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 [Task Force on Legal Equity for Women] ~~OA 9095~~
Box 10

Date: 5/5/99

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	C. Ronald Kimberling to Mike Uhlmann re: report, 1p	7/14/82	PS <i>ex</i>
2. memo	Jo Ann Gasper to Uhlmann re: Working Group Partial Recommendations, 7p	7/15/82	PS <i>10/5/00</i>

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

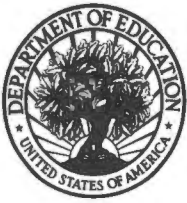
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

Bill

Per Conversation

$$\begin{array}{r} \boxed{6} \\ 26 \\ \hline 19 \\ 19 \\ \hline 8 \quad 156 \\ 8 \\ \hline 76 \end{array}$$

$$\begin{array}{r} 3 \\ 26 \\ \hline 6 \\ \hline 156 \\ \boxed{20} \text{ weeks} \end{array}$$



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

OFFICE OF THE SECRETARY

~~CONFIDENTIAL~~

July 14, 1982

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
E.O. 12958, Sec. 1.3(a)


NOTE TO MIKE UHLMANN:

By NARA MDP Date 9/5/99

Sorry that we seem to miss each other on the phone!

I had called to ask if you'd be willing to meet with Susan Burton of my staff and Joanne Gasper of HHS to discuss the report you recently received from the Working Group on Legal Equity for Women. Both Susan and Joanne were members of that group and feel their dissenting comments were eliminated from the report. They also report that the Working Group Chair has represented some of her personal views as those of the entire Working Group. They have a strong interest in having about 20 minutes of your time to confidentially discuss the Working Group's process and the final product it issued.

Your secretary could make the necessary arrangements directly with Susan Burton. She may be reached at 245-7913.


C. Ronald Kimberling
Executive Secretary

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

JUL 15 1982

MEMORANDUM

TO : Michael Uhlmann, Elizabeth Dole

FROM : Jo Ann Gaspe *JAG*
Deputy Assistant Secretary for Social Services Policy

SUBJECT: Working Group Partial Recommendations Based on Draft Quarterly Report of the Attorney General Under Executive Order 12336, with Additional Suggestions

The following are comments regarding the document transmitted to you by Barbara Honegger on June 29.

1. Action to facilitate the staffing of Executive Order 12336

The title of the issue paper is inappropriate and self-serving and suggests that the goal of reviewing regulations for potential discriminatory provisions is to increase Justice Department staff.

No evidence is presented in this issue paper to indicate that a current problem exists concerning gender inequities in proposed Federal regulations. Routine Department of Health and Human Services analysis of the impact of all regulations now includes the consideration of any differential impact on a specific group. During the past year, no gender discriminatory language or effect has been identified in regulations promulgated by this Department, which amounts for a substantial fraction of total Federal regulations. Without a substantiated government-wide problem, no action is needed.

If a real problem does exist, this paper recommends the wrong solutions. The Department of Justice proposes to review only "major" NPRMs. Very few regulations are major regulations. Obviously, the potential for gender discriminatory provisions is not limited to major regulations, and the vast majority of regulations would still not be reviewed under the options proposed.

If a problem does exist, we suggest two possible solutions:

- The Director of the Office of Management and Budget should notify all Federal departments and agencies to pay special attention to this issue in the review of all regulations and to report any problems to the appropriate office in the Department of Justice.

- The Department of Justice staff person assigned to this function can read all Federal Register NPRMs each day in a few hours, and if any gender based inequities are identified, initiate appropriate formal or informal comments from the Department of Justice to the proposing agency.

2. Social Security: Earning Sharing Proposal

The options presented to the Cabinet Council on Legal Policy are three variations for sending a particular earnings sharing proposal for social security to the National Commission on Social Security Reform -- transmit with endorsement; transmit with assurance that the changes are consistent with Administration policy; transmit with no comment. The particular earnings sharing proposal under discussion is one developed by the "Civil Rights Division Task Force" (CRDTF) of the Justice Department; this proposal was recently published in the Attorney General's first quarterly report under Executive Order 12336. Considering the controversial nature of this kind of proposal, a more exhaustive listing of policy choices for the Cabinet Council might have included:

- transmission of the CRDTF proposal with general statements about the differences of opinion and judgment that exist about the seriousness of the perceived equity problems in social security and information about earnings sharing proposals in general and, especially, this particular variant;
- transmission of the CRDTF proposal with a statement of disapproval of its particulars;
- transmission of a statement disapproving the entire concept of earnings sharing in social security;
- not transmitting the CRDTF proposal at all, but instead a statement that the National Commission should be sensitive to equity issues in any long-run redesign of the system's key parameters. That statement might contain appendices outlining the equity issues as perceived from different vantage points and the different approaches, including earnings sharing, that have been put forward from time to time.

Because of the many problems and issues that the concept of earnings sharing in social security raises, we recommend the last option outlined above, i.e., not transmitting the specific CRDTF proposal at all. Some of those problems and issues are listed below.

