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A Report of the
U.S. Commission on Civil Rights
April 1977

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.
APRIL 1977

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report is an assessment of the status of women under Federal law. It surveys the United States Code identifying sex-based references. The report briefly discusses possible solutions and advocates action on the part of Congress and the President in ending the bias which remains in the law.

As some members of Congress are probably aware, the initial research and draft of this report was developed by contractors, Ruth Bader Ginsberg and Brenda Feigen Fasteau, assisted by a group of Columbia Law School students. That original product, utilized by several committees of the International Women's Year (IWY) project, led to strong recommendations that a comprehensive study of our laws--statutory and regulatory--be completed and a strategy developed to end sex bias in our laws. Former President Ford, in response to IWY, directed the Department of Justice to undertake such a study. The Justice Department study is underway and should not suffer from some of the limitations of this study that we are transmitting to you. Our study is not comprehensive, but it is a guide to you and to the Justice Department for action in erasing sex-based references and sex bias from our most basic laws. This study is current through December 1977.

The report is extensive, but not exhaustive. It is anticipated that the Department of Justice will utilize its resources to elaborate on what the Commission's report surveys. Much of the substantive material is included in Parts I and III. Part II is devoted to a Title-by-Title analysis. The discussion is deliberately brief--the value of Part II is to report or identify the sex-based references in each Title of the United States Code within the limitations set out earlier in the report. Part III,

"Findings and Recommendations," summarizes positions stated earlier in Parts I and II. Part III urges Presidential and congressional action, with strongest emphasis on congressional action.

We urge your consideration of the facts presented and ask for your leadership in ensuring implementation of the recommendations made.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

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ACKNOWLEDGMENTS

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A report prepared under contract no. CR3AK010 by Brenda Feigen-Fasteau, Ruth Bader Ginsburg, and 15 students from the Columbia Law School, New York City was used as the basis for the Commission study. Ms. Ginsburg is professor of law at the Columbia Law School and Ms. Feigen-Fasteau, former director of the American Civil Liberties Union's Women's Rights Project, is a practicing attorney in New York City. The Commission is indebted to them for their work and the work of the Columbia Law School students.

The Commission is also indebted to staff members Shirley Bergert, Claudia Booker, Gladys T. de Chaves, Lucy Edwards, and Gail Gerebenics, and to interns Roger Burke, Catherine Crockett, and Joan Gilmore, students from the Antioch School of Law, Washington, D.C.

Impetus for this study and subsequent consultation was provided by the Commission's Womens' Rights Program Unit.

All the writers are particularly indebted to Laura Chin for her editorial assistance.

Final preparation of this report was the responsibility of Audree B. Holton and Bobby Wortman in the Publications Support Center, Office of Management.

The project was directed and completed under the overall supervision of Lucy Edwards, Assistant General Counsel, Lawrence B. Glick, Acting General Counsel, and Richard Baca, General Counsel.

young. Statutes prohibiting corruption of a minor and sex offenses against a minor should suffice.

Rape

Under 18 U.S.C. §§1153 and 2032, it is a crime for a person to have carnal knowledge of a female not his wife who has not reached 16 years of age.³⁷ "Rape" is defined in 10 U.S.C. §920 in the traditional manner as: "Any person...who commits an act of sexual intercourse with a female not his wife, by force or without her consent, is guilty of rape." The "statutory rape" offense is defined in these sections in much the same way: the victim must be a female and the offender a male, with the current penalty of 15 years imprisonment for a first offense.

These provisions clearly fail to comply with the equal rights principle. They fail to recognize that women of all ages are not the only targets of sexual assault; men and boys can also be the victims of rape. In the case of statutory rape, the immaturity and vulnerability of young people of both sexes could be protected through appropriately drawn, sex-neutral proscriptions. The Model Penal Code and S. 1400 §1633 require a substantial age differential between the offender and victim, thus declaring criminal only those situations in which overbearing or coercion may play a part.

that act. The provisions do not appear sex discriminatory on their face; implementing regulations should not deviate from this neutrality.

Recommendations

18 U.S.C. §3056--Change "wife" and "widow" to "spouse" and "surviving spouse."

18 U.S.C. §714--Amend the statute to provide for a female counterpart to Johnny Horizon; she should promote the same values as he does on an equal basis.

18 U.S.C. §1114--Replace "enlisted man" with "enlisted member" or "enlisted person."

18 U.S.C. §4082--Replace "brother or sister" with "sibling."

18 U.S.C. §§2198 and 3614 -- Eliminate these sections.

18 U.S.C. §2032 -- Eliminate the phrase "carnal knowledge of any female, not his wife who has not attained the age of sixteen years" and substitute a Federal, sex-neutral definition of the offense patterned after S. 1400 §1633: A person is guilty of an offense if he engages in a sexual act with another person, not his spouse, and (1) compels the other person to participate: (A) by force or (B) by threatening or placing the other person in fear that any person will imminently be subjected to death, serious bodily injury, or kidnapping; (2) has substantially impaired the other person's power to appraise or control the conduct by administering or employing a drug or intoxicant without the knowledge or against the will of such other person, or by other means; or (3) the other person is, in fact, less than 12 years old.

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