The original documents are located in Box 11, folder "10/25/75 - International Women's Year Congress, Cleveland, OH (2)" of the Betty Ford White House Papers, 1973-1977 at the Gerald R. Ford Presidential Library.

"Out of the Sweatshop"

Pages 10-11

JUSTICE

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Vol. LVII, No. 9-10 May 1-15, 1975 Price 10 Cents

International Ladies' Garment Workers' Union

75th Anniversary ALMANAC

A compendium of facts and figures about a great trade union – its history, members, the products they make and the industry in which they work.

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Greater Cleveland Congress

International Women's Year

Today, tomorrow and Monday

Carrying the banner higher

There's never been anything quite like the three-day session of the Cleveland Congress for International Women's Year that opened today.

The topics to be covered in hundreds of meetings and displays run the whole course of women's interests — which means almost no topic has been omitted.

It's all there — everything from assertiveness to lesbianism, from women in politics to women in sports, from coping with widowhood and divorce to the pros and cons of abortion, from women's role in labor unions to creative day care centers for children.

Her mother or her grandmother may have demonstrated for the right to vote or in favor of prohibition or to protest war.

Today's woman is concerned not only with the obligation of using the vote wisely, but of broadening women's opportunities to hold public office.

Today's woman is interested in the treatment of alcoholism. And she, too, has marched for peace.

Today's woman carries high the banner calling for equal rights with men on all fronts. She proclaims the watchwords of this International Women's Year: Equality. Development. Peace.

She urges her sisters to become aware of the opportunities already open for them — and to help unlatch other doors to equality.

Personified here by Gwill York (right), chairman of the Cleveland Congress, she lifts high the banner carried by American women of past generations and invites others — men as well as women — to look, and listen and discuss the issues that involve women in 1975.

That's what the Cleveland Congress of IWY is all about. It will continue at the Convention Center from 9 a.m. to 9 p.m. tomorrow and from 9:15 a.m. till 8:30 p.m. Monday. Admission is free.

Here, in interviews with Press staffers and in their own words are portraits of some of the outstanding women scheduled to speak today and tomorrow on a wide range of topics.

— By MARJORIE SCHUSTER

The Cleveland Press

VARIETY

Saturday, Oct. 25, 1975

Women's pay shrinks

Union leader Addie Wyatt doesn't fancy herself an alarmist, but she brought to Cleveland some pretty alarming figures.

"The gap between what women make and what men make is widening, not narrowing," the vice president of the Coalition of Labor Union Women told an IWY session today.

"In 1956, women earned 63% of what men made; in 1970, they made only 59%.

"For black women it's worse. They earn only 51% of what men make—but then, weights and loads, hours and struggle are a way of life for black women."

Addie Wyatt worked her way up in the Amalgamated Meat Cutters and Butcher

Women, don't try

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

The Socialist Workers Party proposes:

A Bill of Rights for working people

for protection from high prices, unemployment, wars, racism, and oppression of women

Peter Camejo for President
Willie Mae Reid for Vice-President

"Today we are ruled by a new tyranny. Industrial and financial barons govern us by the rule of profits, denying the basic democratic and social rights we need for 'life, liberty, and the pursuit of happiness.'"

The United States is in a deepening crisis. We are in the midst of the worst depression since the 1930s. The quality of life for most people is going from bad to worse. And the present system offers us no hope for improvement.

There is no end to wars—one after another since the end of World War II. After Korea came Vietnam; now the Middle East is a powder keg. And Washington is looking for a way to help turn Portugal into the next Chile.

Huge stockpiles of hydrogen weapons are a constant reminder of the threat of nuclear war.

Pollution is destroying our environment—from the water we drink to the air we breathe.

Millions are unemployed, and layoffs throw more out of work every day. Breakdowns, shortages, and high prices—each week our real take-home pay is less. Suffering the most are those at the bottom of the ladder—Blacks, Chicanos, Puerto Ricans, women, and other doubly oppressed people.

Neither the Republican administration nor the Democratic Congress can offer a solution. They are only interested in shifting the responsibility and escaping the blame.

They try to pit white workers against Blacks in a struggle for jobs, housing, and education.

They blame all working people, claiming we eat too much and live too well. They say that inflation will slow down if we tighten our belts and stop demanding higher wages.

They blame people in other countries. They point to a "population explosion" in Asia, Africa, and Latin America as a burden on the U.S. economy—while the corporations they represent plunder the resources of these same countries.

They say the Arabs caused the energy crisis, as if skyrocketing profits of the U.S. oil monopolies weren't responsible.

The Democratic and Republican proposals are clear: don't struggle to defend your living standards; pay the costs of foreign wars; eat less and pay more; victimize foreign-born workers; use less electricity and gasoline; forget about health and safety, social services, and jobs.

This way of running the country can be stated in nine words: "What's good for big business is good for America."

The Rockefellers, DuPonts, Mellons, Morgans, and other super-rich families who rule America think they were born with rights and privileges that come before the welfare and security of the rest of us. For the sake of profits they think it is perfectly justifiable to lay off millions of workers, to destroy our environment, or to plunge the country into war.

They are a tiny minority trampling on the rights of the American people.

Defend the democratic rights of the majority

Nearly 200 years ago, when our country won its war of independence against British tyranny, the workers and small farmers waged a fight to add ten amendments to the Constitution—the Bill of Rights. These were intended to help guarantee "life, liberty, and the pursuit of happiness."

Among these rights are:

- Freedom of speech, press, assembly, and religion
- Right to a jury trial by one's peers
- Right to bear arms
- Protection from unreasonable search and seizure, excessive bail or fines, and cruel or unusual punishment

A second revolution—the Civil War—resulted in additional amendments to the Constitution protecting the rights of the American people:

- Outlawing of slavery
- No deprivation of life, liberty, or property without due process of law
- Right of all male citizens age 21 or over to vote, regardless of race or color

More than fifty years ago women won the right to vote, and recently this was extended to all citizens over the age of 18.

These rights were won through struggle, and bitter battles have been required to preserve them against witch-hunters, racists, bigots, and antilabor forces. Especially significant was the recent victory of Blacks in the South, who fought for nearly two decades to restore voting rights forcibly denied them since the defeat of Reconstruction in the 1870s.

Yet all these rights have never been fully implemented, nor are they extended to everyone. In reality, millions of Americans are being pushed into second-class status by the powerful few who rule this country. Their whole strategy is to divide working people by trying to create a class of pariahs—oppressed minorities, women, foreign-born workers of color, the unemployed—those that relatively better-off white workers view as "them" rather than "us."

The only way to counter the rulers' attempts to undermine working class solidarity is for all working people to support the struggles of oppressed minorities and women for equal opportunities.

Preferential hiring and upgrading are necessary to help achieve equality on the job. Employers must not be allowed to use layoffs to reduce the proportion of minority and women workers.

To gain equality, Blacks and other oppressed minorities must have the right to live in the neighborhoods of their choice. They must have the right to decide where to send their children to school, and to use busing if necessary to transport them to better, predominantly white schools.

Minorities who don't speak English as their first language must be provided with education, civil service exams, ballots, and voting instructions in their own language to help achieve equality.

The struggle of women for the right to safe, legal abortions and to get the Equal Rights Amendment adopted and implemented should be supported to help achieve equality in all spheres of life.

Watergate revealed a tiny bit of the illegal spying, bugging, and harassment carried out by the government against unions, Black organizations, socialists, and other dissenters. Subsequent revelations have shown how the secret agencies coldly calculated to frame up people demanding their rights and then tried to sabotage their legal defense efforts—for example the American Indian Movement and the Attica defendants.

As the economic crisis deepens and big business tightens its squeeze on labor, the civil liberties of working people are threatened even more. Our rights to assembly, free speech, and individual privacy are being challenged.

Government interference infringes on the rights of unions to organize, bargain collectively, and strike. All laws that allow government interference in the unions or that bar public employees from striking should be repealed.

Democratic and human rights should be applied to prisoners, GIs, gays, foreign-born workers, and young people. Repressive legislation must be abolished, along with all cruel and unusual punishment including the death penalty.

A Bill of Rights for working people

Not only is it necessary to fight back and reassert our rights, but we need to broaden these rights to protect working people against the threat of new wars, racist offensives, and attacks on our working conditions. We need a new bill of rights to meet the present needs of the majority, those who must work for a living.

The Socialist Workers Party proposes the following:

1. Right to a job
2. Right to an adequate income, protected against inflation
3. Right to free education
4. Right to free medical care
5. Right to a secure retirement
6. Right of oppressed national minorities to control their own affairs
7. Right to know the truth about and decide the political policies that affect our lives
8. Right to know the truth about and decide economic and social policies

1. Right to a job

It is an elementary obligation of society to guarantee steady work for everyone. This can be done by the following measures:

An emergency public works program should be launched to provide

jobs through construction of housing, mass transportation, hospitals, schools, child care facilities, parks, and other social necessities. Priority should be given to projects in the workers' neighborhoods, where they are most needed—especially in Black, Chicano, and Puerto Rican communities.

The huge sums necessary to pay for this program should come from eliminating the mammoth war budget and from a 100 percent tax on war profits. A moratorium should be declared on using our taxes to pay billions of dollars to bankers for interest on the public debt.

Working hours should be reduced with no reduction in take-home pay in order to spread the available work and achieve full employment.

Unemployment compensation should be paid by the government at full union wages for as long as a person is unemployed.

In order to assure economic independence for women, government-financed free child care centers should be established. Maternity leaves with full pay should be provided. Women must also have the right to decide whether or not to give birth to children. This includes the right to abortion and contraception on demand as well as protection from forced sterilization.

And fellow workers who are not U.S. citizens, including those without immigration documents, are entitled to jobs and equal pay without fear of racist harassment or deportation.

2. Right to an adequate income protected against inflation

A guaranteed living wage is a basic human right. As a protection against inflation, wages must be free to rise. There must be no government wage controls.

To offset price gouging on food, rent, gas, electricity, and other basic necessities, wages must be protected with cost-of-living escalator clauses in union contracts, so that wages increase—promptly and fully—with each rise in living costs.

Escalator provisions should be pegged to the real rate of inflation as determined by committees set up by unions and consumer groups—not the Labor Department's Consumer Price Index which is based on a "market basket" that deliberately underestimates price increases.

All pensions, Social Security benefits, unemployment and disability compensation, welfare and veterans' benefits should be raised to union wage scales and protected with cost-of-living escalator provisions.

Small working farmers, who are gouged by banks on one hand and squeezed by the food trusts on the other, should be allowed to make a decent living. They have a right to low-interest, long-term government loans.

3. Right to free education

4. Right to free medical care

5. Right to a secure retirement

Education, health, and security should not be privileges of the rich. These are rights that should be guaranteed to everyone. They are the responsibility of society.

Tuition, books, and living expenses should be furnished to all who want to attend colleges and trade schools.

Everyone, from birth to old age, should be guaranteed free medical and dental care through a full program of socialized medicine.

All retired and disabled persons should receive government-financed benefits at full union wages.

Government-financed programs should be instituted not only to provide care for people who are ill, but for medical research and public education about health.

Adult education and cultural programs should be expanded to permit working people to develop themselves to the fullest extent possible.

6. Right of oppressed national minorities to control their own affairs

Blacks, Chicanos, Puerto Ricans, and other oppressed peoples have a right to control the schools, hospitals, child care centers, parks, and other institutions in their communities. They have a right to determine how federal and state funds will be used in their communities.

To end police brutality and lower the crime rate, the police should be removed from the ghettos and barrios. They should be replaced with a security force democratically selected and supervised by the people who live in these communities.

7. Right to know the truth about and decide political policies that affect our lives

Republican and Democratic administrations claim that their foreign policy decisions advance peace and democracy throughout the world. The Pentagon Papers, the CIA's intervention in Chile, and Nixon's secret promise to the Thieu regime to send U.S. troops and B-52s back into Vietnam show that this is not true. We have a right to know the full truth.

Let us see what the rulers really have in mind when they make decisions that affect our lives:

Publish all secret treaties and agreements Washington has made with other countries!

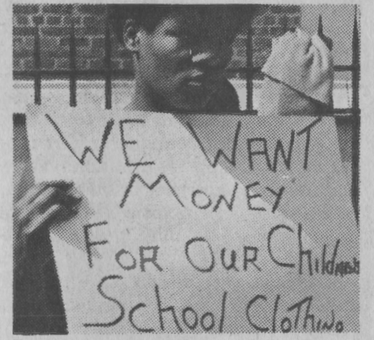
Open all police, CIA, FBI, and IRS files!

No secret diplomacy behind the backs of the American people!

Let the public know the truth about U.S. support for dictatorships all over the world, from South Africa to South Korea.

Take the war-making power away from the White House and Congress. Let the people vote in a referendum before the country is dragged into any more wars. Let us have the right to say no to policies that can lead to nuclear holocaust and the end of humanity.

We have the right to say no to government stockpiling and testing of weapons that threaten our health and safety and endanger the ecology. We have a right to veto the stationing of U.S. forces throughout the world and support of puppet military dictators.



8. Right to know the truth about and decide economic and social policies

When the corporations claim they can't grant wage increases, and when they lay off workers, make them *open their books.*

Make the oil, food, and auto monopolies show their records to elected workers' committees so we can see their real profits, production statistics, technological possibilities, and secret dealings. Then we can see who is rigging prices, deliberately creating shortages, and hoarding reserves.

When employers close down plants, those plants should be *nationalized* and put under the control of these workers' committees. With access to all financial and technical information kept secret by the bosses, the workers' committees will be able to make the necessary decisions on retooling and reopening the plants to produce for the needs of society.

These workers' committees can expose the hundreds of business secrets that tie industry and agribusiness to the big banks, the transportation and retailing monopolies, government agencies, Democratic and Republican politicians, and judges.

Workers have the right to control

their working conditions through their own democratically elected committees. They have the right to regulate the pace of work in the safest and least dehumanizing way.

Workers—for example, the miners—have a right to elect their own safety inspectors. Production must be shut down on the demand of the workers and at the expense of the boss whenever the safety of personnel is involved.

Workers have a right to halt industrial processes that contaminate the air and water and endanger the environment.

They have a right to veto arbitrary and discriminatory layoffs.

Workers also have a right to insist that things they produce will be safe and durable and that production will be for social needs rather than private profits.

When monopolies like the utilities, the postal service, the railroads, and the airlines cry bankruptcy, charge exorbitant rates, or refuse services to those who can't pay their rates, they should be nationalized and operated under the control of workers' committees.

In order to make sound decisions, these committees will have to cooperate with similar committees throughout their industry on a national scale and in other industries in their region, as well as with committees of consumers, housewives, and other affected groups.

To acquire the needed information and resources for economic planning, the entire banking system—in reality the accounting and credit system of the capitalist class—will have to be taken over, opened up to the workers' committees, and placed under their control.

Only in that way can the entire economy be democratically planned and organized so as to prevent the recurring breakdowns and chaos that result from the anarchy of production for private profit.

If the majority had known the truth about the oil industry and had the right to make the decisions about the country's energy needs, the energy crisis would have been prevented. The oil trusts deliberately cut back their refining capacity in order to create a shortage and drive up prices and profits. A national plan worked out and overseen by the workers themselves would not have allowed this to happen.

Such a national economic plan would divert the colossal sums now spent for military purposes to social needs. It would end the threat of worldwide famine and war.

However, this will only be possible if the government itself passes completely into the hands of the majority—the masses of working people.

For a workers' government

When the American colonists could no longer tolerate British rule and drew up their Declaration of Independence, they stated that "whenever any form of government becomes destructive of these ends [life, liberty, and the pursuit of happiness], it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Today we are ruled by a new tyranny. Industrial and financial barons govern us by the rule of profits, denying the basic democratic and social rights we need for life, liberty, and the pursuit of happiness. This government of the few must be abolished and replaced by a workers' government that will represent the majority.

Police protect landlords and big business—workers need own government

A workers' government will guarantee democracy and implement a new bill of rights for working people.

It will immediately recognize the right of Blacks and Chicanos to self-determination. It will immediately grant independence to Puerto Rico.

It will end all discrimination against foreign-born workers and extend them equal rights with all other workers.

It will adopt a policy of peace and friendship with peoples throughout the world and offer massive economic and technical assistance and food to other countries—with no strings attached. It will stop U.S. interference in the internal affairs of other countries and dismantle all U.S. military bases abroad. It will stop shedding the blood of America's youth in foreign adventures.

Instead of supporting oppressors and dictators, it will aid the struggles

of the oppressed—Palestinians driven from their homeland by Israel; South African Blacks ruled by a white minority; South Koreans dominated by U.S.-backed generals, bankers, and landlords; Chileans repressed by the bloody military junta.

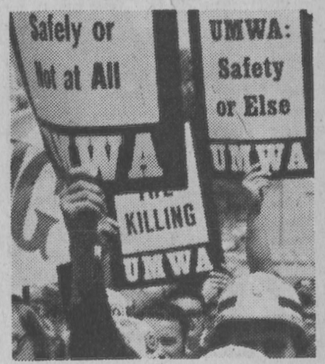
A workers' government in the United States would be a tremendous inspiration to people all over the world. With a knowledge that the mighty USA was not their enemy, oppressed people everywhere would rise up against their oppressors. The entire world would be changed for the better.

The working people of the Soviet Union would throw out their hated rulers and revive the democratic and humanitarian goals of the Russian Revolution. The hand of friendship would be extended between the Soviet and American peoples, and the threat of nuclear war would be eliminated. Socialist democracy would open up a new epoch for humanity.

How can these goals be achieved?

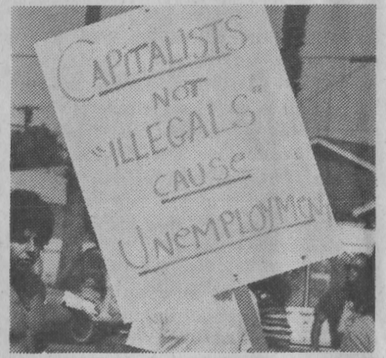
The majority can win its rights only by its own independent action. *Rallies* demanding jobs for all; *strikes* for higher wages and cost-of-living clauses; *demonstrations* against new war threats, against cutbacks in education and social services, and for the rights of women; a *boycott* of scab lettuce, grapes, and wine; *marches* against racist attacks on busing and school desegregation—these are examples of struggles now being waged.

But it doesn't make sense to strike, rally, demonstrate, boycott, or march against the deterioration of our rights and living standards on one day, and then vote for the two parties responsible for them on the next.



The colonists fighting British rule and the abolitionists fighting against slavery learned that they could have no faith in the goodwill of colonial governors or the slave-owners' parties.

They formed their own organizations, including committees of correspondence, continental congresses, and Black conventions.



Likewise today, working people cannot rely on the Democratic and Republican parties, which are financed and controlled by big business to defend its profits. We must break from them.

The Socialist Workers Party believes that the only way to effectively organize the power of American working people on the scale necessary to abolish the present government of big business, and initiate a workers' government, is through a mass socialist party. This will not be anything like the Democratic and Republican parties; it will be a fighting party that will help lead the struggles of working people and all the oppressed. This is what the Socialist Workers Party is campaigning for and what it intends to become.

The first big step toward a working class break from the two parties of big business would be the formation of an independent *labor party* based on the power of the unions. Workers running as independent labor candidates on a local scale can help set an example and point the way to a nationwide party of labor. Such a party would organize union power into a new social movement to fight for the rights of *all* the oppressed. It would lead the way toward a mass socialist movement that can start building a new social system.

The Socialist Workers Party is campaigning for a new society—a socialist society—where industry and science will be put at the service of the vast majority; where wars, racism, sexual oppression, and all other forms of human degradation and exploitation will no longer exist. We believe that this is a realistic goal, and a necessary one if humanity is to survive.

Join us in this struggle.

Peter Camejo for president

Socialist Workers presidential candidate Peter Camejo has spent much of his life on the front line of struggles to advance the rights and well-being of working people.

Unlike the Democrats and Republicans running for president, Camejo is an activist in struggles against racist oppression and was a leader of the massive movement against the Vietnam War.

Camejo, 35, has been a member of the Socialist Workers Party since 1959. Active in the student movement of the early 1960s, he joined the civil rights struggle against segregation and was a leading defender of the Cuban Revolution.

Since he announced his campaign, Camejo has been touring the country speaking to working people at unemployment lines, factory gates, community meetings, union meetings, and on street corners, and speaking to students on college campuses and in high schools.

He participated in the April 26 march and rally for jobs in Washington, D.C. He actively supports the struggle against racist attacks on school busing in Boston, where he has participated in demonstrations and rallies against school segregation.

In 1970 Camejo was a candidate for U.S. Senate in Massachusetts, and one of his opponents was Senator Edward Kennedy. The pro-Kennedy *Boston Globe* admitted, "The young man Camejo draws a big response from students. . . , more than Senator Edward Kennedy. . . ."

Camejo, fluent in Spanish, is the first U.S. citizen of Latin American descent to be a candidate for president of the United States.

Willie Mae Reid for vice-president

When Willie Mae Reid was running for mayor of Chicago in early 1975, a prominent Black community paper, the *Chicago Weekend,* wrote that "she is no ordinary candidate."

For one thing she was the first candidate for mayor under any party label other than Democrat or Republican to get enough signatures to obtain ballot status since the 1930s. She ran an energetic and widely publicized socialist campaign against the Daley machine.

Reid, 36, has firsthand experience with the problems facing Blacks and other working people.

She grew up in the segregated Southern city of Memphis, Tennessee, where she supported civil rights struggles that ended the segregated seating of Blacks on city buses.

After moving to Chicago, she became active in a West Side community group, Together One Community, organized around tenants' grievances.

In 1970, Together One Community joined with other West Side groups to fight for the construction of low- and moderate-income housing.

She also actively supported the September 1973 demonstration for "Jobs and Economic Justice" organized by Operation PUSH and a number of unions in Chicago.

She helped organize the Chicago Women's Abortion Action Coalition, a group fighting for women's right to abortion.

Reid has worked nearly all her life—as a kitchen worker in a hospital, a hotel worker, a garment worker, and a computer programmer. As a child she spent three months a year picking cotton.

She became an active socialist in 1971. In 1974, she was the Socialist Workers Party candidate for U.S. Congress from Illinois's First District.

Join the socialist campaign

☐ I would like more information about the Socialist Workers campaign.

☐ I want to join the Socialist Workers Party.

☐ I endorse the Camejo-Reid ticket as a positive alternative to the Democratic and Republican parties, although I do not necessarily agree with all the planks of the SWP platform.

☐ I would like information about the Young Socialist Alliance, whose members are organizing youth support for the campaign.

☐ Please send me a catalog of the socialist literature available from Pathfinder Press.

☐ Send me two months of *The Militant*, the socialist newsweekly. Enclosed is one dollar.

☐ I would like to set up a meeting for a socialist speaker.

Enclosed is a contribution of $_____.

Funds are urgently needed.

Name _____ Address _____

City _____ State _____ Zip _____

Organization/School/Occupation _____

Business Address _____

Clip and mail to:

Socialist Workers 1976 National Campaign Committee,

14 Charles Lane, New York, N.Y. 10014

Local address:

2300 Payne - First Floor
Cleveland, Ohio 44114
Phone: 861-4166

Literature

Brochures: SWP Proposal for a Bill of Rights for Working People (English or Spanish)/3¢; The Socialist Candidates for 1976 (biographies)/4¢; Youth and the '76 elections—join the campaign for socialism/2¢

Posters: Camejo for President/10¢; Reid for Vice-President/10¢; Jobs for All/25¢; Join the Fight Against Racism/10¢

Buttons: Vote Socialist Workers Party/30¢; Photo Buttons: Peter Camejo/35¢, Willie Mae Reid/35¢; Jobs for All, Not One Cent for War/50¢

Pamphlets: What Socialists Stand For/50¢; Socialism and Democracy/25¢; The Racist Offensive Against Busing/50¢; Who Killed Jim Crow?/60¢; Inflation: What Causes It, How to Fight It/25¢; America's Road to Socialism/$1.95

Special prices for bulk orders

Officers of the Socialist Workers 1976 National Campaign Committee—Chairpersons: Fred Halstead, Ed Heisler, Linda Jenness, Andrew Pulley—Treasurer: Andrea Morrell

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C.

The Socialist Workers Campaign stand on:

The Fight for Women's Rights

Ratify the E.R.A. / Defend Abortion Rights
Stop Discriminatory Layoffs / Free Joanne Little

Peter Camejo for President
Willie Mae Reid for Vice-President

The Fight for Women's Rights

The framers of the U.S. Constitution considered women to be inferior to men and unworthy of full rights as human beings. This same concept of female inferiority is still reflected in the Constitution 200 years later.

On the eve of the bicentennial, the Equal Rights Amendment has yet to become part of the Constitution. This is symbolic of the second-class status allotted to women in all areas of life in this country.

The Equal Rights Amendment simply states: "Equality of rights under the law shall not be denied or abridged . . . on account of sex."

Introduced into Congress every year since 1923, it was not until 1972 that the ERA was adopted by Congress. To take effect it must be ratified in at least thirty-eight states by March 1979. Thirty-four states have ratified so far.

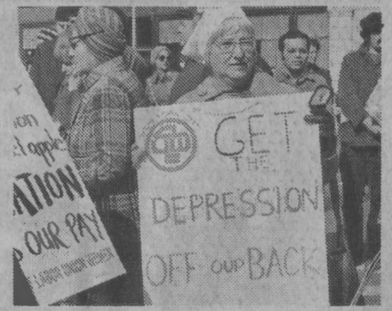
It was testimony to the power of the women's liberation movement that the ERA was passed by Congress in 1972. The new feminist movement put wind in the sails of the amendment, bringing quick passage by Congress and ratification by many states.

Then further progress toward ratification was stopped. Reactionary organizations, such as the John Birch Society, the Ku Klux Klan, and the Catholic church hierarchy, began a well-organized and well-financed campaign to keep the ERA from being ratified. Many Democratic and Republican legislators oppose ratification.

Why are these forces so intent on defeating the ERA? Because they see that this simple amendment would have far-reaching implications—that true equality for women would mean changing this society of inequality from top to bottom.

Why the ERA

The ERA, if passed, would be a weapon in the hands of women in much the same way that the 1954 Supreme Court decision outlawing



school segregation is a weapon on the side of the Black community. In the struggles for equal pay, against discrimination in education, and for child-care centers, the law of the land would at least formally be on the side of women.

And most of all, the ERA would aid Black, Chicana, and Puerto Rican women in their dual struggle against oppression as women and against racism.

A Harris poll released last May showed that a solid majority of the American people support the ERA. What is needed is for that majority to unite in massive, visible activity to bring the full force of its weight to bear on state governments where it is not yet ratified.

Women's organizations, regardless of differences on other issues, can unite to organize a massive campaign for the ERA through education, demonstrations, pickets, and debates.

The women's liberation movement and its supporters can make it clear to this government that 200 years without equality is enough! The bicentennial of this country should not pass without women's rights being codified in the U.S. Constitution!

Broader attack

The effort to stop ratification of the ERA is part of a generalized attempt to roll back the gains women have made and to rob them of newly won victories, both democratic and economic.

This is combined with a racist offensive to try to also beat back the gains that have been won by Black people, Chicanos, and other oppressed minorities. The same reactionary forces are involved in fighting to stop the ERA, in demanding restrictions on abortion, and in stoning school buses carrying Black students trying to acquire a better education.

The backdrop for this offensive is the policies of the federal government, for which both the Democratic and Republican parties are responsible. The burden of the current depression—the layoffs and cutbacks in social services—is hardest on women and the oppressed minorities.

The capitalist rulers also use their traditional weapons of racism and sexism to point the finger at scapegoats for the problems generated by their own system. They try to deepen

the divisions that exist among working people by saying: "Blame the women and Blacks who have gotten so 'uppity' as to demand equality."

No discriminatory layoffs

One manifestation of the attack on women is discriminatory layoffs. The massive layoffs taking place are threatening to wipe out the gains made by women through affirmative-action plans in recent years. These plans were an effort to force employers to increase the percentage of women and oppressed minorities in the work force and to upgrade their positions and pay. Through them, women were hired in previously all-male jobs, and many won higher-paying positions.

Now, under the guise of strict seniority—or "last hired, first fired"—these women are being disproportionately victimized by the layoffs. Often this is supported by the unions.

Women should not suffer more layoffs because of the sexist hiring practices of the bosses. Where layoffs occur, the percentage of women workers should not be reduced one iota!

Women and Blacks bear brunt of massive layoffs

The unions will only be effective in fighting for the interests of all workers to the extent that they defend the rights of the most oppressed workers.

Abortion rights

Another attack on women is against the right to abortion. The conviction of Dr. Kenneth Edelin, a Black physician in Boston, was an ominous warning to the abortion-rights movement. Dr. Edelin was convicted of "manslaughter" for having performed a legal abortion.

In 1973 the Supreme Court ruled that abortions are legal. The decision came as a result of pressure, through the courts and in the streets, from women demanding the right to abortion. Only women—not the church and not the state—have the right to decide if and when to bear children.

Reid (left) discusses defense with Little

But conservative, antiwoman forces are trying to curtail and restrict the Supreme Court decision. Their aim is to totally reverse the decision through a constitutional amendment giving a fetus rights from the moment of conception.

Joanne Little

The attacks on women and Black people are symbolized in the frame-up of Joanne Little.

Joanne Little is a twenty-one-year-old Black woman on trial for her life in Raleigh, North Carolina. Little's only "crime" was defending herself against an attempted rape by a white jail guard.

Support for Joanne Little has sprung up throughout the country, but we must not let up. Visible, massive pressure on the authorities in North Carolina is the only thing that can give Joanne Little a chance at freedom.

Ideas of women's liberation

The women's liberation movement has come a long way. Started by a handful of primarily young, student women in the late 1960s, the ideas of feminism now affect millions.

The latest Harris poll shows that 59 percent of the American people have been won to support the basic demands of the women's movement.

In particular, working women and Black women are among the staunchest supporters of equal rights for women.

Women's fight for equality has extended into the unions. In March 1974 the Coalition of Labor Union Women was formed. Its purpose is to fight against sex discrimination in the unions, on the job, and in society as a whole.

It is this growth and wide support for the women's movement that the government is trying to stop. Women need to serve notice that whenever and wherever women's rights come under attack, we stand ready to fight back.

A drive is needed by the entire women's movement and its supporters to push through the ERA in 1976 and

show the antiwoman forces that they are in a minority.

Attempts to roll back the right to abortion should be greeted with a massive "NO!"

We need to unite in defense of affirmative-action gains. Not one percentage decrease in the proportion of women in the work force!

The women's liberation movement must let the government know that the old trick of divide and rule won't work:

- Women stand with the Black, Chicano, and Puerto Rican communities in the face of the racist attacks against them.
- Women stand with the Black community in Boston and elsewhere in the fight to desegregate the schools.
- Women stand with the oppressed national minorities in protecting the gains they made through affirmative action.
- Women join with Blacks in demanding freedom for Joanne Little and for overturning the conviction of Dr. Kenneth Edelin.

Join the socialist campaign

The oppression of women is woven into the very structure of this society. The relegation of women to household drudgery and the superexploitation of women on the job are profitable for the bankers and big businessmen who control both the economy and the government. As long as society is organized on the basis of private profit, women cannot win total liberation.

The Democratic and Republican parties, which have been in power for decades, are responsible for maintaining discrimination against women. Major advances for women have been won only when women themselves took massive, united action to demand justice—such as during the suffrage movement, or the recent abortion-rights movement, or the many struggles that have been waged by working women.

The Democratic and Republican parties have made a special effort in recent years to run women candidates and to pretend to support women's rights. But women who have been sucked into this two-party hoax have only hindered what they could do for the cause of women's rights. Whatever their intentions, they serve to prettify these parties of big business, unemployment, Watergate, the Vietnam War, and the CIA and FBI.

These two parties cannot be reformed into representing working people, women, Blacks, or any of the oppressed.

The present capitalist government, run by corrupt agents of the rich, needs to be replaced with a government run by the majority—a workers government. This system run on the basis of private profit needs to be replaced with a system based on human need—a socialist system.

Supporters of women's liberation can best aid the fight for women's rights in 1976 by supporting the socialist candidates, Peter Camejo for president and Willie Mae Reid for vice-president.

Peter Camejo for President / Willie Mae Reid for Vice-President

Peter Camejo, 35, has been a member of the Socialist Workers party since 1959. Active in the student movement of the early 1960s, he joined the civil rights struggle against segregation and was a leading defender of the Cuban Revolution. Camejo was also a leader of the massive movement against the Vietnam War.

He participated in the April 26 march and rally for jobs in Washington, D.C., and actively supports the struggle against racist attacks on school busing in Boston.

In 1970 Camejo was a candidate for U.S. Senate in Massachusetts, and one of his opponents was Senator Edward Kennedy. The pro-Kennedy *Boston Globe* admitted, "The young man Camejo draws a big response from students. . . , more than Senator Edward Kennedy. . . ."

Camejo, fluent in Spanish, is the first U.S. citizen of Latin American descent to be a candidate for president of the United States.

When Willie Mae Reid ran for mayor of Chicago on the Socialist Workers ticket in early 1975, a prominent Black community paper, the *Chicago Weekend*, wrote that "she is no ordinary candidate."

For one thing, she was the first candidate for mayor under any party label other than Democrat or Republican to obtain ballot status since the 1930s.

Reid, 36, grew up in Memphis, Tennessee, where she participated in civil rights struggles that ended the segregated seating of Blacks on city buses.

After moving to Chicago, she helped organize the Chicago Women's Abortion Action Coalition, a group fighting for women's right to abortion.

She actively supported the September 1973 demonstration for "Jobs and Economic Justice" organized by Operation PUSH and a number of unions in Chicago.

Reid became an active socialist in 1971.

Join the socialist campaign

☐ I would like more information about the Socialist Workers campaign.
☐ I can help distribute campaign literature.
☐ I can do volunteer office work.
☐ I would like to set up a meeting for a campaign representative.
☐ I want to join the Socialist Workers party.
☐ I would like information about the Young Socialist Alliance, whose members are organizing youth support for the campaign.
☐ Send me a catalog of socialist literature available from Pathfinder Press.
☐ Enclosed is $1 for two months of the *Militant*, the socialist newsweekly.
☐ Enclosed is a contribution of $_____. Funds are urgently needed.

Name _____ Address _____

City _____ State _____ Zip _____

Organization/School/Occupation _____

Business Address _____

Clip and mail to:
Socialist Workers 1976 National Campaign Committee,
14 Charles Lane, New York, N.Y. 10014

Local address:

Literature

Brochures: SWP Proposal for a Bill of Rights for Working People (English or Spanish)/3¢; The Socialist Candidates for 1976 (biographies)/4¢; The Fight for Women's Rights/2¢; Youth and the '76 Elections/2¢.

Posters: Camejo for President/10¢; Reid for Vice-President/10¢; Jobs for All/25¢; Join the Fight Against Racism/10¢.

Pamphlets: What Socialists Stand For/50¢; Socialism and Democracy/25¢; The Racist Offensive Against Busing/50¢; Why Women Need the ERA/35¢; Feminism and Socialism/$1.95; America's Road to Socialism/$1.95.

Buttons: Vote Socialist Workers Party/30¢; Photo buttons: Peter Camejo/35¢; Willie Mae Reid/35¢; Jobs for All, Not One Cent for War/50¢; Education is a Right, Stop the Cutbacks/50¢. Special prices for bulk orders

Officers of the Socialist Workers 1976 National Campaign Committee—Chairpersons: Fred Halstead, Ed Heisler, Linda Jenness, Andrew Pulley—Treasurer: Andrea Morrell

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C.

A Tribute to The Retirees of The International Ladies' Garment Workers' Union

A Tribute to The Retirees of The International Ladies' Garment Workers' Union

On June 3, 1900, eleven men founded the ILGWU, in a meeting at the Labor Lyceum, 64 East Fourth Street, New York City. Out of that small beginning rose a great union that has profoundly shaped the economic and political life of the garment workers, the labor movement and the nation.

Among the more than 75,000 living retirees of the ILGWU are countless numbers who contributed mightily to the work of the union, often at great personal sacrifice to themselves. The names of some appear in the records. The names of most do not.

It is to the unsung and unknown heroes of the ILGWU that we pay our tribute on this, the Seventy-fifth year of our life and labors. They may have retired from their jobs but the deeds they have done, the causes they have created will never rest.

We salute them in our name and in the name of humanity.