To the best of our knowledge, the Civil Rights Division Task Force has engaged in no formal discussions with either the Social Security Administration or components of the DHHS Office of the Secretary in developing their latest version of earnings sharing. (Apparently, they also have ignored all the problems raised in a 1980 SSA report concerning an even more limited earnings sharing proposal made by the 1979 Advisory Council.)

The National Commission is already very well equipped to consider questions of equity in social security. SSA staff who have been detailed to it include individuals who, to a degree unmatched by others, are expert on the general subject of horizontal equity in social security and the specific issues in various earnings sharing proposals.

Issues and Problems with Earnings Sharing

Earnings sharing is a concept for organizing the distribution of benefits within social security. It is, however, a very general concept. In attempting to work out its details, very specific choices have to be made, which choices involve complex social policies. The Task Force's particular proposal presumes a great many of those complex choices, e.g., inheritance of earnings credits by divorced spouses, the non-inheritance of credits earned outside any marriage, that the disability of a homemaker should become an insurable event in social security. There exists a substantial literature on these questions both within the earnings sharing context and, more generally, within the context of discussions of alternative proposals. An excellent summary volume is A Challenge to Social Security: The Changing Roles of Women and Men in American Society, edited by Burkhauser and Holden, Academic Press, 1982. Before the Administration undertakes any actions in this area, it should consult that literature and review all the prior proposals made in this area. Below are just some of the issues to be considered:

- The perceived problem of inequity between one and two-earner couples depends critically on one's measure of equity. Because women workers benefits are increasingly dominating their ancillary entitlements as spouses, many have argued that the problem -- if, indeed, it is a problem -- is diminishing rapidly. (Some have concluded that this phenomenon will accelerate at an even more rapid rate than now officially estimated.) Thus, it is not clear that equity demands a change in the program. The argument that the dual entitlement rules operate as a labor disincentive is belied by the very substantial increase in the labor force participation of women in recent years.

- The perceived inequity between one and two earner couples in retirement could be more easily solved, and at substantially less cost, by phasing down the dependent spouse's benefit percentage from its current 50% to around 35% — just enough to give the tilt in the PIA formula twice to the one-earner couple so that it is treated the same as the two-earner couple with the same earnings history. (Some would argue that even this reduction for one earner families would be anti-family and, therefore, not consistent with this Administration's pro-family stance).
- It should be recalled that the system is in financial trouble in the 80's, and it is not evident that the projected surpluses in the 90's and early 21st century should be spent on a costly transition scheme as outlined in the Task Force proposal. The surpluses may be necessary to ease the transition to a new, higher dependency ratio in the later 21st century.
- It is not evident that only the survivors of some, not all, two-earner couples should be made better off as happens in this particular earnings sharing proposal. If poverty among aged widows is a problem — and, arguably, it continues to be — then perhaps an even greater general portion of the social security system's benefits should be reallocated toward very old surviving spouses. Within that group of older beneficiaries it is not clear that one sub-group is more deserving than another.
- The system contains the current anomaly that a surviving divorced spouse is better off when her former spouse — usually a man with whom she has no continuing economic or social relationship — dies. By allowing inheritance of wage credits to divorced surviving spouses, that anomaly would be continued and enhanced. This is not a necessary feature of earnings sharing, and should be separately assessed.
- This particular proposal would also make various surviving spouses much worse off relative to the current system — thus, defeating the proposal's purported primary objective. For example, by not allowing the last surviving spouse to inherit wage credits of the decedent earned outside any marriage, those credits disappear from any calculation and, in comparison to current law, many surviving spouses would be substantially worse off.
- This particular earnings proposal apparently (details are sketchy) would have effects on young survivors and disability benefits that might be unintended and, if separately considered, judged undesirable. See the 1980 SSA report on the 1979 Advisory Council proposal.

- Because we lack specifics, we are uncertain how the plan would address the retirement of different spouses who are not the same age and how that would interact with the so-called retirement test, especially for those between ages 62 and 65. Some variants of this proposal could create increased labor force disincentives in that critical age range.
- Most earnings sharing proposals demand coverage of currently uncovered, especially government, workers. That may or may not be a good idea, but it should be judged on its own merits.
- The current system does not well handle divorce, but there do exist alternatives to full-scale (or even limited) earnings sharing proposals to address that problem.

Finally, a basic presumption in the discussion surrounding this CRDTF proposal should be addressed -- that the system is unfair to women, especially working women. The system almost entirely ignores age distinctions in calculating both young survivors protection and aged survivors benefits. In distinction to systems that would take combined life expectancies into account, the current system has a substantial and inherent bias to the benefit of women. That bias may reflect a general social judgment to allocate benefits to those whom, on average, society believes need them more than others. It would be wrong, however, to think that bias is anything but extremely favorable to women as a class.

6. Gender Equity for Women Business Owners Doing Business with the Federal Government

We would recommend that the age from contracting be age 18 for both men and women, since this is more consistent with other Federal statutes and regulations regarding the emancipation of minors.

