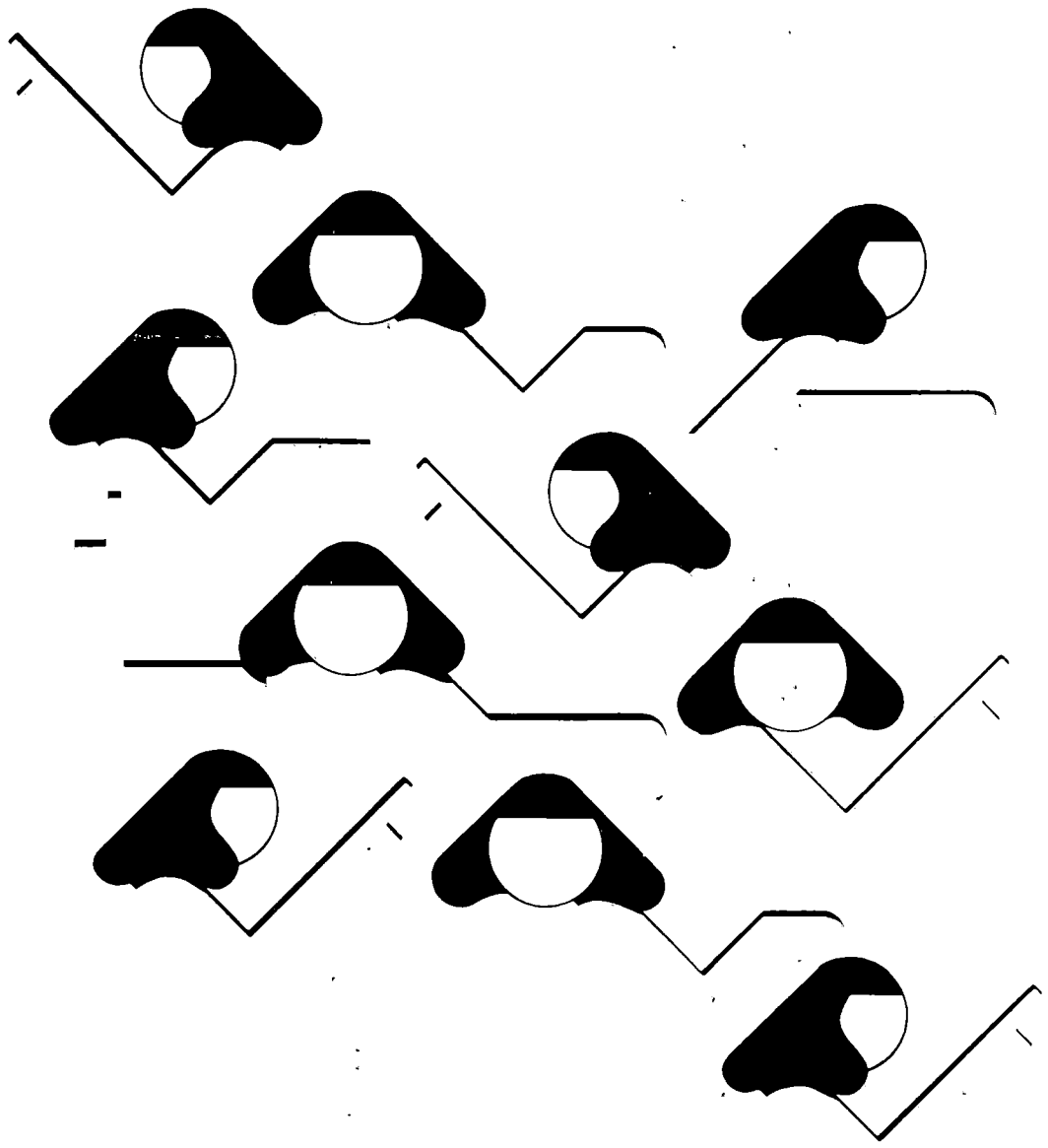
Public Forum on Women's Rights and Responsibilities

Las Vegas, Nevada, October 6, 1978



Proceedings of a meeting sponsored by the Nevada Advisory Committee to the United States Commission on Civil Rights, published for the information of the Commission and the citizens of Nevada. The contents of this publication do not necessarily reflect the position or policies of the United States Commission on Civil Rights and should not be attributed to the Commission.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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Public Forum on Women's Rights and Responsibilities

—Proceedings of a public forum sponsored by the Nevada Advisory Committee to the U.S. Commission on Civil Rights, Las Vegas, Nevada, October 6, 1978.

