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After Challenging Military Ban on Women in Combat, Molly Pitcher Project's Dreams Are Realized



The Molly Pitcher Project: (from left) Helen O'Beirne, law professor Anne Coughlin, Ariel Linet, Rebecca Cohn and Kyle Mallinak.

U.S. Army 1st Lt. Ashley White, 24, was killed by an improvised explosive device in Afghanistan in October 2011 while serving as a part of a team attached to a special operations unit. Though the military officially banned women from serving in combat positions, servicewomen like White were often attached to units that saw deadly combat in Iraq and Afghanistan.

Army Reserve Command Sgt. Maj. Jane P. Baldwin had tried out at Fort Bragg along with White to serve on the same kind of cultural support team. When Baldwin heard her friend had been killed in combat alongside two Army Rangers, it fueled her growing belief that the military ban on women in combat was both wrong and indefensible.

"I just got really fired up," said Baldwin, who now lives in Tallahassee, Fla. "Here Ashley was, working

with the Rangers, breaking the combat exclusion policy rules — [the Army] had to get an exception-to-policy memo to do the job they were doing. And here she is, dying doing that job."

Baldwin, who had been writing a research paper for the Army Sergeants Major Academy about women in combat, came across an article about the policy that mentioned White.

"I ended up writing the author, saying I really liked your article," Baldwin said. "And she referred me to [Professor] [Anne Coughlin](#) at the University of Virginia Law School."

Coughlin and four students had formed a group that was studying the combat exclusion policy and was beginning to lay the groundwork for a possible federal lawsuit challenging the rule as unlawful discrimination. The group was calling itself the [Molly Pitcher Project](#), after the folk tale — based on real accounts — of a woman in the Revolutionary War who took her husband's place in firing a cannon on British forces.



Army Reserve Command Sgt. Maj.
Jane P. Baldwin

Soon after, Baldwin became one of two plaintiffs in the lawsuit, which was filed in May 2012. It alleged that the Defense Department and U.S. Army were violating the law and infringing upon the constitutional rights of military servicewomen by excluding them from certain ground combat units and other positions solely on the basis of their gender.

The lawsuit argued that the combat exclusion policy harmed the careers of military servicewomen like Baldwin, who was not allowed to apply to a number of jobs, even though she was otherwise qualified. And some female servicewomen who were serving in combat positions despite the policy — like White — were being wounded or killed, yet were denied official recognition for their work.

"There's no reason why women shouldn't have the opportunity to serve in combat," Baldwin said. "There was nothing logical, no evidence, backing up [the policy]."

On Jan. 24, then-Secretary of Defense Leon Panetta announced that he was lifting the longstanding direct ground combat exclusion rule for female service members and eliminating all unnecessary gender-based barriers to service, following the unanimous recommendation of the Joint Chiefs of Staff.

The move, he said, would ensure that the best qualified and most capable service members, regardless of their gender, were allowed to carry out the mission. It would open up roughly 237,000 positions to women, 184,000 in combat arms professions and 53,000 assignments that were closed based on unit type.

The Molly Pitcher Project and the lawsuit it helped initiate may have offered the critical tipping point that led to the military's overturning of the combat exclusion policy, one law student involved in the project said.

"So much work had already been done on the issue, so many women had been in combat [and] died in combat. The lawsuit was maybe the straw that broke the camel's back," said third-year law student Helen O'Beirne.



Professor Anne Coughlin spoke to UVA Law alumni on May 10 about the origins and efforts of the Molly Pitcher Project.

'We Are Going to File a Lawsuit'

Coughlin, who has written a number of articles exploring the intersections among criminal law, criminal procedure and feminist theory, had been teaching about the combat exclusion policy since the early 1990s.

"Students [often] have the impression that they're living in a world that is sex-blind," she said. "One of the points that you always bring to their attention are the spaces where the government or the culture continues to discriminate. And the combat exclusion policy and the draft are key examples of that. You have the federal government treating males and females quite differently for purposes of a very important societal obligation and opportunity."

In the spring of 2011, Coughlin brought up the combat exclusion policy in her Law and Public Service course as part of a class project on impact litigation, designed to teach students how to plan and execute a legal movement to bring about social change. The idea, she said, was to get the first-year law students thinking about a real-world problem that might be tackled by impact litigation lawyers, and

then explore the idea of a lawsuit.

"What would the case look like?" she asked the students. "What would the doctrinal basis be for the case? Who would the plaintiffs be? Who would the defendants be? What would the best arguments be? What would we anticipate the other side would say? Is this a wise case to bring, strategically? Are we going to do more harm than good? Are there clients out in the real world who are suffering an injury?"

In the days leading up to the class discussion, law student Ariel Linet decided to pick the brain of a friend who wasn't in her class, Kyle Mallinak.

"I told him, I'm not trying to mooch off of you, but I'd love to hear any thoughts you have or any resources you might suggest to get some background," Linet said. "And so Kyle wrote back this explosion of thoughts. He picked it up and ran with it."

Mallinak sat in on the next class. And afterwards, Coughlin and the students — Mallinak, Linet, O'Beirne and their classmate Rebecca Cohn — continued to discuss the topic.