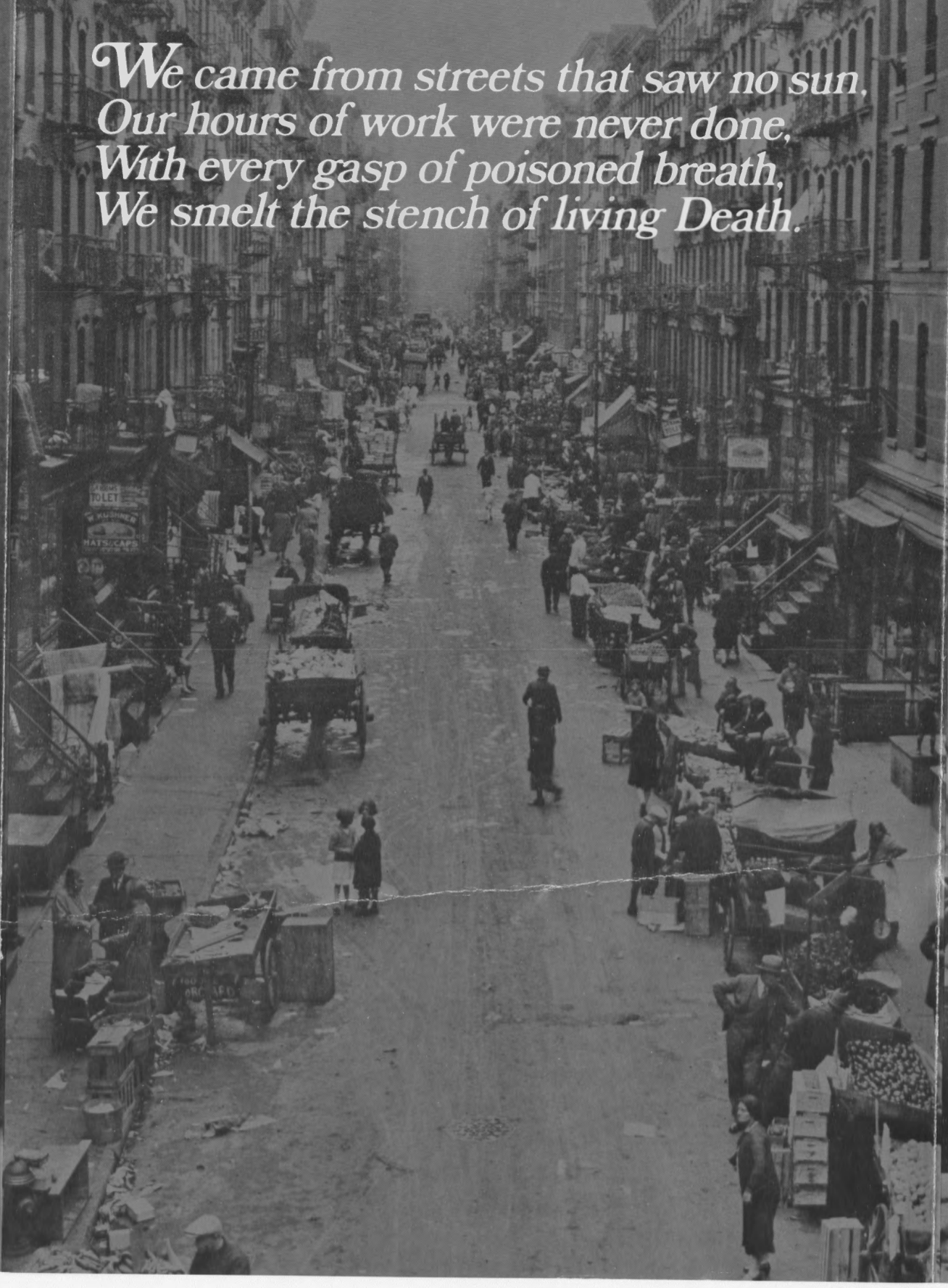
Wilbur Daniels
Executive Vice President

E. Howard Molisani
First Vice President

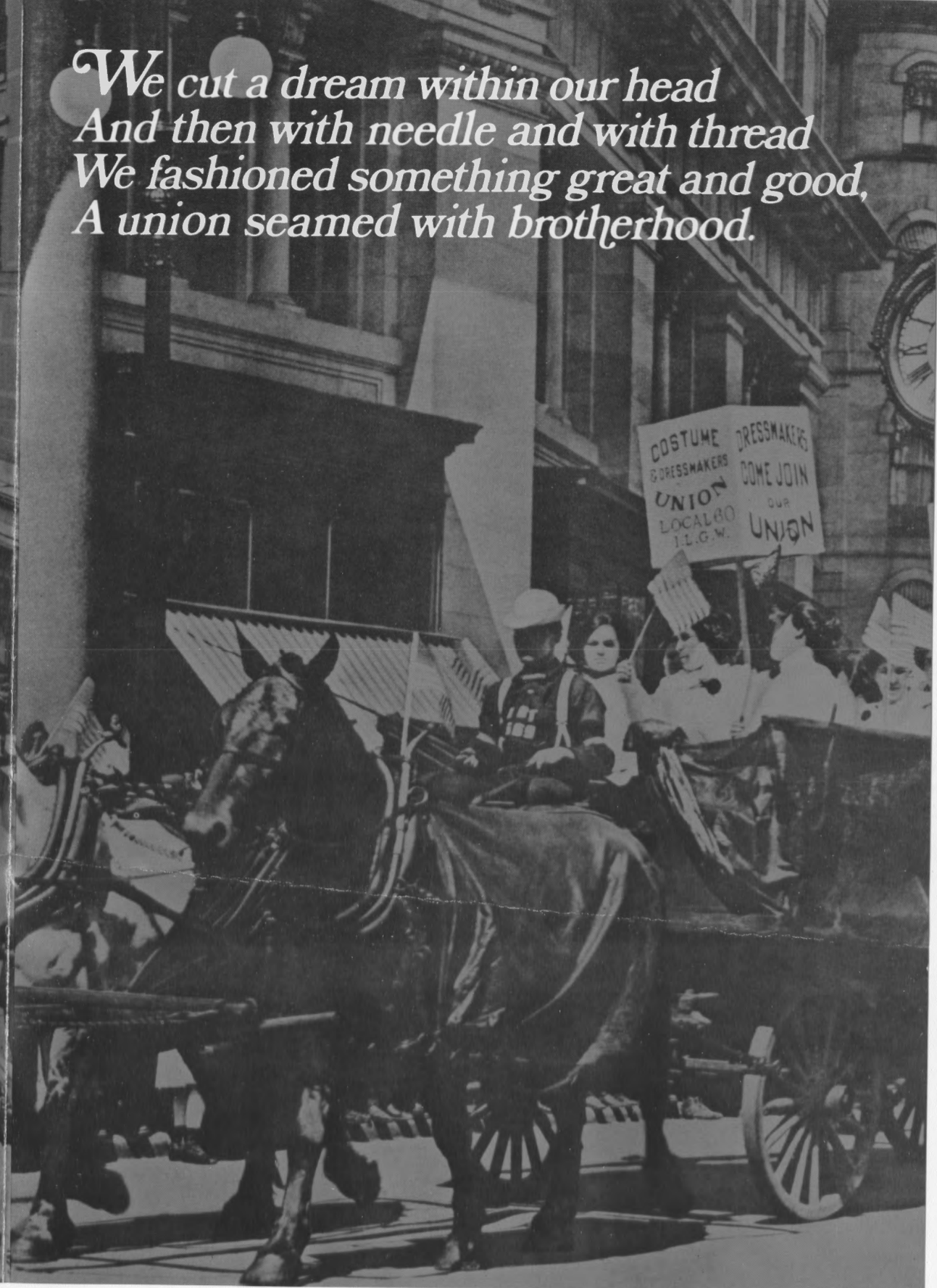
Louis Stulberg
President

Sol C. Chaikin
General Secretary-Treasurer

We came from streets that saw no sun,
Our hours of work were never done,
With every gasp of poisoned breath,
We smelt the stench of living Death.



We cut a dream within our head
And then with needle and with thread
We fashioned something great and good,
A union seamed with brotherhood.



International Ladies' Garment Workers' Union

OHIO

A report by the Ohio Task Force for the Implementation of the Equal Rights Amendment.

July, 1975

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ACKNOWLEDGMENTS

The Ohio Task Force for the Implementation of the Equal Rights Amendment wishes to express deep appreciation to the following organizations and individuals for assistance which was invaluable in enabling us to fulfill our charge:

- William J. Brown, Attorney General of Ohio, for legal staff and services throughout the life of the Task Force and full support services during the final seven months of the project;
- The Columbus Foundation, the Cleveland Foundation, Battelle Memorial Institute, the Manpower Comprehensive Employment and Training Act, and the Department of Housing and Urban Development, for operating funds;
- The Academy for Contemporary Problems for meeting space, meals, overnight accommodations, and other services;
- The Ohio Civil Rights Commission for reprinting copies of the final report'
- The Lucile and Robert Gries Foundation for funds for editing and printing of the public testimony received regarding education;
- The Women's Law Project, Philadelphia, for legal consultant services;
- Simon Lazarus, Jr., for services of his legal intern, Deborah Delong;
- Cleveland State University, Channel 30 (WGTE-TV), Toledo, and Case Western Reserve University for facilities used in public hearings;
- Annette Johnson, Cleveland State University; Patricia Garver, NOW, Toledo; Mel Weisblatt, Case Western Reserve University; and the staff of Channel 30, Toledo, for assistance in arranging the hearings;
- Ohio Bell Telephone Company for its communications staff services, producing a half-hour television documentary on implementing the Equal Rights Amendment in Ohio. The documentary will be scheduled in cities around the state throughout the coming year;
- Margaret Rosenfield for assistance in editing this report;
- The Department of Commerce for use of its public information staff from September through December, 1974;
- Chancellor Dolph Norton, Board of Regents; Barbara Rawson, Cleveland Foundation; Leeda Marting, Columbus Foundation; Jane Picker, Women's Law Fund, Cleveland; Catherine East, Citizens' Advisory Council to the Commission on the Status of Women; Dave Johnston, Legislative Services Commission, for time and advice in the formation of the Task Force.

July 1, 1975

Honorable James A. Rhodes
Governor of Ohio

Honorable William J. Brown
Attorney General of Ohio

Gentlemen:

The Task Force on Implementation of the Equal Rights Amendment submits to you this report documenting our findings of sex discrimination in the Ohio Revised Code. We recommend changes which will make the Code comport with the Equal Rights Amendment, and present rationale for these changes. Many sections can be changed simply by making the law gender neutral. Others involve substantive changes and these recommendations have been made after expert testimony, day long public hearings, examination of basic resource material and in-depth discussion, first in committee and then by the entire Task Force.

This report also recommends new statutes which, if enacted into law, will affirm the principle of equality of rights for women and men in the State of Ohio.

The implementation of the Equal Rights Amendment will not be accomplished by the work of this Task Force alone. It should be continued on a regular basis and, for that reason, this Task Force recommends an agency in state government to monitor this implementation for as long as it is necessary.

The struggle through which the members of this Task Force arrived at their decisions is proof of their conscientious dedication to the task. They are to be highly commended as is the valuable staff which facilitated their efforts.

We are committed to support legislation which will implement these recommendations, and to provide testimony on behalf of it. It is our belief that enactment of such legislation will enhance the quality of life for all the citizens of Ohio.

Respectfully,

Mary E. Miller

Mary E. Miller
Chairperson

MEM/jt

State of Ohio
Office of the Attorney General

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Attorney General

Robert H. Olson, Jr.
First Assistant Attorney General
Maryann Baker Gall
Chief Counsel
Dwight C. Pettay, Jr.
Executive Assistant Attorney General
P. Michael DeAngelo
Deputy Attorney General

July 1, 1975

Mary E. Miller, Chairperson
Ohio Task Force for the Implementation
of the Equal Rights Amendment
Columbus, Ohio

Dear Ms. Miller:

On behalf of the citizens of Ohio and the Office of the Attorney General, I wish to thank you and the Ohio ERA Task Force for the thousands of hours of hard work and careful consideration which have gone into the preparation of the task force report. The wealth of information and the wide variety of citizen input reflected in your report will contribute significantly to the implementation of the Equal Rights Amendment in Ohio.

Your report effectively and graphically demonstrates the need for revisions of laws which discriminate against citizens on the basis of their sex. The impact of your work will undoubtedly be felt throughout the state of Ohio and the nation. The report will serve as an example and model for other states which aspire to the goal of true equality for their own citizens.

I have considered it an honor to have sponsored and assisted the Task Force by supplying legal and logistic resources. You have my assurance that your recommendations will be studied carefully and thoroughly so that the necessary work can begin immediately to make equality among our citizens a reality.

Thank you again for your work.

Very truly yours,

William J. Brown

WILLIAM J. BROWN
Attorney General

State Office Tower / 30 East Broad Street / Columbus, Ohio 43215

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Jeanne Muir & Eileen Roberts, American Civil Liberties Union
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Introduction

Since the earliest days of building a new country, the struggle for equal rights for women has been underway. At different times during the last century, large movements have formed around demands for equality in specific areas such as property holding, labor protections, suffrage, and, finally, in all areas of the law.

The evolution toward equal treatment has always involved a process of establishing and attaining goals, discovering their inadequacies, and then establishing new goals. For instance, in the late nineteenth century, women who worked in factories and sweatshops rallied aroung legislation to protect them from inhuman working conditions; yet, by the mid-twentieth century, some of those hard-won protections were beginning to prevent women from access to higher paying jobs or lucrative overtime work.

A new chapter in the equal rights movement opened in 1972, when, after 49 years of inaction, Congress ratified the Equal Rights Amendment to the Constitution. The Amendment was simple, stating that "Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex." Its implications touched some aspect of every citizen's life, because it recognized that discrimination on the basis of sex could harm men as well as women.

On February 7, 1974, the Ohio Legislature became the 33rd state (of a necessary 38) to ratify the Equal Rights Amendment to the U.S. Constitution. This victory could have been only a hard-won symbol — meaningless without implementation. Fortunately, within a few weeks of passage, Governor John J. Gilligan and Attorney General William J. Brown began work to create a citizens' task force to seriously study the precise form that implementation of equal rights should take in this state.

On August 22, 1974, the Governor issued an Executive Order creating the Ohio Task Force for the Implementation of the Equal Rights Amendment charged with:

1. Reviewing all statutes in the Ohio Revised Code and regulations of the various departments and agencies of the state to determine which need revision or repeal to comply with the Equal Rights Amendment;
2. Drafting new statutes or amendments to existing statutes as needed to conform existing law to the non-discrimination mandate of the Equal Rights Amendment;
3. Reviewing the need for a permanent Commission on the Status of Women;
4. Submitting a final report and recommendations.

The Governor and Attorney General appointed to the Task Force thirteen women and twelve men with varied backgrounds including business, labor, social work, law, homemaking, the Legislature, education, and the military. Also represented were Republicans and Democrats, persons involved in the ratification of the ERA and others who were considering its implications for the first time.

At the first meeting of citizens appointed to the Task Force, it became obvious that certain basic operating assumptions needed to be clarified in order to meet the charge. The first of these assumptions was central to the deliberations: namely,

> "the question of the value of the Equal Rights Amendment has been settled in Ohio. The ERA has been ratified, and it is not the responsibility of this Task Force to reconsider the decision of the General Assembly; rather, our charge is to recommend the best ways to implement the ERA considering both the legislative history of the ERA and established constitutional guidelines."

The remaining assumptions followed logically from this:

- The goal of the Task Force shall be to examine current Ohio laws and recommend adoption, amendment, or repeal which will comport with the letter and spirit of the Equal Rights Amendment.
- When protective legislation is reviewed by the Task Force, the following guidelines should be used:
  - —if such legislation is, in fact, protective of workers, such protection should be extended to all workers;
  - —if such legislation is not truly protective, repeal is recommended.
- With marriage and family law, families should be seen as a partnership or joint enterprise in which both partners have equal rights and responsibilities;
- Where the Code has not addressed itself to the realities of modern life or the legal rights of women and men in modern society, the Task Force may need to consider and recommend affirmative legislation;
- With regard to the Task Force's charge to study the need for a permanent Commission on the Status of Women, the approach should be to recommend the best possible vehicle which the state government can create to insure the equality of all Ohio citizens;
- The method of decision making for committees should be by consensus; decisions of the entire Task Force should be made by vote with simple majority ruling.
- The final work product of the Task Force will be a report recommending to the Governor and the Attorney General such legislative changes and additions to the Ohio Revised Code as seem appropriate.

At this same meeting new members were divided into six committees to study particular areas of law: Marriage and the Family; Children; Employment; Insurance, Pensions, and Tax; Criminal Law; and Public Obligations. Education was identified as an area needing attention, but as the law governing education seemed significantly different from these other areas of law, a special committee was recommended. (See Education Chapter.)

In October, 1974, Attorney General William J. Brown provided the Task Force with a computer code study identifying some two hundred sections of the Ohio Revised Code which might require revision in order to comply with the ERA. Most Committees began their research by addressing these code sections and considering additional areas where affirmative legislation might be needed. Over an eight month period, previous studies, case law, position papers by legal consultants, *et al.*, were presented and debated in committees while the entire Task Force heard expert testimony at its regular meetings and public testimony at four additional hearings held across the state. Based on this study, committees presented their findings to the Task Force and the Task Force then voted on final recommendations.

Committees of the Task Force varied greatly in style and approach. Individual chapters of this report generally reflect those variations. Moreover, debate of committee reports by the whole Task Force was often heated, with voting rarely unanimous. Although there was disagreement about the best method for implementing equality, in general the Task Force saw its recommendations *not* as a means of imposing change on the lives of Ohio's citizens. Rather, its study led the Task Force to believe that such ERA-mandated changes would merely allow the law to keep pace with the ways in which most people's lives have already changed.

In presenting this final report, the Task Force believes it has fulfilled its charge. However, as the sex-based inequities in society reach beyond the areas regulated by law, the Task Force sees these recommendations not as a final solution but as a contribution toward the continuing quest for individual equality.

Recommendations

MARRIAGE AND FAMILY RECOMMENDATIONS

I. ABILITY TO CONTRACT MARRIAGE

A. Age

The Task Force recommends that §3101.01 should be amended to provide that persons of both sexes 18 years of age or over may marry without parental consent; those between ages 16 and 18 may marry with parental consent.

B. Marriage of a Female Ward

The Task Force recommends that §2111.45 should be amended to terminate guardianship of the person of wards of both sexes, not just female wards, upon marriage.

II. ON-GOING MARRIAGE

A. Determination of Domicile

The Task Force recommends that a new statute should be enacted prescribing the manner in which domicile is established. The statute would recognize the individual's right to determine his/her own domicile apart from that of the individual's family and would specifically state that domicile may not be acquired or lost by marriage alone.

A minor child's domicile should be determined by the responsible parent or parents.

B. Determination of Legal Settlement for Poor Relief Payments

The Task Force recommends that §5113.05 should be amended to provide that one who marries a person with legal settlement in any county and resides there with intent to establish residence acquires the right of the spouse to receive poor relief. The legal settlement statute should contain an affirmative statement that marriage, alone, does not affect the settlement of an individual.

C. Spousal Support

The Task Force recommends that §3103.03 should be amended to provide that it is the mutual obligation of each spouse in a marriage to support the other spouse to the extent possible considering the ability and property of each, and that both spouses bear the responsibility of support for their children. The statute should set forth the factors to be considered by the court in ruling on a petition for support; for example, age, education, job skills, custody of children (if any), contributions of a homemaking spouse, physical or mental disability, and financial resources of both parties. The third party's right to recover for necessaries furnished to a dependent spouse should be made applicable to either spouse.

D. Property Holding

1. Present Common Law System

The Task Force recommends that the statutes which provide for the common law property holding system in Ohio should remain unchanged.

2. "Married Women's Property Acts"

The Task Force recommends that §§2107.27, 2109.22, 2307.09, and 2323.09 which provide married women with the same property rights as all other adult persons should be amended to be gender-neutral.

3. Married Women and/or Widows

The Task Force recommends that certain sections of the Code relative to property that are sex discriminatory in that they grant special privileges to widows or married women should be amended to be gender-neutral and applicable to either spouse and/or surviving spouse.

E. Names

The Task Force recommends that in order to lessen the confusion surrounding the retention of birth names by both spouses, Ohio should enact a statute which permits parties to a marriage to state each party's choice of name at the time of application for a marriage license. The name(s) would not necessarily have to relate to any name either had previously. We support a recent Massachusetts Attorney General's Opinion (October 29, 1974) which states that a child of a marriage may be given any name the parents wish. In the event of divorce or dissolution of the marriage of the child's parents, the child would continue to use the name given to him/her at birth. If for any reason the child wants to use another name, he/she should formally request a name change from the probate court.

F. Spousal Agency

The Task Force recommends that §1311.10, which codifies a common law agency principle allowing a husband to act as his wife's agent in certain property contracts, be repealed.

G. Consortium

The Task Force recommends that no affirmative legislation is needed.

III. DISSOLUTION/DIVORCE

The Task Force recommends that judges and the court system *must* uphold the *letter* and the *spirit* of the law which calls for equitable treatment of both spouses in dissolution and divorce. Citizens should become aware of their Domestic Relations Court and its judges as only an informed electorate can see that the present statutes are enforced.

Furthermore, the Ohio Legislature must give attention to the problem of the overwhelming default rate of spousal support and/or child support payments and take action to correct this problem.

IV. MISCELLANEOUS

A. Order and Disposition of Cases on Appeal

The Task Force recommends that §§2501.09(e) and 2503.37(f), concerning order and disposition of cases on appeal, be amended by deleting the reference to "widow," because the term "next of kin" already contained in the section includes widows.

B. Free Transportation

The Task Force recommends that §4917.30 relative to free transportation on railroads be amended by changing "widow" to "surviving spouse".

C. Damages of Lynching

The Task Force recommends that §3761.04, which provides for payment of damages to the relatives of lynching victims, be amended to change "widow" to "surviving spouse".

D. Marriage Relationship Contracts

The Task Force recommends that §3103.06 defining conditions under which spouses may contract to alter the marriage relationship should remain unchanged.

E. Education of Ohio Citizens About Marriage

The Task Force recommends that the State Department of Education foster and encourage the inclusion of courses which discuss marriage and family law in the high school curriculum.

CHILDREN RECOMMENDATIONS

I. JUVENILE JUSTICE

A. Age Jurisdiction of Ohio Youth Commission

The Task Force recommends that §5139.05 be amended so that both boys and girls may be committed to the Ohio Youth Commission at the same age, twelve.

B. Juvenile Treatment Facilities

1. Single-Sex Facilities

The Task force recommends that juvenile treatment facilities used for educational, social, and vocational purposes be made co-educational.

2. Vocational Opportunities
The Task Force recommends that vocational and educational opportunities available to females in juvenile facilities be equal to those available to males. Such opportunities should not be limited to areas that traditionally have been occupied by women.

C. Juvenile Court Referees

1. The Task Force recommends that §2151.15 be amended to include requirement that juvenile court referees be assigned on a random basis, unless the individual child requests that the referee assigned be of a particular sex.

D. "Unruly Child" Status Offense

The Task Force recommends that the Ohio General Assembly undertake a thorough revision of §2151.022 that governs the "unruly child"; particular attention should be given to correcting existing inequities in the application of the law to male and female juveniles, to providing adequate alternatives to placement in juvenile detention facilities, and to the establishment of guidelines for applying the "unruly child" statute which are nondiscriminatory.

II. SOCIAL SERVICES

The Task Force recommends that §5153.16 be amended to empower county children services boards to provide social services to both the mother and the father of an illegitimate child. §5107.10 should be amended to permit administrators of the ADC program to refer both the mother *and* the father of an ADC recipient for counseling about birth control and to procure for *either* parent any contraceptive devices needed or desired.

III. MISCELLANEOUS DIFFERENTIALS

The Task Force recommends that both parents be treated equally with respect to their parental duties and obligations. Specifically §2101.12 should be amended to require the probate court to record *both* parents' names in the guardian's docket; §5711.05 should impose the duty of filing a personal property tax return for a minor, idiot or insane person who does not have a court-appointed guardian on *both* parents, and if either is deceased, on the surviving parent; in the event of a divorce, legal separation or dissolution of marriage, then on the parent with the custody of said property. §5121.21 should provide that *either* parent can recover all or a portion of sums paid to the state for the institutional care of a minor child from the other parent on the basis of each parent's respective ability to provide support to the child, as determined under §3103.03, [See Marriage and Family Chapter, II(C)]. §§2101.27 and 2101.09, dealing with service of process on a minor, have been superseded by the Ohio Rules of Civil Procedure and should be repealed.

IV. ILLEGITIMACY

Since the existing concept of legitimacy requires different legal treatment of parent-child relationships based solely on the sex of the parent, the Task Force recommends that §§2105.17, 2105.18, 3705.15, 3107.06 and Ch. 3111 be repealed, and that a comprehensive parentage act, modeled, in part, after the Uniform Parentage Act, be enacted. Such legislation should cover all the situations in which parentage may be an issue, including adoption, inheritance, custody and child support. Under such an act, all children would be the legitimate children of their natural parents. Rights and duties between parent and child would not be determined solely by the marital status of the parents, or by the act of formal acknowledgment by the father; instead, *parentage* would be the governing factor.

V. CHILD CARE

A. Inadequacy of Services

The Task Force recommends that the State set as a priority during the next biennium the establishment of high quality, universally available child care services which are funded in whole or in part by the State of Ohio.

B. Program Development

The Task Force further recommends the enactment of standards which speak to the program of child care centers.

VI. AID TO DEPENDENT CHILDREN

Given the disparity in treatment between recipients of Aid to Dependent Children and those receiving Supplemental Security Income (formerly Aid to the Aged, Blind and Disabled), and the discriminatory impact of this disparity on women and children, the Task Force recommends that the State of Ohio increase the benefits of ADC recipients to achieve parity with the other assistance programs and to insure an adequate standard of living for women and children living in poverty.

EMPLOYMENT RECOMMENDATIONS

I. THE STATE AS EMPLOYER

A. Civil Service Changes—Women's Study Committee

The Task Force recommends that the Legislature consider the suggestions made by the *Ad Hoc* Women's Study Committee for Civil Service Law Revision, toward eliminating sex-based discrimination in civil service employment in this State.

B. Sex-based Classifications

The Task Force recommends that §§124.23 and 124.27, which relate to the area of civil service employment, be revised to make it clear that distinctions based upon sex between applicants or persons eligible for appointment are constitutionally reprehensible and will not be tolerated.

C. Veteran's Preference

The Task Force makes no recommendation.

II. THE STATE AS REGULATOR OF PRIVATE EMPLOYMENT OR EMPLOYMENT-RELATED SERVICES

A. Licensing Boards

The Task Force recommends that, with regard to licensed professions, in all instances where a sex-based distinction limits entry into the profession or the sope of practice of the profession or the sex of the professional or the clientele, (for example, §§4709, *et seq.*, 4713, *et seq.*), the limitations be repealed, whether statutory or administrative in nature.

B. Employment Agencies

The Task Force recommends that Chapter 4143 be amended to require the Department of Commerce to review the procedures of all employment agencies to determine if discriminatory practices, whether based upon race, color, religion, sex or national origin, are being followed or sanctioned by these agencies and to require the suspension or nonrenewal of the license of any employment agency if there is an adjudication or final order finding that agency to have discriminated on the basis of race, color, religion, sex or national origin. In addition, it is recommended that the Department of Commerce adopt appropriate forms to be kept by all employment agencies so as to make the annual license renewal and review procedures meaningful.

C. Employment Rights of Minors

The Task Force recommends that §§3331.01, 3331.15, and 4109.01 be revised by equalizing the age restrictions, in order to make equal the employment opportunities for minors of both sexes; §§4109.10, 4109.12, 4109.20 and 4109.25 should be reviewed by the Legislature to determine whether the occupations addressed by these sections are still considered dangerous to minors; if so, the protection afforded by these sections should be extended to *all* minors regardless of their sex.

D. Protective Labor Legislation

1. Occupations
The Task Force recommends that the language of Chapters 4125, 4151, 4153, 4155, and 4157 be made sex-neutral in recognition of the ERA's mandate that all jobs must available to all persons regardless of sex.

2. Public Health
The Task Force recommends that §913.08 be amended to require *all* employees in the canning industry to wear "clean washable caps covering the hair."

3. Female Protective Legislation

a. Exclusionary Statutes

i. Specific Occupations

The Task Force recommends that that portion of §4107.43 that prohibits the employment of females in certain occupations (for example, gas meter reader, freight elevator operators), be repealed.

ii. Weight Limit

The Task Force recommends that that portion of §4107.43 regulating weight lifting, be extended to men in a fashion designed to enhance rather than diminish the safeguards of workers' health and safety.

b. Restrictive Statutes—Hours Limitations
The Task Force recommends that statutes which restrict the number of hours a woman may work be amended so that no employee can be required to work in excess of 8 hours per day or 40 hours per week, unless the employee receives premium pay.

c. Beneficial Statutes
The Task Force recommends that statutes which require employers to provide female employees with certain benefits (such as, work breaks, safety standards, and sanitary facilities), be extended to cover male employees.

d. Administrative Statutes—Enforcement
The Task Force recommends that statutes that provide for the enforcement of female protective laws (for example, §§4104.02, 4107.08, 4113.11 be amended to reflect the new functions of the enforcement agency (that is, insuring that *all* workers, male and female, receive the protections granted them by law).

III. THE STATE AS PROVIDER OF EMPLOYMENT-RELATED BENEFITS

A. Workmen's Compensation

1. Survivors
The Task Force recommends that §§4123.57, and 4123.60, which give special treatment to widows with regard to workmen's compensation benefits, be amended to treat widows and widowers equally.

2. Dependency
The Task Force recommends that §4123.59 providing for death benefits to a dependent spouse be amended to treat widows and widowers equally.

3. Bureau Name Change
The Task Force recommends that the name, "Workmen's Compensation Bureau," be made gender-neutral; for example, the agency could be called "Workers' Compensation Bureau," or "Employees' Compensation Bureau."

B. Unemployment Compensation

1. Disqualifications

a. Marital, Parental, Filial, and Domestic Obligations
The Task Force recommends that §4141.29(D)(2)(c), which provides that no unemployment compensation benefits be paid to an individual who quit work to marry of "because of marital, parental, filial, or other domestic obligations . . .", be repealed because of its discriminatory impact on women.

b. Pregnancy and Post-pregnancy Provisions
The Task Force recommends that §4141.29(D)(2)(c), which provides that no unemployment compensation benefits be paid to an individual who "became unemployed because of pregnancy," be repealed in order to remove any confusion that may exist over the status of pregnancy disqualifications. In addition, it is recommended that all other special post-pregnancy provisions that provide for an arbitrary period of ineligibility without regard to the time at which the actual disability ended (for example, §4141.29(G)), or which impose some additional requirements or obstacles to reinstatement to eligible status that are not imposed in the case of other disabilities, be repealed.

2. Dependency

a. Dependent Spouses
See Marriage and Family Recommendations II(E).

b. Dependent Children
The Task Force recommends that the Bureau of Unemployment Compensation discontinue the sex-discriminatory practices it has adopted for determining dependency conditions under §4141.30. The Bureau should use a simple balancing test in determining these dependency factors, as is presently mandated by the clear language of §4141.30.

C. The Women's Division
The Task Force recommends that the Women's Division, created pursuant to §4141.42, be abolished.

INSURANCE, PENSIONS AND TAXES RECOMMENDATIONS

I. DISABILITY INCOME INSURANCE

A. Unequal Availability
The Task Force recommends that renewable and noncancellable disability income insurance policies which are available to men in various occupations be made available on the same basis to women in those occupations.

B. Unequal Conditions
The Task Force recommends that where disability income insurance policies discriminate against women in terms of premiums, benefits, waiting periods, eligibility conditions and coverage, they be equalized and made available to women on the same basis as men.

C. Risk
The Task Force recommends that rather than basing female risk upon the *number* of women in an occupation, insurance be available on a basis calculated solely upon the risks associated with the occupation and made available to all persons, regardless of sex, upon payment of the premium.

D. Work Patterns
With regard to women who work part time, at home, or are employed by relatives

1. The Task Force recommends that in the situation of the part-time worker, or the woman employed by relatives, disability coverage be made available with appropriate safeguards.
2. The Task Force recommends that disability income insurance be made available to the homemaker; coverage should be calculated on the value of the homemaker's work, using the most current national figures, and should be revised accordingly when adjustments are made.

II. MEDICAL INSURANCE

A. The Task Force recommends that where group medical plans (offered by insurance companies licensed by the State of Ohio) currently incorporate coverage or benefits variations based on race, color, religion, sex, national origin, or alienage, these distinctions be eliminated.

B. The Task Force recommends that a notification provision be written into the statutes so that recipients of benefits of medical and/or health insurance must be notified if, at the instance of the policyholder, any alteration in the policy or beneficiary should occur.

III. LIFE INSURANCE AND ANNUITIES
The Task Force recommends that differential coverage and benefits in life insurance and annuities which are based upon sex-linked classifications not be allowed.

IV. INSURANCE—GENERAL RECOMMENDATIONS

A. The Task Force recommends that an unfair practices statute be enacted prohibiting sex-linked discrimination in all types of insurance.

B. The Task Force recommends that where existing statutes do not include sex in defining nondiscriminatory classifications, they be amended to do so.

C. The Task Force recommends that the Ohio Department of Insurance be given the statutory authority to disapprove any form of insurance available in Ohio which differentiates in coverage, benefits, or premiums on the basis of sex or sex-linked characteristics.

V. PENSIONS FOR PRIVATE AND PUBLIC PLANS

1. Since discrimination exists in both public and private employment-based pension plans, in that male retirees have a greater reduction in benefits than female retirees when they elect the survivor option, the Task Force recommends that the reductions be equal for both male and female employees when survivor options are elected.
2. Because states are virtually pre-empted by the new federal law from playing any role in the private pension field (and because, at the state level, neither private nor public employment-based pension plans can be sufficiently reformed to meet the legitimate needs of workers and, at the same time, be non-discriminatory), the Task Force recommends that a nationally-administered, fully portable, non-discriminatory pension plan be established through appropriate federal legislation.

VI. TAXES

A. Estate Tax
The Task Force recommends that §2117.20, R.C., be changed so that the surviving *spouse* is provided an allowance for support which is set off from the decedent spouse's estate.

B. Income Tax—State and Federal
The Task Force recommends that a minimum deduction or credit be enacted under state tax law to put married wage-earning persons on a par with unmarried wage earners.

VII. MISCELLANEOUS SECTIONS
In addition to the general discriminatory features mentioned above, there are occasional miscellaneous sections of the Code's provisions on insurance which should be made gender-neuter. (See footnote 7 of Insurance, Pensions and Taxes Chapter).

CRIMINAL LAW RECOMMENDATIONS

I. RAPE

A. Evidence of Past Sexual Conduct

The Task Force recommends an addition to the present rape law, §2907.02, R.C., as follows:

Evidence of specific instances of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct, and evidence of the victim's reputation for chastity shall not be admitted under this section unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value—

(a) evidence of the victim's past sexual conduct with the actor;

(b) evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy or disease at or immediately about the time of the alleged rape.

B. Corroboration and Proof of Resistance

The Task Force recommends that Ohio case law with regard to the need for corroboration of the victim's testimony and the need for the victim to physically resist the assault be codified into statutory law, in the following form—

"In order to prosecute under §2907.02, it is not necessary that the victim's testimony be corroborated, or that the victim have physically resisted the offender."

C. Spousal Rape

The Task Force recommends that limitations be placed on the spousal exclusion, which exists in the rape laws; "spouse" should be defined to mean a person married to and cohabiting with an offender at the time of the alleged rape.

D. Police Training

The Task Force recommends to the Ohio Peace Officers Training School (established by §§109.71 - 109.79, R.C.) that the basic training course for peace officers include instruction in the proper conduct of rape investigation and case preparation, with an emphasis on the psychological and emotional effects on the victim. The Task Force also recommends that advanced in-service training be provided both to special investigators in rape and to seasoned peace officers.

E. Evidence Costs

The Task Force recommends that a statutory provision mandating the tests which are necessary to prosecute a rape case, standardizing the procedure for reporting these tests, and requiring that such tests be paid for by the responsible law enforcement agency be enacted. The statute should provide that the admission of such tests is not necessary for a finding of guilty, and no inference may be drawn by the defense for the failure to admit such tests. The cooperation and expertise of the state prosecutors' association, the state police chiefs' association, and the state hospital association, should be obtained in determining which tests should be taken.

F. Rape Victims, Minor

The Task Force recommends that minors who are the victims of rape be afforded medical treatment under guidelines similar to those used for the treatment of medical emergencies of minor victims of non-sexual assaults.