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LETTER OF TRANSMITTAL

The Nevada Advisory Committee to the
U.S. Commission on Civil Rights
June 1979

MEMBERS OF THE COMMISSION
Arthur S. Flemming, *Chairman*
Stephen Horn, Vice Chairman
Frankie Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Staff Director*

Dear People:

The Nevada Advisory Committee, pursuant to its responsibility to advise the Commission on State civil rights issues, submits these proceedings on women's rights and responsibilities.

The members of the Nevada Advisory Committee found in 1978 that objective knowledge of the legal status of women in Nevada was negligible. Much discussion about equal rights and equal opportunities was clouded with emotion and recriminations. The Advisory Committee decided that providing a dispassionate forum to discuss the rights and responsibilities of women would contribute toward ensuring a well-informed public in the State.

A public forum was convened on October 6, 1978, in Las Vegas. Speakers reviewed the progress toward attaining equality between women and men and the barriers that still prevent full equality.

We urge your review of the proceedings.

Respectfully,

Woodrow Wilson, Chairperson

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Preface

The Declaration of Independence proclaims that all men are created equal. Unfortunately, the word "men" has been taken too literally, resulting in the principle that women are created unequal. With this practice the rule, rather than the exception, the issue of the legal rights of women in American society has been debated throughout the history of our country.*

In 1972 the jurisdiction of the U.S. Commission on Civil Rights was extended to include discrimination on the basis of sex. In August 1978 the Commission released a report, *Social Indicators of Equality for Minorities and Women,* that includes highlights on women's continued secondary place in our society. The Nevada Advisory Committee to the Commission decided that sharing information on issues such as those raised in *Social Indicators* would contribute toward ensuring a well-informed public in Nevada.

To disseminate information on the current legal status of women, the Nevada Advisory Committee chose a public forum. At this meeting, knowledgeable persons discussed the opportunities for women in the economic, social, cultural, and political life of this Nation and of this State. Speakers reviewed the progress toward attaining equality between men and women and the barriers that still prevent full equality.

The public forum convened October 6, 1978, in the Las Vegas City Hall, Las Vegas, Nevada. It began with a welcome from a representative of the Governor of Nevada.

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*U.S., Commission on Civil Rights, *A Guide to Federal Laws and Regulations Prohibiting Sex Discrimination (July 1976) (revised), p. 1.*

ACKNOWLEDGMENTS

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1. Welcome

James F. Wittenberg, State Personnel Director

Representing Governor Michael O'Callaghan of Nevada

From the beginning of Governor O'Callaghan's administration 8 years ago, he has vigorously encouraged the employment of women, ethnic minorities, and the handicapped in State government. A number of affirmative action steps have been taken to achieve the best possible results in this area. Minimum qualifications have been designed to allow for more reasonable entry in and to provide opportunities for career employees to progress to higher level, policymaking positions. Several years ago, volunteer experience became an acceptable qualification for positions in State government. Training opportunities have increased considerably. Of the training offerings that our agency made available to State employees last year, almost 60 percent of the participants were women.

More women are working today because it is necessary for them to work from an economic standpoint. Women have to work these days, and they work for the same reasons that men do, either to fully support or help support their families and themselves. It's time that everyone realizes that women want the same rewards from employment that men do. Women want the best paycheck they can earn; they want emotional satisfaction from their job; and they want to grow professionally in their work. Therefore, women have every right and should be every bit as interested as men in seeking jobs of higher responsibility and increased pay.

The Governor has encouraged their progress and has not found it a threat to his masculinity. To the contrary, he has carefully watched the professional growth of many women, and, when he felt they were ready, when their administrative talents developed and their instincts were on target, he moved these women into top administrative posts in State government. They in turn have delivered, in his opinion. They have met every expectation and, believe me, they are tough and fair, characteristics that are essential to successful management and administration.

Under the O'Callaghan administration, women for the first time in the history of Nevada State government are heading State agencies. A woman heads the Department of General Services, another heads the Department of Commerce, and another serves as director of the State CETA agency. A woman for the first time is a full-time member of the Public Service Commission, the State's utility regulatory agency. One-half of the professional staff of the Office of the Governor are women. No other Governor in the Nation can make that claim.