"Kyle, Becca, Helen and I were all in the same 1L section," Linet said. "So we were all friends."

For Linet, the idea that the military was banning women from even trying out for combat positions was deeply offensive.

"I was just fundamentally insulted as a woman," she said. "It's not that I wanted to go out and fight in combat. In fact, I consider myself something of a pacifist. But nobody, least of all the government, should be telling women you can't do something simply because of your sex, regardless of how qualified you might be."

It was an issue of simple fairness, Linet said.

"We don't want the standards to be lowered so that more women can qualify," she said. "And if the standards are fair and gender-neutral and no women can qualify — which we don't think would be the case — we wouldn't object to that. The point is that everybody who wants to serve in combat has a shot, regardless of gender."

The four students realized that their discussion could serve as the groundwork for a lawsuit challenging the combat exclusion policy.

"We started pushing the professor a little bit, saying, 'You know what? We think there's more than a hypothetical case here. We think there's actually something to be done,'" Mallinak said.

The students obtained permission from the Law School to form a course, led by Coughlin, that would focus on developing a framework for a lawsuit.

"The students said to me, 'Let's bring a lawsuit.' I said 'No, I can't bring a lawsuit, I have to teach

academic courses," Coughlin said. "They said, 'Let's start a clinic.' I said 'No, I can't start a clinic just for this one case. Clinics don't work that way.' So finally they said, 'What can we do?' I said, 'What you could do is form your own little course that would focus on the combat exclusion policy.' They came back and said, 'That's what we want to do.'"

On the first day of the course, Coughlin told the four students that this was their class. What was their agenda?

"And they said, 'We are going to file a lawsuit.'"

Laying the Groundwork

From the spring of 2011 and into the fall, the group — which had dubbed itself the Molly Pitcher Project — researched the law, studied the relevant cases at the Supreme Court and lower courts, and began reaching out to stakeholders and building the factual foundation of a potential lawsuit.

They interviewed military veterans enrolled at UVA Law, as well as students in UVA's ROTC program and a JROTC program in Orange County, Va. They invited UVA law professor [Deborah Hellman](#) to speak to them about equal protection issues. Professor [Richard Balnave](#), who leads the Law School's clinics program, instructed them on what they could and could not do, as none of the students held bar licenses.

And they began to connect with women who had been deployed in Iraq and Afghanistan who had taken the cutting-edge roles the conflict had opened to them.

"We were looking up and down the chain," Mallinak said. "We saw a world where women were making advances, were taking on increased roles that brought them closer and closer to combat roles, but the official recognition of that fact was lacking.

"There was a gap between what the women were doing and what the military was acknowledging they were doing," he added. "And there was an even bigger gap — a huge gap — between what women were actually doing and what the public understood they were doing."

By October, the Molly Pitchers had realized they were at the point where they needed the help of a lawyer willing to work pro bono.

Mallinak reached out to Tally Parham, a 1996 alumna of UVA Law and a former F-16 fighter pilot who flew combat missions in Iraq. Parham, a lawyer with the law firm Wyche in South Carolina, had also authored an article about the combat exclusion policy and spoken at an academic conference on the topic.

"I emailed her out of the blue and said we've got this thing, we think you'd be great, you have a personal connection, you know the issue," Mallinak said. "She came back and said she was willing to take on a

role, at least as far as providing an official umbrella for us to work under and possibly as a source [to whom] we could refer people who we thought had a strong interest and the potential to be plaintiffs down the road."

In November, the Molly Pitcher Project began to attract the public's notice and began to hear from a number of female servicewomen. Articles about their work appeared in local and state media, as well as in the Army Times.



Army Col. Ellen Haring

Army Col. Ellen Haring of Bristow, Va., a strategic planner who had served 28 years in the military, came across that particular article.

"My husband read an article in the Army Times talking about the Molly Pitcher Project," she said. "I decided to try to find Anne Coughlin, so I wrote to the author of the article who put me in touch with her. Initially, we just talked back and forth. She was just very excited to begin to hear from women who were interested in pursuing this through legal options. And I was one of them."

Haring, who became a plaintiff in the lawsuit, said her career has been held back because she has been excluded from the elite training and jobs in the military.

"In recent years it's become very obvious," she said. "If you can't serve in those combat specialties, you are almost entirely excluded from the senior ranks in the military. Eighty percent of our senior leaders come out of the combat arms from which women are excluded. So it was a structural barrier to women's advancement."

Without combat experience, Haring said, her career had seemingly hit a ceiling.

"Up to the rank of colonel, it's pretty fairly even. It's beyond colonel [where the effects of the policy can be seen]," she said. "Generals and admirals are pulled from those critical specialties, those combat specialties. And so that means that the most senior leaders in our armed services, who make all the policy decisions, are almost all men."

The Molly Pitcher Project, she said, came along at the right time.

"There were all these women in the military who didn't like this policy, but we didn't know how to go about challenging it. So [the Molly Pitcher Project's] efforts came along at the end of 10 years of conflict where women had been doing things that we'd never been allowed to do before," she said. "So I think it all came together. It was a tipping point."