7. Equal Equal Opportunity for Women Small Business Owners Wishing to do Business with the Federal Government

The materials presented by the Justice Department present evidence of Congressional intent. The background paper references sex discrimination conducted under the Carter Administration. Since this Administration is unequivocally committed to the advancement of women, it is hard to accept that this issue had not already been administratively remedied by this Administration.

9. Elimination of Gender Discrimination in Federal Programs and Activities Due to the use of Sex-based Actuarial Tables

10. Elimination of Use of Sex-based Actuarial Data in Determining Payments to Health Maintenance Organizations

Our comments on issues 9 and 10 are consolidated since the issue is similar.

The implications of the issues raised under 9 and 10 are not clearly spelled out. In general, in insurance and annuity calculations, companies attempt to find easily measurable characteristics which predict well how long an individual will live. One that has been found and tested is gender. When two individuals are otherwise similar, including age, health status, job pressure, marital status, etc., but one is male and the other female, the probabilities are high that the female will outlive the male. Hence it will cost more to pay the woman a pension if both man and woman retire at the same age. On the other hand, the woman will pay premiums longer and earn interest longer on those premiums if both buy life insurance at the same age. These differences have long been recognized in insurance and pension computations in private industry. They were formerly recognized in such calculations in government; legislation over the last several years has eliminated most separate sex-based actuarial tables in government.

Elimination of the sex-based tables transfers income from men to women in the case of pensions, and from women to men in the case of life insurance. Men pay more than an "actuarially fair" premium for pension benefits, and women pay less; women pay more than an "actuarially fair" premium for life insurance, and men pay less. To say, as the issue paper does, that the use of gender-based actuarial tables has an "inevitable discriminatory effect" is misleading and wrong, as the authors clearly are using discrimination in its pejorative sense; that is, in the sense of actions which treat people differently, when there is no real grounds for the separate treatment. In the case of gender-based tables, there is a real basis in insurance and pension experience. For any moderately large group of people with otherwise similar characteristics, the gender-based actuarial tables will produce a careful balancing of premiums and payments, and this balancing is time-tested and accurate. Hence it differs from job discrimination, or discrimination in education or housing, areas in which gender has been shown to have little real effect for otherwise similar individuals.

For this reason, the analogy to job quotas by sex is not really an accurate one, and the further comments on life-shortening illnesses and perfect driving records are not apropos. It is possible that people with life-shortening illnesses should be paid different annuities than those without; this issue does not deal with that, but whether men and women in equivalent circumstances should be treated differently. Certainly, men with perfect driving records should be (and are) treated differently than men with poor driving records; at issue is whether men should be treated differently than women with similar driving records, and automobile insurance experience indicates they should, in an "actuarially fair" sense.

To comment specifically on the issues at hand; if the Pension Benefit Guarantee Corporation is valuing the assets of a terminated pension plan, and the pension plan provided for separate benefit rates for men and women, it should be desirable to use gender-based tables in valuation. If the plan had continued, benefits would have been paid from such tables. Why should the Federal insurance program alter those terms, on which the employment contract had been based? For the IRS changes, there is no reason a priori to favor one position or the other. If the current provisions result in smaller periodic annuities for women and smaller allowable deductions for women than for men, then changing the provisions will transfer some income from men to women. The decision should be made on the grounds that this is a desirable transfer, not because of negative feelings about discrimination or the mistaken argument that this is similar to "quotas" in jobs, education or housing.

On issue 10, concerning payments to HMOs, gender-based tables for health insurance also have sound actuarial backing. Some of the differences arise from maternity costs, but differences at older ages in susceptibility to certain illnesses also affect costs. As before, if the use of gender-based tables are eliminated, there will be some transfer from men to women and vice-versa. The desirability of these transfers should be the basis for decision, rather than charges of discrimination. Acceptance of an endorsement of HR 100 implies that the Cabinet Council on Legal Policy wishes to endorse the requirement of transfer from men to women in private pension programs, and from women to men in private life insurance programs.

11. Elimination of Sex Discrimination in Farmer's Home Administration State Supplements Consistent with Effected Reforms in FMHA Rules and Regulations

We defer to the Farmer's Home Administration.

12. Elimination of Gender Inequities in U.S. Code Relating to the Immigration and Naturalization Service

We defer to the Justice Department on this issue.

cc: Barbara Honegger



JUL 8 1982

MEMORANDUM

TO: Barbara Honegger

FROM:  Jo Ann Gasper, Deputy Assistant Secretary
for Social Services Policy

SUBJECT: Working Group Partial Recommendation Based on Draft
Quarterly Report of the Attorney General Under
Executive Order 12336 with Additional Suggestions

I have just received the above report and would like to point out an erroneous statement under The Department of Health and Human Services.

#17 (see page 6): 42 U.S.C. 633. The position should state that our recommendation would be to do nothing since the Administration has proposed zero funding in 1973, thus the issue would go away.