The number of unclassified jobs for which the Governor has the sole appointing authority is only 50. That's just about one-half of 1 percent of the entire State service. The remainder of the positions are filled on the basis of competitive examinations through the State's personnel system.

The Governor, however, has set policy and led by example. Since 1973 the percentage of State supervisory and administrative level positions held by women has almost doubled. In 1973, 22 percent of these higher level positions were held by women. Today, that percentage is 39 percent.

Also, women comprise 45 percent of the total work force today, compared to 42 percent in 1974. So there has certainly been an increase just from the standpoint of the number of women coming into the State work force. In 1977, 58 percent—practically 60 percent—of all the promotions in the State service went to women. These facts show that more women State employees are now seeking jobs of high responsibility, more so than they did 5 or 10 years ago. Women are now working in numerous occupational areas that 10 years ago were unheard of, and that's good. Some of those areas include forestry, parole and probation, engineering, drafting right of way, highway maintenance, and corrections, just to mention a few. Competition is good for the system; it is good for men, it is good for women, and it is good for the quality of government.

Valuable and useful experience can also come from serving on State advisory boards and commissions. The Governor has more than doubled the number of women serving on these boards and commissions. He has seen many of these women, through their experience in the decisionmaking on the boards and commissions, grow both professionally and in their personal lives.

There has been an equal emphasis in the area of ethnic minorities, where the work force has increased from 5.5 percent in 1971 to over 13 percent as of September 1978. The handicapped now comprise more than 4 percent of the State's work force, as compared to less than 2 percent when the Governor took office in 1971. Every ethnic minority group in State government has doubled its representation in the State work force, and some have increased sixfold. As an example of this fact, 60 minorities were employed in State government in 1971, compared to 366 in 1978.

Ladies and gentlemen, that seems to me to be real progress through initiative, capability through performance, not gender or ethnic origin. Women and minorities have taken giant steps during the O'Callaghan administration. It has been a pleasure to welcome you on behalf of the Governor.

2. Keynote Address

Stewart B. Oneglia

Ms. Oneglia is Director of the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice. Under a Presidental directive, the task force reviews Federal statutes, regulations, programs, policies, and procedures to identify sex discrimination and to suggest remedial proposals. In private practice, Ms. Oneglia specialized in domestic relations. She served as an associate judge, Orphans' Court, Prince George's County, Maryland. She is a member of the Maryland Commission for Women and the Governor's Commission to Implement the Equal Rights Amendment. In 1978 Ms. Oneglia received the "Woman of the Year for Law and Justice" award from the Prince George's County International Woman of the Year Task Force.

Today the U.S. Constitution does not prohibit distinctions to be made on the basis of sex in the same manner in which it forbids them to be made on the basis of race. This difference is the key to the answer to the question, is ERA needed?

For example, the Constitution did not protect a woman's right to vote until a special constitutional amendment was passed. In an early test case, the U.S. Supreme Court said that the Constitution only guaranteed the protection of those rights that already existed, and, if you are a woman, voting was not one of them.

What happened to the woman who tried? Susan B. Anthony was charged and brought before a criminal court for a jury trial on the crime of self-enfranchisement; this crime carried a potential 3-year jail sentence. When it appeared that her attorney, who was obviously an indefatigable talker, might dissuade the jury with his 3 hours of argument, the judge drew his previously prepared written opinion from his pocket and read it. He found that the 14th amendment did not apply to the issue at hand. He directed the jury to bring in a guilty verdict and then sent them all home.

The same reasoning held in a case that denied women the right to practice law. In that case, the U.S. Supreme Court said:

> This case assumed that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation or employment in civil life. It cannot be assumed that this has ever been established as one of the fundamental privileges and immunities of sex. On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. The harmony, not to say identity of interests and views which belong or should belong to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.

So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from that of her husband. In other words, no woman could work outside of the home regardless of her personal wishes or her personal problems.

You might ask, what about the poor unfortunates, those unmarried women who did not have another

identity with which to merge? The Supreme Court dealt with that problem. It said:

> That indeed many women are unmarried and not affected by any of the duties, complications and incapacities arising out of the marriage state, but these are merely exceptions to the general rule. The paramount mission and destiny of women are to fulfill the noble and divine offices of wife and mother. This is the law of the Creator. And rules of civil society must be adapted to the general constitution of things and cannot be based upon exceptional cases.