II. PROSTITUTION

The Task Force recommends that the law which provides for the criminalization of prostitution be repealed, while other provisions consistent with decriminalization, such as those which prohibit procurement for prostitution, exploitation of prostitutes, and offensive and harassing solicitation for prostitution in public places remain in the Code.

III. THE CORRECTIONAL SYSTEM

A. Unequal Facilities

1. The Task Force recommends the immediate equalization of male and female treatment facilities to the greatest extent feasible, given the constitutional rights of the prisoners to be free from cruel and unusual punishment and to privacy, the fixed nature of Ohio's present physical facilities, the vast disparity in size between the female institution and the male institutions, and the interest of the state in providing the best possible rehabilitation.

   In addition, the Task Force recommends that before taxpayer's money is spent to build additional facilities, the sex-equality mandate of ERA be given serious consideration by the Legislature.

2. The Task Force recommends that the classification system, as mandated for men by §§5143.03 and 5145.01, R.C., be studied and that the system be made applicable on a sex-neutral basis or that the system be eliminated. The committee declines to make a more specific recommendation because the value of such a system is open to debate.

B. Unequal Programs

The Task Force recommends that the educational, vocational and industrial opportunities and the vocational counseling available to female inmates be expanded to reflect both the wide variety of employment opportunities now open to women, and modern women's greater responsibility to themselves and their families.

C. County and Municipal Jail Provisions and Other Miscellaneous Provisions

1. **Prison Labor**

   The Task Force recommends that §715.58, R.C., be amended to delete sex from the list of permissible factors to be used in drafting regulations concerning prison labor.

2. **Support of Prisoner's Family**

   The Task Force recommends that §5147.22, R.C., be amended to authorize the board of county commissioners or any officer in charge of a workhouse or jail to withhold a portion of a prisoner's salary for the support of a *spouse* and/or children (rather than wife and/or children).

3. **Prisoner's Safeguards**

   The Task Force recommends that the safeguards provided female inmates by §341.20, R.C., be extended to protect both male and female inmates by requiring that an attendant of the same sex as the inmate be used to supervise the inmate in situations in which the prisoner has a right to privacy including, but not limited to, body searches, bathing, dressing, the performance of bodily functions and sleeping. (This recommendation is not intended to limit the use of attendants of the opposite sex in recreation, work, study or other situations which do not give rise to a right to privacy.)

4. **Stereotyped Job Classifications**

   The Task Force recommends that §341.20, R.C., which requires the employment of matrons to care for the insane and minors and which allows the utilization of matrons as cooks, be made sex-neutral, so as to permit males equal employment opportunities.

5. **Privacy**

   The Task Force recommends that §§5123.32 and 339.57 be expanded to provide that male mental patients and male tuberculosis patients being transported under certain conditions be accompanied by male attendants.

6. **Obsolete Sections**

   The Task Force recommends that §2945.42 (which related to actions for criminal nonsupport, which actions no longer exist) and §2331.11 (which grants females a privilege from any arrest for any debt claim or demand arising upon a contract) be repealed, because each is obsolete.

PUBLIC OBLIGATIONS RECOMMENDATIONS

I. ELECTIONS AND JURY DUTY

A. Elections

1. **Name Changes**

   The Task Force recommends that §3503.18, R.C., be amended to preclude application of the name-change presumption to all women who marry. In practice this would mean notifying all applicants for marriage licenses that if they are changing their names they must also change their voter registration.

2. **Honorifics**

   The Task Force recommends that §3503.13, R.C., be amended to delete all titles from voter registration forms.

B. Jury Duty

The Task Force recommends that §2313.16, R.C., dealing with juries, be so amended as to use gender-neutral terms such as "juror" and "spouse."

II. MILITARY PROVISIONS

A. Language

The Task Force recommends that Title 59, R.C., dealing with the Ohio National Guard and the Ohio Defense Corps, be so amended as to employ gender-neutralized language.

B. Qualifications

The Task Force recommends that an independent group be formed including representatives from both the military and from

civilian ERA-oriented groups to review military procedures and regulations. Equal Opportunity should be made readily available to the members of both sexes to serve in the military.

C. Rape

The Task Force recommends that §5109.120, R.C., be amended to prohibit sexual imposition on either sex in conformity with the new §2907.02 of the Ohio Criminal Code.

III. VETERAN'S BENEFITS

A. Relatives

The Task Force recommends that §§5901.05, 5901.06, 5901.07, 5901.08, 5901.25, 5901.05, 345.09, 345.16, and 129.46, R.C., which generally provide that benefits to veteran's relatives go only to "wives, widows and mothers," be amended to permit benefits to "spouses, surviving spouses, and parents."

B. Madison Home

The Task Force recommends that §§5901.28, 4907.13, 5907.14 and 5907.16, R.C., providing the Madison Home for wives, widows, or mothers of veterans, be deleted, since the Home completely closed on January 15, 1975.

IV. BENEVOLENT CORPORATIONS

A. Trustees

The Task Force recommends that §§1715.29, 1715.30, R.C., be amended to permit *any* benevolent association (not just those of which women are trustees) to ask for the appointment of fiscal trustees of *either* sex, if such action is deemed advisable by the association trustees.

B. Widows' Homes

Because of the extreme administrative difficulty in retroactively revoking the charters of corporations designated as "widows' homes" or as "asylums for aged and indigent women," the Task Force recommends that §§1743.04, 1713.28 and 1713.29, R.C., be amended to provide for homes for the care of aged and indigent *persons*. The Task Force also suggests that the Legislature in the near future review these sections in their totality to determine whether or not these sections are still necessary.

C. YMCA

The Task Force recommends that §§1715.23, 1715.24, 1715.25, 1715.26, 1715.27, 1715.30 and 4907.30, R.C., which makes special provision for the Young Men's Christian Association, be deleted and that the YMCA be treated, under §1702.12, like any other nonprofit corporation.

V. MISCELLANEOUS PROVISIONS

A. Fire Wardens

The Task Force recommends that §1503.11, R.C., which authorizes fire wardens to summon "any male" resident between eighteen and fifty years of age to aid in firefighting efforts, be amended to read "any able-bodied" resident.

B. Library Board

The Task Force recommends that §3375.12, R.C., which provides that the municipal library board shall consist of six members, "not more than three of whom shall be women," be amended by deleting the phrase "not more than three of whom shall be women." The Task Force hopes that library boards do not become male monopolies, as have most other governmental boards.

C. County Children's Services Board

The Task Force recommends that §5153.05 and 5153.08, R.C., which require that at least one woman serve on the County Children's Services Board, be amended to delete these special provisions for women, so as to make these sections gender-neutral.

D. University Housing Commission

The Task Force recommends that §3347.09, R.C., which authorizes the state university housing commission to provide accommodations for the wives and children of students, faculty and staff, be amended to authorize the commission to provide accommodations to spouses and children.

E. State Agencies

While this Task Force did not have the time or the resources to examine the rules and regulations of all state agencies, the Task Force recommends that every state agency make a concerted effort to study their rules and regulations to make certain that they are in compliance with the mandate of the Equal Rights Amendment.

VI. AFFIRMATIVE POLICY RECOMMENDATIONS

A. All State Boards

The Task Force recommends that on all agencies, commissions, boards, etc., appointed by an officer or arm of government, the number of members of the board that are of one sex shall never exceed the number of the members of the opposite sex by more than one.

B. Civil Rights Law

1. Commission Powers

In the last year, the Ohio Supreme Court has interpreted the Ohio law against discrimination to preclude the Ohio Civil Rights Commission from having discovery power over corporations and to forbid its assessing damages other than back pay. The Task Force recommends that these powers be restored by statute.

2. Commission Procedure

The Task Force endorses the specific provisions of the Attorney General's proposed legislation which would revise portions of the Civil Rights Laws to remedy the following: (1) the burdensome and redundant court procedures required to secure compliance with Commission subpoenas and discovery motions; (2) the lack of a default judgment provision; (3) the lack of an expeditious pattern and practice proceeding; and (4) the lack of an adequate remedy for discrimination by state contractors.

C. State Highway Patrol

The Task Force recommends that the State Highway Patrol's hiring policies be the first area of study by the proposed state agency for dealing with women's role. (See recommendation VII A.)

VII. STATUTORY STATE AGENCY ON THE CONCERNS OF WOMEN

The Task Force recommends the establishment of an agency within state government to help women and society in dealing with the changes which will be necessitated by women's evolving role in society. (See Page 52 for brief description of proposed structure and function of such an agency.)

EDUCATION RECOMMENDATIONS

EDUCATION

A. The State of Ohio, under the sponsorship of either the new agency, recommended in the Public Obligations Chapter of this report, or the Department of Education, should establish a citizens' Task Force for Equal Rights for Women in Education.

B. In each local school district, action committees should be established to eliminate sex discrimination in employment, textbooks, curriculum or in any area where sex discrimination may exist.

C. A model bill, such as attached in Education Supplement Appendix C, should be enacted by the Ohio Legislature in 1976.

Editor's Notes:

—While brief appendices or supplements may be attached to some chapters, the basic Appendix to this report, including testimony received by the Task Force, legal research, position papers, tapes of meetings, et al., will be kept on public file at the State Library as the materials are too extensive for printing.

—The "General Bibliography" is a selection of background materials chosen with an eye to easy accessibility. Most books are available in paperback. The "Subject Bibliography" consists of those books and articles which each committee found most useful in its deliberations. In addition, other valuable sources of information are mentioned in the footnotes of each chapter.

—Minority reports to Task Force recommendations appear verbatim and without comment.

—In all references to specific sections of the Ohio Revised Code, the symbol "§" is used to denote "section" and O.R.C. is not printed.

—The Task Force recommendations that would change the gender of words in the Ohio Revised Code are made with full knowledge of Section 1.01, O.R.C., which provides that words in the masculine gender, as used in the Code, include the feminine and neuter genders, unless the context requires otherwise.

OHIO ERA

MARRIAGE AND FAMILY

I. Ability to Contract Marriage

A. Age

B. Marriage of a Female Ward

II. On-Going Marriage

A. Determination of Domicile

B. Determination of Legal Settlement for Poor Relief Payments

C. Spousal Support

D. Property Holding
1. Present Common Law System
2. "Married Women's Property Acts"
3. Married Women and/or Widows

E. Names

F. Spousal Agency

G. Consortium

III. Dissolution / Divorce

IV. Miscellaneous

A. Order and Disposition of Cases on Appeal

B. Free Transportation

C. Damages of Lynching

D. Marriage Relationship Contracts

E. Education of Ohio Citizens about Marriage

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INTRODUCTION

The charge of the Marriage and Family Committee of the Task Force was (1) to review the sections of the Ohio Revised Code relating to marriage, divorce, dissolution of marriage, and death of one spouse in a marriage and correct any gender-linked discrimination; (2) to investigate gender-linked discrimination in the administration of these statutes; and (3) to suggest methods for eliminating such discrimination by proposing affirmative legislation, revising rules and regulations, or persuading the public. As the Committee approached its task, three principles were used against which to evaluate sex-based discrimination:

- the need to achieve a balance between the needs of individuals and the needs of society;
- the need to recognize the boundaries of legitimate state interest in the institution of marriage, that is, the state's need to know who and where its citizens are for purposes of licensing, taxation, the orderly transfer of property, etc.;
- the need to insure that marriage is a viable institution by correcting the legal inequalities in it.

The Committee found that these three principles are not antithetical to either the letter or spirit of ERA, but rather can be accommodated while still assuring the rights guaranteed to citizens under the ERA.

The Committee members' views on marriage were widely divergent, from quite traditional to quite progressive, however the Committee was able to agree on the following definition of marriage:

> "Marriage is the relation between man and woman in which the independence is equal, the dependence mutual, and the obligation reciprocal."[1]

The changes the Committee is suggesting in the Ohio Revised Code reflect that definition.

Although the charge of the Committee was to examine marital law and the effect the ERA would have on it, the Committee fully realizes that the marital relationship is much larger than a legal contract. This report addresses the areas of marital law which will be affected by the ERA; however, the personal, psychological and social relationships in marriage must be addressed by educators, health professionals, sociologists and others if the goal of equality for both spouses in a marriage is to be realized.

The Committee report is in four parts:

- the ability to contract marriage;
- on-going marriage;
- dissolution and divorce;
- miscellaneous.

I. ABILITY TO CONTRACT MARRIAGE

A. Age

Problem

The present statute, Section 3101.01, Ohio Revised Code, provides a different age for women's ability to marry (16 years) than for men (18 years); however minor women between 16 and 18 must obtain parental consent.[2]

Recommendation

§3101.01 should be amended to provide that persons of both sexes 18 years of age or over may marry without parental consent; those between ages 16 and 18 may marry with parental consent.[3]

Rationale

Equalizing the ages for men and women is necessary to eliminate gender-based discrimination presently contained in the statute. The Task Force recommends age eighteen because the age of 18 is recommended as the age of majority both in Ohio and the United States and child marriages should be discouraged in order for Ohio citizens to complete their education, attain job skills, and acquire the ability to provide mutual support in a marriage relationship.[4]

B. Marriage of a Female Ward

Problem

The present statute, §2111.45, provides that marriage of a female ward determines guardianship as to her person, but not as to her estate. There is no analogous statute pertaining to male wards.

Recommendation

§2111.45 should be amended to terminate guardianship of the person of wards of both sexes upon marriage.

Rationale

The statute must be extended to male wards to eliminate gender-based discrimination in the present statute. Any person who was a ward prior to marriage would be an independent person after marriage. However, guardianship of the estate of a ward would not change as a result of his or her marriage.

II. ON-GOING MARRIAGE

A. Determination of Domicile

Problem

The domicile of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, he/she has the intention of returning. The Ohio Divorce Reform Act of 1974[5] repealed §3101.02 which provided that the husband was the head of the family and that he could choose any reasonable place or mode of living and the wife had to conform thereto. Thus, under this section, the wife's domicile was determined by the domicile of her husband. Since this section was repealed, no new provision has been enacted to clarify the method of determining domicile.[6]

Although the domicile of children has been a matter of judicial decision, former §3101.02 led to the assumption that in an on-going marriage the domicile of the father was also that of the child.

Recommendation

A new statute should be enacted prescribing the manner in which domicile is established. The statute would recognize the individual's right to determine his/her own domicile apart from that of the individual's family and would specifically state that domicile may not be acquired or lost by marriage alone. A suggested form is attached. (See Appendix to this chapter.)

A minor child's domicile should be determined by the responsible parent or parents.

Rationale

Determining domicile on an individual basis eliminates gender-based discrimination. Although Ohio statutes no longer contain an explicit gender-discriminatory domicile rule, legislation is needed to affirmatively state that marriage or change in marital status alone does not affect the domicile of an individual. A clarification of the minor child's domicile is needed in marriages which are on-going, have children, and yet the spouses are maintaining separate domiciles.

B. Determination of Legal Settlement[7] for Poor Relief Payments

Problem

The legal settlement statute, §5113.05, provides that all men and unmarried women must reside in the state for one year in order to receive poor relief payments, and married women automatically acquire settlement of their husbands. [Since *Butler v. Breyer*, 355 F. Supp. 405 (S.D. Ohio, 1972), invalidated the one year residency requirement, the statute should be re-examined in its totality.]

Recommendation

§5113.05 should be amended to provide that one who marries a person with legal settlement in any county and resides there with intent to establish residence acquires the right of the spouse to receive poor relief.

The legal settlement statute should contain an affirmative statement that marriage alone does not affect the settlement of an individual.

Rationale

The change eliminates gender-based discrimination against men.

C. Spousal Support

Problem

§3103.03 provides that the husband must support himself, his wife, and his children.

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[1]Louis Kaufman Anspacher of Cincinnati, Ohio in an address at Boston, Massachusetts, December 30, 1934.

[2]See also §3101.04 and Juvenile Rule 42 of the OHIO RULES OF JUVENILE PROCEDURE (judicial consent in lieu of parental consent and judicial consent and waiver of age requirement when the female applicant for the license is pregnant) and §3101.05 (marriage license applications).

[3]These provisions are consistent with §203 of the *Uniform Marriage and Divorce Act*, National Conference of Commissioners on Uniform State Law. The Task Force recommendation would not affect the provision of §§3101.04 and 3101.05, *supra* footnote 2.

[4]Testimony of Prof. Hugh Ross, Case Western Reserve Law School, Cleveland, Ohio, March 6, 1975. For further discussion see *The Uniform Marriage and Divorce Act—Marital Age Provisions*, 57 MINNESOTA LAW REVIEW 179 (1972).

[5]House Bill Number 233 §2, effective September 23, 1974.

[6]A person may have several residences but only one domicile. Appendix A. There is some confusion concerning the use of the terms "domicile" and "residency" in the Ohio Revised Code. The Legislature should enact definitions of the concepts of domicile and residency. The Ohio Legislative Service Commission should then review and isolate statutes where the concepts are inappropriately used and the Legislature should amend these statutes to conform to the definitions.

[7]The legal settlement of a person is defined as the place where he/she has a right to support as a pauper. The term is roughly equivalent to the terms "dwelling place," "home," or "residence."

Only where the husband cannot support his family is there an analogous duty on the part of the wife. If the husband fails to support his wife, a third person may supply her with necessaries and recover the value from the husband. "The term 'necessaries' as used in the statute means such foods, medicines, clothing, shelter, or personal services as are usually considered reasonably essential for the preservation and enjoyment of life." It includes "such articles and services as are suitable to maintain the wife according to the position and condition of the life and means of the husband."[8]

Recommendation

§3103.03 should be amended to provide that it is the mutual obligation of each spouse in a marriage to support the other spouse, to the extent possible considering the ability and property of each, and that both spouses bear the responsibility of support for their children.[9] The statute should set forth the factors to be considered by the court in ruling on a petition for support; for example, age, education, job skills, custody of children (if any), contributions of a homemaking spouse, physical or emotional disability, and financial resources of both parties. The third party's right to recover for necessaries furnished to a dependent spouse should be made applicable to either spouse.[10]

Rationale

Making the support obligation mutual eliminates gender-based discrimination. An amended §3103.03 should lead judges to consider factors which realistically determine one's ability to care for oneself and one's children, if any, and to impose obligations on each spouse commensurate with the responsibility each assumes on marriage.

D. Property Holding

1. Present Common Law System

Problem

Ohio has a common law property system in which each married person owns what he or she earns and what he or she brought into the marriage. Property other than land which belongs to one spouse can be sold or used without the consent of the other. Ohio does make some limited provision for jointly held property, with rights of survivorship in the other spouse.

The current system derived from the old common law property system, in which the husband owned all the real property of the wife and managed all her personal property as well. She did not control her own earnings or have the right to bring legal actions; these rights accrued to her husband. She could not enter into contracts, and had no independent legal identity. The discriminatory features of this system of property ownership in an on-going marriage began to disappear in the nineteenth century,[11] with the passage of the so-called "Married Women's Property Acts," giving married women the same rights to ownership and control of property as all other adult persons. A serious objection to the common law property system is that the homemaking spouse might be prevented from sharing in the earnings of the other spouse. This disability could disadvantage the homemaking spouse in the event of divorce or dissolution. The statutes governing common law property holding in Ohio are generally gender-neutral.

An alternative system which is in effect in several states in the United States today is the community property system. Under this arrangement, property brought into the marriage or inherited during the marriage is separate property, but all earnings by either spouse during the marriage are considered community property, jointly owned by both. During the on-going marriage, the community property is not split evenly into his or hers, but on dissolution of the marriage, is to be split between them in equal shares. In fact, in most community property states, the husband has, or has had until recently, the sole management and control of the community property during the on-going marriage. One of the most serious objections to the community property system is that the debtors of one spouse can claim the community property assets of both.[12]

Recommendation

The statutes which provide for the common law property holding system in Ohio should remain unchanged.

[8] *Smith v. Sutler*, 90 Ohio App. 320, 322; 47 Ohio Opinions 427, 428; 106 N.E. 2d 685, 660 (1951).

[9] §§307 and 308 of *The Uniform Marriage and Divorce Act* drafted by National Conference of Commissions on Uniform State Laws suggest similar criteria for determination of the support obligation and property division in instances of divorce.

[10] A suggested form would be: "if one spouse fails to support the other or the minor children, any other person in good faith may supply that spouse with the necessaries for that spouse's support and recover the reasonable value thereof from the nonsupporting spouse unless the nonsupporting spouse abandons the other spouse with cause."

[11] "The Married Women's Property Acts" were enacted on a piece-meal basis between 1850 and 1890.

[12] For further discussion of problems of the community and common law property systems see Joan M. Krauskopf and Rhonda C. Thomas, *Partnership Marriage: The Solution to an Ineffective and Inequitable Law of Support*, OHIO STATE LAW JOURNAL 558 (1974) and *Marital Property Reform in New York: Partnership of Co-equals*, 8 FAMILY LAW QUARTERLY 169 (1974).

Rationale

The Task Force recommends retaining the common law property system, first, because the new divorce/dissolution statute in Ohio clearly requires judges to consider the contributions of the homemaking spouse when making a property settlement (see discussion of Divorce/Dissolution, III). If the statute is properly enforced, it improves the economic position of the homemaking spouse. Further, maintaining the common law property holding system enables spouses who are both working outside the home to maintain control of his/her own earnings. A change in Ohio's property holding system would result in the complex problems of determining ownership of property acquired under the old system and the status of property holding within a marriage contracted prior to the change. A dual system might be necessary to protect the separate property of spouses which was acquired prior to the change. The Task Force has not been convinced that the advantages of community property justify the disruption that a change in Ohio's system of property holding would cause.[13]

2. "Married Women's Property Acts"

Problem

Certain sections of the Code were enacted as part of the "Ohio Married Women's Property Acts" and provide married women with the same rights as all other adult persons.

Specifically, §2107.37 provides that a will executed by an unmarried woman is not revoked by subsequent marriage; §2109.22 provides that marriage of a woman does not disqualify her to act as fiduciary; §2307.09 permits a married woman to sue and be sued as if unmarried; §2323.09 provides for judgment against a married woman.

Recommendation

§§2107.27, 2109.22, 2307.09 and 2323.09 should be amended to be gender-neutral.

Rationale

Although the repeal of these sections would be one method of complying with the ERA, the Task Force recommends an affirmation of the equality principles inherent in these sections by making them applicable to all married persons.

3. Married Women and/or Widows

Problem

Certain sections of the Ohio Revised Code relative to property are sex discriminatory in that they apply specifically to married women and/or widows such as widow's allowance,[14] homestead exemption,[15] property exempt from attachment,[16] various liens on property,[17] particular exemptions and limitations[18] and order of payment of debts.[19] Certain provisions dealing with dower are sex-neutral in application but discriminatory in their language.[20]

Recommendation

The statutes listed in footnotes 14-20 should be amended to be gender-neutral and applicable to either spouse and/or surviving spouse.

[13] The following is a descriptive rather than comprehensive discussion of Ohio's common law property-holding system.

a. *While Both Spouses are Alive.*

(i.) *Personal Property.* §3103.07 provides that a married person may take, hold and dispose of both personal and real property the same as if unmarried. Neither a husband nor a wife has any interest in the personal property of the other merely as a result of the marital relation. This rule also applies to choses in action and to wages earned by each spouse. A husband or wife has no vested or quasi-vested right in his or her spouse's personal property during life. Consequently, either may dispose of personal property during his/her lifetime without the consent of the other.

Traditionally, there was no community property or tenancy by the entirety in Ohio. In 1972, however, Ohio enacted §5302.17, authorizing the creation of an estate by the entirety by deed.

Joint ownership with a right of survivorship may be created by a contract between husband and wife in Ohio. Husband and wife may become joint owners of a bank account, bonds, building and loan certificates, a stock account or a cash fund maintained in their home for the use of both.

(ii.) *Real Property.* §3103.07 makes the wife's status regarding the taking, holding and disposition of real property equal to that of the husband. Dower statutes provide the only statutory limitations on the husband or wife's right to dispose of real property during his or her lifetime without the consent of the other.

§2103.02 is the dower statute. Both husband and wife have a right of dower. A spouse cannot convey real property under such circumstances that dower attaches so as to defeat the other spouse's right to dower, if the other spouse does not join in the deed. A deed or lease of any interest of a married person in real property must be signed, attested, acknowledged and certified as provided in §5301.01.

A prospective husband and wife may enter into a valid antenuptial contract with respect to the rights of each in both the real and personal property of the other. Provision may be made in an antenuptial agreement for payment to the wife of a specified sum of money immediately after the solemnization of the proposed marriage, or upon the death of a spouse. When each party owns property prior to the contemplated marriage, the antenuptial agreement may provide that neither party shall have any right, interest or claim in or to the property of the other, either during their marriage or upon the death of the other.

b. *Upon the Death of One or Both Spouses.* In Ohio, any person over eighteen of sound mind and memory and not under restraint may make a valid will. A will made by an unmarried woman is not revoked by her subsequent marriage.

Neither §2107.39, providing for election by surviving spouse, nor §2105.06, the statute of descent and distribution, distinguish between male and female spouses. Hence, either a husband or wife may elect to take against the will of a deceased spouse and receive his or her distributive share.

Similarly, §2117.24 provides that a surviving spouse, either husband or wife, may remain in the mansion house of the deceased consort free of charge for one year. This statute also does not discriminate on the basis of gender.

With respect to the right of the surviving spouse to dower, §2103.02 provides that each spouse shall have a life estate of one-third of the real property of which the spouse was seized through inheritance at any time during the marriage.

[14] §§2117.20-25, 2101.12, 2107.42, 2113.532, 2115.14, 2127.02, 2127.03, 2127.31, 2127.41.

[15] §§2329.72-73, 2329.75-77, 2329.80-82.

[16] §2329.66.

[17] §§1311.34, 4399.04.

[18] §§1313.17, 1313.18, 1313.30, 1313.33-35.

[19] §§2117.25, 2127.02.

[20] §§1313.30, 1313.33, 1313.34, 5307.17, 5307.18.

Rationale
Gender based discrimination in these statutes should be corrected by extending the rights contained in these statutes to men.

E. Names
Problem
Although it is a widely accepted practice, there is no statute in Ohio which requires that a wife change her name upon marriage to that of her husband. Married women have the legal right now to maintain their birth names after marriage. However, in practice, many women are denied the use of their birth names; for example, by administrative regulations or by creditors.[21] Further, in an instance where a woman uses a name different from her husband's, a problem arises in naming children born to the marriage.

Recommendation
In order to lessen confusion in this area, Ohio should enact a statute which permits the parties to a marriage to state each party's choice of name at the time of marriage license application. The name(s) would not necessarily have to relate to any name either had previously. We support a recent Massachusetts Attorney General's Opinion (October 29, 1974) which states that a child of a marriage may be given any name the parents wish.[22] In the event of divorce or dissolution of the marriage of the child's parents, the child would continue under the name given to him/her at birth. If for any reason the child wants to go by some other name, he/she should formally request a name-change from the probate court.[23]

Rationale
The proposed affirmative legislation will enable persons to clearly establish their choice of names at the time of marriage. The recommendation reaffirms the common law right of all Ohioans to go by whatever name they choose as long as there is no intent to defraud, while providing a document to buttress that choice.

The recommendation relative to children's names allows parents maximum freedom in the selection of children's names, while specifically allowing for giving the child a hyphenated combination of both parents' birth names.

F. Spousal Agency
Problem
§1311.10 codifies the agency principle in situations in which a husband acts as his wife's agent when she is the owner of certain property and the husband contracts as to that property with her knowledge and without her express objection. The statute is worded solely in terms of the husband acting as the agent for the wife; this is sex discriminatory.

Recommendation
Repeal §1311.10.

Rationale
Spouses would be bound to contracts by agency principles contained in the common law without a specific statute.

G. Consortium
Problem
Consortium is the companionship, comfort, conjugal affection, and sexual relations which all form part of the relationship between married persons. When one spouse is injured, intentionally or negligently, the other spouse suffers, too, and the uninjured spouse may sue for loss of consortium. The law governing actions for loss of consortium is not in the Revised Code but is based on case law. The review of case law indicates that, although the original common law principle held that only a husband could sue for loss of consortium, this principle has been modified by subsequent court cases to allow the wife an equal right to sue.

Recommendation
The Task Force recommends that no affirmative legislation is needed.[24]

III. DISSOLUTION/DIVORCE

Problem
The Ohio Divorce Reform Act of 1974 constitutes a major revision of Ohio's divorce laws.[25] It represents a middle ground between complete "no-fault" divorce and the traditional "one-partner-at-fault" divorce.

[21]For further discussion of the retention of birth-names and its problems see Marija Hughes, *And Then There Were Two*, 23 HASTINGS LAW JOURNAL 233 (1971); Kathleen A. Carlsson, *Surnames of Married Women and Legitimate Children*, 17 NEW YORK LAW FORUM 552 (1971); and Kenneth L. Karst, *"A Discrimination So Trivial": A Note On Law and The Symbolism of Women's Dependency*, 35 OHIO STATE LAW JOURNAL 546 (1974).

[22]Simon Lazarus dissents from the majority view feeling that a child should have the surname of one of its parents.

[23]Saunier, Winning, Gall and Lazarus dissent from this recommendation because they believe that voluntary registration will be ineffective. Registration should be mandatory at the time the marriage license is issued. This registration should also be filed with the Ohio Vital Statistics Division. In the event of divorce or dissolution, each party would file with the court the legal name that they wanted to use subsequent to divorce or dissolution. This also would be filed with the Ohio Vital Statistics Division. Further, the legal procedure for changing one's name should be simpler and less expensive. This procedure for name change should be the only way a citizen can change his or her legal name other than through the statement filed at the time of marriage and divorce/dissolution, annulment.

[24]*Flandermeyer v. Cooper*, (1912), 85 Ohio State 327, 98 N.E. 102 *Clouston v. Remlinger Oldsmobile Cadillac, Inc.* (1970), 22 Ohio State 2d. 65, 258 N.E. 2d 230.

[25]Amended Substitute House Bill No. 233 effective September 23, 1974. For a full discussion see XLVII *Ohio Bar* No. 35, Page 1031 (Issue of September 16, 1974) and Ohio Legal Center Institute, *Dissolution of Marriage*, Publication No. 89 (1974).

"No fault" divorce or dissolution of marriage is permitted to spouses who want a divorce and have a written agreement on custody, visitation, child support, alimony and property division. The traditional "one-partner-at-fault" concept is retained; the grounds have to be proved in divorce actions where there is controversy between the parties on the question of divorce itself, child custody, child support, alimony or property settlement. The new act is gender-neutral and contains excellent provisions to be considered in the property settlement including the contributions of the homemaking spouse.

Although there is no sex-based discrimination contained in Ohio divorce/dissolution law, there are problems in its administration. Wives in divorce proceedings are favored statistically in awarding custody of children. Husbands, who are assessed child support, default in large numbers, abandoning many divorced mothers and their children to poverty or at least to a much lower standard of living than that to which the wife was accustomed while the marriage was on-going.[26] In addition, the equitable treatment of the homemaking spouse in a property settlement depends upon judicial discretion.

Recommendation and Rationale
The present statutes call for recognition of the contribution of the homemaking spouse in divorce and dissolution settlements as well as a number of items which are suggested in the Uniform Marriage and Divorce Act. In addition, the courts have the right to collect support payments from the non-paying spouse. Judges and the court system *must* uphold the *letter* and the *spirit* of the law which calls for equitable treatment of both spouses in dissolution and divorce. Citizens should become aware of their Domestic Relations Court and its judges. An informed electorate can see that the present statutes are enforced.[27] The Ohio Legislature must give attention to the problem of the overwhelming default rate of spousal support and/or child support payments and take action to correct this problem.[28]

IV. MISCELLANEOUS

A. Order and Disposition of Cases on Appeal
Problem
In cases where relief is sought for death caused by negligence and where the widow or any of the next of kin of the deceased certifies by affidavit that such person was dependent for livelihood upon the decedent's daily labor, §§2501.09(e) and 2503.37(f) require that these cases be advanced in the docket order.

Recommendation
Amend §§2501.09(e) and 2503.37(f) by deleting "widow."

Rationale
Since a widow meets the definition of next of kin, gender-based discrimination can be eliminated from the statute by deleting the word "widow."

B. Free Transportation
Problem
§4907.30 excepts widows of employees who died while in the service of any common carrier from the law that prohibits free transportation on the railroads.

Recommendation
Amend §4907.30 by changing "widow" to "surviving spouse."

Rationale
Extending this right to widowers eliminates gender-based discrimination.

C. Damages of Lynching
Problem
§3761.04 provides that the widow of a lynching victim may recover up to $5,000 in damages from the county.

Recommendation
Change "widow" to "surviving spouse."

Rationale
Extending this right to widowers eliminates gender-based discrimination.

D. Marriage Relationship Contracts
Problem
§3103.06 states that a husband and wife cannot, by contract with each other, alter their legal relations, except that they may agree to an immediate separation and make support provisions for themselves and their children during the separation. Antenuptial agreements, such as agreements concerning the religious education of children, agreements allowing the wife to maintain her own name, and agreements waiving the inheritance rights of the spouses in each other's estates, have been held to be valid and not within the prohibitions of this section. Further, §3103.06 is an exception to the general rule stated in §3103.05, that a husband or wife may enter into any engagement or transaction with the other, or with any person, which either might make, if unmarried; subject, in transactions

[26]See testimony of Prof. Janet T. Wallin, Toledo University College of Law, Toledo, Ohio, February 22, 1975 and testimony of Susan Johnson, Cleveland Chapter National Organization of Women, Cleveland, Ohio, March 6, 1975.

[27]Such a project is underway by Columbus NOW. For information, contact Columbus NOW, Box 5053, Columbus, Ohio 43212.

[28]A new federal law (Pub. L. 93-647, 93rd Congress, effective July 1, 1975) provides federal aid to help states find persons who are in default on child support payments.

between themselves, to general rules which control the actions of persons occupying confidential relations with each other.

Recommendation
No change should be made in the statute.

Rationale
The statutes are gender-free and permit Ohio citizens to contract with each other concerning major aspects of their marital contract. In addition to formal legal contracts, the Task Force sees value in personal marriage agreements which permit parties to a marriage to make as many conscious decisions as possible prior to the marriage about how they will live together, and to reevaluate these decisions regularly during the marriage. For this latter purpose the Task Force encourages the use of a tool popularly being called "marriage contracts," but feels these should not be binding legal contracts, but rather personal marriage agreements. (Examples of several such "contracts" are contained in the Appendix of the report.)

E. Education of Ohio Citizens About Marriage Problem

Most parties to a marriage are not aware of the legal rights and responsibilities entailed in marriage. The Task Force believes that a full understanding of the legal concepts of marriage and divorce/dissolution by both the women and men intending to marry can only strengthen the marriage bond. In addition, both parties should understand those aspects of marriage discussed in the introduction which are beyond the scope of the ERA.

Recommendation
The Committee favors marriage and family courses in high school and recommends that the State Department of Education foster and encourage the inclusion of courses which discuss marriage and family law in the high school curriculum.

Rationale
It is our belief that the family as a basic institution of society will continue to exist in spite of economic, political, or religious change. It is assumed that the family institution encompasses a relationship which provides not only the basic needs of living but also the sense of belonging which is crucial to human development; therefore, the term "family" may refer to a variety of human relationships.

In order to build a stronger and more realistic base for future family life, Marriage and Family courses in the high school curriculum must be broadened to include the following units:

- legal aspects of family life
- financial aspects of family life
- division of labor within families
- physical requirement of living (e.g. shelter, food, etc.)
- psychological and interpersonal needs of family members

We believe that such a preparatory course is crucial for all young adults as the success of on-going marriage cannot be left to the law or chance, but depends on individual readiness to face the decisions and responsibilities involved.

APPENDIX A
PROPOSED DOMICILE STATUTE
AN ACT

RELATING TO ESTABLISHMENT OF DOMICILE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF OHIO:

Section 1. Section 3103.02 is enacted to read:

"3103.02. DOMICILE—RULE FOR DETERMINING—For the purpose of determining domicile, domicile shall be determined by the following rules:

A. The domicile of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return.

B. The place where a person's family resides is presumed to be his domicile, but a person who takes up or continues his abode with the intention of remaining at a place other than where his family resides is domiciled where he abides.

C. A change of domicile is made only by the act of removal joined with the intent to remain in another place. There can be only one domicile.

D. A person does not gain or lose domicile solely by reason of his presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while residing upon a military reservation.

E. No member of the armed forces of the United States, his spouse or his dependent is domiciled in this state solely by reason of being stationed in this state.

F. A person does not lose his domicile if he leaves his home and goes to another country, state or place within this state for temporary purposes only and with the intention of returning.