The comments which you included in the report was a further discussion of what would be the political implications of attempting a change. As you agreed, given a family with both mother and father present and both parents able to work and the Administration's support of the traditional family, this Administration would support priority to fathers. For the Administration not to take a position supporting the traditional family would have adverse political ramifications among those people who elected and support the President.

cc: Michael Uhlmann
Elizabeth Dole

THE WHITE HOUSE
WASHINGTON

Date: 9/11/82

FOR: Bill Barry
FROM: Diana Lorano

For your information

Per our conversation

Other:

file
women

THE WHITE HOUSE

WASHINGTON

August 7, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

FROM: DIANA LOZANO *Diana*

SUBJECT: Qs and As on the Task Force on Legal Equity
for Women

I have been working with Linda McCann in the Justice Department's Public Affairs office on a set of questions and answers concerning the Legal Equity Task Force. I had hoped to have them in hand before this, but they were just completed.

Two documents are attached. The first is a set of questions addressing the entire process set up under E.O. 12336. I feel these will be very useful in the development of fact sheets and in answering press inquiries. The second document is a set of Qs and As specifically addressing the Sarah McClendon comments during the President's July 28 press conference. Events have already passed us by on these, it appears.

The answers you see have been developed by Linda and me. As far as I know, they have not yet been officially cleared by either Brad Reynolds or by OPD. I am sending them to Mike Uhlmann for review, but they should probably be formally staffed out through Dick Darman.

QUESTIONS AND ANSWERS REGARDING
THE PROJECT ON
LEGAL EQUITY FOR WOMEN

Categories

1. Purpose
2. Process
3. Personnel
4. Content
5. Cost
6. Perceived competition with other Administration policies and goals
7. Elimination of Carter Administration bodies in the same executive order establishing the Task Force on Legal Equity for Women

1. Purpose

Q. What is the purpose of the Task Force on Legal Equity for Women?

A. The purpose is to implement changes in Federal regulations and policies which have been determined to discriminate unfairly against women.

Q. Why was the Task Force formed?

A. The President created the Task Force because he is committed to assuring equal rights for women. *(Campaign promise)*
Fuel bills
Amendment?

Q. Isn't this just an effort to placate women and obfuscate the President's opposition to the ERA?

A. ~~Absolutely~~ ^{No.} not. This effort to change discriminatory federal laws, regulations, and policies stands on its own merit, ^{as} ~~this is~~ part of the President's plan to secure legal equity for women. The President feels that the combination of the Project on Legal Equity for Women, the Fifty States Project and working with Congress is the best way to ensure equal rights for women.

2. Process

Q. What is the actual process for getting a regulation identified and changed by this Executive Order?

A. The three-part process is as follows:

Step 1: The identification of remaining federal laws, regulations, policies and practices which unjustifiably differentiate or which effectively discriminate on the basis of sex. The Attorney General is charged with reporting the findings of this identification effort to the President and Cabinet Council on Legal Policy on a quarterly basis.

Step 2: Consists of the decision-making by the President on the advice and counsel of the Cabinet Council on Legal Policy.

Step 3 is the implementation of the President's decisions regarding changes in regulations, policies and practices of federal departments and agencies, coordinated by the appropriate member of the Task Force on Legal Equity for Women, the implementing body established by Executive Order 12336. (The Cabinet Council may also recommend changes in federal statutes, in which case the appropriate department or agency may draft legislation in coordination with the White House Office of Legislative Affairs.)

The final decision on what to do in each case is, of course, the President's, based on input from the Attorney General, the President's counsel and the Cabinet Council on Legal Policy.

Q. What is the specific process involved after the President decides that a particular regulatory change should be made?

A. When the President makes a decision that a particular regulation should be changed, eliminated, or added, the head of the department or agency affected will be notified and given a chance to comment. Following his or her comment, the proposed changes will be published in the Federal Register and input from the public will be reviewed and/or assimilated. The final Presidential directive for regulatory change will then be sent to the department head affected. The job of the Task Force members is to ensure timely compliance with the President's directives, and to report on progress within their department and agencies to the President, through the Task Force chairman, on a periodic basis.

Q. Who will make the ultimate decision as to which federal laws and regulations will be forwarded to the President and to the Cabinet Council on Legal Policy?

A. The Executive Order specifically names the Attorney General as responsible for the identification function. The Assistant Attorney General for Civil Rights is his designee. In addition, the Attorney General has responsibility and authority as chairman of the Cabinet Council on Legal Policy.

Q. With regard to the procedures for changing or eliminating a federal regulation, what are the specific requirements of the Federal Administrative Procedures Act?

A. Once the President has informed his Cabinet Secretary or Agency Administrator of his decision on a particular regulation or group of regulations, the Secretary or Administrator is required by the Federal Administrative Procedures Act to report proposed changes in the Federal Register for a minimum of 30 days prior to the changes going into effect to provide ample time for input from the public. Thus, concerned individuals and citizen groups have a real chance to know what changes are being proposed and to make specific suggestions for modification.