In other words, widows, you are without aid, nor are you to aid yourselves.

Most of these cases occurred long after black men were granted the right to vote and to practice in the professions. In fact, in 1948, a mere 6 years before the historic school desegregation opinion, the Supreme Court said that the State of Michigan could deny women the right to tend bar unless the bar was owned by their husbands or fathers. The women who challenged that law earned their living as bartenders, but the Court said:

> The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the State from drawing a sharp line between the sexes.

Yet 30 years before [in 1918] the Supreme Court had said that the right to work without discrimination on the grounds of race or nationality is "the very essence of the personal freedom and opportunity that is the purpose of the 14th amendment." In other words, the Supreme Court said that it is not permissible to discriminate on the basis of race, but perfectly all right on the basis of sex.

It wasn't until 1971 that the Supreme Court utilized the 14th amendment to strike down law that discriminated on the basis of sex. That year the State of Idaho claimed that in choosing the administrator of an estate, where a man and a woman are equally qualified—that is, of an equal relationship to the deceased—one must always appoint a man. The State's reasoning was that men were generally going to be better qualified because, after all, they have business heads and women do not. Therefore [the reasoning continued], we might as well save the trouble of having a hearing and always appoint a man. The U.S. Supreme Court found that this was an irrational distinction and that women were being denied equal protection of the law. This analysis, however, is almost never used.

The Court has repeatedly declined to look strictly at laws or actions that discriminate on the basis of sex, as opposed to those that discriminate on the basis of race. In fact, in a very recent case, one of the Justices stressed that it would be inappropriate for the Court to do so until the Equal Rights Amendment was passed. Yet, we hear opponents of the Equal Rights Amendment say that we've already got the 14th and 5th amendments, what more do we need? The Supreme Court tells us we need more. We need the ERA.

Long after slavery was abolished, women, especially married women, were denied by law practically all the freedoms that black men were granted after the Civil War. Yet there was not one disability attached to slaves that was not attached to every married woman, whether a housemaid or a millionaire's wife.

The similarity between the legal position of women and slaves was pointed out by the U.S. Supreme Court in 1971:

> Our statute books gradually became laden with the gross stereotype distinctions between the sexes and, indeed, throughout most of the nineteenth century, the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave code. Neither slaves nor women could hold office, serve on juries, bring suit in their own name, and married women traditionally were denied the legal capacity to hold or convey property or serve as legal guardians of their own children.

The inability to own property is one of those very badges and incidents of slavery that we passed the 13th amendment to eradicate. Slaves, as property themselves, could own no property; by virtue of the legal fiction that the husband and wife were one and *the one* was the husband, the legal right to possession and control of all real property owned by the wife was vested in the husband.

During this time, the wife had no claim on the property, and this principle to this day has not been completely eradicated from American law. The Tennessee Supreme Court has ruled that the disabilities of coverture—and coverture is another word for marriage—are still in effect in that State with respect to property held by the married couple.

(I'm always interested that I take this material from a book which is called *The Disabilities of Infancy, Coverture and Idiocy.)*

In the case of personal property, and by personal property we mean everything else, money, furniture, clothes, jewelry, and so forth, a married woman has absolutely no rights, not even the rights that she retains in the estate of her husband. All of the personal property belonging to the wife, or afterward acquired by her, always passed absolutely to the husband. He could dispose of it by will, but she could not. Mr. Justice Douglas pointed out that one of the disabilities of slaves was their inability to hire out their services, and since a married woman's wages were personal property acquired by her during the marriage, this also fell into the general rule and belonged to her husband absolutely.

Another badge or incident of slavery noted by the Court was the inability of slaves to make contracts. Presumably, since slaves didn't own property, they had nothing to contract about. The same problem applies to married women. In one small way, which, of course, was not a small way, the position of a slave was even better than that of a wife, since at least the master could terminate the slave-master relationship; divorce, on the other hand, was not permitted.

Finally, the father alone was guardian of the children, and on his death, guardianship passed to the person he named in his will, not necessarily to the mother. In the event of a dispute between the parents and a separation, the father was entitled to custody of the children, and the mother was denied even visitation rights. This rule was so firmly implemented that it was applied regardless of the mother's innocence or the father's misconduct. In one English case, a court reluctantly ruled that the children must remain with the father even though he had deserted the mother and had taken the children to live with his mistress.