G. A person does not gain a domicile in a place to which he comes for temporary purposes only.

H. A person loses his domicile in this state if he votes in another state in an election requiring residence and/or domicile in that state, and has not upon his return regained his domicile in this state under the provisions of the Constitution of Ohio.

I. A person does not acquire or lose domicile by marriage only.

MINORITY REPORT of Maryann Gall

RE: **§3103.03—"Necessaries" [II(C)]**

The Ohio Revised Code, Section 3103.03 provides, in part, that if the husband "neglects to support his wife, any other person, in good faith, may supply her with necessaries for her support, and recover the reasonable value thereof from the husband unless she abandons him with cause." The "necessaries" doctrine is an anachronism in today's society and has lead to much confusion in the areas of women's credit —the clause should be eliminated from §3103.03.

The historical reasons which gave rise to the necessaries concept no longer hold true. The doctrine developed at a time when married women were unable to make contracts and could not be liable for their purchases. Therefore, husbands were held liable for "necessaries" purchased by the wife, whether or not the husband had consented. The necessaries doctrine put creditors in a bind. If the creditor unexpectedly found that the husband did not consent and refused to pay, the creditor had to prove that the item was a necessary according to the particular circumstances of that household. In 1877, Married Women's Acts were passed in Ohio giving women the right to make contracts. The necessaries doctrine survived, but with one significant change—because married women were now able to purchase specifically on their own credit and the husband could not be held liable. In the days when few married women had separate incomes this change made little impact, however.

Because of these historical difficulties, creditors have become dubious about extending credit to all women, married or not. Although society has changed, and more and more women now have their own incomes, creditors retain the historical reluctance to extend credit—they believe that, despite a woman's own credit worth, the husband is ultimately liable for debts construed to be part of her support. The problem is not so much with the present law, which *does* allow a woman to purchase solely on her own credit; the problem is with creditors' perception of the law. As the necessaries clause is part of the cause of this confusion, it should be eliminated. It would serve little purpose to extend this hazy, outmoded concept to husbands as well as wives. In addition, when the ERA abolishes the husband's primary duty to support his family and places liability for household and family expenses on both spouses equally, there will be no need for specific legislation covering the narrow situation of "necessaries." Therefore, I recommend that the "necessaries" clause of R.C. 3103.03 be eliminated rather than changed.

OHIO ERA

CHILDREN

I. **Juvenile Justice**
   - A. Age Jurisdiction of Ohio Youth Commission
   - B. Juvenile Treatment Facilities
     1. Single Sex Facilities
     2. Vocational Opportunities
   - C. Juvenile Court Referees
   - D. "Unruly Child" Status Offense

II. **Social Services**

III. **Miscellaneous Differentials**

IV. **Illegitimacy**

V. **Child Care**
   - A. Inadequacy of Services
   - B. Program Development

VI. **Aid to Dependent Children**

COMMITTEE:

Lila Burke, *Chair*
Betty Carroll
Catherine Catanzarite
June R. Galvin
Margaret Rosenfield

INTRODUCTION

The Study of the Committee on Children focused on several areas:

- the juvenile justice system which, in certain instances, treats girls differently from boys;
- areas of law that provide different treatment for either parents or children based on the sex of a parent;
- public policies that, in our judgment, are based on societal attitudes toward women, the consequences of which result in detriment to children.

In the area of juvenile justice, the Committee found evidence of sex discrimination in the "unruly child" status offense, the age jurisdiction differentials of the Ohio Youth Commission, the appointment procedure of court referees based on the sex of the offender, and in the sex segregation of juvenile treatment facilities. Our recommendations will bring each of these areas into conformity with the mandate of the ERA.

In the area of laws affecting either parents or children unequally based on sex of the parent, the Committee found that illegitimacy laws, laws regulating access to birth control information by recipients of state services, and the laws designating certain legal responsibilities of parents were all discriminatory. The recommendations of the Committee serve to make the law sex neutral. In the case of illegitimacy laws, we recommend the enactment of a comprehensive parentage act.

In the area of public policy, the Committee felt that the issues of child care and Aid to Dependent Children came under the Task Force's charge to make affirmative legislation recommendations. From our study of these issues and the testimony received, we concluded that public policies on these two issues have been formulated on the basis of attitudes concerning the proper role of women in our society. The resulting effect has been discriminatory to women and detrimental to children. Our recommendations are that the state should provide several kinds of high quality child care within the next biennium and that ADC grants should be raised to insure a minimum standard of health and decency for recipients.

I. JUVENILE JUSTICE

A. Age Jurisdiction, Ohio Youth Commission

Problem

Under present law, the age at which a child may be committed to the Ohio Youth Commission (OYC) depends upon the sex of the child. Section 5139.05[1] of the Ohio Revised Code authorizes the OYC to take permanent custody of delinquent males between the ages of *ten* and twenty-one and of females between the ages of *twelve* and twenty-one. The ERA requires the elimination of age differentials based solely on sex.

Recommendation

The Task Force recommends that §5139.05 be amended so that both boys and girls may be committed to the Ohio Youth Commission at the same age, twelve.

Rationale

The notion that boys, by nature, are prone to commit more serious offenses at an earlier age and need to be dealt with more severely than girls is not supported by empirical evidence. The Ohio Youth Commission advocates that the age minimum be set at twelve for boys and girls.[2]

B. Juvenile Treatment Facilities

1. Single-Sex Facilities

Problem

The juvenile treatment facilities presently operated by Ohio are primarily sex-segregated.[3] (§§2151.651, 2151.652, 5139.27, 5139.37, and 5139.39 refer to maintenance of juvenile facilities for use solely "for . . . male children . . . or female children.") Because they permit the grouping of individuals solely on the basis of sex, separate facilities would seem to be a *prima facie* violation of the Equal Rights Amendment. However, the Equal Rights Amendment must be viewed in light of other constitutional provisions. The individual's rights to privacy and freedom from cruel and unusual punishment must be a major concern when addressing the subject of incarceration. At this time it is unclear whether the ERA mandates that all penal facilities be sex-integrated or whether other constitutional provisions outweigh the ERA's sexual equality principle.[4]

Recommendation

The Task Force recommends that juvenile treatment facilities used for educational, social, and vocational purposes be made co-educational.

Rationale

If the rehabilitation programs for juveniles are to prepare the youths to return to society as productive individuals, the treatment environment should be as much like the outside world as possible. Juveniles should be given an opportunity to relate to adults and peers of both sexes. Many of the present juvenile treatment facilities employ a cottage system of living; these facilities would be easiest to make co-ed. Activities such as bathing, sleeping and other intimate functions could be assigned to the cottages on a sex-segregated basis, while education, social and vocational activities could be conducted in other areas of the facility in a sex-integrated fashion.[5]

2. Vocational Opportunities

Problem

Even though the ERA may not require complete integration of juvenile facilities, it will require correcting existing inequities between boys' facilities and girls' facilities. The vocational and educational opportunities available to girls are substantially less than those available to boys. In addition, those vocational programs that are offered are frequently aimed at preparing girls for the traditional woman's role and occupation. For example, girls are given the opportunity to learn cosmetology or cooking, while boys can study auto mechanics.[6]

Recommendations

The Task Force recommends that vocational and educational opportunities available to females in juvenile facilities be equal to those available to males. Such opportunities should not be limited to areas that have traditionally been occupied by women.

Rationale

Training and educational programs provided in juvenile facilities should not be determined by traditional sex stereotyping; both boys and girls should be exposed to the same variety of programs.

C. Juvenile Court Referees

Problem

§2151.15 provides that whenever possible a female referee shall be appointed in the trial of a female offender; there is no preference for appointing male referees for male offenders. This differential treatment will not be permitted under the Equal Rights Amendment.

A preference system of assignment, based on sex, is particularly undesirable because in practice, it works to the disadvantage of the female offender. The charges against female juvenile offenders tend to be similar in nature; for example, running away, truancy, ungovernability. When one referee is confronted repeatedly by similar offenses, the referee has a tendency to develop a stereotyped approach to dealing with offenders, often ignoring the particular problems and circumstances of the individual offender.[7] In addition, when female referees handle only female offenders, the referees are likely to be unaware of the differences in treatment accorded males and females. Females tend to be incarcerated for offenses which are insignificant and for which boys are not incarcerated.[8]

Recommendation

The Task Force recommends that §2151.15 be amended to include a statutory requirement that juvenile court referees be assigned on a random basis, unless the individual child requests that the referee assigned be of a particular sex.

Rationale

It is important that random assignment be made a *statutory* requirement, rather than simply abolishing the present sex-preferential provision. If random assignment is not required by statute, there will be a tendency for courts to continue assigning female offenders to female referees. However, it should be possible for a child to indicate a preference that the referee assigned be of a particular sex (and not necessarily of the same sex). This

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[1] §§2151.651, 2151.652, 5139.27, 5139.37 and 5139.39, authorize the OYC to create, finance, supervise and operate facilities for the care and treatment of male children between the ages of ten to twenty-one or female children between the ages of twelve to twenty-one years. These sections will need to be brought into conformity with §5139.05.

[2] Testimony of M. B. McLane, Deputy Director for Correctional Services, Ohio Youth Commission, Columbus, Ohio, February 7, 1975.

[3] The Ohio Youth Commission does, however, operate two sex-integrated facilities: the Child Study Center, a diagnostic facility and the Buckeye Youth Center. Testimony of Dr. Sandra Priestino, Director of Child Study Center, Ohio Youth Commission, Columbus, Ohio, February 7, 1975.

[4] See *The Sexual Segregation of American Prisons*, 82 YALE LAW JOURNAL 1229, 1234-36 (1973).

[5] It should be noted that any private agencies working with juvenile delinquents, or pre-delinquents, already have sex-integrated programs. These agencies should be looked to for guidance in implementing this recommendation.

[6] Report to the Children's Committee by Donna Hamparian, Fellow, Academy for Contemporary Problems, Columbus, Ohio. Ms. Hamparian is conducting an in-depth study of Ohio's juvenile justice system.

[7] Priestino, *op. cit.* Dr. Priestino favors a system of random assignment of counselors who work with juvenile offenders because such a system discourages counselors from developing stereotyped opinions of certain types of offenders.

[8] *See* Singer, *Women and the Correctional Process*, 11 AMERICAN CRIMINAL LAW REVIEW 295, 297-99 (1973); Rogers, *"For Her Own Protection . . .": Conditions for Incarceration for Female Juvenile Offenders in the State of Connecticut*, 7 LAW & SOCIETY REVIEW 223 (1972); Gold, *Equal Protection for Juvenile Girls in Need of Supervision in New York State*, 46 NEW YORK LAW FORUM 57 (1971).

provision takes into account the fact that some children have difficulty relating to an adult of a particular sex.

D. "Unruly Child" Status Offense

Problem

Historically, the juvenile court system developed to protect the children who committed criminal acts from being subjected to adult criminal sanctions, and to initiate alternative measures with the child's interests in mind.[9] However, in addition to dealing with criminal behavior, the Ohio juvenile system deals with children who fail to respond to lawful authority.

§2151.022 provides that an "unruly child" is one:

(A) Who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
(B) Who is an habitual truant from home or school;
(C) Who so deports himself as to injure or endanger the health or morals of himself or others;
(D) Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority;
(E) Who is found in a disreputable place, visits or patronizes a place prohibited by law or associates with vagrant, vicious, criminal, notorious, or immoral persons;
(F) Who engages in an occupation prohibited by law or is in a situation dangerous to life or limb or injurious to the health or morals of himself or others;
(G) Who has violated a law applicable only to a child.

The "unruly child" statute raises an ERA problem because the vagueness of the statute permits officials to apply the statute in a sex-discriminatory fashion. Testimony revealed that the application of the "unruly child" statute is discriminatory in that standards of sexual behavior are markedly different for boys and girls. Girls who become pregnant come under the control of the Juvenile Court through use of this statute while the boys who are equally responsible for the pregnancies do not. In addition, girls are frequently incarcerated[10] for non-criminal acts or acts for which boys are not incarcerated; for example, pregnancy and sexual promiscuity.[11] Once imprisoned, sexually stereotyped attitudes cause yet another inequity: girls spend a longer time in institutions than do boys, apparently under the assumption that the girls need such "protection."[12] Thus, many girls who have committed no criminal offense are detained in the same facilities as those who have committed serious criminal offenses.[13] The President's Commission on Law Enforcement and the Administration of Justice stated that the juvenile court system had "not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of juvenile criminality, or in bringing justice and compassion to the child offender."[14] Further, the Commission stated that "by institutionalizing children not guilty of any crime, the court may feed the disorder it is designed to cure."[15]

Recommendation

The Task Force recommends that the Ohio General Assembly undertake a thorough revision of O.R.C. §2151.022 which governs the "unruly child"; particular attention should be given to correcting existing inequities in the application of the law to male and female juveniles, to providing adequate alternatives to placement in juvenile detention facilities, and to the establishment of guidelines for applying the "unruly child" statute which are non-discriminatory.

Rationale

The problems inherent in the "unruly child" statute are great. Yet certain portions of the statute, specifically subsections (A) and (D), are legitimate objects of legislative concern. There is an urgent need for the Legislature to establish guidelines for the application of this statute which will prevent it from continuing to be applied in a sex-discriminatory fashion. In addition, the Legislature should concern itself with improving local social services so that the bulk of juvenile offenders can be handled outside the court system. The Juvenile Justice and Delinquency Act of 1974 states that juveniles who have committed offenses that would not be criminal if committed by an adult should not be placed in juvenile detention or correctional facilities, but rather should be placed in shelter facilities. It is particularly important that programs be developed at the local level to deal with pregnant girls who have not committed criminal offenses; girls should not be imprisoned solely because they are pregnant out-of-wedlock.

[9] Alan R. Coffey, *Juvenile Justice As A System.* (Englewood Cliffs, N.J.: Prentice Hall, 1974), pp. 36-39.

[10] Incarceration of an "unruly child" is accomplished by means of first adjudicating the child "unruly", followed by a determination that the child is "not amenable to treatment", which determination permits the court to treat the child as a delinquent. §2151.354.

[11] Hamparian, *loc. cit.* Testimony by Candace Cohen, Attorney with Toledo Legal Aid Society, Toledo, Ohio, February 22, 1975. Ms. Cohen specializes in the defense of juveniles.

[12] Gold, *Equal Protection for Juvenile Girls in Need of Supervision in New York State*, 46 NEW YORK LAW FORUM 57 (1971).

[13] The Ohio Youth Commission operates only *two* facilities for delinquent girls: Scioto Village and Riverview.

[14] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, (Washington: GPO, 1967), p. 7.

[15] *Ibid.*, p. 9.

II. SOCIAL SERVICES

Problem

§5153.16 (E) authorizes the county children's services board to provide social services to any girl or woman who is pregnant with/or has been delivered of an illegitimate child. §5107.10 permits administrators of the ADC program to refer the mother of an ADC recipient for counseling about birth control and to procure for the mother any birth control pills or devices she needs and desires. Such differential treatment of parents, based solely on sex, will not be permitted under the ERA.

Recommendation

The Task Force recommends that §5153.16 be amended to empower county children's services boards to provide social services to both the mother and the father of an illegitimate child. §5107.10 should be amended to permit administrators of the ADC program to refer both the mother *and* the father of an ADC recipient for counseling about birth control and to procure for *either* parent any contraceptive devices needed or desired.

Rationale

The man's role in the birth process should not be ignored; *both* parents should have access to county social services for the purpose of learning how to deal with pregnancy and birth control.

III. MISCELLANEOUS DIFFERENTIALS

Problem

There are several sections of the Ohio Revised Code that are violative of the Equal Rights Amendment because they differentiate between parents on the basis of sex. These provisions are generally premised on the notion that the father has the primary duty of support and responsibility for his children; the mother has such obligations only where the father is not living.

§2101.12 requires the probate court to keep a guardian's docket which shows, *inter alia*, the name of the father of each ward, but not of the mother.

§5711.05 imposes the duty of filing a personal property tax return for a minor, idiot or insane person who does not have a court-appointed guardian on "his father if living, if not (then on) his mother, if living."

§5121.21 allows the recovery of payments made to the state by the mother of a minor patient who is in a state institution from such minor patient's father.

§2101.27 and 2101.29, dealing with the service of notice and summons on minors, specify that service is to be made on "his guardian, father, mother, the person having care of the minor or the person with whom the minor lives, in named order." These sections were rendered obsolete with the adoption of Ohio Civil Rules 4 and 73.

Recommendation

The Task Force recommends that both parents be treated equally with respect to their parental duties and obligations. Specifically, §2101.12 should be amended to require the probate court to record *both* parents' names in the guardian's docket; §5711.05 should impose the duty of filing a personal property tax return for a minor, idiot or insane person who does not have a court-appointed guardian on *both* parents, and if either is deceased, on the surviving parent; in the event of a divorce, legal separation or dissolution of marriage, then on the parent with the custody of said property. §5121.21 should provide that *either* parent can recover all or a portion of sums paid to the state for the institutional care of a minor child from the other parent on the basis of each parent's respective ability to provide support to the child, as determined under §3103.03 (See Marriage and Family Chapter). §§2101.27 and 2101.09, dealing with service of process, have been superseded by the Rules of Civil Procedure and should be repealed.

Rationale

This recommendation will render the above Code sections gender neutral.

IV. ILLEGITIMACY

Problem

Historically, the purpose of the concept of illegitimacy was to discourage illicit sexual relations by making the product of such relations socially and legally disfavored. The concept is sex discriminatory, because the legal treatment of parent-child relationships is based solely on the sex of the parent. The rights and duties running between the father and the illegitimate child are substantially less than those between the mother and the child. Under the present law, a child born out of wedlock has no rights of inheritance against the father's estate,[16] although §2105.17 does give the child such rights against the mother's estate. Under §3111.17, the out-of-wedlock child has no right to support from the father unless a successful paternity proceeding has been

[16] OHIO JURISPRUDENCE 2D REVISED BASTARDY §49 (19).

brought. The mother's duty of support is automatic.[17] The putative father of the child has very limited parental rights with respect to his child[18], while the mother's rights are total.[19]

The concept of illegitimacy is particularly offensive because it ignores the most important factor: parentage. Instead of focusing on paternity and maternity, parentage looks beyond to the legal constructs of marriage and acknowledgment. A child can only be legitimate if the child bears a prescribed relationship *with the father*, in addition to the blood-relationship. §§2105.18, 3705.15. Children are never deemed "illegitimate" based on their relationship to the mother. Further, only the father holds the power to legitimate a child; the establishment of paternity for the purpose of determining the duty of support does not have the legal effect of legitimating the child. (See §§2105.18, 3705.15, and Chapter 3111, in general.)

Although children clearly suffer the greatest damage by the operation of the concept of illegitimacy, and mothers have such greater parental obligations and bear a greater social stigma than do the fathers, fathers are also disadvantaged by the operation of the institution. The custodial interests of the putative father are generally ignored. A child may be placed for adoption without ever obtaining the natural father's consent, even though the father may have evidenced a great interest in the child. Although the U.S. Supreme Court has recently expanded the rights of the custodial father[20] the rights of many fathers continue to be ignored because courts are confused by the Supreme Court's holding, or simply choose to ignore the Court.[21] The rights of putative fathers will not be assured until they are set forth in statutory form.

Recommendation

Since the existing concept of legitimacy requires different legal treatment of parent-child relationships based solely on the sex of the parent, the Task Force recommends that §§2105.17, 2105.18, 3705.15, 3107.06 and Ch. 3111, be repealed, and that a comprehensive parentage act, modeled, in part, after the Uniform Parentage Act, be enacted. Such legislation should cover all the situations in which parentage may be an issue, including adoption, inheritance, custody and child support. Under such an act, all children would be the legitimate children of their natural parents. Rights and duties between parent and child would not be determined solely by the marital status of the parents, or by the act of formal acknowledgment by the father; instead, *parentage* would be the governing factor.

Rationale

The growing judicial recognition of the constitutional problems with disparate treatment of legitimate and illegitimate children and their parents,[22] as well as the ERA problems raised by the sex-based distinctions, makes affirmative legislation dealing with *all* aspects of parent-child relationships most desirable.

A basic tenant of a comprehensive parentage act[23] should be that all biological parents who can reasonably be identified have potential rights in their children regardless of the sex or marital status of the parent. These rights and responsibilities are in existence until they are forfeited by neglect of parental obligations for a significant period of time, or until other persons adopt their children with their consent. Ascertainment of parentage thus becomes the crucial factor.

[17] *Ibid.*, §42.

[18] The right of the father to custody of the child is inferior to that of the mother, but superior to that of all other persons; upon her death, the father becomes entitled, as against the world, to the care and custody of the child. *Ibid.*, §43. During the mother's life, it is presumed that the best interests of the child require it to be in the mother's custody; the person disputing her custody has the burden to show why the general rule should not apply. §42. *See* also §3107.07, which requires only the mother of an illegitimate child to consent to its adoption.

[19] *Ibid.*, §42.

[20] In *Stanley v. Illinois*, 405 United States 645 (1972), the U.S. Supreme Court ruled that an Illinois statute which operated to automatically deprive an unwed father of custody of his children violated the father's rights of due process and equal protection of the law. The unwed father could be deprived of parental rights without a fitness hearing, and, thus, fathers were treated differently from other parents.

The Supreme Court has also invalidated several state and federal statutory schemes which make distinctions between legitimate and illegitimate parent-child relationships. The Court has held such distinctions to be denials of equal protection to the excluded groups. See *Levy v. Louisiana*, 391 United States 68 (1968) and subsequent cases.

[21] Testimony of Rev. James Couts, Lutheran Social Services of Columbus, Ohio, Cleveland, Ohio, March 6, 1975.

[22] *See* n. 20.

[23] The following outline briefly describes those factors which should be considered when formulating a comprehensive parentage act.

Presumptions

Since the natural mother is usually easily identifiable by virtue of giving birth to the child, it is usually unnecessary to adjudicate the issue of maternity, although it is necessary to make a determination of paternity. (The ERA permits differential treatment if based on a biological fact.) A comprehensive act should be built around a series of presumptions of parentage. The Uniform Parentage Act (National Conference of Commissioners on Uniform State Laws, *Uniform Parentage Act of 1973*, hereafter referred to as UPA.), for example, presumes that the husband of the mother is also the child's father. [UPA §4(a). Several changes should be made to §4 of the UPA. §4(a)(3)(iii) should be made a separate section; a man who is obligated to pay support should be presumed the natural father. §4(a)(5) should permit any number of men to file forms. No presumption should be established simply on the basis of who filed first; the question of parentage should be settled at the hearing. A man's acknowledgment should stand until the court hearing, irrespective of the mother's response. §4(b) should give preference to a factual determination of parentage; the policy considerations should be used only if no one was otherwise adjudged the parent.] The use of presumptions has two advantages: (1) it favors a finding of parenthood, because in the absence to the contrary, the presumption will operate to establish parenthood; (2) it is not necessary that an adjudication of parenthood be made as to every child. An adjudication of parentage would be required only where there is no male (or female) who fits the characteristics set forth in the presumptions, or where the accuracy of a presumption is in question.

Initiation of Proceedings

The following persons should be able to initiate a parentage proceeding: the child or the child's representative other than a parent; the mother; a person claiming to be the natural father or natural mother; and a person claiming not to be the natural father or natural mother. [UPA §6(c) should be changed so as not to limit the bringing of an action by the specified individuals only to those cases in which the child has no presumed father.] The establishment of a parent-child relationship should not depend solely on the voluntary action of one or either parent; both parent and child may have a substantial interest in having parentage either proved or disproved.

Notice of Proceedings

If a person's parental rights are to be meaningful, notice must be given the person when a matter affecting the child is pending as, for example, with an adoption. [*See Stanley v. Illinois*, 405 United States 645 (1972), generally, as to due process requirements.] Where paternity has yet to be established, it is important that notice be given to a wide category of putative fathers. The UPA requires notice to be given each man presumed under the Act to be the father, and to each man alleged to be the natural father. [UPA §§9 and 24(f).] This notice requirement should be greatly expanded, in accordance with the Minnesota notice requirement. [*See* MINNESOTA STATUTES ANNOTATED §259.26 (Session Law Service, Ch. 66, 1974). The following additions should be made to the Minnesota provision. §259.26, Subd. 1, (3) should include any person currently married to the mother; and any person who has married the mother between the child's birth and the giving of notice of a hearing or within *ninety* days after the child's birth, whichever is sooner.] The determination that a person is entitled to notice does not always mean that that person's consent to the matter affecting the child must be received; parentage must still be established before parental rights vest.

Notice should be given by personal service, if possible. Where this method fails, notice by certified mail is preferred. Notice by publication should be resorted to where the above two methods fail, or where no individual has been identified to merit notice. (Where notice is made by publication, the mother's name could be joined with three or more similar names to protect the mother's privacy: Mary James, Mary Jackson, Mary Jamison, Mary Jemison, for example.) However, when notice by publication is indicated, the putative father's rights should be balanced against the mother's right to privacy. No pressure should be exerted on the mother to identify the father, beyond a simple inquiry; in this context, the provision which permits filing of a declaration of parental interest is a sufficient safeguard for fathers who are genuinely concerned about their child's welfare. [*See* WISCONSIN STATUTES ANNOTATED §48.025 (Legisl. Service Ch. 263, 1974), for model.]

Declaration of Parental Interest

An administrative procedure should be established whereby an individual who is interested in the welfare of a child can make known this interest. Such a declaration insures the person of notice of any proceeding that will affect the child. Upon receipt of notice, the concerned individual has an opportunity to go before the court and assert his parental interests. If his parentage is judicially determined, the individual is then accorded full parental rights. (See above paragraph.)

Evidence

As a general rule, all evidence relevant to the issue of parenthood should be admissible. On an action to determine paternity, evidence relating to the sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probably time of conception of the child should be inadmissible unless offered by the mother. [Note difference in language of UPA §12(1).] Evidence such as blood tests and the statistical probability of the alleged father's paternity should be admissible.

Standard of Proof

The standard of proof for establishing parenthood should be the same in all contexts, except where the adjudication occurs after the death of the alleged parent. The normal standard should be that of "prepondernace of the evidence"; where the alleged parent is deceased, the "clear and convincing evidence" standard should be used.

Time Limits

It is important that any parentage act set forth time limits governing such matters as termination of parental rights and filing of parentage actions. Where an adoption is pending, it should be possible to terminate parental rights as early as thirty days after the child's birth. [*See* WISCONSIN STATUTES ANNOTATED §48.425(3) (Legisl. Serv. Ch. 263, 1974), for model.] The time limits of the UPA for the filing of parentage actions vary according to who is initiating the suit, the extent of the complainant's involvement with the child or mother, and the purpose of the action. (UPA §§6 and 7.) Where an adoption is being planned, and it is necessary to bring an action to determine parentage, the filing of such action should not be permitted until after the birth of the child. Although it is desirable to expedite adoptions, there are disadvantages to bringing parentage actions before the child's birth. A woman may decide, after the birth of the child, that she wishes to retain custody of the child; however, if the proceedings have gone too far, she may feel pressured to continue with her original course of action and relinquish the child. In addition, until the child is born, there is no "life in being" to be the subject of a legal action. As a practical matter, adoptive parents should probably not have their hopes raised until they know the baby is alive and well.

Termination of Parental Rights

Procedures should be established for the termination of the natural parents' rights, including absent or unidentified parents, after appropriate notice. (*See* §3107.06 for present Ohio provisions. An adjudication of parentage should operate to extinguish the parental rights of all other persons. In addition, there should be a provision governing the withdrawal of consent by the natural parents.)

Effect of Ascertaining Parentage

Any comprehensive act should include an affirmative statement that the ascertainment of parentage is, by itself, sufficient to: (1) vest in the parent consent rights with regard to matters such as adoption; (2) establish full inheritance rights in a child as to that parent; and (3) fix the parent's duty of support to the child. [The parental duty of support should be considered in light of the Task Force Recommendation as to §3103.03. *See* Marriage and Family Chapter II(C).]

With regard to child custody, parents living apart should have an equal right to custody. The standards used in awarding custody should be the same as those used in the Ohio Divorce Reform Act. Due to the biological facts of childbirth, the mother should have initial custody until paternity has been established. The expenses caused by pregnancy and childbirth should be divided between the parents based on their ability to pay, rather than being charged entirely to either parent. (§3111.17 presently requires the man adjudged to be the father to pay *all* such costs.)

Miscellaneous Provisions

The act should provide that parents can give their child any surname they desire. Under the present Ohio law, an illegitimate child must be given the mother's surname. §3705.14. There should, in addition, be a provision permitting amendment of the birth certificate after a determination of parentage has been made. Birth certificates should be designed so as not to distinguish between a child born in or out of wedlock. Birth certificates should also request the same biographical information of each parent; such information should be kept separate and apart from the birth certificate itself.

The UPA has additional features which should be incorporated into any new comprehensive legislation dealing with parentage. These include a provision clarifying the parental rights of sperm donors and spouses where child have been conceived by artificial insemination. (UPA §5); and the provision of court-appointed counsel for indigents at parentage proceedings. (UPA §19).

V. CHILD CARE

A. Inadequacy of Services

Problem

The lack of adequate child care services in the State of Ohio raises ERA problems because the State's failure to recognize a need for insuring adequate child care is founded on sex-stereotyped attitudes about both the "proper" roles of men and women and the "innate" abilities of mothers and fathers. Mothers have traditionally been considered the most qualified persons to raise children; as a result, mothers have been given the responsibility of full-time child care, while fathers have been assigned the role of sole breadwinner. However, these traditional notions ignore the realities of today's world.[24] Before the recent economic decline, it was estimated that almost five out of ten mothers with children under age eighteen were in the labor market. The axiom that "motherhood is the life work of women" no longer holds true for a large number of Ohio's mothers.[25]

Many women are presently unable to assume the role of full time child caretaker for three major reasons. First, it is economically imperative for many mothers to work to support

[24] Nationwide, the number of women in the labor force more than doubled between 1940 and 1972. There was an eightfold increase during that time in the number of working mothers (from 1.2 million to 12.7 million). In March of 1972, 4.4 million women with children under age six were working or seeking work. Of the mothers with children under age 18, four out of ten were in the work force; of those who had children under six, one out of three were working. U.S. Dept of Labor, Women's Bureau, "Day Care Facts," Pamphlet 16 (Rev.), (Washington: GPO, 1973) pp. v, 1.

In Ohio, according to the 1970 Census there were:

Age of Children	Number of Working Mothers	Number of Children With Mothers Working
0-15	204,200	248,500
6-17	371,300	
6-14		684,400
Under 18	575,500	1,191,400

[25] Boston Women's Collective, *Women's Yellow Pages*, 1974, p. 6.

themselves and their families. With the rising divorce rate, the number of female-headed households is on the increase.[26] In addition, many married mothers are forced to work because their husband's income alone is insufficient to meet the family's needs.[27] Second, many mothers have personal or professional aspirations in addition to those of motherhood and desire to combine the rewards of child rearing with the challenge of participating in the adult world. Third, some mothers are emotionally, physically or mentally unable to cope with the responsibilities of full time child rearing.

Existing child care services are inadequate in terms of quantity, quality and cost. There are only approximately 60,000 slots in licensed day care facilities throughout the state;[28] yet, there are approximately 250,000 children under age six whose mothers work.[29]

The cost of quality child care to lower and middle income families is generally prohibitive. The cost of average quality day care both in Cuyahoga[30] and Franklin[31] Counties is said to be $25-$30 per child per week; for high quality service based on an assessment of the individual child's needs, the cost may be as high as $50 per week.

Recommendation

The Task Force recommends that the state set as a priority during the next biennium the establishment of high quality, universally available child care services that are funded in whole or in part by the State of Ohio.

Rationale

The equality principle embodied in the ERA requires consideration of a new public policy on the issue of child care.[32] Women who are mothers need to enjoy the same freedoms and opportunities as men who are fathers. Mothers who desire to engage in activities outside the home, either on a full or part time basis, must have access to child care services so that they can fulfill these professional, educational or personal goals. The thousands of mothers who are presently working to earn a living have a right to know that their children are being properly cared for while they are at work.

There are additional benefits to be gained by an improved system of child care. Child care services can help detect early childhood development problems at a time when corrective steps can be taken. In families where a parent or child has emotional, mental or physical problems, outside child care assistance can be extremely helpful. Most importantly, children who are presently receiving inadequate or nonexistent care while their parents work would benefit from the security and structure of a child care program. In the long run, the establishment of quality child care will help deter juvenile delinquency and emotional and mental health problems, as well as help strengthen the family.

In implementing the proposed recommendation, the following factors should be considered:

HIGH QUALITY—In order for child care to be of high quality, it must meet the particular needs of the individual child. It is therefore necessary that any child care plan provide a variety of programs. "Child care" need not connote a central facility housing dozens of children; there are a number of child care schemes which should be considered. For example, quality child care can be established on a neighborhood basis, in the homes of persons deemed qualified as child care workers. In addition, parents should be permitted to take a determinative role in choosing the type of child care setting best suited for their child. Parents should also be given the opportunity to actively participate in the operation, overall direction and evaluation of child care services.

UNIVERSALLY AVAILABLE — Quality child care must be available to all families who need such services, irrespective of their income level. The cost of child care should be shared by the state and the families, according to their ability to pay.[33]

Access to child care should not be limited to families in which the parents are absent from the home on a full time basis. Many mothers need to and/or prefer to work only part time. Furthermore, child care should not be limited to those families in which the parent(s) are gainfully employed. Many mothers and fathers need to be free during portions of the day to pursue educational or personal goals and civic responsibilities.

An important factor in any child care plan is flexibility. Child care should be available to parents who work night or weekend shifts, and in cases of family emergencies.

B. Program Development

Problem

Presently child day care is governed by Chapter 5104 of the Ohio Revised Code. Contained within this section are numerous rules and regulations which cover requirements to achieve a state license. While there is sufficient attention to physical facilities little attention is directed to program.

Recommendation

The Task Force further recommends the enactment of standards which speak to program.

Rationale

A variety of programs that enhance the developmental level of children should be available to meet differing child care needs. Children experiencing full-time child care clearly need different programs than children who are in child care situations only on an occasional or part-time basis.

VI. AID TO DEPENDENT CHILDREN

Problem

The level of funding for the Aid to Dependent Children (ADC) program has been set by the State of Ohio to provide only 49% of the cost of maintaining a minimum standard of health and decency.[34] This underfunding presents an ERA problem because of its discriminatory impact on women. The majority of ADC recipients are women and children.[35] The ADC program is the one assistance program having not only the most minimal level of funding, but also the smallest level of participation by adult males. Of the various government programs designed to aid those in need, the programs having greater percentages of male recipients have traditionally received higher funding levels than the ADC program.[36] The refusal to set ADC grants at a level which would insure a minimum standard of health and decency is indicative of the widespread low regard afforded welfare mothers and their children.

Recommendation

Given the disparity in treatment between recipients of Aid to Dependent Children and those receiving Supplemental Security Income (formerly Aid to the Aged, Blind and Disabled), and the discriminatory impact of this disparity on women and children, the Task Force recommends that the State of Ohio increase the benefits of ADC recipients to achieve parity with the other assistance programs and to insure an adequate standard of living for women and children living in poverty.

Rationale

The sex discriminatory impact of the present funding level of the ADC program will be lessened when ADC payments are brought into alignment with the other assistance programs. The fact that the State no longer controls the funding of these other assistance programs does not justify the continuation of this disparate treatment; families in need should be treated as well as the state's aged, blind and disabled in need are treated. It is the responsibility of the State to make adequate provisions for *all* its citizens in need; that the federal government has stepped in to shoulder some of this obligation does not relieve the state of its remaining responsibilities.

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[26]Nationally, one out of ten women workers was the head of a household. U.S. Dept. of Labor, "Women Workers Today," (Washington: GPO, 1973), p. 7.

In Ohio, according to the 1970 Census, there were 40,250 female heads of household in the labor force with children under 6 years; there were 68,850 with children between ages of 6-18 years. There were 130,100 children, living below the poverty level, whose mothers were working.

Testimony of Susan Mallula Johnson, Cleveland Chapter of N.O.W., Cleveland, O., March 6, 1975, that the rule of thumb in Ohio when awarding child support is $15 per child per week.

Ms. Johnson also testified that temporary alimony is granted in less than 10% of all divorces, chiefly to give the woman time to find gainful employment; permanent alimony awarded in less than 2% of all divorces.

Ms. Johnson further testified that within one year after divorce, only 38% of fathers are in full compliance with the support order, 20% in partial compliance, and 42% no compliance; by the second year, 52% no compliance; by third year, 60% no compliance; by fourth year, 67% no compliance; by tenth year, 79% no compliance.