Q. How does the Task Force actually work to eliminate sex-discriminatory federal laws?

A. The Task Force does not have the authority to change federal laws, as only Congress can do that. Federal regulations, however, are written to carry out laws. The Task Force is an implementing body facilitating changes in Federal regulations.

Q. Will the Task Force recommend legislative changes?

A. No. The Task Force is an implementing, not an advisory, body.

Q. How will the laws get changed?

A. One of the President's campaign promises was to work with Congress to identify sex-discriminatory laws and change them. To be specific, Section 2C of Executive Order 12335 charges the Attorney General with the responsibility for continuing and completing the process of identifying sex-discriminatory federal laws and regulations, and reporting them to the President on a quarterly basis. These reports go to the Cabinet Council on Legal Policy. On the basis of information provided in these reports the Cabinet Council will make its recommendations to the President who has the final decision, as to what to request of Congress or what proposed legislation to bring forward. Following the President's decision to propose a change in a law, the White House Office of Congressional Relations will work with members of Congress to seek enactment of the proposal.

redundant?

Q. Why was this method chosen? Wouldn't it be simpler and more expeditious to order Cabinet officers to sort out discriminatory regulations and change them in their departments and agencies?

A. This Executive Order gives high priority to the project. It illustrates the fact that the President expects action in a concrete, timely, and thorough way. President Carter employed the method of charging respective agency heads with the task of identifying sex-discriminatory regulations, policies and practices, and reporting them to the Justice Department. Some departments complied in a meaningful way; others, however, did not. Though a great deal has been accomplished during the past two administrations, the task is as yet unfinished. The "instruction" has been thus elevated to an Executive Order providing top-level Cabinet Council review and recommendations. The added attention should greatly facilitate the completion of the important task.

Q. Why will the Department of Justice have greater success under this administration than under the previous administration in its effort to get departments and agencies to comply with its requests for information about sex-discriminatory regulations, policies and practices?

A. The initiative embodied in the Presidential directive of the previous administration has been elevated to law through the Executive Order. In addition, high-ranking officials (members of the Task Force) in the departments and agencies, will be reporting to the President regarding the progress of this effort.

Q. Will the affected departments and agencies have a chance to review and comment on proposed regulatory changes which apply to them before the President makes a decision?

A. Yes. This is part of the Cabinet Council process. In addition, the departments and agencies must propose and promulgate the rules.

Q. What safeguards are in place to ensure that the proposed regulatory changes are, in fact, made?

A. That is the primary function of the Task Force members; namely, to make certain that the changes are made and are made expeditiously. After the proposed changes are sent to the department or agency, the Task Force member in that department or agency will report back to the President on a regular basis.

Q. What happens to discriminatory laws and regulations which are not sent on to the President?

A. It is the Task of the Civil Rights Division to ensure that the Cabinet Council on Legal Policy is apprised of all laws and regulations which discriminate or unfairly differentiate on the basis of sex. The Cabinet Council then makes certain that such laws and regulations are brought to the President's attention.

Q. Will the Justice Department's reports to the President and the Cabinet Council on Legal Policy contain any recommendations for

proposed language changes in federal regulations, or is this a function of the Cabinet Council on Legal Policy?

A. The role of the Department of Justice is to identify, ~~and~~ not to recommend. Laws and regulations which are identified may discriminate on the basis of sex in their actual language, or in their effect, or both. The Attorney General may, however, propose alternative language to the President and the Cabinet Council either in all cases or in selected circumstances.

3. PERSONNEL

Q. What were the criteria for selection of members for the Task Force?

A. In most cases, members of the Task Force are at the Assistant Secretary level. These members generally have a direct reporting relationship with the agency head.

Q. If only 21 departments and agencies are covered by having representatives on the Task Force, does that mean sex discriminatory regulations won't be addressed in other agencies?

A. The executive order lists 21 major departments and agencies which have members participating directly on the Task Force. It does not, however, limit the process of identification and correction just to these departments and agencies. The Justice Department is charged with identifying all instances of sex-discriminatory regulations, policies and practices, as well as laws throughout the government.

The President wants, at first, to cover the major departments and agencies where changes will have the most immediate effect. Other agencies may later be asked to have a member on the Task Force, especially if a serious area of discrimination is discovered in that agency by the Department of Justice's search. Initially, the President wants to keep the number small enough to enhance communication and action.

Q. How many women are on the Task Force?

A. Fourteen of the 21 members of the Task Force are women and key officials in the Administration.

Q. What were the criteria for selection of a chairperson for the Task Force.

A. The chairperson was selected by the President from among the members of the Task Force. The Assistant Attorney General for Land and Natural Resources, Carol Dinkins, was chosen by the President to chair the Task Force. Her legal background and her position in the Department of Justice, where the central task of identifying the laws and regulations takes place, ideally suit her to manage the functions of the Task Force.