Now, of course, laws have been passed granting certain of these rights to women in various States, but the United States Constitution does not grant them and will not unless the Equal Rights Amendment is passed.

I am Director of the Task Force on Sex Discrimination. We are charged under a Presidential memorandum to examine the entire Federal Government for sex discrimination. We are looking at laws, regulations, issuances, written and unwritten policies; and we are reporting on the remedies necessary to correct the disparities that exist.

We are finding in a number of governmental systems and institutions which provide benefits and impose burdens that usually the benefits are provided to the men and the burdens are imposed on the women. This is because some of these were written down. Some of these disparities are written as statutes, others as regulations. Some are written or unwritten policies, and many exist simply because of the roles women occupy. Why? Who are these women? Many are poor. Many are old. Many have custody of children. They hold the worst jobs. They get fewer promotions. When they retire, they receive the least amount of money.

We found, for example, in the Farmers Home Administration, a Department of Agriculture program that lends money for rural housing and farms, an entire scheme of written regulations that provided benefits to the borrower, always a man, and burden to the woman, the wife. The lender was allowed to consider the industry of the family in deciding whether to grant the loan. The wife was then held personally liable on the loan, but her name was not necessarily on the title. In most cases, no requirement existed that the wife be notified of foreclosure in case the payments were not made on the loan.

We found that in the income tax code women paid a mighty penalty for getting married. We had thought that at least if there were a marriage penalty (a higher tax paid by two working people when they married, than had they remained single), that this was a tax imposed upon higher income couples. We weren't feeling terribly sorry about two doctors who got married and consequently had to pay higher taxes. We found, however, that 68 percent of this tax is being paid by couples earning less than $25,000 a year. Of couples earning less than $10,000 a year, 83 percent of them pay mightily for the privilege of being married.

We found that in the social security system if you had a one-earner family—a working husband and a dependent wife and children—if he earned $800 per month while he was working, upon retirement, he and his wife, with the wife's benefits, would have a total benefit of $786. If that same couple were a two-earner couple, earning the same amount of money but $600 was earned by the husband and $200 was earned by the wife, their benefit at retirement would be cut to $669 per month.

In the U.S. civil service system, we looked at the retirement system and found that poorly paid women—and by that I mean the overwhelming majority of women, since 75 percent of them are in the bottom four grades and only 2 percent of them are in the top three grades—subsidized the retirement benefits of the retired grade 15s. The retirement system of civil service is set up to benefit only long term, highly paid employees; it uses the earnings and the contributions of lower paid, shorter term employees to pay for the retirement of others.

We found that in the Internal Revenue tax forms the wife is held liable for the taxes on income that she didn't earn if she signs a joint return. She's liable for the truth of the statements made on that joint return, even though the chances are she didn't have much to do with filling it out. On the other hand, if there is a deficiency, and the tax isn't paid, she is not required by law to be notified. She's not going to know until the marshal arrives at the door.

We found that it is important to provide employment and training programs for persons on welfare. We find that the law contains a prohibition against sex discrimination right in its body. It says you shall not discriminate on the basis of sex. Yet, the law also says that priority shall be given to unemployed fathers in providing employment training.

We found that there is a welfare program which provides benefits for unemployed fathers, its purpose being to not force the husband/father from the home so that his family would qualify for welfare. If the mother is the breadwinner, however, and she loses her job, *no benefits are paid to her.* That's written in the statute. It's very clear. It's discriminatory on its face.

We found that the Civil Aeronautics Board has permitted a rule to go into effect permitting airlines to deny passage to pregnant women as handicapped persons. Not all pregnant women, mind you, but at the discretion of the pilot, boarding can be denied. We analyzed this and thought maybe they are afraid there will be a medical emergency, which makes some sense. Then we thought about all the other people who have risks for medical emergencies, such as heart conditions, and we noted that certain other categories of people—obese people and frail people—were not considered handicapped for the same purpose. So we don't know what the reason is. The only thing we do know is that when a special fare is provided for the benefit of handicapped persons, pregnant women are not among those who get the special fare.

We have found an entire scheme of discriminatory laws, and I've given you just some examples, from the absurd to those that really cause great hardship to people. They will not be eliminated until the Equal Rights Amendment to the Constitution is passed.

Thank you.