[27]Although the earnings of women are low in comparison to those of men (in 1971 women's median earnings were only three-fifths those of men: $5,593 compared to $9,399), the income contributions of women have been judged crucial to the family income when they raise the family from low to middle income status. "Women Workers Today", *op. cit.* pp. 5-7.

[28]Estimate by The Ohio Citizens Council on Health and Welfare, 8 East Long, Columbus, Ohio, May 1, 1975.

[29]*See* n. 24.

[30]Statement by Ms. Frances Ward, Day Care Licensing Specialist for the Ohio Department of Public Welfare, in telephone conversation with Task Force member Lila Burke, April 8, 1975.

[31]Testimony by Dorothy Reynolds, Chairperson of the Ohio Day Care Advisory Committee, Ohio Department of Public Welfare, and Executive Director, Community Coordinated Child Care, Franklin County, Columbus, Ohio, February 7, 1975.

[32]In 1974, Ohio appropriated only $4 million for state-subsidized day care to assist ADC mothers who worked. This amount, combined with federal monies, purchased $16 million worth of child care. $5 million must be appropriated by Ohio for 1975 in order to meet minimal child care needs. Reynolds, *op. cit.*

[33]Substantial amounts of federal money are available to the state for the purpose of providing child care for ADC mothers who work; the federal government will match $3 for every $1 spent by the state on child care, subject to a national $2.5 billion spending ceiling for social welfare programs that receive matching federal funds.

Federal projects include Headstart as well as purchased service contracts with selected agencies administered by Ohio Department of Public Welfare under Title IV(A) of Social Security Act. *See* also, Susan Ross, *The Rights of Women*, (New York: Sunrise, 1973), p. 266.

[34]The 1975 ADC payment standard for a family of four is $209 per month, or an average of $1.72 per day per person. This allotment is to be used to meet the costs of food, clothing, shelter and other living expenses. The November, 1974 Minimum Standard for Health and Decency, set by the Ohio Department of Public Welfare, is $5,148 for a family of four.

Ohio's ADC payments are the lowest of the Great Lakes states. The following are the largest monthly amounts paid for basic needs for a family of four:

Wisconsin	$403
Michigan	400
New York	392
Minnesota	370
Pennsylvania	349
Illinois	288
Indiana	250
Ohio	209

National Center for Social Statistics, Social and Rehabilitation Service, Department of Health, Education, and Welfare, *Public Assistance Programs: Standards for Basic Needs*, (Washington: GPO, July, 1974).

[35]The breakdown of ADC recipients, as of September, 1974, is as follows:

Children	70.3%
Women	25.5%
Men	4.2%

Ohio Citizens' Council for Health and Welfare, *op. cit.*

[36]Under the Supplemental Security Income (SSI) program, which administers aid to the aged, blind and disabled in need, an eligible individual with no eligible spouse can receive up to $1,752 per annum; an eligible individual with an eligible spouse can receive up to $2,628 per annum. Title 42 UNITED STATES CODE §1382.

MINORITY REPORT OF SIMON LAZARUS, JR.

I cannot subscribe to the Children's Section of the Report of the Task Force.

1. There is a philosophy pervading this section of the report that downgrades the institution of marriage and the family.

For example, in the section on Child Care, a reader would be led to believe that parents can abdicate their responsibilities for their children even when not financially necessary. In the section on illegitimacy, a reader would be led to believe that the constructs of marriage are not important for the welfare of children.

2. The recommendations on Child Care and Aid to Families with Dependent Children (AFDC) are beyond the scope of the responsibilities of the Task Force. The recommendations attempt to bootstrap the important social issues of child care and AFDC into a gender-discrimination matter. The attempt, in my view, is unsuccessful. These are matters for other studies and not this Task Force.

3. The Report on Children is not, as mandated by the Governor's Executive Order, "a well thought-out review" of the statutes exhibiting gender-discrimination in the field of children.

A. In the section on illegitimacy, the Report fails to take into account recent court decisions holding on constitutional grounds that illegitimate children should be treated the same as legitimate children. For example, the recent case of *Green v. Woodard,* decided in May of 1974, by the Court of Appeals of Cuyahoga County, held that illegitimate children inherit the same as legitimate children (40 O. App. 2d 101).

B. The Section of the Report on Day Care is not completely accurate in its description of O.R.C. §5104.01 et. seq. The report fails to describe the statutory minimum requirements for licenses for day care centers other than physical, such as food, medical, personnel, etc. Further, the analogy to the statutes and regulations concerning schools, teachers and other educational provisions should have been considered in the Report.

4. The Report on Children seems to advocate relieving parents of the responsibility to care for their own children, if the parent or parents so desire.

I concur in the need for high quality child care. This is the responsibility of the parents. Where both parents work, child care must be provided by part-time help, babysitters, neighbors, relatives and/or by day care centers. The financing of child care is the responsibility of parents. Where the economics of the family require financial assistance, government-subsidized day care centers should be structured as are government subsidies in the fields of food and housing. The report fails to make such an analysis.

OHIO ERA

EMPLOYMENT

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INTRODUCTION

In determining how best to implement the Equal Rights Amendment's mandate, it must be remembered that the employment policies of a purely private employer generally will not be affected unless said policies are mandated or sanctioned by the State.[1] Thus, the Task Force recognized three general areas where the amendment's impact will be felt:

- when the State acts as an employer;
- when the State regulates private employment or employment-related services; and
- when the State provides employment-related benefits.

I. THE STATE AS EMPLOYER

A. Civil Service Changes—Women's Study Committee

Problem and Rationale

In spite of the fact that the State of Ohio, as an employer, is required by federal and state law to provide equal opportunity in employment, the evidence indicates that this goal is not being met. The majority of women in State employment are concentrated in the lowest pay ranges. This is the result of both blatant discrimination in the civil service laws and also institutional barriers that act to deny to women equal access to State employment.

During the summer of 1974, an *ad hoc* group of women employed by several branches and agencies of State government prepared a report analyzing and documenting the discrimination that women suffer under both the civil service laws and administrative rules. It was recommended that legislation be enacted to remedy the inequities that were found to exist by that study group.[2]

Recommendation

The Task Force recommends that the Legislature consider the suggestions made by the Ad Hoc Women's Study Committee for Civil Service Law Revision toward eliminating sex-based discrimination in civil service employment in this state.

B. Sex-based Classifications

Problem and Rationale

The Ohio civil service laws presently sanction sex-based classifications. Section 124.23 of the Ohio Revised Code (§124.23), which provides for competitive examinations for classified civil service positions, permits the director of administrative services to consider the sex of the applicant in setting limitations on who may be eligible to take any given civil service examination. Additionally, pursuant to §124.27, the director, "in his discretion for good cause," can elect to certify for appointment to any position people of only one sex. Together, these two statutes contain the potential for maintaining the disadvantaged position of women and prolonging the built-in stereotypes inherent in the employment area.

Recommendation

It is essential that these statutes be revised to make it clear that distinctions based upon sex between applicants or persons eligible for appointment are constitutionally reprehensible and will not be tolerated.[3]

C. Veteran's Preference

Problem and Rationale

The armed forces historically has been one of the most male-dominated institutions in this country. This domination has not been indicative of choice and selection. The Honorable Jacqueline G. Gutwillig, Chairperson of the National Citizens' Advisory Council on the Status of Women and a retired Lieutenant Colonel in the United States Army, is of the opinion that one of the most significant barriers to women's full participation in veteran's benefits has been the past and continuing restrictions placed upon the entry of women into the military services—restrictions in number of women permitted to enlist in the services, differential entry requirements, and tradition.[4] Furthermore, women have not been informed about careers in the military or encouraged to enlist.[5]

§§124.23, 124.26, 124.27 contain Ohio's veteran's preference plan. After taking any examination for a position in the classified service, a veteran is eligible to "receive additional credit of twenty percent[6] of his total grade given in the regular examination in which he receives a passing grade."[7] These bonus points are added to the veteran's score before an eligible list is compiled (§124.23). In the event that two or more applicants receive the same mark on an examination, the veteran receives priority in rank on the eligible list (§124.26). And finally, when three persons are certified by the director of administrative services to the appointing authority, §124.27 requires that veterans be given absolute preference in original appointment "over all persons eligible for such appointments and standing on the list thereof, with a rating equal to that of each such person."

Ohio's veteran's preference system is not by design or application sex-discriminatory. Only its effects are, and its effects are only discriminatory because of federal law and practice discriminating against female entrance into the military. A graphic example of this disadvantage was presented in the testimony of Jane M. Picker.[8] The 1972 eligibility list of the Cleveland Police Department was examined in order to measure the effect of Cleveland's 10 and 5-point preference system. A candidate with a raw score of 84.718 ranked between 580 and 586 on a list of approximately 1500 eligibles. Adding a 5-point preference improved a candidate's score to 230th, while a 10-point preference would raise the candidate to 19th among the eligibles. Such a result essentially eliminated women from all classified jobs.[9]

This Task Force does recognize the validity of veteran's benefit plans in which the costs of such benefits are spread over society as a whole, that is, educational benefits of the G.I. Bill and medical benefits provided by the Veteran's Administration. In effect, the veteran's preference is a method of compensating veterans for lost work experience time while they were performing a public duty and of rewarding them for such performance. Hence, while clearly discriminatory (at least until the armed forces themselves completely change their attitudes towards women), the Task Force concludes that the discrimination is more acceptable than the alternative of outright abolishment.[10]

Recommendation

The Task Force makes no recommendation.

II. THE STATE AS REGULATOR OF PRIVATE EMPLOYMENT OR EMPLOYMENT-RELATED SERVICES

Ohio has adopted a multiple approach in regulating private employment within the State. Certain occupations are considered to be of such a nature that the State reserves the right to license individuals to practice these professions, that is, lawyers, doctors, barbers, and cosmetologists, and to define the manner in which these occupations are to be practiced. In other areas the State elects to regulate the industry or the working conditions affecting employees to be certain that the health, safety, and welfare of the employees are protected. In all areas the State must be certain that it is not mandating sex discrimination in attempting to regulate private employment within the State.

A. Licensing Boards

Problem and Rationale

Examples of Ohio's control of occupations through licensing boards are §§4709, *et seq.* and 4713, *et seq.*, which concern themselves with the regulation of the professions of barber and cosmetologist. In Ohio no person is

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[1]However, this is not to say that private employers are free to discriminate among their employees on the basis of sex. Both federal and state legislation has been enacted that outlaws such discrimination in both public and private employment. See Executive Order 11246 as amended by 11375; Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972; Equal Pay Act of 1963, as amended by the Education Amendments of 1972; Title 42 UNITED STATES CODE Section 1983; §4111.17; §4112.01, *et seq.*

[2]Ad Hoc Women's Study Committee for Civil Service Law Revision, *Submission of the Women's Study Committee for Civil Service Law Revision to the Ohio Civil Service Study Commission*, Memo, 31 pp., on file at the State Library of Ohio as a portion of the appendix of this report.

[3]The Equal Employment Opportunity Commission has taken the position that there are few jobs that can legally be classified as unisex jobs. "The Commission believes that the bona fide occupational qualification exception as to sex shall be interpreted narrowly." Guidelines on Discrimination Because of Sex, Title 29, Labor, Chapter XIV, Part 1604 (March 31, 1972), Section 1604.2(a).

[4]Citizens' Advisory Council on the Status of Women, June, 1974, p. 52.

[5]*Ibid.*

[6]Ohio's preference of 20% is one of the highest veteran's preferences in the country.

[7]Veterans are eligible for these bonus points all of their lives. For an interesting critique of Ohio's veterans' preference plan, we quote the minority remarks by Dorothy Reynolds:

> "The question of veterans' preference, which is not included in this report, is important and should be addressed. Therefore, I am submitting the following remarks on this subject.
> "I see veterans' preference as having two possible functions as part of the civil service:
> 1) As a reward for honorable service to the nation.
> 2) As a form of assistance to help veterans adjust to their return to civilian life.
> "The second function, that of readjustment, is one on which the state should base its policy of veterans' preference. Ohio presently has one of the most liberal policies in the country, granting twenty percent of passing score on an examination. Preference can be used an unlimited number of times throughout a lifetime on both examinations for original appointment and for promotion:.
> "I believe this policy to be out of line with the theory of veterans' preference as an aid to readjustment into society. Therefore, I propose that the following be adopted as the state's policy on veterans' preference:
> 1) The value of the preference should be changed to grant all honorably discharged veterans five points and disabled veterans ten points on top of a passing score on a civil service examination.
> 2) A minimum length of service in the armed forces of one hundred eighty days be established as a qualification for veterans' preference.
> 3) The preference may be used only once for an original appointment to civil service.
> 4) The preference must be used within five years after honorable discharge from the armed forces. This excludes time spent in an accredited educational institution or government certified training program.
> 5) The preference should not apply to those persons receiving a pension from any branch of the armed forces.
> "The policy would generally coincide with the federal government's policy with regard to veterans' preference."
> Ohio Civil Service Study Commission, *Report*, Vol. 1, January 1975, n.p.

[8]Testimony of Jane M. Picker Before the Civil Service Study Commission April 11, 1974. Ms. Picker is Professor, College of Law, Cleveland State University and Project Director, Women's Law Fund, Inc., Cleveland, Ohio.

[9]Results such as those indicated by the Cleveland statistics could easily result in the appointment of individuals who were substantially less qualified to perform the job for which they were hired than those individuals further down on the "eligibles" list.

[10]Task Force members Saunier, Carroll, Burke, Rosenfield, and Guerrier dissent from the Task Force's failure to take a strong stand and make a recommendation on Veterans' Preference. Ohio Veterans' Preference plan perpetuates the affects of prior sex discrimination in the armed forces. Veterans should receive benefits for their contributions and sacrifices for the country such as those contained in the G.I. Bill of Rights, which are provided at the expense of all United States taxpayers as opposed to the veterans preference plan which benefits veterans by punishing a small segment of society, i.e., those competing on the same examination.
Ohio's Veterans' Preference plan is the most generous in the country. The dissenting members favor, at the very least, a modification of the preference plan but since the effects of the plan are on-going, elimination of the plan altogether is the only sure method of eliminating its discriminatory effects.

permitted to barber without first obtaining a license from the State. Barbering is defined as, among other things, "cutting hair." Similarly, cosmetologists must first obtain a license before practicing their trade. The practice of cosmetology is defined to include work that is for "the embellishment, cleanliness and beautification of women's hair . . . such as . . . cutting . . ." Should a cosmetologist elect to embellish, clean, and beautify a man's hair, and cut it in the process, that cosmetologist could be criminally prosecuted for barbering without a license.

The sex-based limitation on a profession cannot withstand scrutiny under the Equal Rights Amendment.[11]

Recommendation

It is the recommendation of this Task Force that with regard to licensed professions, in all instances where a sex-based distinction limits entry into the profession or the scope of practice of the profession or the sex of the professional or the clientele, such limitations be repealed, whether statutory or administrative in nature.

B. Employment Agencies

Problem and Rationale

Employment agencies in Ohio are regulated by Chapter 4143 of the Ohio Revised Code. This public regulation of private employment agencies is undertaken primarily to protect applicants for employment against exploitation, dishonesty, overreaching, and baneful influences and to secure to those to whom employment is promised legitimate employment of the character and under the conditions represented. *Brazee v. Michigan*, 241 U.S. 340 (1916).

Before engaging in the business of an employment agency, one must obtain a license from the Department of Commerce. Such licensing provisions require an annual license fee and the obtaining and filing of a bond guaranteeing compliance with the laws that regulate employment agencies (§4143.04). Failure to hold a valid license is *prima facie* evidence that the agency is not authorized to engage in the business of an employment agency (§4143.18). Licensees are required to maintain records of business transactions of the office upon forms prescribed by the Department of Commerce and to file a monthly report covering the work of the preceding calendar month with the Department (§4143.11). The Department establishes a schedule of maximum fees to be charged and requires that they be posted in the licensee's place of business (§4143.13). Certain other restrictions are placed upon the operation of these agencies. No employment agency or person conducting an employment agency shall make any false statements or misrepresentations to any person seeking employment or concerning any matter within the scope of the business of the employment agency.

§4112.02 makes it an unlawful employment practice for an employment agency to discriminate on the basis of sex in referrals or placement of applicants or to comply with a request from an employer for referral of applicants if that request indicates a preference based upon sex.[12] In spite of these statutory requirements, employment agencies continue practices that cause sex-tracking in the employment market. These practices include not only the usage of sexually discriminatory corporate names,[13] but also more significant deterrents to equal opportunity. Job orders are accepted from employers who indicate preferences based upon sex, and agencies fail to refer women for job interviews for jobs that traditionally have been considered male.[14]

Although §4143.06 provides that the Department of Commerce may refuse to issue a license if, in its judgment, an applicant has violated any law of the State, the Department has taken a less-than-activist approach in reviewing applicants for licenses. This should not be occurring today and must not be allowed to continue upon the ratification of the Equal Rights Amendment.

Recommendation

It is this Task Force's recommendation that Chapter 4143 be amended to require the Department of Commerce to review the procedures of all employment agencies to determine whether discriminatory practices, whether based upon race, color, religion, sex, or national origin, are being followed or sanctioned by these agencies and to require the suspension or non-renewal of the license of any employment agency if there is an adjudication or final order finding that agency to have discriminated on the basis of race, color, religion, sex, or national origin. In addition, it is recommended that the Department of Commerce adopt appropriate forms to be kept by all employment agencies to make the annual license renewal and review procedures meaningful.[15]

C. Employment Rights of Minors

Problem and Rationale

Ohio has recognized a legitimate interest in regulating the employment of minors. This interest arises not only from a valid educational concern that children of compulsory school age be educated, but also from the fear that minors will be exploited or endangered while in the job market. Consequently, Ohio has enacted two types of statutes in this area: those concerned with minors who are employed (§§331.01, 331.15, 4109.01), and those that exclude minors from certain occupations or regulate the conditions under which minors can work in those occupations (§§4109.10, 4109.12, 4109.20, 4109.25).

In regulating the employment of minors, Ohio has established different standards for male and female minors. Where this differential exists, it generally results in males under sixteen being prohibited from engaging in certain types of work, while females are excluded until they are eighteen. In addition, there are certain occupations or working conditions that are considered tolerable for one sex but intolerable for the other.

Recommendation

It is recommended that these statutes be revised in order to equalize the opportunities for minors of both sexes by equalizing the age restrictions. Additionally, in those areas where Ohio has concluded that a certain occupation was dangerous for one sex, it must decide whether, today, such work remains dangerous to all minors. If so, such protection must be extended to all minors regardless of their sex.[16]

D. Protective Labor Legislation

1. Occupations

Problem

Ohio, in order to protect the life, health, safety, and welfare of all employees within the State has determined that certain occupations are especially dangerous to the health of the employees. Thus, all employers are required to furnish a safe place of employment (§4101.12), while specific employers engaged in especially dangerous processes have additional controls imposed upon them §§4125.02, *et seq.* (regulating the manufacturers of lead products); §§4151, *et seq.*; 4153, *et seq.*; 4155, *et seq.* (regulating mines and mine employees). Many of these statutes, drafted at a time when women were excluded from these occupations,[17] are discriminatory in their coverage. For example, in mines that generate a fire damp, "a sufficient number of competent men" must be employed (§4153.24); in emergencies, noncertificate men may be appointed as fire bosses (§4155.06); mine foremen are compelled to "employ a competent man as stableman" (§4155.15); and any man working in mines must wear "such clothes as will protect him from injury" (§4157.67). In addition, should a miner lose his life due to the failure of a mine owner to comply with the safety regulations, the right of action accrues to the miner's widow (4155.13).

Recommendation

These statutes, reminiscent of an earlier era, must be amended to recognize that such jobs will now be available to all persons regardless of sex. Although the changes may be merely the substitution of "person" for "man" and "spouse" for "widow," they will represent an affirmative commitment to equality of opportunity in all occupations in Ohio.

2. Public Health

Problem

In those occupations where the health of the public in general is involved, Ohio has chosen to regulate the employees in that occupation, especially with regard to cleanliness. §913.08 requires all employees who are engaged in the preparing and handling of fruit and vegetables for canning to wear clean garments of washable fabrics. However, the statute requires only females to wear clean washable caps covering the hair. This statute, by imposing limitations upon female employees only (presumably because women traditionally had long hair

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[11]The statute under discussion also fails to withstand scrutiny when tested under the Fourteenth Amendment. In *Herzig v. Ross* (C 73-621, N.D. Ohio, Dec. 23, 1974), a three-judge federal district court ruled that the Ohio statute must be construed in order to allow licensed cosmetologists to practice their profession on persons of either sex. *See* also, *Pavone v. Louisiana State Board of Barber Examiners*, 364 Federal Supplement 961 (E.D. La. 1973); *Maryland Board of Barber Examiners v. Kuhn*, 311 Atlantic 2d 216 (Md. Ct. App. 1973); *Bolton v. Texas Board of Barber Examiners*. 350 Federal Supplement 494 (N.D. Tex. 1973), *aff'd* 409 United States Supreme Court Reports 807.

[12]A similar mandate of nondiscrimination is also found in Title VII, 42 UNITED STATES CODE §2000e-2(b).

[13]A cursory examination of the Cleveland telephone directory reveals the following employment agencies: Business Men's Clearing House, Exclusively Girls Employment Agency, General Girls, Gibson Girls, Girl Place, Insurance Girls for Life, Le-Gals Employment Specialists, Manpower, Kelly Girl Division of Kelly Services, Inc., Minute Men, Minute Girls, Nationwide Girls.

[14]Testimony of Patricia Sommers, State Compliance Coordinator, NOW, Columbus, Ohio, February 7, 1975.

[15]It is this Task Force's understanding that proposed Department of Commerce rules dealing with the problems identified by this Task Force were filed with the Secretary of State on January 9, 1975. Although a public hearing was scheduled to be held February 18, 1975, Director Peltier cancelled this hearing and has not as yet set a new date for the hearing. The Department of Commerce is urged to proceed to consideration of these rules at the earliest practicable date.

[16]A similar conclusion was mandated by the United State Court of Appeals for the Fourth Circuit in *Eslinger v. Thomas*, 476 Federal 2d 225 (4th Cir. 1973), wherein the court concluded that a South Carolina Senate Resolution that limited the job opportunities of females within the Senate was violative of the Fourteenth Amendment. "We do not question the right of the Senate of South Carolina to make such regulations and to exercise such control as it may think appropriate in keeping with its sense of propriety as to the duties of *all* pages, male and female. But such regulations and control must be kept within the bounds of the Constitution. The latter does not permit denial of employment opportunity to female pages because they are female." 476 Federal 2d at 232.

[17]*See* §4107.43, which excludes women from working in mines.

while men wore their hair shorter), fails to protect the public adequately from possible health dangers involved when males fail to wear caps while canning foods for consumption.

Recommendation

The Task Force recommends that this statute be revised to require all employees engaged in the canning of food for consumption to wear "clean washable caps covering the hair."

3. Female Protective Legislation

The history of female protective legislation is unseemly at best. In 1908, the Supreme Court, in *Muller v. Oregon*, 208 U.S. 412 (1908), concluded that Oregon could constitutionally limit the hours of employment of women in laundries, in spite of the fact that three years earlier, in *Lochner v. New York*, 198 U.S. 45 (1905), the Court had concluded that men working in bakeries could not have their hours of employment limited by the State of New York. In response to the *Muller* decision, states began adopting maximum hours legislation covering women.[18] Although this legislation may have been prompted by a legitimate concern for the health and safety of female workers, in actuality the laws have served as an excuse for employers to keep women in lower paying jobs or out of the labor force in general. Additionally, to the extent that these laws provided bona fide protection to women, men were discriminatorily denied benefits.

While there are many different schemes adopted by different states, statutes fall basically into three broad categories:

- laws excluding women from certain jobs;
- laws restricting the conditions under which women may be employed; and
- laws conferring supposed benefits.

Ohio is typical in having all three types of statutes on its books.[19]

a. Exclusionary Statutes

(i) Specific Occupations

Problem

§4107.43 prohibits the employment of females in certain occupations or capacities. This statute compels employers to refuse to hire females in occupations such as crossing watchmen, gas or electric meter readers, certain delivery jobs, freight elevator operators, and other specific occupations.

Recommendation

The portion of this statute which excludes women from certain jobs must be repealed.

(ii) Weight Lifting

Problem

Additionally, §4107.43 excludes women from occupations requiring frequent or repeated lifting of weights over twenty-five pounds. Individuals should be given the opportunity to qualify for any job regardless of the applicant's sex. The Secretary of Labor has concluded, concerning weight-lifting maximums, that it is best to consider individual qualifications and conditions, such as the physical capabilities and physiological makeup of an individual, climatic conditions, and the manner in which the weight is to be lifted, rather than the individual's sex.[20] Additionally, it is recognized that if an employer adopts or maintains a weight-lifting requirement as an aspect of a job and that requirement has a disparate impact upon women without showing that the requirement is job-related or mandated by business necessity, the employer may be found to be in violation of both Title VII and the Ohio Civil Rights Act. *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969).

Recommendation; (See below)

b. Restrictive Statutes—Hours Limitations

Problem

The typical restrictive statute is similar to §§4107.46 and 4107.47. These sections limit the number of hours per day and week that an employer can employ any individual female and also limit the aggregate number of hours per day and week that a female employee can work. The hours limitations vary, according to the kind of establishment that is acting as employer. In addition, employers are required to provide female employees with a half-hour meal period after every five hours of continuous labor.

These statutes place women at a substantial disadvantage in the market place. Women are denied the opportunity to earn overtime or are not hired because a job may require overtime. Employers may refuse to hire women because they may not wish to grant their employees a half-hour break after five consecutive hours of work.

In addition, compulsory overtime often works as a barrier to full employment opportunity for women. Because of the sociological fact that working women are still expected to care for the home and family, compulsory overtime often forces a woman to choose between either her job or her family obligations.[21]

Recommendations (See below)

c. Beneficial Statutes

Problem

Evidencing a concern for the working conditions of employees, Ohio has chosen to impose upon employers the duty to "furnish a place of employment which is safe" and to "do every other thing reasonably necessary to protect the life, health, safety and welfare" of employees (§§4101.11, 4101.12). In addition to these general statutes, Ohio has chosen to adopt additional legislation that deals specifically with the working conditions of females. Primarily concerned with the health of female employees, Ohio requires employers with female employees to provide "suitable and separate toilet and dressing rooms and water closets" (§§4107.40, 4107.41), "a suitable seat for the use of each female" when such employee is not engaged in active duties (§4107.42), a "suitable lunchroom, separate and apart from the workroom" (§4107.42), and not less than a thirty minute lunch break (§4107.42). The Equal Employment Opportunity Commission has taken the position that such laws have not been invalidated by Title VII, but rather that employers would have to provide men with such benefits.[22] In *Hays v. Potlatch Forests, Inc.*, 465 F.2d 1081 (8th Cir. 1972), the court concluded that an Arkansas statute that granted only females premium pay had to be extended to men in order to conform with the nondiscrimination mandate of Title VII.

Recommendation and Rationale of a. (ii), b., and c.

It is this Task Force's recommendation that the provisions of all laws originally designed to protect women's health or safety, or both, be extended to all workers.

It is the Task Force's intent that existing gains made by workers shall not be diminished, but rather extended wherever possible, on a gender-neutral basis.[23]

For example, the existing weight-lifting restrictions in §4107.43, now applicable only to women, ought to be extended to men, in a form designed to enhance rather than diminish the safeguards of workers' health and safety.

Similarly, no employee should be required to work in excess of 8 hours per day or 40 hours per week, without premium pay.

Likewise, existing safety and health laws regarding, for example, work breaks, lunch breaks, safety standards, sanitary facilities should be made applicable to all workers.[24]

The Task Force recognizes the existence of many divergent perspectives on the foregoing. It is certain that various interest groups may have different and, in many cases, better specific applications of the foregoing than the Task Force's limited charge permitted it to consider. However, the guiding principles of such changes should be (a) retention of existing protective laws, (b) their extension on a gender-neutral basis, and (c) their improvement for the benefit of all workers.

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[18]Although the Supreme Court approved maximum hours legislation for both men and women in *Bunting v. Oregon*, 243 United States Supreme Court Reports 426 (1917), this decision came late in the "hours" movement. Consequently, few states adopted maximum hours legislation covering men.

[19]In *Jones Metal Products Co. v. Walker*, 29 Ohio State 2d 173 (1972), the Ohio Supreme Court, although holding that the Ohio protective laws were valid legislative enactments, found that the statutes were in conflict with Title VII of the Civil Rights Act of 1974 and, therefore, could not be enforced against employers covered by Title VII. Because of the conclusion that the statutes are enforceable against employers not covered by Title VII, it is necessary that this Task Force examine each statute to determine whether it should be extended or repealed.

[20]U.S. Dept. of Labor, "Teach Them To Lift," Bull. No. 110 (Rev.) (Washington: GPO, 1965).

[21]Because of the substantial barrier which compulsory overtime has upon the employment opportunities of women, it was the feeling of Task Force members Carroll, Guerrier, Rosenfield, Valiquette, and Saunier that the abolition of compulsory overtime should have been a recommendation of this Task Force. Although these five members recognize that there may be many occupations which are seasonal or of such a nature that the concept of voluntary overtime may not be feasible, they also recognize that employees should not be forced to work overtime against their will or discharged for refusing overtime. In addition, a woman who, because of parental obligations must refuse overtime, will be denied unemployment compensation if she is subsequently discharged by her employer for such refusal. *See* Section III(B)(1)(a) of this chapter.

[22]29 CODE OF FEDERAL REGULATIONS §§1604.2(b), (3), (4), and (5) (1972). This approach is similar to that under the Equal Pay Act of 1963. An employer who is found to be violating the equal pay act "shall not, in order to comply with the provisions of (the act), reduce the wage rate of any employee." 29 UNITED STATES CODE §206(d)(1), §4111.17(C), R.C.

[23]This conclusion is supported not only by individuals who presented testimony to this Task Force (*see* statement of Hugh A. Ross, Professor of Law, Case Western Reserve University, Cleveland, Ohio, March 6, 1975, in appendix to this report), but also by court decisions interpreting these Ohio statutes. "(T)he State of Ohio is not precluded from enacting protective laws which contain maximum hour and weight-lifting limitations, and require the furnishing of seats to the employees who are not actively engaged in work. However, these laws must apply to males and females on an even-handed basis. Such legislation would be in full compliance with the intention of Congress in enacting Title VII." *Manning v. General Motors Corp.*, _____Federal Supplement_____, 3 EPD Section 8325 (N.D. Ohio, 1971), *aff'd* 466 Federal 2d 812 (6th Cir. 1972), *cert. denied*, 410 United States 946 (1973).

[24]Recognizing the concerns of employers, the enforcing state agency should be permitted, upon a showing of substantial cause, after hearing, to grant appropriate variances to maintain the viability of, or prevent hardship to, particular trades, occupation, businesses, or industries.

d. Administrative Statutes—Enforcement

Problem

The female labor laws required the creation of an administrative and enforcement agency in order to ensure compliance with the acts. With the repeal or extension of these acts, the enforcement statutes will have to be amended and revised in order to recognize these changes. Thus, §4104.02 will have to be revised to remove references to the enforcement of laws relating to the employment of females. Requirements that employers post copies of the female protective laws (§4107.08), and keep time and wage records of female employees only (§4107.09), must be revised to reflect the changes in the statutes that are recommended by this Task Force.

Those sections of the Code that create the positions of female visitors (inspectors) and define their duties and powers must be amended to remove the discriminatory nature of these statutes (§§4113.11, 4113.12, 4113.13). Not only must the definitions of these positions be re-drafted in order to reflect the changes recommended by this Task Force, but the position of female visitor must be renamed and redefined to ensure that these eight positions are open to both men and women (§4113.11).

Recommendation

The statutes that provide for the enforcement of the female protective laws must be amended to reflect the new functions of this agency.

III. THE STATE AS PROVIDER OF EMPLOYMENT-RELATED BENEFITS

A. Workmen's Compensation

1. Survivors

Problem

Chapter 4123 of the Ohio Revised Code contains the statutory system for compensating employees who are injured or who contract occupational diseases in the course of employment. The chapter, although containing over 140 sections, is unnecessarily myopic in its view and discriminatory in its coverage. The statute assumes that an employee is male. Thus, references are made to widows as surviving spouses, thereby exluding widowers. The result is that, under §4123.57, surviving widows have first priority for unpaid disability benefits, but surviving widowers receive benefits only if they can prove that they were dependent upon the wife and if there are no children surviving. §4123.60 provides a procedure whereby a widow can make application to the Commission on behalf of herself and minor children, but there is no such provision for widowers. Widows of alien workers are protected from discrimination but widowers are not (§4123.60).

Recommendation

It is recommended that the statute be redrafted to protect widows and widowers equally.

2. Dependency

Problem

§4123.59 provides for the payment of benefits in the case of death. Benefits are made payable to persons who were dependent upon the deceased at the time of death. However, a wife who was residing with her husband at his death or who was not residing with her husband because of his aggressive behavior is presumed to be wholly dependent upon her husband.

Recommendation

Such a provision discriminates against widowers and should be revised to treat widows and widowers equally.

3. Bureau Name Change

Recommendation

Finally, it is this Task Force's recommendation that the word "workmen's" in the bureau name be replaced by a gender-neutral term such as "worker's" or "employee's."

B. Unemployment Compensation

The practices and policies of the Unemployment Compensation Division of the Bureau of Employment Services are among the most discriminatory considered by this Task Force. Not only is the Division saddled by a discriminatory statute but, where the statute is written in nondiscriminatory terms, the administrators have, through rule or regulation, created discrimination, always to the disadvantages of female claimants. These practices have gone so far as to include possible violations of a federal court order mandating nondiscrimination in the enforcement of the Code. Such actions must not be permitted to continue even without the Equal Rights Amendment.

On December 31, 1970, the United States Department of Labor, Manpower Administration, contacted all state employment agencies, including Ohio, in order to bring to their attention provisions of the unemployment insurance law that discriminate against persons

on the basis of sex. The Department of Labor recognized two areas where discrimination could occur and urged each state agency to modify or remove all discriminatory provisions as they had "no place in a social insurance program." Ohio had, and still has, offending provisions in both areas.

1. Disqualifications

Eligible individuals are entitled to benefits due to involuntary total or partial unemployment, provided:

- they meet the eligibility requirement and file an application for determination of benefit rights,
- make a claim for benefits,
- register at an employment office,
- be "able to work and available for suitable work and (be) actively seeking suitable work," and
- be unable to obtain suitable work.

However, otherwise eligible individuals may still be denied benefits under certain disqualifying conditions. §4141.29(D)(2)(c), provides that no benefits are to be paid to an individual who "quit work to marry or because of marital, parental, filial, or other domestic obligations or became unemployed because of pregnancy."

(a.) Marital, Parental, Filial, and Domestic Obligations

Problem

The Department of Labor recommended that marital, parental, filial, and domestic obligation provisions be scrutinized to determine the effect of the disqualification upon claimants. Professor Hugh A. Ross was of the opinion that this disqualification has an unequal impact upon women. "(I)t is the working woman who is expected to quit her job and follow her husband when he is drafted or transferred by his employer, and it is the working mother who may be laid off without benefits because she has to stay home to care for a sick child."[25] Indeed, examination of the court decisions interpreting this section reveals that in every reported instance, it is a woman who is being denied benefits.

Recommendation

Consequently, it is this Task Force's recommendation that *this* disqualification be repealed.[26]

Rationale

Because all applicants for benefits will have to meet the five eligibliity requirements discussed above, this Task Force agrees with Professor Ross's opinion that abolition of the disqualification, as has been done in other states, would not create a serious risk of encouraging malingering or "voluntary" unemployment. In fact, the statute already recognizes the special situation of such workers, since it requires only one week of covered employment to re-establish such a worker's right to benefits rather than the six weeks of covered employment required to re-establish eligibility after a cessation of employment for some other disqualifying reason.

(b.) Pregnancy & Post-pregnancy Provisions

Problem

§4141.29(D)(2)(c) provides that individuals who became unemployed because of pregnancy are disqualified from receiving benefits. Additionally, §4141.29(G) provides that a woman who is unemployed because of pregnancy is to be considered unemployable until such time after delivery as she can furnish medical evidence that she is able to work and that work with her former employer is no longer available.