Q. Does Ms. Dinkins have any particular expertise or experience with women's issues, which would qualify her for this position?

A. Ms. Dinkins, like the other Task Force members, is qualified because of her high-ranking position and regular access to the head of her department. Each member of the Task Force brings his or her own experience and expertise to the job. She is an attorney; therefore, she is familiar with dealing with laws and regulations.

Q. Who at the Department of Justice is responsible for the review of federal laws, regulations, policies and practices?

A. The Executive Order charges the Attorney General with this responsibility. The Attorney General has delegated the task to the Assistant Attorney General for Civil Rights, William Bradford Reynolds.

4. CONTENT

Q. Why is the Task Force just for women? Isn't this an example of reverse discrimination?

A. No. The Task Force is concerned with the elimination of discrimination and unfair differentiation on the basis of sex in the laws, regulations, policies and practices of the Federal government. Women are highlighted in the work of the Task Force because of past discrimination. Identified examples of discrimination against men ^{may} ~~will~~ also be addressed.

Q. Will the Task Force propose any special "affirmative action" regulations for women?

A. No. The Task Force does not propose regulations. It's job is only to implement changes ordered by the President in already-existing regulations.

5. COST

Q. The executive order provides that agencies and departments will provide administrative support. What is the cost of all this? Isn't that cost something that the President wants to eliminate?

A. The Task Force and its operations will not cost the government any money beyond what is already budgeted. The members of the Task Force all are high-ranking officials who have offered to add this important function to their present responsibilities.

6. PERCEIVED COMPETITION WITH OTHER ADMINISTRATION GOALS AND POLICIES

Q. Isn't the identification of discriminatory federal laws and regulations something the President Carter initiated?

A. No. Actually, the concept and the original presidential initiative which led to the Task Force on sex discrimination at the Department of Justice was undertaken by President Ford. ~~So the idea originated with the previous Republican administration.~~ President Carter carried it forward.

Q. The President pledged to eliminate a number of boards and commissions. Isn't this just another wasteful bureaucratic body?

A. A number of boards and commissions have been reviewed to determine whether they have outlived their usefulness. Many have been retained as they are fulfilling specific important objectives. The Task Force on Legal Equity for Women fulfills an explicit campaign promise of the President's, and performs an essential function which must be addressed at the federal level.

PRESIDENTIAL PRESS CONFERENCE
July 28, 1982

Please find attached a clipping from The New York Times which is a transcript of the dialog between President Reagan and Mrs. Sarah McClendon. The facts regarding this report are as follows:

1. The First Quarterly Report of the Attorney General to the President and the Cabinet Council on Legal Policy has been transmitted to the Cabinet Council on July 28, 1982. The President has been verbally briefed on the report, but at this time it is under review by the Cabinet Council. Following the review, the Cabinet Council will make recommendations either in a Cabinet Council or separately. Those recommendations approved by the President will be forwarded to the Task Force.

2. The quarterly report did not deal with the issue of sexual harrassment of women.

3. The report had not been "waiting to get out for years" as Mrs. McClendon maintained. The applicable Executive Order (12336) had been signed on December 21, 1981. The report in question was the first quarterly report.

4. Sarah McClendon stated that President Reagan's Task Force was started by President Ford and funded by President Carter. Ford directed the Attorney General to come up with a plan to bring the federal government's laws, regulations, policies and practices into conformity with principles of non-discrimination on the basis of sex. President Carter established a task force which continued to work on the project. President Reagan established his own Task Force by executive order on December 21, 1981.

5. The Task was not "finished a long time ago" as Mrs. McClendon alleged. This was only the first report in an ongoing process.

A. Sarah.

Equal Rights for Women

Q. Mr. President, you have a report before you that was given to you from the Justice Department. It shows the discrimination that actually exists on the books in Federal agencies and departments against women. Now, you're committed to take care of legal equity for women. And this report has not been made public. Would you please let us see it? And will you do something about it?

A. It hasn't reached me yet.

Q. Yes sir, it did. It came to you in the Cabinet meeting and you admitted at your last press conference that you had it. And I have checked this out thoroughly. It came from [drowned out by laughter]. Yes sir, it came from Assistant Secretary [more laughter]...

A. Well, Sarah, let me tell you this: First of all, I don't know of any Administration that in the first 16 months that it was here placed as many women — certainly not the last Administration...

Q. Sir, that's fine, that's fine.

A. In high positions, a great number of them requiring confirmation and that is continuing along that line and that has a task force now, in the Justice Department, there is a task force that is working on this very question.

Q. You've got it. You've got part of it. You've got the first quarter and it was given to you at the Cabinet meeting by Brad Reynolds. And it says there's been a lot of sex harrassment of women.

A. Harrassment?

Q. And I suggest that you [laughter] looked into that and you talked about it at the Cabinet meeting. [drowned out]

A. Now Sarah, just a minute here with the discussion or we'll be getting an R rating.

Q. I hope you'll look into it and let us see the report. It's been waiting to get out for years.

A. No, and what we're doing, the task force that I've spoken about is one that is aimed, just as I have asked 50 governors, and they have all appointed a representative to go into all the statutes they can find in their states, as we did in California when I was Governor.

