' and is not 'substantially related' to any alleged government interest."

MEMORANDUM

file
Vets
groups

THE WHITE HOUSE

WASHINGTON

23 April, 1981
Time: 4:00 PM

Please return to

FOR: MORTON BLACKWELL
SHANNON FAIRBANKS

FROM: LARRY DE MEO, X2646

SUBJECT: PLANS FOR CEREMONIES ON 26 APRIL, NATIONAL RECOGNITION DAY FOR VIETNAM-ERA VETERANS

The American Legion has laid the groundwork for Recognition Day activities to be held at Constitution Gardens (adjacent to the Lincoln Memorial). This is the site donated by the Federal Government to the Vietnam Veteran Memorial Fund (VVMF) for the proposed construction of the privately-funded Vietnam Veteran Memorial.

The Legion's Park Service permit extends from 1:00 PM to 3:30 PM, Sunday, 26 April, 1981.

The Legion has issued the following invitations for speakers at the ceremony:

1. Marion Barry, Mayor, District of Columbia.
2. Rep. Donald J. Albosta (D MI-10)
3. Jan C. Scruggs, President, VVMF

As of this time, it is not yet known whether Mayor Barry will attend. The attendence of Albosta and Scruggs is confirmed.

The Military District of Washington (MDW) has arranged for a 28-piece Navy band for the ceremony. The Joint Military Organization will provide a Joint Service Color Guard composed of members of the five military services.

Secretary of the Air Force Verne Orr has been confirmed as the Administration representative, and will speak at the ceremony.

The Veterans Administration, in conjunction with the Department of Health and Human Services, has been tasked to draft a speech for Secretary Orr. The VA will also arrange for a Chaplain (tentstively scheduled to be CH. Clarence Cross of the Washington VA Medical Center) to open and close the ceremonies, and is now working with the American Legion, MDW and the National Park Service for logistical support.

Proposed Schedule of Events:

12:30 AM to 1:15 PM:	Legion escort assembles at Arlington Cemetery Gates (see attached Legion press release).
1:15 PM to 2:00 PM:	Legion escorts "walkathon" veterans across Memorial Bridge to the ceremony site.
(1:45 PM)	Navy band and Color Guard in place.
2:00 PM to 2:25 PM	Posting of Colors; Legion MC introduces Chaplain Cross; Invocation.
2:25 PM to 2:35 PM	Mayor Barry (OR Legion Executive Director Robert Spanogle)--speech.
2:35 PM to 2:55 PM	Presentation of "walkathon" funds to Jan Scruggs, President, VVMF.
2:55 PM to 3:05 PM	Legion National Commander, Michael Kogutek--speech.
3:05 PM to 3:15 PM	Air Force Secretary Verne Orr--speech.
3:15 PM to 3:25 PM	Rep. Donald Albosta--speech.
3:25 PM to 3:30 PM	Benediction and Retrieval of Colors.

The Veterans Administration is notifying the members of both Congressional Veterans Affairs Committees of these activities. It is not known if any of these Congressmen will attend.

DOD and VA will handle publicity (in addition to Legion efforts) pending the release of the Presidential Proclamation by the White House Press Office.
The Legion has contacted the American Red Cross to try to arrange for medical support. Neither MDW nor Park Service can provide this service.

The following Veterans Organizations have indicated they will send representatives and will encourage local members to attend:

1. Veterans of Foreign Wars
2. Disabled American Veterans
3. AMVETS
4. Blinded Veterans Association
5. Paralyzed Veterans of America
6. National League of Families

At this time there is still a hitch on the provision of chairs. The Park Service cannot provide personnel to work on weekends, and is reluctant to release its chairs unless someone is detailed to pick them

up immediately upon the close of ceremonies, lest they be stolen. The VA is now working with MDW and the Park Service to arrange for personnel and transportation to pickup, emplace, retrieve and return the Park Service chairs. However, the availability of chairs is not yet confirmed.

Due to the nature of the ceremony and concern among the Veteran Organizations for Vietnam Veteran issues, it is recommended that Mrs. Elizabeth Dole attend.

THE AMERICAN LEGION

For God and Country

NEWS RELEASE

NEWS HOTLINE (800) 428-2686
(INDIANA) (317) 637-6649

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FOR IMMEDIATE RELEASE

SUBJECT SUMMARY: The American Legion will observe National Vietnam Veterans Day with a march in support of the Vietnam Veterans Memorial. Urges area veterans to join in walk across Memorial Bridge.

