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WOMEN IN THE DRAFT?

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HARVEY SCHWARTZ HASN'T HAD THIS MUCH MEDIA ATTENTION SINCE HE WON THE CASE STRIKING DOWN A MASSACHUSETTS BAN ON TATTOOING ON THE GROUNDS THAT TATTOOS WERE A FORM OF FREE EXPRESSION.

After that trial, he remembers the judge saying, in humor, "If my daughter comes home with a tattoo, you'll never win another case in my court." Schwartz pauses for a beat and wonders about his next case: "What'll she do if her daughter gets drafted?"

Of course, nobody's daughter - or son - is getting drafted. There hasn't been a draft in 30 years. But every male is required to register with the Selective Service when he turns 18. Females, on the other hand, aren't allowed to register. This difference prompted a dinner conversation in the home of this civil rights lawyer. Schwartz's 18-year-old son, Sam, called it discrimination. He had to register to be eligible for a government school loan while his stepsister didn't. He couldn't get into most government jobs or training programs without signing up. He'd be thrown in jail if he refused. "It isn't fair," said Sam.

Then 17-year-old Nicole made the same but opposite argument. She wasn't asked to sign up because of old ideas about men going off to war and women staying home waiting for letters. "I don't think it's fair, and I don't think it's ethical," said Nicole.

The upshot is that Sam, Nicole, and three other Massachusetts friends filed a lawsuit last week to declare the all-male registry unconstitutional.

In some ways, this was a suit just waiting to happen. Or, actually, to happen again. In 1981, the Supreme Court upheld this males-only law as reasonable because there were so many restrictions against women in the military. But that was 22 years ago, before women were on the court, before most of the restrictions were lifted, before there were 33 female generals and 212,000 female soldiers doing nearly every job in the military short of ground combat.

The rules and the images have changed one war at a time. During the Gulf War there was still a national debate about women, especially mothers, at war. There were headlines: "Women in harm's way," "Mommy goes to war." An AP poll said 64 percent of Americans thought mothers shouldn't be sent to a war zone.

Now, in the run-up to this Iraq war, we talk about "husbands and wives," "sons and daughters," "mothers and fathers" going off to war with strikingly little comment. Women at war are no longer news.

I am sure that it's easier to accept and support the idea of fighting women in the context of a

volunteer army. This is the world they chose. And surely it's easier to support a coed registry when there's no draft anyway. But at this post-9/11, pre-Iraq war moment in time, this case is not just a prod to think about equal rights. It's also a message about burdens.

Indeed, as this quintet of young people filed their suit, Representative Charles Rangel filed a consciousness-raising bill to reinstitute the draft as part of a national service. How come, he asked, only a handful of the members of Congress who voted to allow war in Iraq have children in the military? He is arguing that "if we are going to send our children to war, the governing principle must be that of shared sacrifice."

If that's true of race, of class, of Congress, it's also true of gender. Over the years, I remember endless articles asking, "Is America ready to see women come home in body bags?" But I can't remember a single article asking whether we were ready to see men come home in body bags. I never understood why it was easier to send our sons into harm's way.

"As much as it would kill me to see my kids go off to war," says Schwartz, "I don't see how you can advocate sending other kids to war while saying mine should be protected." That includes the parents of daughters.

The military isn't always in synch with civilian times. It was racially integrated in the 1950s when the South was still segregated. It still wants gays in the closet. It has been on both the front lines and the rear guard of advancing women.

Gradually, as the brass found that women can do the job, we ran out of reasons for treating them differently in the military. Why, then, treat them differently in registering for Selective Service, a list gathered in case of emergency?

"If things get so bad we have to start drafting kids, why wouldn't we want women?" asks Schwartz. "Is it chivalry? Stereotypes? I can't think of a good reason."

Neither can I.

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