Q. Sir that's ... that's not right. Your task force is one that was started by Jerry Ford. It was funded by Carter.

A. That's right.

Q. And you kept it on after...

A. That's right and I have given them...

Q. And you said in December that you would do something legal equity for women. Since your last Cabinet meeting you've got part of this report.

A. Helen is just trying to get up here but, Helen, before you do, let me just tell you something: Yes, I do not claim that I started the task force. I have told the task force to continue and what they should do now is look at statutes, look at laws, look at regulations and any place they find anything in our Government that is discriminatory — just as we found it in California when we started looking at that — to eliminate those, just as we're asking the 50 states to do it. And I have...

Q. Well they finished the job, sir, when are you going to let them see the report.

A. What?

Q. They finished the job, finished it a long time ago. When you going to let us see the report?

A. I'll look into that and see what it is. But I don't recall anything that really had an X rating that ever was handed to me.

Q. What is the purpose of the Project on Legal Equity for Women?

A. The purpose of the Project on Legal Equity for Women is to implement changes in federal laws, regulations, policies and practices which discriminate or unfairly differentiate on the basis of sex.

Q. Isn't this an effort to placate women and obfuscate the President's opposition to the ERA?

A. ^{No.} ~~Absolutely not.~~ This effort to change discriminatory federal laws, regulations, policies and practices stands on its own merit, ^{and} This is part of the President's plan to secure legal equity for women. The President feels that a combination of the Task Force on Legal Equity for Women, the **Fifty States** Project, and working with Congress is the best way to ensure equal rights for women.

Q. What is the actual process for getting a regulation or statute identified and changed by the Executive Order?

A. Under Section 2C of the Executive Order creating the Task Force on Legal Equity for Women, the Justice Department is mandated to continue and to complete its identification of sex-discriminatory federal regulations and policies and statutes. Identified regulations and statutes will then be forwarded in quarterly reports to the President through the Cabinet Council on Legal Policy for review at a subsequent Cabinet Council meeting. The Cabinet Council will then make its recommendations to the President, either in a Cabinet Council meeting, or separately.

The final decision on what to do in each case is, of course, the President's, based on the combined input from the Attorney General, the President's legal office, and the Cabinet Council on Legal Policy.

When the President makes a decision that a particular regulation should be changed, eliminated, or added, the head of the department or agency affected will be notified and given a chance to comment. Following his or her comment, the proposed changes will be published in the Federal Register, and input from the public will be reviewed. The final Presidential directive for regulatory change will then be sent to the department head affected and to the Task Force on Legal Equity

for Women, whose members will work with the department head affected to implement the changes. The job of the Task Force members is to ensure timely compliance with the President's directives, and to report on progress within their departments and agencies to the President, through the Task Force Chair, on a periodic basis.

If the President decides that a particular statute should be changed, he will order the Office of Congressional Relations at the White House to draft appropriate legislation.

Q. What was the report that Sarah McClendon asked the President to release at the July 28 press conference?

A. Sarah McClendon was inquiring about the First Quarterly Report of the Attorney General to the President and the Cabinet Council on Legal Policy as required by Executive Order 12336.

Q. Was this report a report on sexual harassment in the Federal Government?

A. No. The Attorney General had been assigned responsibility to complete a review of Federal laws, regulations, policies, and practices, and to identify and report to the President on any language or provision which tolerates discrimination on the basis of sex. With regard to contents, the report included reviews of Federal statutes, agency rules, regulations, and policies, and brief discussions of other issues of general importance to women. These issues include:

1. Economic status of women and poverty levels.
2. Economic Recovery Tax Acts of 1981
3. The Marriage Penalty
4. Child and dependent
5. The widow's tax
6. Employee pension plans
7. Social Security

Q. Why did the President appear to be unaware that the report had reached him?

A. On June 28, 1982, the report was transmitted to the President through the Cabinet Council on Legal Policy. William Bradford Reynolds, the Assistant Attorney General for the Civil Rights Division, had verbally briefed the President on the contents of the report, but at this time, the report is under review by the Cabinet Council.

Q. Why wasn't the report released?

A. It was not considered appropriate to release the report prematurely, as it is a working document currently under review by the Cabinet Council.