WASHINGTON, D.C.--Acting on President Reagan's signing of a Congressional Resolution designating April 26 "National Vietnam Veterans Recognition Day,"The American Legion is calling on area veterans to join a march Sunday afternoon to the planned site of the Vietnam Veterans Memorial.

The march is scheduled to begin about 1 p.m. at Arlington Cemetery, cross the Memorial Bridge, and proceed to the west end of Constitution Gardens near the Lincoln Memorial, where a short ceremony will be held.

Leading the march will be two Jacksonville, Ill., Legionnaires, Kim Splain and Junior Wyatt. The men, both Vietnam era veterans, began their 818 mile walk to Washington from their hometown on March 14 to draw attention to the memorial which is to be constructed through public donations.

During the ceremony at the memorial grounds Sunday, Splain and Wyatt will present to the Director of the Vietnam Memorial Fund a check representing the amount of money their walk has generated in cash and pledges.

Veterans interested in joining in the walk are requested to meet at the Arlington National Cemetery visitor's parking lot on the Virginia side of Memorial Bridge at 1 p.m. The pace will be maintained at wheelchair speed. For additional information call (202) 861-2790.

(end)

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

file Veterans groups

April 21, 1981

FOR: ED GRAY

THROUGH: RON FRANKUM

FROM: SHANNON FAIRBANKS SF.

SUBJECT: Vietnam Veterans Recognition Day

Action Forcing Event

Sunday, April 26, 1981
Vietnam Veterans Day

Background and Discussion

It is a well known fact that the President received strong support from the veterans organizations early and through out his campaign. The Veterans of Foreign Wars even broke tradition and formed a political action committee to martial support for the President.

However, there are unmistakeable signs that the organizations' faith in the Administration has begun to erode. I know that one of their major concerns is the fact that the President has not yet nominated anyone to fill the position of Administrator of the Veterans Administration.

ISSUE 1. Under the circumstances, I think one of the best actions that could be taken on Vietnam Veterans Recognition Day is the announcement of the nominee for the VA Administrator position. I think it would be perceived by the organizations as a substantive as well as symbolic action, and would begin to allay their doubts and fears about the Administration's commitment to veterans.

Action

I will contact Ed Meese's office (Ed Thomas) and try to get the decision to appoint pushed forward.

A call (no response) has been placed to Wayne Roberts.

ISSUE 2. The main event planned for Sunday is a ceremony scheduled for 2:00 p.m. in Constitution Gardens and sponsored by the American Legion.

I recommend that someone from the Administration be asked to deliver the President's greetings to the assembled Veterans Groups.

Recommendation concurred in by Major Robert Kimmitt, NSC staff who believes it is important for the Administration to show its concern in a visible way.

Action

Secretary of the Air Force Verne Orr is standing ready to be asked. (contact: Dennis LeBlanc, White House Military Office). You must decide whether it would be appropriate to ask Secretary Weinberger first. (contact: Lt.Col. Grant Green, Special Assistant to Sec. Def. x4138)

3. It is appropriate to arrange for one of the ceremonial bands to play for this kind of memorial event.

Action

The ceremonial troops have been alerted and a final go-ahead needs to be given to Col. Muratti (x2150) by 10:00 a.m., Wednesday, April 22, 1981. Your OK NEEDED.

4. It would be appropriate to name the Veterans Administration as the action agency to co-ordinate Federal participation in the ceremony, and to generate public announcements at Federal installations.

Action

Please indicate how to proceed. Our contact person for the VA is Nick Longworth. He will be in my office tomorrow at 9:00 a.m.

cc: Martin Anderson
Robert Carleson
Morton Blackwell

THE WHITE HOUSE

WASHINGTON

May 21, 1981

Robert Sniffen
Vietnam Veterans Foundation
P.O. Box 1544
Washington, D.C. 20013

Dear Mr. Sniffen:

Enclosed is a ceremonial copy of the Presidential proclamation concerning the recognition day for the Vietnam Veteran.

Thank you for your inquiry.

Sincerely,

Morton C. Blackwell
Special Assistant to the
President for Public Liaison
for Veterans

sent 5/27/81