The Department of Labor directed that provisions which subject pregnant and post-pregnant women to more stringent eligibility conditions than those applied to disabilities common to both sexes are patently discriminatory. This conclusion was also reached by a federal court in Ohio, in August 1973. In *Lasko v. Garnes*, C72-1350 (N.D. Ohio, August 14, 1973), Judge Krupansky, finding the application of the statute to be unconstitutional, enjoined the administrators of the Ohio Bureau of Employment Services from "denying unemployment compensation benefits to those women who . . . apply for such benefits because of involuntary discharge from employment due to pregnancy and who are otherwise qualified to receive benefits." In spite of this injunction, women are still being denied benefits because of this section of the Code. Dorothy B. McCrory, Toledo attorney, stated before this Task Force that, as recently as November 1974, over one year after the court order in *Lasko*, a client of hers was denied benefits solely because of this statute without any evidence of her being otherwise ineligible. Apparently the Bureau has not taken steps to insure that the federal court order is obeyed.

Recommendation

It is this Task Force's recommendation that

[25]Testimony of Hugh Ross, Professor of Law, Case Western Reserve Law School, Cleveland, Ohio, March 6, 1975.

[26]The Task Force recommends that the entire subdivision [(D)(2)(c) of §4141.29], be repealed. *See* IIIB (1)(b) of this Report as to pregnancy and post pregnancy provision of §4141.29(D)(2)(c).

§4141.29(D)(2)(c) be repealed in order to remove any confusion that may exist over the status of disqualifications because of pregnancy. In addition, it is recommended that all other special post-pregnancy provisions that provide for an arbitrary period of ineligibility without regard to the time at which the actual disability ended or which impose some additional requirements or obstacle to reinstatement to eligible status that is not imposed in the case of other disabilities be repealed.

The Task Force is most concerned about the facts that have come to light surrounding the *Lasko* decision and its implementation by the Bureau of Employment Services. The Task Force heard testimony that indicates that the federal court order in *Lasko* has not been enforced and suggests that this situation be investigated.

2. Dependency

§4141.30 establishes the benefits rates and dependency classes under the unemployment code. Dependents are defined to include children and spouses if the claimant provided more than one-half of the cost of support of that child or spouse. When examined, the statute is clearly sex-neutral in its terms. Yet the Bureau, through adoption of rules and regulations, has created a policy so discriminatory that it led Mr. William T. Graessle, Assistant Director, Bureau of Unemployment Compensation, to say of it, "It may not be rational but it's the way we do it."[27]

(a.) Dependent Spouses

Problem

The Ohio Claims Handbook requests that three conditions be met if a claimant wishes to receive benefits for a dependent spouse. There must be a legal marriage, the spouse must be living with the claimant, and the claimant must provide more than one-half of the cost of the support. The first of these requirements can be evidenced by either a marriage ceremony or an agreement to live together in a common-law marriage.

One of the factors that the Bureau considers relevant to the existence of a common-law marriage is whether both parties use the same last name. Inasmuch as it is becoming a more common practice for individuals to retain their birth names following marriage, this factor should be reevaluated for its relevancy. Certainly, if two individuals meet all of the other tests of a common-law marriage, they should not be coerced by the unemployment law into changing their names. Nothing in the Code mandates that the spouses have the same name and this Task Force feels that the regulations should not require identical surnames.

Recommendation

[See Marriage and Family recommendation II(E)]

(b.) Dependent Children

Problem

The Handbook provides that the amount of benefits payable to a claimant be based partially upon the number of dependents claimed and allowed by the State. The statute provides that the children of a claimant can be counted as dependents provided, among other requirements, that the claimant has supplied more than one-half of the cost of support of the children. Although this standard is apparently sex-neutral, the Bureau, through its regulations has encouraged sex discrimination in the day-to-day administration of the statute.

In determining whether a claimant has supplied more than one-half of the support of the child, the Bureau makes a basic sexist presumption that is all but irrebuttable — the husband is considered the chief support of the child.[28] Consequently, the "one-half of the cost of support" standard, established by statute, is being ignored by the administrators of the Bureau for a more sexist and administratively complex test. Under the Bureau's regulations, the husband is considered chief support of the child, unless the wife can clearly establish that she is the primary wage earner and contributes over one-half the cost of support. In addition, there are special requirements when a mother claims the support of a child.[29] Ohio's approach on this matter is the traditional and erroneous view that women do not work out of necessity but for luxuries; their income is not necessary for the support of the family. This assumption is not generally true today. Such presumptions not only are in conflict with the Equal Rights Amendment but already have been declared unconstitutional under the Fourteenth Amendment.[30]

The effect of the application of the Bureau's policies can be demonstrated by examining the two fact situations presented to the Task Force.

1. Mrs. X earned $250 a week. Her husband earned $150 per week. The couple have four children. When Mrs. X became unemployed, she filed for benefits claiming her four children. The Ohio Bureau denied her claim for the children because her husband was considered the chief support of the children. The economic effect of this decision was that Mrs. X received $77 per week in benefits rather than $114 per week, a loss of $37 a week when compared to a male in a similar circumstance.

When Mr. X ultimately became unemployed he was "urged by the Bureau to claim the four children although he did not consider himself to be their chief support. Mr. X's benefits totaled $82.50 a week, $7.50 more than a similarly situated female. The result, with both parents unemployed, was a loss to the family of $29.50 a week in benefits. Additionally, Mr. X was encouraged to commit fraud by claiming children who did not qualify as dependents under the statute.[31]

2. Ms. Y, a divorced woman with custody of the children, became unemployed. In determining whether or not she had contributed more than one-half of the support of the children, the examiner of the Bureau felt it appropriate to comment upon claimed expenses for the support of the children. Ms. Y was forced by the State of Ohio to defend the manner in which she elected to raise her children. Ms. Y was not permitted to claim her children as dependents.[32]

Recommendation and Rationale

This Task Force finds that many of the Bureau's practices used to implement the statute are discriminatory and recommends that the Bureau adopt the standard mandated by the clear language of the statute. In determining who is the chief support of the children, the Bureau should adopt a simple balancing test. The spouse who has the greater income should be considered the chief support of the children. The Bureau must remember that its reason for existence is to provide unemployment benefits to those people who qualify, *both* male and female. It does not exist to harass female claimants who do not fall into the traditional family roles.

C. The Women's Division

Problem

§4141.42 of the Unemployment Compensation Code provides for the creation within the Bureau of Employment Services of a Women's Division. The Division is directed to promote programs to improve the employment competencies of women and to enhance their employment opportunities through a wide variety of means ranging from education to child care. In addition, the Division is charged to function as a clearinghouse for information, to conduct studies, to address legislation affecting women's employment opportunities, and so forth.

Recommendation

This Task Force recommends that the Women's Division be abolished.

Rationale

Our study of the functions of the Bureau of Employment Services has shown numerous policies that severely discriminate against women and that ignore specific court and Labor Department rulings calling for cessation of such discrimination. Therefore, the Task Force could only conclude the Division has been ineffective in fulfilling its charge.

One cause of this ineffectiveness may be structural: the Division is required to monitor the policies of other Divisions within the same agency. Another cause may be serious underfunding. In 1973-74, the staff of the Division consisted of only three employees. Moreover, the funding has been totally federal and has imposed restrictions which limit the Division's capabilities.

[27]Testimony of William T. Graessle, Assistant Director, Bureau of Unemployment Compensation, OBES, Columbus, Ohio, February 7, 1975.

[28]The Department of Labor identified as discriminatory, provisions such as Ohio's which "presume a male claimant's children are his dependents but that require a female claimant to establish the dependency status of her children" or provisions which make it "more difficult for a female claimant than for a male claimant to claim or to receive such allowances."

[29]Testimony of Kezia Sproat, Columbus, Ohio, February 7, 1975.

[30]*Reed v. Reed*, 404 United States Supreme Court Reports 71 (1971); *Frontiero v. Richardson*, 411 United States Supreme Court Reports 681 (1973).

[31]Testimony of William T. Graessle, Assistant Director, Bureau of Unemployment Compensation, OBES, Columbus, Ohio, February 7, 1975.

[32]Sproat, *loc. cit.*

MINORITY REPORT OF SIMON LAZARUS, JR.

I disagree with and do not subscribe to the parts of the Employment Section of the Report which state that protective legislation formerly applicable only to women be made applicable to men as well (O.R.C. §§4107.42-53). No testimony or evidence was offered to substantiate the extension of these protective laws to men. Since the statutes are gender-discriminatory, they should be repealed; namely, O.R.C. §4107.42, dealing with working conditions for women (requiring seats be provided for women, lunch rooms and lunch breaks); O.R.C. §4107.43, dealing with the occupations prohibited to women; and O.R.C. §§4107.46-47, dealing with hours and days limitations of employment for women.

The administrative statutes (O.R.C. §§4107.48-49) that deal with record keeping for female employees should also be repealed. The Federal Occupational Safety and Health Act of 1970 (OSHA) and the Federal Fair Labor Standards Act of 1938, as amended April 8, 1974 (FLSA), require sufficient records for all employees. These two statutes more than adequately furnish protection of workers from health and safety points of view, and place limitations on hours that may be worked in such a way as not to interfere unduly with an employer's needs and an employee's freedom to work.

If additional protective legislation were needed, it would take far greater evidence and proof of necessity than the bootstrap assertions made in the majority report. In *Muller v. Oregon*, 208 U.S. 412 (1908), which upheld Oregon's right to limit women's hours of work in laundries, Louis D. Brandeis (later Mr. Justice Brandeis) represented the State of Oregon. He filed in that case a separate brief which has come to be known as the "Brandeis Brief" because of its thoroughness and depth in presenting social and economic needs to substantiate his legal case. The Supreme Court cited excerpts from Mr. Brandeis's special brief. That brief outlined the course of women's protective legislation, as well as expression of opinion from other than judicial sources, which the Court characterizes as a very copious collection of all these matters. In addition to tracing the history of protective legislation for women in the United States and in foreign countries, the brief contained well-documented and creditable evidence of the need for restrictions of hours of employment for women.

No such showing as made by Mr. Brandeis to the Supreme Court was made to or by the Employment Committee or the Task Force. Until such showing can be made for men and women, extension of protective legislation cannot be recommended, certainly not by this Task Force. Furthermore, recommending the extension of such protective legislation, I believe, is beyond the responsibility of the ERA Task Force.

OHIO ERA

INSURANCE, PENSIONS AND TAXES

COMMITTEE:

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INTRODUCTION

Examination of reports and studies conducted by other states, evidence presented at hearings, and recent literature in the area make it clear that widespread sex-linked discrimination exists in the insurance industry. Certain types of coverage are totally unavailable to women; where coverage is available, it is often inadequate and the premiums paid by women are higher than those paid by men, even for the lesser coverage.

While the Task Force recognizes that the insurance industry is one basically founded upon discriminations between groups, the Equal Rights Amendment will not sanction sex-linked classifications because these distinctions are as invalid as those based upon race.[1]

The *Final Report and Recommendations*, prepared by the Insurance Commissioner's Advisory Task Force for the Pennsylvania Insurance Department, provided us with a basic working document. Problems identified in the Pennsylvania report are, for the most part, problems affecting all states since insurance packages of major companies are basically offered nationwide.

The areas of disability income insurance, medical insurance, and life insurance were examined in the context of:

—equal insurance availability;
—insurance coverage for all conditions, regardless of sex; and
—nondiscriminatory insurance rates.

Where these conditions are met, insurance is free from sex discrimination; where any is not present, problems exist, usually for women.

I. DISABILITY INCOME INSURANCE

Disability income insurance currently discriminates unfairly or illegally in terms of renewability, age, occupation, standards of proof, coverage, premiums, and waiting periods.

A. Unequal Availability

Problems

- availability of noncancellable policies is limited with respect to women
- renewable policies are limited to women in permanent career-type occupations
- many special riders are not available to women
- coverage is not available to women in the lowest occupational classes even though it is available to men

Recommendation

Renewable and noncancellable disability income insurance policies which are available to men in various occupations should be made available on the same basis to women in those occupations.

B. Unequal Conditions

Problems

- coverage beyond age 55 or below 25 is not available to women, and lifetime benefits are not available to women
- some disability income insurance provides that once a woman is disabled, her term for recovering benefits is shorter than that of a male, that is, two years as compared to five years
- there are maximum limits on the amount of insurance women may buy, but they are not the same limits for men
- women have higher standards of proof than men, for example, they are required to prove that they have a well-established pattern of full time employment before being able to acquire insurance
- disability from pregnancy and all its complications is often not covered at all in personal disability income insurance policies[2]
- where covered, disability caused by pregnancy may be limited to six weeks of benefits on group policies while other causes of disability are covered for the maximum period
- disability is often excluded from medical or surgical procedures based upon classifications "indigenous to female"
- shorter elimination periods prior to coverage are not available to women
- in some areas of disability, insurance premiums are substantially higher for women, even though coverage and benefits are lower

Recommendation

Where disability income insurance policies discriminate against women in terms of premiums, benefits, waiting periods, eligibility conditions and coverage, they should be equalized and made available to women on the same basis as men.

C. Risk

Problem

- many occupational categories for female risk are based on the numbers of women in those occupations, rather than the risks pertaining to the job — this results in higher premiums for women due to sex discrimination, not occupational hazard

Recommendation

Rather than basing female risk upon the *number* of women in an occupation, insurance should be available on a basis calculated solely upon the risks associated with the occupation and made available to all persons, regardless of sex, upon payment of the premium.

D. Work Patterns

Problem

- women often cannot obtain insurance if they work part time, at home, or are employed by relatives.

Recommendations

1. In the situation of the part-time worker, or the woman employed be relatives, disability coverage should be made available with appropriate safeguards.
2. For the homemaker, disability income insurance should be available and coverage should be calculated on the value of the homemaker's work, using the most current national figures,[3] and should be revised accordingly when adjustments are made.

II. MEDICAL INSURANCE

Problems

- medical insurance, under group plans or private coverage, generally does not offer maternity coverage to single women
- maternity benefits in group insurance generally are not provided on the same terms and conditions to female employees as to male employees' spouses—frequently employees' wives receive higher benefits than female employees.
- women employees may be restricted from including husbands as dependents in group policies even though employed men are permitted to include wives
- married women are often unable to enroll as individuals in group coverage even though married men are allowed to elect this option
- maternity coverage may be subject to a flat maximum benefit unrelated to true expenses, while other conditions are covered on an indemnity basis related to actual claims
- major medical coverage normally will not pay for expenses related to normal pregnancy
- much Ohio coverage is under group plans which are offered by employers who are not obliged by statute to provide any specific benefits

Recommendations

1. Where group medical plans (offered by insurance companies licensed by the State of Ohio) currently incorporate coverage or benefit variations based upon race, color, religion, sex, national origin, or alienage, these distinctions should be eliminated.
2. A notification provision should be written into the statutes so that recipients of benefits of medical and/or health insurance, must be notified if, at the request of the policyholder, any alteration in the policy or beneficiary should occur.

III. LIFE INSURANCE AND ANNUITIES

Problems

- despite mortality data which indicate women live six to nine years longer than men, the industry grants women only a three year setback in premium rates
- the waiver of premium option is available only to selected women, frequently for shorter periods of time and/or with limitations not applicable to men, and at rates up to 200% higher than the male rates—the waiver may be available for a shorter time period, or may be available for a limited amount of the premium
- some companies continue to prescribe special criteria for female insurability such as the requirement that women be self-supporting, leave home to work, or be employed in a "responsible position"
- a family protection benefit payable to group life insurance beneficiaries is paid to all surviving widows but to surviving widowers only when they can show a dependency status

Recommendation

Differential coverage and benefits based upon sex-linked classifications should not be allowed.

[1]The Ohio Revised Code expressly prohibits racial discrimination in the area of insurance. For example, §3911.16 provides that life insurance companies cannot discriminate between races as to premiums, rates, rebates, discounts, or contract conditions.

[2]The Task Force does not consider normal pregnancy to be a disability within the context of disability income insurance.

[3]Walker, Kathryn E. and William Gauger, *The Dollar Value of Household Work*, (Cornell Univ., Ithaca, N.Y., 1973).

IV. INSURANCE—GENERAL RECOMMENDATIONS

A. An unfair practices statute should be enacted prohibiting sex-linked discrimination in all types of insurance.

B. Where existing statutes do not include sex in defining nondiscriminatory classifications, they should be amended to do so.

C. The Ohio Department of Insurance should be be given the statutory authority to disapprove any form of insurance available in Ohio which differentiates in coverage, benefits, or premiums on the basis of sex or sex-linked characteristics.

V. PENSIONS

A. Private Employment-Based Pension Plans

Private-plan coverage is more usually enjoyed by men than women. Fewer women, both in absolute numbers and as a percentage of the work force, are covered by pension plans.

Problems

- eligibility for pension benefits depends on long and usually continuous service—historically women in any area of employment have had shorter lengths of service than men, thus limiting their eligibility for benefits under pension plans based on length of service
- private pension plans, almost without exception, provide different treatment based upon sex in the survivor situation. Under most private plans an employee may take either his benefit undiminished for his own lifetime, providing nothing for a survivor, or he may take a reduced amount during his lifetime, earning the survivor, usually the spouse, the right to a benefit. Election of the survivor option, if the employed person is a woman, results in practically no reduction in her benefit. If the retiree is a man, the reduction is so substantial that it is often impossible to elect the survivor option and still have enough on which to live. This has the effect of leaving women survivors stranded, since wives are likely to outlive their husbands
- the Employee Retirement Income Security Act (ERISA)[4] is inadequate and will have very slight effect upon the bulk of pension plan participants. States have been virtually pre-empted from playing any role in the private pension field by the new federal law

Recommendations (See below)

B. Public Pension Plans

As in the private sector, male retirees in public employment have a much greater reduction in current benefits than female retirees when they elect a survivor option.

Problem

- the reduction in benefits for male retirees tends to discourage election of the survivor option, leaving women survivors without income when their husbands die

Recommendations for Private and Public Plans

1. Currently discrimination exists in both public and private employment-based pension plans, where male retirees have a greater reduction in benefits than female retirees when they elect the survivor option. The reductions should be equal for both male and female employees when survivor options are elected.
2. Because states are virtually pre-empted by the new federal law from playing any role in the private pension field (and because, at the state level, neither private nor public employment-based pension plans can be sufficiently reformed to meet the legitimate needs of workers and, at the same time, be nondiscriminatory),[5] it is recommended that a nationally-administered, fully portable, non-discriminatory pension plan be established through appropriate federal legislation.

VI. TAXES

A. Estate Tax

Problem

The "widow's and children's allowance" in Ohio's estate tax discriminates on the basis of sex.

Under §2117.20, sufficient provision to support the widow and children under 18 for a year is set off from a decedent's estate; a widower gets no such allowance.

There is also sex discrimination in determining the allowance to children. Because the primary duty to support the family is on the husband [See Marriage and Family Chapter II(C)], the allowance to children is given from the *father's* estate as a matter of course, but is given from the *mother's* estate only if the widower is unable to fulfill his primary duty of support.[6]

The United States Supreme Court has upheld a Florida tax statute which treats widows differently from widowers. *Kahn* v. *Shevin*, 416 U.S. 351, 94 S. Ct. 1734 (1974). Under the ERA, however, classification on the basis of sex would be prohibited and the difference in tax treatment could not stand. The widow's allowance should therefore either be eliminated or extended to widowers, and the duty to support the family should be equalized for both spouses so that the children's allowance is determined by the same criteria no matter which parent has died.

- in the area of estate taxation, the "widow's allowance" is exempt from the taxable estate of a deceased man, while a widower is not accorded the same treatment

Recommendation

The statute should be changed so that the surviving spouse is entitled to the allowance.

B. Income Tax—State and Federal

Problems

Because taxable income for Ohio's income tax purposes is based on federal income tax calculations, discrimination in the federal tax structure carries over into the state's tax. Certain deductions from gross income are allowed by the federal law in reaching "adjusted gross income" (the figure on which Ohio's tax is based). Further deductions are allowed by the federal provisions before federal tax is calculated. However, these deductions do not enter into the Ohio computation. Federal deductions for child care are in the latter class of deductions and thus no benefit is derived from this deduction in calculating Ohio's income tax. The income limitation for this deduction is no higher for a two-wage-earner married couple than for a single person, a disadvantage to the married couple. There are other penalties in the federal tax structure for a two-wage-earner-married couple. Because of the scale of federal tax rates, two unmarried people earning approximately equal wages would pay more tax if they married and filed jointly than if they did not marry. In addition, wage earners who file individually each receive a standard deduction of up to $2,000; if two wage earners are married, the maximum deduction does not increase accordingly: they are still subject to the $2,000 ceiling.

- Ohio's income tax provisions, by tracking federal tax provisions in computing "adjusted gross income" but not federal deductions, discriminate against married female wage earners whose husbands are also wage earners
- married wage-earning couples are penalized by the Ohio tax scale for filing joint returns because they may take only one standard deduction rather than two

Recommendation

Because taxable income for Ohio income tax purposes is based on federal tax theory, discrimination in the federal tax provisions carries over into the state tax. Rate structure differentials and standard deduction applicability discriminate against married wage-earning persons. While federal law should also be reformed, a minimum deduction of credit should be enacted under state law to put married wage-earning persons on a par with unmarried wage earners.

VII. MISCELLANEOUS SECTIONS

Recommendation

In addition to the discriminatory features mentioned above, there are miscellaneous sections of the Code's provisions relating to these issues which should be rendered gender-neutral.[7]

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[4]Also known as the Pension Reform Act of 1974.

[5]Testimony of Professor Merton C. Bernstein to the ERA Task Force, Ohio State University, College of Law, Columbus, Ohio, February 7, 1975, who suggests that an appropriate legislative vehicle would be amendments to the Social Security Act of 1935.

[6]The allowance has little actual impact on either the taxpayer or state revenues. The widow's allowance is included in the $20,000 exemption (maximum) that is given to widows and widowers alike. The allowance does not increase the exemption or form a separate deduction. The allowance is also protected from the state's lien on the estate for unpaid taxes, but this only affects state revenues when there is not enough other property in the estate to cover unpaid taxes.

[7]§3911.09 establishes who may be named as a beneficiary of a life insurance policy. Although sex-neutral as to who may effect life insurance, the statute obviously was drafted with the traditional family in mind: husband and dependent wife and children. In order to meet the gender-neutral standards of the ERA, the statute must be revised in order to allow any spouse to be named as beneficiary of a life insurance policy.

In addition, the statute defines beneficiaries, *inter alia*, as a "relative or relatives dependent upon such person." The statute does not indicate what standard of "dependency" is used in meeting this test. The enforcement procedures for statutes which incorporate such standards must be carefully scrutinized so as to be certain that presumptions of dependency which have a discriminatory impact upon one sex or another are not operating. Additionally, the statute should be re-evaluated in order to consider the recognized changes in family life styles present today.

§3911.10 makes the proceeds from all contracts of life insurance, which inure to the benefit of beneficiaries (as defined in §3911.09), exempt from the claims of creditors. As such, the deficiencies of §3911.09 are compounded by being restated here. Apparently, this exemption runs only to husbands who can prove actual dependency, while wives are presumed dependent. This statute must be re-evaluated in order to extend its benefits to all persons defined as beneficiaries in §3911.09. In addition, should §3911.09 be revised so as to include non-traditional beneficiary situations, similar changes should be made in this statute.

§3911.11 grants a wife an insurable interest in the life of her husband and exempts the proceeds of such a policy from the claims of the husband's representatives or creditors. This benefit is conferred upon all wives irrespective of evidence of dependency. As such, the ERA requires that husbands be given the same rights. This can be done either by altering the statute to refer to spouses or by adopting parallel legislation for husbands. Also, any revisions of the statute should also consider the non-traditional life styles referred to under §§3911.09 and 3911.10.

§3911.12 guarantees that any policy of life insurance which is assigned to a married woman will inure to her benefit independently of her husband or his creditors. The statute apparently is part of the scheme to allow for husbands to provide financial security for their wives. In an era when the number of working women is increasing, women should be given the same opportunities to provide for their husbands' financial security as men are given. In addition, as family structures change, it may become necessary to re-evaluate the statute to include relationships not encompassed by the husband/wife standard.

§3911.13 provides for the situation where a wife, who is the original beneficiary of a life insurance policy, dies. Apparently, because §3911.09 defines beneficiaries as "wives," the language of this section was limited to situations where the wife dies. With the revision of §3911.09 to remove the discriminatory aspects, this section will have to be re-evaluated to cover

not only the case of the death of a husband-beneficiary, but also any beneficiary who can be considered to be in a similar relationship.

§3915.07, the standard non-forfeiture law, provides throughout, that in calculating adjusted premiums, and present values, standard ordinary mortality tables (either 1941 or 1958) can be used for life insurance except that as to female risks, adjusted premiums and present values may be calcluated according to an age other than the actual age of the insured.

Such differential treatment of the sexes cannot be sanctioned under the Equal Rights Amendment. A unitary standard of calculation is required and special classifications based upon sex must neither be sanctioned nor encouraged.

§3903.36 of the Code, covering the valuation of reserve liabilities, also relies upon the 1941 and 1958 standard ordinary mortality tables, but allows calculations of policies issued on female risks to be based on less than the actual age of the insured. (See discussion of §3915.07).

§3917.01 defines group insurance. Paragraph (A) sanctions classifications based upon sex in establishing an employment-related group for purposes of group life insurance. Such classifications, with lines drawn on the basis of sex, are impermissible under the Equal Rights Amendment (if not already outlawed by Title VII of the Civil Rights Act of 1964).

§3929.06 deals with insurance money applied to satisfy a judgment rendered in favor of a person whose "wife or minor child" has died or been injured by the insured. The statute should make possible recovery for the death or injury of *either* spouse.

§5731.16 states that the value of the taxable estate shall not include the widow's allowance and other costs of administration. §5731.37 states that the taxes levied under Chapter 5731 constitute a lien upon the estate except that such lien shall not attach to property used to pay the cost of administration including the widow's allowance. These sections should extend benefits conferred to "surviving spouse" rather than to "widow."

The firemen's funds statutes, §§146.01, 146.12, 146.14 and 521.11 presume that firemen will be only men and that benefits will accrue only to widows. Under the ERA women will be allowed to join such companies on an equal basis, therefore, benefits must be extended to widowers also.

Other firemen and policemen funds statutes, §§741.18, 741.20, 741.49, 741.50, 742.02, 742.37, and 742.50 also fail to reflect the fact that a woman may be a police or fire officer; therefore, the language of these statutes should be extended to cover women employees and their male surviving spouses.

OHIO ERA

CRIMINAL LAW

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   - C. Spousal Rape
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COMMITTEE:

Linda Lehman, *Chair*
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Hon. Michael Stinziano
Hon. Marigene Valiquette

INTRODUCTION

The Criminal Law Committee was charged with considering the Ohio Criminal Code and determining whether the law, its impact and its effect, is different for men and women. The Committee was also charged with suggesting revisions in the law which are intended to make the law sex-neutral. Although the law in this area is sex-neutral on its face,[1] the Committee noted significant discriminatory effects in the areas of rape, prostitution, and in the correctional system. In each of these areas women receive different treatment from men; this is a violation of the Equal Rights Amendment which must be eliminated.

The criminal justice system is a difficult and complex subject with many problems. This study deals only with sex discrimination problems and does not purport to be a comprehensive study of the criminal justice system itself.

I. RAPE

A. Evidence of Past Sexual Conduct

Problem and Rationale

Historically, rape laws were developed to protect women against sexual assaults by men. While these laws are now sex neutral on their face,[2] rape is still a crime committed almost exclusively by men against women, and because the treatment accorded the rape victim differs radically from the treatment accorded victims of other crimes, the effect of these laws is sex discriminatory.[3]

Effective rape laws are needed to enable women to participate more fully in society. The current rape laws are unenforced because victims are reluctant to report the crime,[4] knowing that the treatment they will receive from law enforcement officials and medical personnel will often be abusive and inadequate, and because the legal process itself creates a presumption of guilt on the part of the victim.

In the past, evidence of prior sexual conduct has been admitted at rape trials to show that the victim was more likely to have consented to the act of sexual intercourse with the alleged rapist. Evidence of prior sexual conduct was also admitted to impeach the credibility of the victim as a witness.[5] It was presumed that if the victim had an extramarital sexual past she was, therefore, immoral and more likely to lie. The admission of such evidence often violated the victim's rights to privacy and to protection under the law. Perhaps the failure to exclude such evidence accounts for the crime of rape having the lowest conviction rate of any violent crime.[6]

Recommendation

The Task Force recommends an addition to the present rape law, §2907.02, as follows:

Evidence of specific instances of the victim's sexual conduct, and evidence of the victim's reputation for chastity shall not be admitted under this section unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value—

(a) evidence of the victim's past sexual conduct with the actor;

(b) evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy or disease at or immediately about the time of the alleged rape.

B. Corroboration and Proof of Resistance

Problem

Although Ohio Judicial decisions specifically state that the victim's testimony need not be corroborated and that the victim need not physically resist the assault, there is substantial question whether the police and juries are aware of this law.[7] Failure to apply this law impedes the prosecution effort. Codification of this Ohio case law would accord greater credibility to the word of the rape victim.

[1]The Ohio General Assembly enacted a comprehensive new criminal code in 1973. The new code (effective January, 1974), eliminated most of the gender-linked language which the old code contained.

[2]§2907.02, part of the new criminal code, prohibits any person from raping another and does not assign male/female labels to the victim or the attacker.

[3]For additional discussion of the sex discriminatory aspects of rape, *see Report of the Public Safety Commission Task Force on Rape*, presented to Council Members, District of Columbia, City Council Memorandum, City Hall, 14th and E Street, N.W., Rm. 507, July 1973; Helen B. Shaffer, *Crime of Rape*, EDITORIAL RESEARCH REPORTS, and Richard A. Hibey, *The Trial of a Rape Case: An Advocate's Analysis of Corroboration, Consent and Character*, AMERICAN CRIMINAL LAW REVIEW, Vol. 11, No. 2 (1973).

[4]Rape is believed to be the most under-reported crime on the crime index. It is estimated that 3½ to 20 times as many rapes occur as are reported. Pamela Lakes Wood, *The Victim in a Forcible Rape Case: A Feminist View*, AMERICAN CRIMINAL LAW REVIEW, Vol. 11, No. 2 (1973), p. 344; D.C. Task Force, p. 3.

[5]For further discussion of this usage *see* Wood, p. 143-144, Shaffer, p. 56-57, and Hibey, p. 325-326.

[6]Bella Abzug, *Congressional Record*, July 31, 1974. *See* D.C. Task Force, p. 22, for discussion of prosecution and conviction in D.C. For general discussion, *see* Wood, p. 341.

[7]The conduct of police toward rape victims and the conviction rates of juries indicates that they are unaware of these decisions. *See* testimony of Ann Taylor, Spokeswoman for Women Against Rape, Columbus, Ohio, January 17, 1975, and Cora Schmidt, President of Toledo United Against Rape, Toledo, Ohio, February 22, 1975, in appendix. For further discussion *see* Wood, p. 351; D.C. Task Force, p. 11.

Recommendation and Rationale

The Task Force recommends that Ohio case law in this regard be codified into statutory law, in the following form:

> In order to prosecute under §2907.02, it is not necessary that the victim's testimony be corroborated, or that the victim have physically resisted the offender.

The codification of these provisions will help insure their inclusion in the judge's charge of law to the jury and will make the police more aware of these provisions.

C. Spousal Rape

Problem and Rationale

Rape and its lesser included offenses are the only crimes which are specifically defined to exclude prosecution of one's spouse under a criminal statute. If a man beats his wife, she can accuse him of assault. If a man steals the personal property of his wife, she can accuse him of theft. However, if a man sexually abuses his wife to the point of forced intercourse, he cannot be prosecuted for rape under the current Ohio statute.[8] The inherent difficulty in creating sanctions against spousal rape is the recognition of the right of privacy in sexual matters in an on-going marriage.[9] However, when the marital relationship has disintegrated to the point that the couple is no longer cohabiting, the privacy consideration is no longer controlling.

Recommendation

The Task Force recommends that limitations be placed on the spousal exclusion, defining "spouse" to mean a person married to and cohabiting with an offender at the time of the alleged rape.

D. Police Training

Problem and Rationale

A victim of a robbery, a mugging, or an attempted homicide is assumed to have suffered a serious injury and to be seeking legitimate and appropriate redress for the injury when he contacts the police. A victim of these crimes is generally given sympathetic treatment and the serious and appropriate attention of law enforcement officers. There are standardized procedures for investigating each of the above crimes. None of the evidence-gathering costs are considered to be the responsibility of the victim. Instead, the appropriate law enforcement agencies incur the costs because society legitimately considers these crimes not only against the person but against society itself.

In contrast to treatment by police of the victim in other crimes the rape victim is suspected of having invited the attack either by wearing enticing clothing, choosing to move about as freely as men move about, or by being promiscuous and seductive. The police, in fact, sometimes assume that the victim is vindictive or hysterical and has come to unfairly accuse an "innocent" man of a "trivial" injury to her person. The rape victim is often subjected to humiliation by police officers and is treated as though she were the accused or, at the very least, that she was a willing party to the attack.[10]

Society must recognize that women have the right to seek legitimate and appropriate redress for the crime of rape. A first step in according a rape victim humane and serious consideration is to educate the police forces about the nature of rape and the seriousness of the crime.[11]

Recommendation

The Task Force recommends to the Ohio Peace Officers Training School (established by §§109.71-109.79) that the basic training course for peace officers include instructions in the proper conduct of rape investigation and case preparation, with an emphasis on the psychological and emotional effects on the victim. The Task Force also recommends that advanced in-service training be provided both to special investigators in rape and to experienced peace officers.

E. Evidence Costs

Problem

The lack of serious regard concerning the crime of rape is evidenced by the total lack of standards or agreement on what tests are necessary for providing evidence to prosecute the rape case in court. When such tests are made, the victim is required to bear the costs—in addition to any medical treatment she may need ancillary to the rape.[12] Hospitals may refuse to treat rape victims claiming that there are

[8]§§2907.02-2907.06, which define the various forms of sexual assaults, all specifically exclude spouses from prosecution under these provisions.

[9]For origins of right, *see Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). For discussion of its application to spousal rape, *see* D.C. Task Force, p. 48.

[10]*See* testimony of Ann Taylor, Spokeswomah for Women Against Rape, Columbus, Ohio, January 17, 1975, and Cora Schmidt, President of Toledo United Against Rape, Toledo, Ohio, February 22, 1975, in appendix. For further discussion, *see* Wood, p. 351; D.C. Task Force, p. 11.

[11]For further discussion *see* Louis C. Cottell, Chief of Detectives, New York, N.Y., *Rape—The Ultimate Invasion of Privacy*, p. 3 FBI LAW ENFORCEMENT BULLETIN, May 1974 and Howard Shook, Chief of Police, Middletown Police Department, Levittown, Pa. *Revitalized Methods Need for Investigation of Rape Complaints*, in POLICE CHIEF, December, 1973.

[12]The tests that have been determined to be necessary for the prosecution effort by the Toledo Police Department are: emergency room doctor visual examination (emergency room fee—$16.00, physician's fee—$15.00), blood typing ($7.00), U.C.G. pregnancy tests ($6.00), blood alcohol ($16.00), anal culture ($4.00), acid phosphatase ($6.00), and slide sperm test ($6.00). At the present time the victim must pay for these tests.

moral questions involved in running the necessary tests and wishing to avoid the unpleasantness of court appearances.[13]

Recommendation and Rationale

The Task Force recommends that a statutory provision mandating the necessary tests, standardizing the procedure for reporting these tests, and requiring that such tests be paid for by the responsible law enforcement agency be enacted.

The statute should provide that the admission of such tests is not necessary for a finding of guilty, and no inference may be drawn by the defense for the failure to admit such tests. The cooperation and expertise of the state prosecutors' association, the state police chiefs' association, and the state hospital association, should be obtained and utilized in determining which tests should be taken. Further, the expenses of forensic evidence gathering should be paid by the public as in all other crimes. To exclude such expenses in the case of rape is totally arbitrary and discriminatory.

F. Rape Victims, Minor

Problem and Rationale

Minor women who are raped have a particular problem in obtaining medical treatment, because of the necessary parental consent.[14] When parents refuse to give consent or the child wishes to avoid informing her parents, medical treatment is generally denied the minor.

A minor who is a victim of a rape has suffered a real injury which constitutes a medical emergency. Treatment should be available and effective in order to prevent pregnancy, venereal disease and other complications which will compound medical emergency.

Recommendation

We recommend that minors who are the victims of rape be afforded medical treatment under guidelines similar to those used for the treatment of medical emergencies of minor victims of non-sexual assaults.