Q. Has the quarterly report subsequently been made public as some news articles suggest?

A. The press has been allowed to read the report, though the document has not been officially released.

Q. Is it true that Sarah McClendon has filed an FOI request for the report?

A. Mrs. McClendon's attorney filed an FOI request on her behalf on August 3, 1982.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 11/17/82 ACTION/CONCURRENCE/COMMENT DUE BY: NOON 11/19/82

SUBJECT: PROPOSED MEMORANDUM RE TASK FORCE ON LEGAL EQUITY FOR WOMEN

	ACTION	FYI		ACTION	FYI
HARPER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DRUG POLICY	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BARR	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
BLED SOE	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	COBB	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	PROPERTY REVIEW BOARD	<input type="checkbox"/>	<input type="checkbox"/>
DENEND	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
FAIRBANKS	<input type="checkbox"/>	<input type="checkbox"/>	<u>EMILY ROCK</u>	<input type="checkbox"/>	<input type="checkbox"/>
FERRARA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GALEBACH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GARFINKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GUNN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LI	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MONTOYA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ROCK	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ROPER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SMITH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
UHLMANN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

MIKE UHLMANN FOR ACTION

May I please have your comments/approval by NOON 11/19

Judy Johnston 11/17

Edwin L. Harper
 Assistant to the President
 for Policy Development
 (x6515)

Please return this tracking
 sheet with your response

WHITE HOUSE STAFFING MEMORANDUM

DATE: November 17 ACTION/CONCURRENCE/COMMENT DUE BY: NOON 11/19/82

SUBJECT: PROPOSED MEMORANDUM RE TASK FORCE ON LEGAL EQUITY FOR WOMEN

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>HARPER</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DOLE	<input type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

Please provide any comments/recommendations on the proposed memorandum to the departments and agencies by noon, November 19th.


Thank you.

Richard G. Darman
Assistant to the President
(x2702)

Response:

THE WHITE HOUSE
WASHINGTON
November 16, 1982

MEMORANDUM FOR DICK DARMAN
CRAIG FULLER

FROM: ELIZABETH H. DOLE 

SUBJECT: Task Force on Legal Equity

In order to improve the efficiency and responsiveness of the Task Force, a modification of its role is being undertaken to facilitate identification of sex-biased regulations. This change would have the departments and agencies conduct the search rather than rely exclusively on the Civil Rights Division of the Department of Justice. Our objective is to have the search fully completed by 1984, and the aforementioned change will not require a change in the enabling Executive Order (E.O. 12336 of 12/21/81). It would increase the amount of personnel to be brought to bear on completing the task in the target time frame.

I have obtained Fred Fielding's guidance re FACA consideration and his analysis is attached at Tab A.

Would you please circulate the Tab B draft of a Presidential letter to Department and Agency Heads through your appropriate channels. I request input in time to submit the final memorandum for Presidential signature not later than 11/20/82. The Task Force will convene on Monday, November 22, and this new guidance is key to that meeting.

Thank you.

Attachments

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 20, 1982

FOR: RED CAVANEY
DEPUTY ASSISTANT TO THE PRESIDENT
FOR PUBLIC LIAISON

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Changes in Functioning of
Task Force on Legal Equity for Women

In response to your inquiry on the above-referenced matter, the proposed changes in the method by which arguably discriminatory regulations would be identified to this Task Force should not make Task Force meetings subject to "open meeting" requirements of the Federal Advisory Committee Act. Since the Task Force is comprised solely of employees of the Executive Departments and agencies listed in Executive Order No. 12336 (1981), it falls within the express exemption of the Act for "any committee which is composed wholly of full-time officers or employees of the Federal Government." Whether it receives information involving its work from Justice Department employees (as at present) or from other Federal employees (as proposed) should not alter the fact that the Task Force is not an advisory committee subject to the Act, so long as all members of the Task Force are full-time Federal employees.

More generally, there do not appear to be any legal objections to the proposed changes; nor would issuance of an amending Executive Order seem to be required. The present Executive Order does not go into detail on how information will be given to the Task Force, and does not require that identification of discriminatory regulations be done by the Justice Department. Indeed, the Order includes language stating that agency heads will "provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions."

Whether the proposed changes should be adopted is primarily a policy, rather than a legal, matter. In the event the recommendations are approved, however, the draft Presidential memorandum does not appear to present any legal problems.

Let me know if you have any other questions.

cc: James A. Baker III

THE WHITE HOUSE

WASHINGTON

D R A F T

MEMORANDUM FOR THE HEADS OF

DEPARTMENTS AND AGENCIES

SUBJECT: Task Force on Legal Equity for Women

One of the most important promises made by this Administration is our pledge to identify and systematically eliminate regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from federal activities.

Last year I issued Executive Order 12336, which directed the Attorney General to complete the review of federal laws and regulations containing language which unjustifiably discriminates or differentiates on the basis of sex. The Executive Order also created a Task Force on Legal Equity for Women which is responsible for implementing changes ordered by me following review of the Attorney General's report.

To help complete this goal, I am directing the head of each department and agency to complete a review of regulations, policies and practices which contain sex bias. Written reports of your progress shall be submitted on a quarterly basis to the Task Force on Legal Equity for Women via the Task Force member in your department or agency or directly to the Chair in the event a Task Force member is not assigned to your department. The Attorney General will subsequently review the reports and transmit them to the Cabinet Council on Legal Policy for recommendation to me.

I appreciate your immediate attention to this important task. With your participation, we can look forward to the day that full equality before the law is not just an ideal, but a practical reality.