'Shock and Disbelief'

Over the winter break, the law firm Covington & Burling agreed to take on the case on a pro bono basis

and file a federal lawsuit challenging the combat exclusion policy, with Baldwin and Haring as the plaintiffs.

"We couldn't have had better lawyers than the team at Covington," Linet said. "We came out of nowhere and got the best lawyers money could buy for no money at all. We're just so lucky to have all the people who came together on this. "

The [lawsuit](#) was filed in May 2012. It sought a declaratory judgment that the Defense Department and Army combat exclusion policies were illegal and unconstitutional because they violated the plaintiffs' right to equal protection under the Fifth Amendment, and because they violated the Administrative Procedure Act. It also sought a permanent injunction against any further enforcement of the military's combat exclusion policies and a mandate requiring the military to make all assignments and training decisions without regard to sex.

The government's lawyers signaled that they intended to vigorously fight the lawsuit, filing a motion to dismiss. Covington filed a response in opposition. And the case was still pending when Panetta issued his order to lift the combat exclusion policy earlier this year. ([More](#))

O'Beirne said she reacted to Panetta's announcement with "shock and disbelief."

"It's one of those things where you'll always remember where you were," she said. "I was sitting in a recliner, watching my baby sleep, which was unfortunate because I wanted to scream out and jump up and down, but I had to stay quiet. I did get a lot of goose bumps. It still, to a degree, feels so surreal. We thought it was going to take so long, that it was going to take years."

Linet called it "absolutely the best-case scenario," as an order from Panetta would likely carry more institutional legitimacy in the military than an order from a judge.

"A federal judge telling the military that they have to do something is not likely to be particularly popular. It may be incontrovertible, but it's not necessarily going to have a lot of support within the military," she said. "It's a whole different ball game when you have the Joint Chiefs of Staff unanimously recommending to the secretary of defense and the secretary accepts that recommendation and says our military will be stronger when combat positions are open to women."

Following Panetta's move, the judge issued a show cause order instructing the Molly Pitcher Project's side to explain why the case shouldn't be dismissed in light of the policy change.

The government and Covington agreed that they wanted to stay the case until after a mid-May deadline for the military branches to explain how they would implement the decision to remove unnecessary gender-based barriers to military jobs.

Baldwin said she believes the lawsuit initiated by the Molly Pitcher Project, as well as a similar suit filed in 2012 by the ACLU, for which the Molly Pitcher team consulted, played a key role in prompting the

policy's removal.

"On the Department of Defense side, their attorneys had to look at what our complaint was and their attorneys probably let [the senior military leadership] know that you're probably going to lose," she said.

"Because of [the Molly Pitcher Project's] efforts pushing this forward," she added, "it made the people in the position make this decision to say, 'We can either go ahead and make this decision or we can wait for the courts to make it for us.' And they chose the path to make the decision, which I think was the smart one."

'Agents of Change'

The four law students, all of whom will graduate this spring, are "agents of change," Coughlin said, not only for initiating a complicated, important lawsuit challenging a national issue, but for actually managing to succeed.

"They now know, from the beginning of their career, that they can make a difference," she said. "They were first-year law students. Kyle wasn't even in the class! They must be graduating knowing, 'Yep, I can do this lawyering thing, and I can do it at a really high level. And you know what? If I see an injustice in the world, I might be able to do something to fix it, whether it's something small or something big — like suing the Pentagon.'"

On a practical level, Coughlin added, the students learned what it takes to file a real lawsuit.

"Not only do they know how to read cases, analyze doctrine, write legal memoranda, they know how to pick up the phone and walk out the door to meet people and interview people," she said. "They know how to develop and ask the right kinds of questions to elicit the information that they need to develop a cause of action. They've been thoughtful about ethical questions. They've been thoughtful about strategy questions. This project required them to develop a case from scratch."

Mallinak said the experience demonstrated the importance of a "full-court press" to cause social change, noting that the policy was lifted after the combined efforts of the Molly Pitcher Project, the ACLU, and a number of advocacy groups like the Service Women's Action Network.



Coughlin and Haring co-organized a symposium on the combat exclusion policy in Washington, D.C., in February. Coughlin was joined at the event by Kyle Mallinak and Rebecca Cohn. ([More](#))

"I came away with a real conviction that the best way for us, as lawyers, to create change is when we can work in conjunction with broader forces for social change and pursue an all-means-possible approach to improving people's lives," he said.

It also underscored his respect for military servicewomen.

"I really got a deep and abiding appreciation for what these women had been able to accomplish by themselves, just by dint of going out there and doing their jobs in an atmosphere where a lot of people were skeptical of their abilities," he said.

As for Baldwin, she is looking forward to seeing what jobs the Army is going to open up to women — and she intends to apply.

"I'm purposely going to go after any combat arms position that I can possibly apply for, just because I can now," she said. "Doesn't mean anybody's going to hire me, and I understand that, but I'm going to do it just because I have the opportunity to apply for them now. All I can do is keep knocking on doors and eventually, if you knock on enough, someone says yes."