II. PROSTITUTION

A. Problem

On July 26, 1974, the American Bar Association considered a resolution presented by the Individual Rights and Responsibilities Committee terming prostitution laws as "one of the most direct forms of discrimination against women in this country today."[15]

The Ohio laws prohibiting prostitution are sex neutral on their face, and are therefore, theoretically applicable for both the customer and the prostitute.[16] In reality, however, the law as applied by law enforcement and judicial agencies punishes the female prostitute much more frequently and harshly than the male customer. Testimony and data heard by the Task Force indicate that the arrest of women for prostitution in four major Ohio cities substantially outnumbered the arrest of men for their part in the crime of prostitution.[17] This finding is consistent with national statistics. In New York City in 1968, for example, there were only 112 customers arrested as opposed to 8,000 prostitutes. In Washington, D.C., the District of Columbia Supreme Court invalidated a prostitution statute because "the court (was) presented with a situation in which a suspect classification (sex) is used as the basis for a determination entailing potential deprivation of liberty for engaging in conduct that is not properly the state's concern."[18]

Additionally, evidence demonstrates that an astonishing number of incarcerated women are serving prison terms for prostitution convictions, and that an equal number who are serving time for more serious crimes were introduced to such activity while serving an initial prison term for prostitution. Convicted prostitutes account for 30% of the population in most women's jails, and in some cities, such as New York, they exceed 50% despite the fact that prostitution is a victimless crime.[19]

It is clear that the application and enforcement of such a statute and not its language determines its constitutionality under such provisions as the ERA,[20] and under the ERA, such arbitrary application of the law is clearly prohobited.[21]

Recommendation and Rationale

The Task Force recommends that the law which provides for the criminalization of prostitution be repealed,[22] while other provisions consistent with decriminalization, such as those which prohibit procurement for prostitution, exploitation of prostitutes, and offensive and harassing solicitation for prostitution in public places remain in the Code.[23] Although the ERA does not require a repeal of a neutrally worded prostitution law which is fairly enforced, it does require careful examination of any law which is disproportionately enforced against women.

From a constitutional point of view, the consentual behavior of adults that is not harmful to others should be regarded as falling within the scope of the right of privacy. The right of privacy is embodied in the Bill of Rights and has been articulated in a number of Supreme Court decisions with respect to marriage, procreation, and related matters. This right cannot be infringed upon without compelling State interest. No compelling interest is apparent in the area of prostitution.[24]

III. THE CORRECTIONAL SYSTEM

A. Unequal Facilities

Problem and Rationale

Of the three areas addressed by this committee, the correctional system was clearly the most challenging. Although there has been a task force on both the state and federal level to consider the problems of corrections, neither of these groups has specifically and definitively dealt with the sex-based discrimination problems of prisoners.[25] While the basic premises of incarceration and the mechanics of the system itself were seriously questioned by these task forces, issues of sex-based differences in treatment have yet to be addressed. Because of a basic lack of data and analysis of different treatment for male and female prisoners, the far reaching subtle sex discrimination in the correctional system presents problems of identification and analysis too broad in scope for this Task Force to undertake.[26]

The following tests are for the basic minimal welfare of the victim solely and are not forensic evidence gathering tests; C.B.V. blood count ($7.00), urine test ($3.50), serology for syphilis ($2.50), slide gram test for gonnorrhea ($3.50), medication, emergency room and physician (costs for latter will vary).

[13]For further discussion, *see* D.C. Task Force, p. 16; Wood, p. 350.

[14]*See* D.C. Task Force, p. 18, and *Minor's Bill of Medical Rights*, issued by the National Association of Children's Hospitals and Related Institutions, FAMILY PLANNING & POPULATION REPORTER, Vol. 3, No. 4 (August 1974).

[15]In 1972 the American Bar Association's Special Committee on Crime Prevention and Control issued a report, *New Perspectives on Urban Crime*, that calls for the decriminalization of prostitution. Last year, the ABA's Committee on Individual Rights and Responsibilities recommended decriminalizing prostitution. The resolution failed to pass in the House of Delegates in 1974. It will be reintroduced in the 1975 annual meeting in Montreal.

[16]§2907.25 prohibits engaging in sexual activity for hire; no gender-linked labels are applied to the customer or the prostitute.

[17]The average of the four cities indicates that five to six times as many women are arrested for prostitution as are men. These statistics are particularly inequitable considering the number of customers necessary to keep a prostitute in business. The individual city statistics are as follows:

Cleveland (1974) 1,136 arrests including commercial vice (pimping, etc.), 178 men and 958 women; Columbus (1974) including commercial vice (pimping, etc.), 48 men and 143 women; Cincinnati (1973) 151 arrests including commercial vice (pimping, etc.) 12 men and 139 women; Toledo (1973) 137 arrests including commercial vice (pimping, etc.) 27 men and 110 women. For further discussion of the inequitable application of the law, *see* testimony of John Quigley, Professor, Ohio State University College of Law, Columbus, Ohio, January 17, 1974.

[18]*United States v. Moses*, Criminal Nos. 17778-72, 21346-72, 18338-72, 34472-72, 36618-72 and 39272-72, November 3, 1972.

[19]Mary G. Haft, *Hustling for Rights*, CIVIL LIBERTIES REVIEW, Winter/Spring 1974, pp. 14-15.

[20]The United States Supreme Court, in deciding *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), under an equal protection rationale, explained that the application and enforcement of a law was controlling over its language. "Though the law itself be fair on its face and impartial in appearance, yet if it be applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution." p. 374.

[21]Existence of the prostitution laws are sometimes justified in terms of controlling the spread of venereal disease and the ancillary crime which accompanies prostitution.

Over a decade ago in fact, a United Nations publication remarked that prostitution ceases to be a major factor in the spread of venereal disease in the United States today. Apparently the VD problem is not the house of prostitution, but rather in the general population.

In the United States during a 12 month period ending July 30, 1971 less than 2% of the more than 136,000 females diagnosed with infectious syphilis were prostitutes.

Statistics indicate that the venereal disease rate among prostitutes is less than 5%, while among high school students aged 15-19 the rate is 25%.

Another fear is inexorably linked with organized crime. The President's Task Force on Organized Crime addressed the question directly. "Prostitution plays a small declining role in organized crime's operation, prostitution is difficult to organize and discipline is hard to maintain." The San Francisco Committee on Crime deals with another aspect of the analysis. "It is probable that if prostitution were not a crime it would not be organized . . ."

An interesting note in the discussion of the relationship between prostitution and crime is the reluctance of those involved in prostitution, both customer and prostitute, who are occasional victims of assault and robbery, to report such a serious crime for fear of revealing their association with the crime. Clearly, the law needs to address with vigor these more serious crimes against the person, rather than hindering the reporting of them, which is now the case. Furthermore, it is not clear whether the crimes commonly associated with prostitution are committed by the prostitutes themselves. According to San Francisco Committee on Crime, society's efforts to prevent crimes of violence associated with prostitution would be more effective by concentrating the law enforcement on procuring, and on associated crimes rather than prostitution itself.

Prostitution laws have proved unenforceable. Prostitution continues to thrive throughout the country, despite the millions of dollars spent in the futile attempt to enforce legal interference with what is essentially a private transaction.

Most important, the assumed harms and evils associated with prostitution do not appear to meet the standards set forth by the court for compelling state interest to intervene in private sexual affairs. In a sexual liaison between two consenting adults, irrespective of a business transaction, the right of privacy has been held to be as inviolate as it is in the confines of one's home.

[22]There are three statutory options available to correct the gender based inequities in prostitution laws. The first of these would be an expansion of the current law to mandate that in every arrest and prosecution of the prostitute, the customer must be arrested and prosecuted as well, and that no prostitute shall receive a punishment or a fine different from that which is levied on the customer. To enact such legislation would go a long way towards satisfying the demands of the Equal Rights Amendment.

It would also unfortunately ignore important realities. Not only have prostitution laws proved to be unenforceable, but reason and evidence make clear that this profession, like any business, operates on the basis of supply and demand. Enlarging the scope of the arrest, prosecution and conviction to include the customer would seem to put the issue beyond the realm of rationality.

Two remaining alternatives are to legalize prostitution, or to decriminalize it. The United States is one of the few nations in which prostitution is illegal. The dilemma between legalization and decriminalization revolves around the question of how much and to what degree the state should or wishes to control prostitution. Those who favor legalization of prostitution argue that such an arrangement would allow the state to set standards for health inspection and, perhaps, licensing. Moreover, there is a possibility that under such a system, legislation could be created enabling municipalities to zone out solicitations for prostitution and brothels. While legalization appears to be the most sensible, constitutionally valid means of dealing with prostitution, the experience of other nations indicates that this may not be so. After experiencing failure with the system of licensing, Britain, France, Italy, Germany, Japan, and a total of 100 members of the United Nations have decriminalized prostitution and seek rather to control public solicitation and procurement. For further discussion *see* Haft, *op. cit.*

[23]§§2907.21 to 2907.24 of the Code which presently prohibit procurement, exploitation and solicitation are too broad in their terms to be consistant with the decriminalization of prostitutes. Retention of these sections would restrict prostitution to such an extent that prostitution would in effect still be illegal.

[24]The U.S. Supreme Court set the "compelling state interest" standard in *Griswold v. Connecticut*, 381 United States 479 (1965) and in *Eisenstadt v. Baird*, 405 United States 438 (1972).

[25]The President's Commission on Law Enforcement and Administration of Justice (1967) did not include "a single paragraph or statistic on the female offender." The 1971 Final Report of the Ohio Citizen's Task Force on Corrections contains very few references to women. For further discussion of the lack of information concerning the female offender, *see* Testimony of Nancy Beran and Beverly Toomey, Ohio State University Program for the Study of Crime and Delinquency, Columbus, Ohio, January 17, 1975.

[26]For a broader discussion of sex discrimination in the correctional system, *see* testimony of Lee Johnson, former teacher of inmates at Marysville, Columbus, Ohio, January 17, 1975, in appendix, and *Sexual Segregation of American Prisons*, 82 YALE LAW JOURNAL 1229 (1973).

Nonetheless, the Task Force has discerned some blatant disparities in the different facilities and programs which are available to men and women. This disparity appears to be the result of the vastly smaller female prisoner population as compared with the male population, and of some basic assumptions made by the correctional system about females and males, their natures, and their roles in society.[27]

There are no adult correctional institutions which house both men and women in Ohio. All women sentenced to incarceration for a felony in the State of Ohio are sent to Marysville, a minimum security institution. There are approximately 350 women now serving sentences in Marysville. A "cottage" system is used to house the prisoners.

Men sentenced to incarceration for a felony are divided among five large institutions for men as required by §§5143.03 and 5145.01 according to their age, offense, character, and previous offenses. There are 9,600 men serving time in these institutions. The systems of housing vary from cell block to dormitory, and levels of security vary from maximum to medium security.[28]

The segregation of prisoners according to sex results in female prisoners being housed in a more heterogenous and smaller institution than their male counterparts. Women prisoners also tend to be further from their homes because there is only one female institution.

It has been suggested that this disparity in treatment could be eliminated by assigning prisoners to correctional institutions in a sex-neutral manner.[29] However, the Task Force rejects this option because of the thirty-to-one ratio of men to women and the impossibility of providing adequate privacy for men and women in some of the present Ohio correctional facilities. The constitutional rights of the prisoners to be free from cruel and unusual punishment and to privacy when performing intimate functions are more urgent than an absolutely "equal" correctional system for men and women which this option would provide.

Recommendation

1. The Task Force recommends the immediate equalization of male and female treatment facilities to the greatest extent feasible, given the constitutional rights of the prisoners to be free from cruel and unusual punishment and to privacy, the fixed nature of Ohio's present physical facilities, the vast disparity in size between the female institution and the male institutions, and the interest of the state in providing the best possible rehabilitation.

   In addition, the Task Force recommends that before taxpayer's money is spent to build additional facilities, that the sex-equality mandate of ERA be given serious consideration by the Legislature.

2. The Task Force also recommends that the classification system, as mandated for men by §§5143.03 and 5145.01, be studied and that the system be made applicable on a sex neutral basis or that the system be eliminated. The committee declines to make a more specific recommendation because the value of such a system is open to debate.[30]

B. Unequal Programs

Problem and Rationale

A second major disparity in the treatment accorded men and women occurs in the availability of vocational, industrial, and educational programs. The vocational and industrial programs offered to women are more limited than those offered to men. There are a total of 32 vocational programs and 17 industrial programs at the five male facilities. These 49 programs represent 17 different types of vocational programs and 9 different types of industrial programs. The six vocational programs and two industrial programs at Marysville are the only programs open to women.[31] In addition, the industrial and vocational programs offered at Marysville and the men's institution are clearly sex-stereotyped. The men's facilities have metal shop and machine shop industrial programs, for example, while Marysville offers sewing and cooking. Vocational programs reflect similar stereotypes. The men's institutions offer auto repair, printing, and welding among other courses, while Marysville offers cooking, sewing, nurses aid, clerical, cosmetology, and keypunch.

The educational opportunities offered to men and women are also different. Although Marysville purportedly has a good high school equivalency program with a teacher-inmate ratio almost double that of the male institutions, the variety of subjects offered is limited because there are only 5 to 6 teachers at Marysville. The Newgate program based at Marion provides college courses for male inmates, but women are unable to take college courses other than by correspondence.[32]

Thus for the most part, women in the correctional system have fewer opportunities vocationally, educationally, and industrially than men and the opportunities that are available reflect sex stereotypes.

Recommendation

The Task Force recommends that the educational, vocational and industrial opportunities and the vocational counseling available to female inmates be expanded to reflect both the wide variety of employment opportunities now open to women, and modern women's greater responsibility to themselves and their families.

C. County and Municipal Jail Provisions and Other Miscellaneous Provisions

1. Prison Labor

Problem

§715.58 specifically authorizes the legislative authority of a municipality to make regulations based upon sex in regulating labor in the city prisons. As discussed above in relation to state corrections institutes, the assignment of prison labor according to the sex of the inmate is violative of the ERA.

Recommendation

The Task Force recommends that sex be deleted from the list of permissible factors to be used in drafting regulations concerning prison labor.

2. Support of Prisoner's Family

Problem

§5147.22 authorizes the board of county commissioners or any officer in charge of a workhouse or jail to withhold a portion of the prisoner's salary for the support of his wife and/or children. This statute assumes that the only prisoner with a support obligation to a spouse will be a male with a wife. However, under current Ohio law both men and women have support obligations.

Recommendation

The Task Force recommends that the word "wife" be changed to "spouse." This revision more accurately reflects the current support responsibilities of women. Recognition of this obligation should encourage expanded vocational rehabilitation opportunities for women.

3. Prisoner's Safeguards

Problem

§341.20 authorizes the sheriff to appoint a matron, who shall have charge over and care for female prisoners in the county jail. This section was enacted to ensure the female prisoner's right to privacy. The Task Force suggests that this provision's safeguards are extremely important.

Recommendation

The Task Force recommends that this provision's safeguards be extended to protect both male and female inmates by requiring that an attendant of the same sex as the inmate be used to supervise the inmate in situations in which the prisoner has a right to privacy, including but not limited to body searches, bathing, dressing, the performance of bodily functions and sleeping. This recommendation is not intended to limit the use of attendants of the opposite sex in recreational, work, study or other situations which do not give rise to a right to privacy.

4. Stereotyped Job Classifications

Problem

§341.20 also requires the employment of matrons to care for the insane and minors and allows the utilization of matrons as cooks. This section reflects stereotyped notions as to the special suitability of women for jobs involving minors, disabled persons, and cooking.

Recommendation

The Task Force feels that these stereotypes restrict equal employment opportunity for males in contravention of the Equal Rights Amendment mandate of equality and recommends that this Code section be made gender neutral.

5. Privacy

Problem

§§5123.32 and 339.57 require that female mental patients and female tuberculosis patients being transported under certain conditions be accompanied by women attendants. This section is intended to ensure these women adequate privacy.

Recommendation

Because of the importance of these privacy safeguards, the Task Force recommends that these sections be expanded to provide that male patients who are being transported be accompanied by male attendants.

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[27]Testimony of Martha E. Wheeler, Deputy Superintendent of Corrections, Ohio Department of Rehabilitation and Corrections, and Lee Johnson, Columbus, Ohio, January 17, 1975.

[28]Testimony of Martha E. Wheeler, *op. cit.*

[29]*Sexual Segregation of American Prisons* suggests this solution.

[30]For discussion of the merits and demerits of the classification system, *see* Final Report of Ohio Citizen's Task Force on Corrections at p. C.31.

[31]Testimony of Lee Johnson and Martha E. Wheeler, *op. cit. See* tables in *Sexual Segregation of American Prisons*.

[32]Testimony of Lee Johnson and Martha E. Wheeler, *op. cit.*

6. Obsolete Sections

Problem

Two additional sections were considered by the Task Force: §2331.11, which grants females a privilege from arrest for any debt, claim or demand arising upon a contract and §2945.42, which allows women to testify against their husbands in actions for criminal non-support which no longer exist (§§3113.01, 3113.03).

Recommendation

These sections are obsolete and should be repealed.

OHIO ERA

PUBLIC OBLIGATIONS

COMMITTEE:

Margaret Rosenfield, *Chair*
Sally Bloomfield
Catherine Catanzarite
Anthony Flask
Harvey Gittler
Freda Winning

INTRODUCTION

The study of the Public Obligations Committee has centered around laws affecting individuals as members of the civic community beyond their homes and families. Areas considered by the Committee include voting rights, jury duty, service on public boards, military service, quasi-public organizations, and the problem of dealing with traditional governmental channels.

Women have made substantial and ever-expanding contributions in these areas of civic responsibility. However the law, particularly in the last half-century, has not been able to keep pace with women's evolving role in the community.

Three methods of making statutory changes have been suggested by the Committee: word changes to make the Code gender-neutral; deletions to rid the Code of archaic provisions; and the enactment of new provisions to meet new needs.

However, the Committee recognized that while laws are the foundation upon which government is built, implementation is equally important, and that changing sex-discriminatory laws will not end all sex discrimination. Women's roles in society will continue to evolve and it will be difficult for society to accommodate these changes. Therefore, in addition to the suggested statutory changes, the Committee recommends that a statutory state agency be formed to facilitate changes in governmental rules, regulations, and practices. This agency will also be charged with the continuing responsibility for further implementation of the Equal Rights Amendment mandate for equality of all individuals before the law, irrespective of their gender.

I. ELECTIONS AND JURY DUTY

Women received the right to vote with the 19th Amendment in 1920. Along with the right to vote came the obligation of jury duty. Since that time women have willingly and capably served in both capacities.

Because voting is the fundamental right in a democratic society and the jury system is the citizen's safeguard on the judicial system, it is most imperative that all traces of inequality be eradicated in these areas of the law.

A. Elections

1. Name Change

Problem

The last vestiges of sex discrimination in voting rights relate to the change in women's names upon marriage and the use of the title "Mrs."

§3503.18 of the Ohio Revised Code requires cancellation of a voter's registration when a voter changes his name by marriage or otherwise. The probate court currently assumes that all women who marry will assume their husbands' surnames. Therefore, the court notifies the Board of Elections that all women who marry have changed their names and the Board of Elections cancels the registration of all women upon marriage.[1]

Ohio law does not require women to assume their husbands' names upon marriage,[2] and an increasing number of women are retaining their own birth names instead of assuming their husbands' names. Yet, women who retain their birth names are required to re-register although no name change has occurred[3] while men do not face this automatic administrative disenfranchisement.[4]

Recommendation

The Task Force recommends that §3503.18 be amended to preclude application of the name-change presumption to all women who marry. In practice this would mean notifying all applicants for marriage licenses that if they are changing their names, they must also change their voter registration. (See Marriage and Family recommendation II (E).)

Rationale

This change will make application of the law gender-neutral.

2. Honorifics

Problem

§3503.14 dealing with voter rights requires women to specify "Miss," "Mrs.," or "Ms." on their voter registration blank; all men are titled "Mr." The current usage of "Mr.," "Miss," "Mrs.," or "Ms." is objectionable because it implies that marital status is relevant to a woman's right to vote but is not relevant to a man's right to vote. If titles are truly necessary, they should not be linked to marital status; however, we do not believe that any titles are needed.

Recommendation

The Task Force recommends that §3503.14 be amended to delete all titles from voter registration forms.

Rationale

If a title is needed for identification, a more extensive list of title options is needed. Currently men have only one title option and women have three. Other titles that would be useful for identification purposes would include "Dr.," "Rev.," "Prof.," "Lt.," "Capt.," "Sen.," "Pres.," etc.

B. Jury Duty

Problem

The jury provisions of the Ohio Revised Code are for the most part gender-neutral. The only residual discriminatory language appears in §2313.16 governing excuses from jury duty. This Section uses the masculine pronoun in referring to the juror and refers to the spouse as the wife.

Recommendation and Rationale

The Task Force recommends that gender-neutral terms such as "juror" and "spouse" be used.

II. MILITARY PROVISIONS

A. Language

Problem

The Ohio Revised Code sets forth military structure in Chapters 5919, 5920, 5923, and 5924. The two subdivisions of the militia are Ohio National Guard and the Ohio Defense Corps. Testimony presented to the Task Force indicates that both units admit women.[5] However, the Code uses the terms "enlisted men" and "man" throughout to refer to enlisted personnel.

Recommendation and Rationale

This language is outdated and should be gender-neutralized.

B. Qualifications

Problem

The neutralization of sex-linked language will not completely eradicate sex discrimination in military rules and practices. Current inequities include different testing and scoring requirements for enlistment of men and women, different policies concerning the commissioning of men and women, different educational requirements for qualifying for officer candidate school between men and women, and differences in uniform requirements between men and women.[6]

Recommendation and Rationale

In addition to the patriotic satisfaction of military service, the military has provided a vehicle for job training and upward mobility in our society.

Equal opportunity should be made readily available to the members of both sexes to serve in the military.[7] We recommend that an independent group be formed including representatives from both the military and from civilian ERA-oriented groups to review military procedures and regulations.

C. Rape

Problem

§4109.120, governing court martial for rape deals only with sexual imposition upon women.

Recommendation and Rationale

The Task Force recommends that this Section be revised to prohibit sexual imposition on

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[1]Testimony of James Marsh, Assistant Secretary of State, Columbus, Ohio, November 8, 1974. See a discussion of a similar statutory provision in K. Karol, *A Discrimination so Trivial*, 21 KANSAS LAW REVIEW 558 (1973).

[2]This is a matter of custom and not of law. 39 OHIO JURISPRUDENCE *NAMES* §3 (1969).

[3]For example, the Montgomery County Board of Elections sends the following form letter to all women who, because they are retaining their birth names after marriage, have objected to having their voter registration automatically cancelled.

"Although no law requires a woman to change her name at the time of marriage, present statutes on voter registration presume the name change has occurred unless the woman provides information to the contrary.

"Section 3503.18 of the Revised Code requires the Probate Judge to file with the Board of Elections a monthly list of the names and addresses of all persons over 18 years of age who have changed their names by marriage or otherwise. The Board is then required to notify the listed persons that their registration has been cancelled and that they are required to register under the new name before they will again be eligible to vote.

"The Board shall accept the registration under the maiden name if the voter provides it with a statement to the effect that that is the name which she uses and by which she is known.

"USE OF MAIDEN NAME

"I, _____, certify that I married _____ on _____. I certify that I use my maiden name and that is the name by which I am known. I hereby declare, under penalty of election falsification, that the statements above are true, as I verily believe.

_____ _____

Date Signature of Voter

'THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF ONE THOUSAND DOLLARS, OR BOTH'."

[4]Testimony of James Marsh, Assistant Secretary of State, Columbus, Ohio, November 8, 1974.

[5]Testimony of Sgt. Luaine Lindsey, Women's Federal Coordinator, Ohio Air National Guard, Columbus, Ohio, November 8, 1974.

[6]Lindsey, *op. cit.*

[7]*Equal Rights Amendment and the Military*, 82 YALE LAW JOURNAL 1533 (1973). *See* also Hale & Kanowitz, *Women and the Draft: A Response to Critics of the Equal Rights Amendment*, 23 HASTINGS LAW JOURNAL 199 (1971).

either sex in conformity with the new §2907.02 of the Ohio Criminal Code.[8] (See also the recommendations in Section I of the Criminal Law Chapter.)

III. VETERANS BENEFITS

A. Relatives

Problem

The Ohio Revised Code contains numerous sections providing benefits to relatives of veterans. (§§5901.05, 5901.06, 5901.07, 5901.08, 5901.25, and 5705.05 provide for the relief of indigent veterans and their dependents. §§345.09 and 345.16 provide for the employment of veterans and their dependents at county veteran's memorial buildings. §129.46 establishes the Viet Nam Veteran's Bonus.) These benefits generally go only to women relatives and were probably based upon the presumption that all male relatives were economically independent and all female relatives were economically dependent.

Recommendation

The Task Force recommends that benefits to veteran's relatives go to "spouses, surviving spouses, and parents" instead of to "wives, widows, and mothers."

Rationale

The presumption of male independence and female dependence is not always valid.[9] The impact of this fallacy falls doubly hard on female veterans because neither their fathers nor their spouses are covered.

B. Madison Home

Problem and Rationale

§§5901.28, 5907.13, 5907.14, and 5907.15, establish the Madison Home for wives, widows, or mothers of veterans. Inquiry revealed that it was turned over to the Ohio Department of Welfare in 1961 and the former clients were transferred at their own expense to private nursing homes. On January 15, 1975, the home was completely closed except for a caretaker. These facilities are now totally unused. In view of this flouting of the law, these provisions are no longer applicable.

Recommendations

The Task Force recommends that the sections of the Code providing the Madison Home for wives, widows, or mothers of the veterans be deleted.

IV. BENEVOLENT CORPORATIONS

These provisions of the Ohio Revised Code deal with benevolent organizations that have a corporate charter granted by the State of Ohio. Because the granting of these charters is a state action, these organizations are within the purview of the Equal Rights Amendment.

A. Trustees

Problem and Rationale

§1715.29 states that benevolent associations with women trustees may ask the probate court to appoint three male fiscal trustees. §1715.30 sets forth the duties of these fiscal trustees. These sanctions presume that women need the aid of fiscal trustees and that only males are suitable for this office, that women aren't capable of managing financial affairs while men are particularly suited to the task. These stereotypes are not acceptable.

Recommendation

The Task Force recommends that any benevolent association be permitted to ask for the appointment of fiscal trustees of either sex, if such action is deemed advisable by the association trustees.

B. Widows Homes

Problem

§§1743.04, 1713.28, and 1713.29, deal with property-holding powers, internal rules, and bookkeeping methods of corporations designated as "widows' homes" or "asylums for aged and indigent women." These Sections are redundant in light of the not-for-profit corporations provision in §1702.12. Moreover, these sections are discriminatory on their face in that they establish corporations providing for old and indigent women and not corporations providing for old and indigent men.

Recommendation and Rationale

Because of the extreme administrative difficulty in retroactively revoking these charters,[10] we recommend that these sections be amended to provide for homes for the care of aged and indigent persons. We also suggest that the Legislature in the near future review these Sections in their totality to determine whether or not these sections are still necessary.

[8]The American Bar Association also recommends that rape laws be revised in this way. American Bar Association, *Summary of Action Taken by the House of Delegates of the American Bar Association*, Chicago, Illinois, February 24-25, 1975.

[9]*Frontiero v. Richardson*, 41 United States Law Week 4609 (May 14, 1973), held that such a dependency presumption was invalid when applied to the U.S. Air Force.

[10]At the present time the corporate charters on file with the Secretary of State are not indexed according to the statutory provision under which they were filed. Therefore, in order to ascertain which corporations were incorporated under this section, a manual review of the more than 1400 corporate charters on file with the Secretary of State would be necessary.

C. YMCA

Problem and Rationale

The Young Men's Christian Association is incorporated under special provisions found in the Ohio Revised Code. Other organizations such as YWCA, the YMHA, and other nonprofit women's or non-Christian groups have no equivalent special provisions. The special treatment of the YMCA is a prima facie violation of the Equal Rights Amendment principles. These provisions also appear to violate the Establishment Clause of the First Amendment.

Recommendation

We recommend that §§1715.23, 1715.24, 1715.25, 1715.26, 1715.27, 1715.30 and 4907.30 be deleted, and that the YMCA should be treated under §1702.12 like any other nonprofit corporation.

V. MISCELLANEOUS PROVISIONS

A. Fire Wardens

Problem and Rationale

§1503.11 authorizes fire wardens to summon any male resident between eighteen and fifty years of age to aid in the firefighting efforts within their fire district. This provision implicitly exempts all females from service. Physical fitness to perform the work should be the criterion, not sexual stereotypes.[11] Some females are more physically fit than are some males, yet any male can be summoned and no female can be summoned.

Recommendation

We recommend that the word "male" be changed to "able-bodied resident."

B. Library Board

Problem and Rationale

§3375.12 requires that the municipal library board shall consist of six members, "not more than three of whom shall be women." This section restricts female membership without a parallel restriction on male membership.

Recommendation

We recommend that §3375.12 be amended by deleting the phrase "not more than three of whom shall be women." We hope that library boards do not become male monopolies, as have most other governmental boards.[12]

C. County Children's Services Board

Problem and Rationale

§§5153.05 and 5153.08 require that the five-member County Children's Services Board must include at least one woman. This law by implication sanctions the under-representation of women on a board that is of special concern to women.

Recommendation

We recommend that the third sentence of §5153.05 and the last sentence of §5153.08, which require that one woman serve on the board, be deleted, making these sections gender-neutral.

D. University Housing Commission

Problem and Rationale

§3347.09 authorize the state university housing commission to provide housing, dormitories, dining halls, and recreational accommodations for students, faculty, and staff and their wives and children. These privileges are conferred upon the relatives of male students, faculty, and staff but not upon the relatives of female students, faculty, and staff. This assumes that all wives are dependent and that no husbands are dependent. This assumption is unequal and is based upon sex stereotyping.

Recommendation

We recommend that "wife" be changed to "spouse."

E. State Agencies

Problem

The Task Force is fearful that many state agencies may be operating under sex neutral statutes but that the agencies may have adopted discriminatory rules and regulations. (See Employment Chapter for discussion of rules of Ohio Bureau of Employment Services.) This fear is compounded when the Task Force is presented with administrators who do not feel that it is their obligation to ensure that all practices and procedures within their agencies are in compliance with the letter and the spirit of the Constitution.

Recommendation and Rationale

While this Task Force did not have the time or the resources to examine the rules and regulations of all state agencies, it is recommended that every state agency make a concerted effort to study their rules and regulations to make certain that they are in compliance with the mandate of the Equal Rights Amendment.

VI. AFFIRMATIVE POLICY RECOMMENDATIONS

A. All State Boards

Problem

It has been clearly documented that women are so poorly represented on appointed boards and commissions that there are not even enough to be considered tokens.

[11]A similar standard for military service was suggested in *ERA and the Military, op. cit.*

[12]Testimony of Sara Sibley, Special Assistant to the Governor for Appointments, Columbus, Ohio, November 8, 1974.

Recommendation
On all agencies, commissions, boards, etc., appointed by an officer or arm of government, the number of members of the board that are of one sex shall never exceed the number of the members of the opposite sex by more than one.

Rationale
If women are ever to be taken seriously as full citizens, they must have equal representation on regulatory commissions. Until this happens naturally, it is necessary that there be a specific requirement for appointing them to openings until they comprise half the membership of all boards.

B. Civil Rights Law

1. Commission Powers

Problem and Rationale
In 1973 the Ohio Civil Rights Commission was granted authority to act on sex discrimination complaints in employment, housing, and public accommodations. However, additional legislation is needed to make the power effective. In the last year, the Ohio Supreme Court has interpreted the Ohio law against discrimination to preclude the Commission's having discovery power over corporations and to forbid its assessing damages other than back pay.[13]

Recommendation
We recommend that these powers be restored by statute.

2. Commission Procedures

Problem and Rationale
Other problems that came to the attention of the Task Force include: (1) the burdensome and redundant court procedure required to secure compliance with commission subpoenas and discovery motions; (2) the lack of a default judgment provision; (3) the lack of an expeditious pattern and practice proceeding; and (4) the lack of an adequate remedy for discrimination by state contractors. Without these powers, the effectiveness of Ohio laws against discrimination is seriously impaired.

Recommendation
We endorse these specific provisions of the Attorney General's proposed legislation to revise these laws.

C. State Highway Patrol

Problem and Rationale
Testimony indicated that hiring policies of the Patrol are probably not in compliance with the Equal Rights Amendment.[14] The suspicion that the Patrol's requirements are not bona fide job-related criteria was not dispelled.[15]

Recommendation
The State Highway Patrol's hiring policies are recommended as a possible first area for study by the state agency for dealing with women's role. (See recommendation VII in this chapter.)

VII. STATUTORY STATE AGENCY ON THE CONCERNS OF WOMEN

Problem and Rationale
Changing the sex discriminatory laws in the Ohio Revised Code will not put an end to all unfair sex discrimination. Women's role in society will continue to evolve, and it will be difficult for society to accommodate these changes. There is a need for an on-going entity within state government to help people in dealing with these changes.

Recommendation
We recommend that such a governmental body be established. Following is a brief description of its proposed structure and function.

Structure
The proposed agency will consist of twelve members who will be appointed to six-year staggered terms. They will not be eligible for reappointment. Three of these members will be appointed by the Governor, three by the Attorney General, three by the President Pro Tempore of the Senate, and three by the Speaker of the House of Representatives. Each of these appointing officials may appoint no more than two members from the same political party. For the initial term, each will appoint one member for two years, one for four years, and one for six years. The initial two- and four-year-term appointees may be reappointed one time. Terms will start on January 1 of even-numbered years, and members will continue in office until a successor has been appointed and qualified. The members shall elect a chair from their own number. The chair shall have no vote except to break a tie vote.

This structure is designed to allow for the maximum flexibility insofar as the appointments are concerned; that is, both the executive and the legislative branches of government will be appointing part of the membership. The political effect will be that the agency will have a varying ratio of 8:4 to 6:6 of majority-to-minority party members. In this way the agency will not be controlled by either party or by any one branch of government.

The members of this agency will not be paid but will be reimbursed for expenses. However, they will hire a director and staff. The agency will be independent, not attached to the Governor's office nor to any other department in government. Non-members will be able to serve on committees chaired by members of the agency. This will insure greater public participation in the policy-making and investigating role of the agency.

Purpose
The purpose of this agency will be to deal with sex discrimination in a variety of ways, but not replace existing agencies, such as the Civil Rights Commission, charged with enforcing specific laws. This agency will serve a variety of functions, including information gathering and advocacy for women, and will serve as a focus and funneling mechanism for women in the State of Ohio who have concerns for which they do not know the proper governmental agency.

Powers
The agency will have power to do the following:

1. Research and study sex discrimination and other related problems in all areas amenable to state action and to recommend legislation.
2. Serve as an advocate in a wide range of ways throughout state government.
3. Receive and refer questions and complaints to the appropriate agency.
4. Serve as an information center on sex discrimination.
5. "Watchdog" sex discrimination in state employment.
6. Hold public hearings to assess problems and needs.
7. Create advisory committees on various topics as there is a need, and name persons to the committees who are not members of the agency.
8. Issue annual reports to the Governor, Legislature, and public that could be free or could be sold at some nominal cost to the public.
9. Review all programs involving the expenditure of federal money in the state (through a state agency).
10. Gather statistics useful in assessing sex discrimination and in determining needs and legislation, and to maintain lists of qualified persons for state government positions to be suggested to appointing authorities at appropriate times.
11. Set priorities for state actions and programs to be recommended to the Governor and the Legislature in assisting to eliminate sex discrimination.

Implementation
The salary of the Director of this agency shall be set in pay range 43 and sufficient funds shall be provided for adequate staffing and implementation of all the functions listed under *"Powers."* Only with adequate funding will this agency function as an effective vehicle for insuring the equality of all Ohio citizens.

The agency shall be established initially for a period of ten years, with the explicit provision that at the end of that time, it must come back to the General Assembly for review and evaluation to determine if it is fulfilling its objectives and if its scope and purposes need modification.

We are sure that, if adequately funded for that period, the agency's accomplishments will more than justify its existence.

[13] *Ohio Civil Rights Commission v. Parklawn*, 41 Ohio State 2d 217 (1974); *Ohio Civil Rights Commission v. Lysyj*, 38 Ohio State 2d 47 (1975).

[14] Testimony of Maj. Ed Reich, State Highway Patrol, Columbus, Ohio, November 8, 1974.

[15] Testimony by Dr. Kenneth Connell, Industrial Psychologist, and Consultant to Ohio Highway Patrol, Columbus, Ohio, December 6, 1974.

MINORITY REPORT OF SIMON LAZARUS, JR.

I disagree with and cannot subscribe to the Public Obligations Section of the Report on Affirmative Action Recommendations.

1. **State Boards.** Appointments to state boards, commissions, etc., should be on the basis of abilities. We probably never can get away from politics being a basis for appointment. Neither ability nor politics which are the prime qualifications for appointment have anything to do with the sex of the individual being appointed, unless the particular board or commission is one which has jurisdiction over activities peculiar to one sex. The establishment of a quota system on the basis of sex can lead to demands by other groups to establish quotas, big cities versus small cities, one ethnic group versus another ethnic group, one religious group versus another religious group, one professional group versus one non-professional group. The *reductio ad absurdum* to the argument of quotas would be a board so large that, if it is to represent all groups who should be represented, it will be ineffective and the whole idea of a competent, able commission or board would be lost.

2. **Civil Rights Laws.** The recommendation for the change in the Ohio Civil Rights Law urging (a) the elimination of those provisions which grant judicial safeguards to respondents challenging the necessity of commission subpoena; (b) enlarge discovery provisions; and (c) permit automatic default judgments, would be a serious mistake. Administrative agencies which are investigators, prosecutors and triers of fact in one cannot fairly provide objective judgments. Any connection with ERA and this recommendation is tenuous and tangential at best.

3. **Statutory State Agency on the Concerns of Women.** Another state agency is recommended —

the Equal Rights Agency. I oppose additional state agencies compounding the proliferation of administrative agencies where similar responsibilities have already been given by the state and/or federal government. The proposals for this agency with pervasive rights over all other state agencies should be taken care of by an oversight committee of the Legislature. The Senate of the United States has a Government Operations Committee used for this purpose. Perhaps the Ohio Legislature could do the same. Specifically, in the proposal the provision requiring review and certification of all funds for programs in the state will further encumber the administrative process. For example, if a Cincinnati hospital is to receive Hill Burton Funds, it must obtain approval of the United States Department of Health, Education and Welfare, the Ohio State Department of Health, the Central Ohio River Valley Authority and the Hamilton County Hospital Commission, all of which consider non-discriminatory practices of the recipient. The proposed agency will provide a state-supported lobby for women.

OHIO ERA

EDUCATION

INTRODUCTION

Background

In the formative stages of the ERA Task Force, it became apparent that the major areas of investigation should probably include education, but the Code contained little for fruitful study, and the subject itself was too large for the twenty-five member Task Force, along with their six other areas of study, to examine.

In October 1974, a dozen women in education from across the state began an *ad hoc* committee. They met monthly, expanding the group to forty members. The study includes five areas: delivery of services—admissions; sports—extra curricular activities; teacher training—professional practices; and employment and promotion. In Cleveland, January 30, 1975, we held public hearings. Generally the hearing testimony was the evidence used to write this report. [See Education Supplement, pages 61-65] The hearing testimony was edited and will be available for free distribution in 1975. The funds for this enterprise have been raised outside the Task Force budget.

Recommendations

At the April 4, 1975 meeting, the ERA Task Force adopted the following recommendations of the *ad hoc* Education Committee. The full report has not been reviewed by the ERA Task Force and will appear in the supplementary section as separate work of the *ad hoc* Equal Rights for Women in Education Committee.*

A. The State of Ohio, under the sponsorship of either the new agency, recommended in the Public Obligations Chapter of this report, or the Department of Education, should establish a citizens' Task Force for Equal Rights for Women in Education.

B. In each local school district, action committees should be established to eliminate sex discrimination in employment, textbooks, curriculum or in any area where sex discrimination may exist.

C. A model bill, such as attached, [Appendix C, page 65] should be enacted by the Ohio Legislature in 1976.

*The committee represented individuals from the OEA, AFT, AAUP, AAUW, University trustees, the Ohio Department of Education, the Board of Regents, Women's Caucus at Ohio University, Cleveland State University, and Ohio State; NOW, YWCA, Ecumenical Women's Caucus Cleveland, University of Cincinnati School of Education, League of Women Voters, Affirmative Action Officers of State Universities, Continuing Education for Women Association, Council of Jewish Women, Women in Communication, classroom teachers, and college instructors.

MINORITY REPORT OF SIMON LAZARUS, JR.

I disassociate myself from and do not subscribe to the Education Section of the Report of the Task Force.

1. There may be a need for local affirmative action committees in each school district depending upon what is meant by affirmative action and in what capacity and in what areas of employment, curriculum, attitude, etc. In the absence of clear definitions, I oppose the recommendation.

2. The Model Bill, the result of the Equal Rights for Women in Education Study, should not be adopted in Ohio. The proposed bill may very well be a Pandora's Box in the first place. In the second place, the enforcement and administrative provisions are too broad, to-wit: the section authorizing the issuance of rules, regulations or orders of general applicability, the section requiring records to be kept that may be required by regulation and such additional reports that may be necessary, the permission of access to the educational institution during normal business hours to its books, records, accounts and other sources of information, etc. (this may be very disruptive of the normal processes of education at the institution, as well as invasion of privacy of some of the personnel and pupils at the institution). The complaint procedure is inadequate. It does not guarantee the educational institution due process and, finally, the enforcement provision permitting the agency to terminate any and all state assistance to the institution is not only a drastic power that may be wielded irresponsibly by a bureaucracy unskilled in due process, but in a sense is a form of blackmail that may be applied. Any such action that the proposed state agencies contemplate taking should not be done except through the courts. In the third place, the authority and powers given the agency for parochial purposes are too pervasive.

The thinking behind espousing another bureaucracy like that contemplated by the proposed bill is ultimately going to result in a series of administrative agencies not accountable to anybody but the chief executive of the state, or of the county who appoints them with no redress for persons who are wronged by arbitrary action. Furthermore, an additional agency such as this only compounds the cost of education and state government. The question is one of balance. Is it necessary? There is sufficient authority in the state government and in the federal government to reach over 99% of the complaints that may arise.

MINORITY REPORT OF SIMON LAZARUS, JR.

1. I disassociate myself from and do not subscribe to several of the recommendations made in the following sections of the report of the Task Force:

A. Children's Section;
B. Public Obligations Section;
C. Employment Section; and
D. Education Section.

2. The Governor's Executive Order creating the Task Force contained a very limited objective — to conform Ohio statutes to the Equal Rights Amendment and to consider the need for a permanent commission on the status of women. The Executive Order recognized:

> "Many of the laws and regulations of Ohio distinguishing on the basis of sex must be repealed or amended to conform to the Equal Rights Amendment, and that the interests of the State of Ohio would be best served by an orderly and well thought-out review of these statutes."

3. I believe:

The family is basic to a civilized society;
The family is a unity that must be preserved;
Marriage is a necessary and viable institution;
The state has an interest in the preservation of the family and the institution of marriage;

Parents have a responsibility to impart love and security to their children, and to prepare them to make a better society for themselves and their own children;

Civilized society has an obligation to pass on these ideals to the next generation;

Our society is based upon a system of private enterprise and its work incentives and rewards;

These values must be preserved and not swept aside merely for the sake of change; and

A civilized society such as ours cannot endure in an existential, individualistic existence.

I believe that women have not had equality of opportunity in many economic ways and such should be rectified; that women as a group have been disparately treated in many respects, but that there are physical, physiological and perhaps emotional differences between men and women generally and between individuals (both men and women) particularly that are and must continue to be recognized.

4. I disassociate myself from and disagree with several recommendations for these reasons:

A. Some of the recommendations are beyond the scope of the Task Force's responsibility.
B. Some of the recommendations in my judgment are based upon insufficient testimony and/or evidence.

5. I do not subscribe to the recommendation for the creation of a commission on the status of women, particularly one that has powers pervasive over other administrative agencies. There are many other federal, state and local agencies that can and do carry out similar responsibilities. The proposal outlined in various sections of the Report creates a state-funded lobbying and special interest organization for women. Such a commission may not only be an improper use of state funds, but may violate the Equal Rights Amendment.

6. Where affirmative social legislation (particularly that beyond the Task Force's responsibility) is recommended, the Task Force did not consider the direct or indirect cost on the state, on suppliers of goods and services, and on consumers.

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EDUCATION SUPPLEMENT

Changes in education have been historically slow, movement often hard to track. For education rarely leads society, but rather follows society's lead. Knowing this, we offer this report as a first step toward the response education must make to the changing role of women in the last quarter of this century. The conclusions are the result of volunteer citizen work, with little staff support and without financial assistance. However, we feel the document can be most useful, particularly for those who wish to continue a study.

I. DELIVERY OF SERVICES — ADMISSIONS

This committee was to become the receptacle for the large and provocative field of Women's Studies, a contemporary movement designed to bring women, especially in higher education, new role models, new scholarship, and new feminist perspectives in traditional fields. Also, the problems of admissions to post-baccalaureate educational programs, and the field of continuing education for women were examined here. A part of every discussion in almost every committee returned again and again to the need for institutional support for increased financial aid and child care facilities.

We did not study the important and potentially sexist area of vocational education in Ohio, but suggest this be a major concern for future study.

The following report is divided into the following sections:

- Women's Studies and Related Services
- Continuing Education for Women, and
- Post-Baccalaureate Admissions

Chairperson
Mareyjoyce Green
Associate Professor Sociology
Cleveland State University

A. Women's Studies and Related Services

Problem

There is widely accepted evidence that women need to learn to understand their role in society, especially as society has conceived of it with its possible limiting consequences. This is best done in courses whose subject matter specifically addresses itself to women.

There is also a need for role-models, especially in fields such as mathematics and sciences, traditionally closed to women. Not only does this involve female faculty members, with whom students can identify as successful role models in their field, but also includes, for example, courses in the history of science, which include material on women scientists. Women students in any significant number can hardly be expected to train for fields in which there appears to be no entry.

Recommendation

1. Therefore, we need to develop courses and course material at all Ohio state colleges which include information about women, the presentation of women role-models, and of feminist perspectives on such traditional disciplines as history, psychology, science, mathematics, politics, sociology, art, literature, and economics. Such curricula in higher education should be integrated with existing program, either through a women's studies department or through offerings within pre-existing departments. Choice should be dependent on the needs and structures of the particular college or university. Courses should be augmented by an active program of speakers, panels, and workshops.
2. The state should make available special funding for programs that demonstrate commitment to these goals in order to assure their initiation in a period of financial exigency; *i.e.,* institutional support of day-care facilities and financial aid to part-time students.

   (Precedent already exists in Ohio for special funding of priority programs, for example the initiation of the high risk student program in 1971-72.)

B. Continuing Education for Women

Problem

Women are 51% of the population and deserve services to assist them in fully utilizing their potentials — potentials untapped and cloistered through many years of societal conditioning resulting in unequal opportunities. Recent enforced legal rights and declining enrollments in higher education have led colleges and universities to create special programs for women, but most are fractionalized and tokens at best. Many of these programs are extension programs or evening adult education programs, removed from the mainstream of the institution, with no particular interest in the specialized educational needs and support services for adult women, nor interest in facilitating the admission of adult women into degree programs. Continuing Education for Women (CEW) is not worth much if what is continued is the same pattern of subtle oppression and discrimination that now exists in nearly all universities. The timing and mode of higher education often needs to be different for women than for men, but the end result is the same, to prepare women to participate fully on the same basis as men in the functioning of society.

Recommendations

1. Encouragement of an active leadership role by the Ohio Board of Regents and the State Department of Education in coordinating and assisting in the development, promotion, definitions and objectives of the CEW programs throughout the State of Ohio.
2. Provision of substantive administrative support for CEW programs, not merely "lip-service" for effective and continuing CEW programs.
3. Visible, convenient and accessible placement of CEW programs within the institutions for internal and external effectiveness.
4. Encouragement and provision of assistance to institutions of higher education for flexible, non-traditional approaches to education.
5. Selection of qualified personnel to administer CEW programs.
6. Articulation and coordination of CEW programs within the state and on individual campuses to provide the best comprehensive approach to assisting women in higher education and avoid fractionalization and duplication of efforts through the development of a State Task Force on CEW to share ideas, unite forces, and to collaborate or assist each other in program development.
7. Identification of the state and community need for more effective use of womanpower, both paid and volunteer, so as to best allocate and direct the educational support programs.
8. Provision of funding for development of community based "Counseling, Resource and Assessment Centers." Institutions located within a 35 mile radius need to work together to effectively disseminate information and services to adult women.

Rationale

The potential of continuing education for women in Ohio is unlimited, given financial assistance, capable leadership (state and local) and administrative support. With these factors and implementation of the listed recommendations, the talents and potentials of women can be developed and expanded to fulfill the need of employers and the community to place women in leadership and non-traditional careers. Education holds the key to removing the previous discrimination of women in these areas.

C. Post-Baccalaureate Admissions

Problem

Discrimination against women in reference to admission to graduate and/or professional schools still continues to exist. For example, in the United States women are approximately 37% of all graduate students and are less than 10% of the students in law, medical, veterinary, optometry and other professional schools. In 1972 women represented only 12% of law students and 16.8% of medical students. Ann Heiss, who researched this situation, states that "sex is probably the most discriminating factor applied in the decision whether to admit an applicant to graduate school." (Heiss, 93)

Recommendation

That legislation be enacted to help substantially increase the number of women students in Ohio's graduate and professional schools by giving the Board of Regents power to review admission policies and make affirmative recommendations to state colleges and universities that will insure this substantial increase within the next seven years.

Rationale

Since sex-based quotas which discriminate against women's admission to these schools are largely unwritten and often denied by admissions officers, a system whereby a certain number of women are expected to be admitted clarifies the schools' responsibilities for affirmative action. Until these schools have set for them an actual number as an affirmative action goal, we cannot count on sex discrimination in admissions being ameliorated.

II. SPORTS — EXTRA CURRICULAR ACTIVITIES

This committee has one report. Members have expressed, as have all other committee participants, the lack of statistical evidence available. Evidence to support the following recommendations needs to be gathered by the State as a matter of public information. This recommendation is made throughout the report: we need a separate State Task Force to study the problems of equal rights for women in education.

Chairperson
Barbara Herrick, Director
Women's Center YWCA, Akron, Ohio

Problems

The evidence submitted to the ERA Implementation Task Force shows that girls' interscholastic athletic programs in elementary, secondary and higher education suffer discrimination in funding, number and variety of sports programs available, scheduling of athletic facilities, and deprecatory attitudes toward girls' athletics in general. Although the degrees of discrimination vary from one school district to another and from one college to another, throughout Ohio, all levels are serious enough to be of concern to the State Board of Education and the Board of Regents.

Recommendations

1. The State Board of Education shall instruct each public school district in Ohio to formulate an affirmative action plan consistent with federal and state regulations, including those to be issued by the Department of Health, Education and Welfare to implement Title IX, for all appropriate areas of public school educational programs. These plans shall be submitted no later than December 31, 1976, to the State Board of Education for its approval.
2. The development of affirmative action plans shall follow a standardized procedure; e.g., Equal Employment Opportunity Commission's *Affirmative Action* and *Equal Employment, A guide-book for employers,* vols. 1 and 2. State Board of Education may develop models so as to facilitate local districts' efforts in formulating affirmative action plans. It is expected that other statewide educational organizations; e.g., Ohio Education Association, Buckeye Association of School Administrators, Ohio School Boards Association, Parent Teachers Association, will develop models which may be consistent with State Board of Education recommendations and, thereby, useful in affirmative action plan preparation.
3. All affirmative action offices in state universities and colleges should be strengthened in order that the enforcement of Title IX guidelines at the higher education level in athletic programs can be accomplished.
4. Evidence supports separate programs for girls and boys. This may not always be the only solution to the problem of equal opportunity, but it is more to the point to encourage the development of a girls' team where many girls might be able to compete. To press for inclusion on boys' teams, as an exclusive goal, would only further limit the number of girl participants at this time.*
5. Regulation of high school athletics should be the responsibility of the State Board of Education, rather than the Ohio High School Athletic Association.

Rationale

In Ohio's public education system local autonomy is still the major reality. Athletic programs will best be improved for women through pressure on local school boards. When Title IX Guidelines are released, certainly their regulation by the State Board of Education will hasten reform.*

III. TEACHER TRAINING — PROFESSIONAL PRACTICES

Here the committee dealt with the schools of education, teacher certification, counselor training and in-service training. Although the cyclical problem of educational equality seems without a beginning or an end, teacher training is probably at the source of all recommendations.

Chairperson
Jane A. Leake
Professor of History, Philosophy
and Political Science
Raymond Walters College
University of Cincinnati

Teacher Training

Sexism and sex-role stereotyping is cyclical. Young girls assimilate inferior status, accept limited career choices, assume passive roles and eventually, transmit these conditioned responses to other young girls. In the classroom the same biases and practices have been amply documented. At the source we find teacher education and the requirements for certification demanded by state law. Investigations into the areas of counselor biases and practices in counseling females have been recently conducted with much evidence of sexism in counselors' attitudes, vocational concerns, knowledge about women's world, vocational development, and counseling materials.

Most of the 108,000 practicing teachers in Ohio today are without training in the area of teacher effect on the development and reinforcement of student attitudes. Without realizing it, teachers through verbal and non-verbal communication often contribute to the formation and strengthening of stereotypes and prejudices that unjustly limit students in their view of themselves and society and in their aspirations for the future.

Recommendations

A. Professional education and general education requirements in Ohio for all certification programs should be rewritten to make certain that sexism in the educational system is examined, and that all teachers are trained and retrained to eliminate sexism in their attitudes and classroom practices.

B. The State Department of Education should require local school districts to include sessions on "Teacher Effect on Student Attitude Formation and Reinforcement" and "Sex-role Stereotyping in the Schools" on all regularly scheduled in-service training programs.

C. Colleges and universities should make credit courses on the same topics readily available to teachers and counselors-in-service.

D. Local school districts should offer financial incentives for teachers and counselors to take the courses.

E. Local school districts should be encouraged to purchase books and other materials on the topics of attitude formation, non-verbal communication, teacher expectations, and sex-role stereotyping for the teachers' shelves in all school libraries.

IV. CURRICULUM AND EDUCATIONAL MEDIA

Much work has been done in Ohio concerning text books, films, and course contents by interest groups such as National Organization for Women, Women's Equity Action League, the American Association of University Women, Ohio Education Association, Women's Caucus, and local citizens' groups. Rather than repeat their studies, the committee agreed that curriculum texts and films, particularly in elementary and secondary schools, should be revised. The work of the committee, therefore, centered on recommendations.

Chairperson
Joy Rose, OEA
Women's Caucus
Columbus, Ohio

Problem

If current curriculum practices in Ohio are discriminatory, as evidence supports, attitudes of school boards, school administrators, school teachers (all of society) must be changed. Changing attitudes as deeply engrained as those regarding sex roles requires diligent work.

While attitudes cannot be changed by federal or state laws or rules and regulations of any agency, many steps can be taken to help eliminate sex discrimination in school curricula.

Recommendations

A. The State Department of Education must develop non-sexist curriculum guides (K-12) not only in subject areas such as science and English, but also special education, counseling, adult education, and particularly vocational education.

B. Existing curriculum materials that would include films must be examined and modified at state and local levels. Guidelines for textbook evaluation are available through the OEA Women's Caucus.

C. All State Department standards and guidelines need to be reviewed (at least two women on review committee) with a report containing suggested changes and implementations to be submitted to State Board of Education and the Ohio Legislature.

D. Local school districts should be required to adopt affirmative action programs.

E. All instructional programs and extra-curricular activities in all schools at all levels must be desegregated — in content as well as by sex. Courses such as bachelor living and home repairs for girls must be eliminated.

F. Federal and state laws and guidelines must be adhered to. An agency, perhaps the OCRC, must be given authority to enforce these laws and guidelines.

G. The State Board of Education should schedule public hearings on curriculum so that a unified course of study in Home Economics and Industrial Arts can be recommended.

V. EMPLOYMENT AND PROMOTION

This committee divided its work into three problem areas: the lack of data available, employment of females in higher education, employment and promotion of females at the elementary and secondary level.

Chairperson
Diane Karpinski
American Association of University
Professors

A. Employment and Promotion

Problem: Lack of Data

The data provided by the Regents indicate broad patterns of discrimination in pay and in the proportion of women hired at various academic ranks in the senior universities, community colleges and technical colleges. Comparison between two different time periods

*Recently, the Pennsylvania Supreme Court found segregation in athletics by sex to be illegal. It is probable that separate teams based only on sex will soon be illegal. However, this will not change the intent of this committee's report.

(1968-69 and 1973-74) indicate that in most cases the gap between the average salary for men and women has increased. The proportion of women hired has gone up less than half of a percentage point from 18.46% of the faculty in 1968-69 to 18.89% of the faculty in 1973-74. The proportion of women hired varies from rank to rank and from one institution to another. However, in the rank of instructor in community and technical colleges where there was a significant increase in the proportion of women hired, the gap in average salaries also increased. (See Appendix B.)

Data provided by the Office of Education and the O.E.A. also indicate that the proportion of female principals in elementary school has dropped from 21% in 1968-69 to 17% in 1973-74. The drop over a twenty year period has been even more marked from 56% in 1975 to 17% in 1973. (See Appendix A.)

These are disturbing trends, but the data are not available in a sufficiently detailed or sophisticated manner to enable us to determine the most important points in this continuing cycle of discrimination. This lack of appropriate data is the problem we would like to address in this recommendation.

Recommendations

1. We recommend that data be collected by State Agencies such as the Board of Regents, the Office of Education, or the Legislative Service Commission following a form which would be given to these agencies indicating the specific information needed.
2. We recommend that a State Agency for Women be organized. One of its functions should be to oversee the process of data collection and analyze and disseminate this information. Such an agency could then develop programs to alter the circumstances causing the continuing pattern of inequities.

Rationale

A model needs to be developed that would describe the various points at which women are cut off from further advancement, or to the points at which they cut themselves off, and the input of various factors at these decision points. These factors would include the type of college attended, the proportion of women at the colleges, the type of graduate school attended, the proportion of women in the graduate program, the proportion of women teachers and administrators at the graduate level, the type of degree, the number of publications, marital status, number of children, ages of children, job history, teaching load, pattern of promotion, proportion of female teachers in the employing institution. If such information could be collected, we could develop a clearer picture of the factors generating the continuing cycle of under-utilization of women, particularly in the highest paid and most powerful positions. Such sophisticated statistical measures as multiple regression analysis and path analysis could be utilized if the appropriate data were collected.

We not only need to collect data on those women who are now employed, but also we need to gather information on the available pools of women power not yet utilized, e.g., the number of women graduates at the undergraduate level, the number of women at different levels of certification, the number of women with graduate degrees.

B. Higher Education

Problem

Salary data made available to the Task Force by the Board of Regents reveal for fall quarter of 1973 significant inequalities between men and women on the faculty of Ohio institutions of higher education. In every kind of state institution of education, women's average salaries were below men's average salaries in the same rank.

Moreover, there was no progress in reducing salary differentials between 1968 and 1973 in state universities in Ohio. Even in hiring, the number of women went up less than half of a percentage point. That is, in 1968, 18.46% of the faculty were women. Five years later they constituted only 18.89% of the faculty of Ohio State Universities.

Despite all the legal avenues opening up for redress, the gap in salaries became larger in all instances except one, especially in those ranks where there was an increase of women. For example, in the instructor's level in technical colleges the number of women went up from 22 to 161 but women's salaries went down from 98.06% of men's salaries in 1968 to 88.14% of men's salaries in 1973. Similarly at the instructor's level in community colleges, the number of women went up from 43 to 100 but women's salaries went down from 97.57% of men's salaries in 1968 to 87.17% in 1973. The discrepancy is probably occuring at entry; the data, however, is not refined enough to provide proof.

The data provided by the Regents do not allow for comparison within ranks. However, if women suffer discrimination in promotions — a logical conclusion given the consistent differences between ranks — then the real salary differential is even larger between faculty men and women, for the Regents' data compare averages only between those promoted to the same rank. To fill in the gaps left in the Regents' data, is a national study by Astin and Bayer. Their statistical evidence indicates that, "when a woman attains the doctorate from a prestigious institution and demonstrates great scholarly productivity, she still cannot expect promotion to a higher rank as quickly as her male counterpart." As to salary, their study proves sex is a better predictor "than such factors as number of years of professional employment or whether one holds a doctorate."

Recommendation

The only solution is for the legislature to mandate that each college and university devise for undergraduate teachers a salary schedule with automatic step increases. Such a schedule is presently employed at most community colleges. Each level should be based on education and experience, which can be simply computed. Since there is no room for ambiguity, there is no room for discrimination except at entry, where equivalencies may require the use of discretionary judgment or fluctuations in the market may require higher levels of entry for favorable competition. However, as long as institutions are not permitted to pay faculty at a level lower than indicated on the schedule by their education and experience, then a most common location of salary discrimination — at entry — is reduced.

Such a schedule does not preclude an institution from allocating funds for a certain number of academic chairs with special annual salaries for outstanding scholars, nor does it prevent granting special awards for outstanding teachers in each department. Nor need it discourage scholarship, since the university could continue to allocate special funds for reduced teaching loads for purposes of research, which is primarily a graduate school activity.

Rationale

The advantage of a schedule is that it established a norm and exposes discriminatory benefits. The major reason for using this technique in Ohio's colleges is that it is the only device that works for salaries. For evidence of its success one can look at the source of the complaints concerning straight salary in the schools. The overwhelming majority come from universities and not elementary and secondary education, where salary schedules are widespread.

C. Elementary and Secondary

Problem

Sex-role stereotyping in education is not confined to curriculum alone but includes the school's work force. The results are lower average incomes for women in education, a lack of effective role models and few women in decision making positions. The majority of women in education are concentrated in the supportive ranks, few women break into administrative ranks. Although 84% of all elementary teachers in Ohio are women, only 17% of elementary principals are women. At the secondary level, 43% of all classroom teachers are women, but only 1% of secondary principals are women (See Apendix A). Three women serve as school district superintendents and *0* women hold the post of president of a state college or university.

The data provided by the Ohio Department of Education (Appendix A) shows that there is a clear need to move more aggressively toward equal hiring, promotion, development and assignment of women in educational administration.

Recommendation

1. That school districts be required to develop and implement Affirmative Action Programs, with a director of Affirmative Action in each school district, with non-compliance resulting in the loss of non-local funding and/or loss of charter.
2. That a state agency for women be created to approve and review any self-analysis and corrective action plans developed by school districts and to publish and disseminate statistics and information on the available pool of women.
3. That the State Board of Education and the Ohio Department of Education implement Affirmative Action Programs within their departments.
4. That school districts be required to confine hiring and promotion decisions to clearly job-related experience and qualification factors, requiring that proper certification be held at the time the contract period begins.

Rationale

Existing employment patterns for women in education need to be broken. Exclusion of women from administrative ranks results in lower average incomes for women in education. The average salary for elementary school teachers in Ohio is $9844, secondary school teachers $10,387. The average salary for elementary principals is $16,405, secondary principals $17,416 and for superintendents, $21,734. Women are not participating in the decision making processes and therefore, much needed changes in curriculum regarding sex-role stereotyping are unlikely to come about. There are very few female models for leadership roles, with the consequence that women are unlikely to see themselves as being equal to leadership roles and students, who take their cues from the social environment, learn to associate certain jobs and abilities with sex.

VII. CONCULSIONS

1. The State of Ohio, under the sponsorship of the appropriate agency, should establish a citizens' Task Force for Equal Rights for Women in Education. Hopefully, this could be the first charge for a state agency for women. Data, statistical evidence, support studies already completed or underway need to be documented and gathered.
2. In each local school district, action committees should be established to eliminate sex discrimination in employment, textbooks, curriculum or in any area where sex discrimination may exist.
3. A model bill, such as attached, should be enacted by the Legislature in 1976.
4. Further study is essential in vocational education, the problem of maternity leave, and funding benefits (pilot projects, matching grants, rewards) for local school districts.

EDUCATION SUPPLEMENT — APPENDIX A

Percentage of women teachers in elementary and secondary schools
(1968-1973)

TABLE I

	1968	1969	1970	1971	1972	1973
Elementary	85%	84½%	85%	84½%	84%	84%
Secondary	43%	42%	43%	43%	43%	43%

Percentage of women administrators in elementary and secondary schools
(1968-1973)

TABLE II

	1968	1969	1970	1971	1972	1973
Elementary Prin.	21%	20%	18%	19%	18%	17%
Asst. Elem. Prin.	40%	34%	32%	33%	31%	31%
Secondary Prin.	1%	4%	4%	3½%	3%	1%
Asst. H.S. Prin.	8%	9%	7%	9%	8%	8%

Decrease in Proportion of Women Elementary Principals
(1955-1973)

TABLE III

1955	1973
56%	17%

EDUCATION SUPPLEMENT — APPENDIX B

Appendix B — Tables on Percentage of Women Faculty Employed at Public Institutions of Higher Learning in Ohio and the Distribution of Salary between Man and Women Faculty*

TABLE I

Women's average salaries as a percentage of men's average salaries at different ranks and in different types of institutions for 1968 and 1973

	University		Community College		Technical College	
	1968	1973	1968	1973	1968	1973
Professor	91.0%	90.7%	—[1]	98.3%	00.0%[2]	99.7%
Associate Professor	94.0%	93.8%	89.8%	98.3%	92.7%	85.5%
Assistant Professor	93.8%	93.5%	99.1%	95.4%	00.0%[2]	93.7%
Instructor	94.0%	94.4%	97.5%	87.1%	98%	88.1%

TABLE II

Percentage of women on the faculty at different ranks and in different institutions for 1968 and 1973

	University		Community College		Technical College	
	1968	1973	1968	1973	1968	1973
Professor	7.37% (732)	6.34% (1,639)	— (0)	30.0% (10)	0% (6)	14.28% (7)
Associate Professor	11.61% (956)	13.10% (1,938)	25.0% (16)	20.45% (88)	40.0% (5)	16.66% (18)
Assistant Professor	17.30% (1,560)	20.80% (2,701)	20.89% (67)	34.23% (111)	0% (4)	27.02% (74)
Instructor	18.46% (1,177)	43.45% (1,084)	28.10% (153)	41.15% (243)	28.98% (69)	34.69% (464)

[1]There were no full professors, male or female, in 1968 in the Community Colleges

[2]There were no female professors in this category in 1968

[3]The numbers in parentheses are the total numbers of professors in those categories — male and female

*The tables are compiled from data provided by the Ohio Board of Regents

EDUCATION SUPPLEMENT — APPENDIX C

AN ACT TO PROHIBIT DISCRIMINATION ON THE BASIS OF SEX IN THE EDUCATIONAL INSTITUTIONS OF THE STATE OF OHIO

Section I. Prohibition against Sex Discrimination

(a) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in the administration of any education program or activity of an institution receiving state financial assistance or under any program of public education of any school district or other political subdivision.

(b) For purposes of this Act, discrimination on the basis of sex shall include, but not be limited to the following practices.

I. On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in the administration of any academic, extracurricular, research, occupational training, or other education program or activity operated by an educational institution which receives or benefits from state financial assistance or which is operated by the state, a school district or any other political subdivision;

II. On the basis of sex, provision of different amounts or types of financial assistance, limitation of eligibility for such assistance, or the application of different criteria to applicants for financial assistance;

III. On the basis of sex, exclusion from participation in or denial of equal benefits of any physical education or athletic program operated by an educational institution or association of educational institutions, except that an educational institution may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill;*

IV. On the basis of sex, discrimination among persons in employment, compensation, fringe benefits, or recruitment, consideration, employment criteria, or selection for employment, whether full-time or part-time, under any education program or activity operated by an educational institution which receives or benefits from state financial assistance or which is operated by the state, a school district or any other political subdivision;

V. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any education program or activity or employment because of pregnancy, childbirth, miscarriage, abortion or recovery therefrom.

(c) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any state-supported program or activity or any program operated by the state, a school district or any other political subdivision, in comparison with the total number or percentage of persons of that sex in any community, state, section or other area.

I. "Educational institution" means any preschool, elementary or secondary school, or any institution of vocational, professional or higher education which operates with state financial assistance or has applied for state financial assistance or any school district or other political subdivision which operates educational programs and public preschool, elementary or secondary school, or any public institution of vocational, professional or higher education which is operated by the state, a school district or any other political subdivision.

II. "State financial assistance" means:

(a) The provision of funds authorized or appropriated pursuant to state law provided by loan, grant, contract, tax rebate, formula allocation or any other means for:

(1) The operation or maintenance of an educational institution, program or activity;

(2) The acquisition, construction, renovation, restoration or repair of a building or facility or any portion thereof;

(3) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(b) A grant of state real or personal property or any interest therein.

(c) Provision of the services of state personnel.

(d) Sale or lease of state property or any interest therein at nominal or reduced consideration or permission to use state property or any interest therein without consideration.

(e) Any other contract, agreement or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Section 2. Textbooks, Sex-role Stereotypes, Training for Teachers and Counselors

(a) The Ohio Department of Education shall establish guidelines for determining sex bias in materials for use at the preschool, elementary and secondary levels of educational institutions. The guidelines shall include a requirement that educational institutions review their materials for sex bias and sex-role stereotypes. The guidelines shall establish indicia of sex bias or sex-role stereotypes. The Ohio Department of Education shall encourage the use of materials which present a balanced view of the historical, cultural, literary, scientific, political and sociological contributions of women and discourage texts and materials which present an unrebutted stereotypical view of either sex.

(b) The Ohio Department of Education shall establish guidelines for all educational institutions to provide in-service training for teachers, administrators and counselors on biased textbooks, sex-role stereotypes, and sex discrimination in career counseling.

Section 3. Living Facilities

Nothing herein shall be construed to prohibit any educational institution from maintaining separate living facilities for the different sexes; *provided, however,* an educational institution shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing.

Section 4. Enforcement

(a) Every education institution shall provide assurance to the Ohio Department of Education that each education program or activity operated by the educational institution will be operated in compliance with this chapter, provided that a single assurance may be provided for all programs under the jurisdiction of an institution.

(b) The Ohio Department of Education is authorized to effectuate the provisions of Section 1 of this chapter by issuing rules, regulations or orders of general applicability.

(c) Each educational institution shall keep such records and submit to the Ohio Department of Education timely, complete and accurate compliance reports, as may be required by regulation, including any report prepared pursuant to Section 2, Education Amendments of 1972, 86 Stat. 374, 20 U.S.C. No. 1682. The Ohio Department of Education shall require such additional reports as are necessary to enforce the requirements of this chapter.

(d) Each educational institution shall permit access by the Ohio Department of Education during normal business hours to such of its books, records accounts, and other sources of information, and its facilities, and shall permit the Ohio Department of Education to make copies of any such written information as may be pertinent to ascertain compliance with this chapter. The Ohio Department of Education shall annually review the practices of educational institutions to determine whether they are complying with this chapter.

(e) Any person who believes himself or herself or any specific class of persons to be subjected to discrimination prohibited by this Act may file with the Ohio Department of Education a written complaint, not later than 180 days from the date of the alleged discrimination. Whenever a compliance review, report, complaint or any other information indicates a possible violation of this Act, the Ohio Department of Education shall make an investigation. If such investigation indicates that a violation has occurred, is continuing or seems likely to reoccur, the Ohio Department of Education shall issue a Notice of Violation setting forth the facts which constitute the violation and prescribing the actions to be taken by the educational institution to terminate the violation. The recipient of a Notice of Probable Violation shall, within a period prescribed by regulations but not less than fifteen (15) days, respond to such notice, admitting or contesting the facts therein or agreeing to take the actions requested. Within a reasonable period thereafter, the Ohio Department of Education shall arrange for a conference with the educational institution to seek agreement to terminate such discriminatory practices as any exist. Any such agreement shall be written and subject to public inspection.

(f) If an education institution receiving a Notice of Violation does not agree to take the remedial actions prescribed therein or does not, in fact, take such action, the Ohio Department of Education may terminate any or all state financial assistance to the institution. Any action taken pursuant to this section shall be subject to such judicial review as is otherwise provided by law.

(g) If a complaint filed with the Ohio Department of Education is dismissed by the Ohio Department of Education or if, within 180 days from the filing of the complaint, the Ohio Department of Education has not terminated state financial assistance or taken other action to remedy discrimination, the Ohio Department of Education shall so notify the complainant and, within 180 days after the giving of such notice, the complainant may bring a civil action for preventive and affirmative relief, including an application for a permanent or temporary injunction, restraining order and other action, against the educational institution. In the case of any successful action by a complainant to enforce the provisions of this chapter, the court shall award the costs of the action, together with a reasonable attorney's fee, as determined by the court.

*Recent court decisions may make revision of this section necessary.

CODE INDEX

Additional copies of this report may be obtained by writing Attorney General William J. Brown, Suite 1705, 30 East Broad Street, Columbus, Ohio 43215, (614) 466-3840.

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