

Compensation Discrimination and Women's Athletics

The Coaches, The Courts and The Battle

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Introduction

Women's intercollegiate athletics has undergone incredible changes over the last few decades. Yet the spending of university funds on athletic scholarships, operating expenditures, recruiting expenditures, and compensation for coaches, still overwhelmingly favors men's athletics programs. But the proponents of gender equity want these practices stopped.

In the late 1980s and early 1990s the focus had generally been on gender equity and Title IX's impact upon varsity athletic programs and its student athletes. However, times are changing and more focus is not being turned to the coaches of women's intercollegiate athletics. Suddenly, the topic of compensation discrimination and the Federal Equal Pay Act has emerged to the forefront of litigation for women's intercollegiate athletics. At the very heart of the latest issue is the ongoing debate over gender equity, equal pay for equal work, and the worth of the coaches of women's sports versus the worth of the coaches of men's sports.

The reality regarding compensation is something that all women's athletic programs and coaches already know. The majority of coaches in women's athletic programs are grossly underpaid. They rarely receive the same base salary as their male program counterparts, despite their equal duties. The rationalization for differences in pay between men's and women's coaches is often based on the greater responsibilities and higher expectations placed on men's coaches, but that usually comes after the fact, when a pay-inequity complaint ends

up in litigation (Berg, 1994). Proponents of gender equity are demanding multi-year contracts for women's coaches, similar base-pay levels for men's and women's coaches, and greater monetary compensation when they are released from their jobs. Proponents want all women's head coaches to have detailed job descriptions outlining what is expected of them and their programs. (Koerner, 1993). In 1994, the Women's Basketball Coaches Administration (WBCA) released the findings of the first ever major survey conducted in 1993, concerning the differences in the salaries and resources of coaches of men's and women's basketball programs. According to the survey and responses received, head coaches of women's basketball programs averaged only 59% of the base salary of head coaches of men's basketball programs (WBCA, 1993). "Women's basketball coaches' average base salary was found to be \$44,961 compared to head coaches of men's basketball, who averaged a base salary of \$76,566." (WBCA, 1993). Furthermore, the latest salary survey of WBCA members shows 88% of men's head basketball coaches earn in excess of \$60,000 while just 32% of Division I women's basketball coaches make over \$60,000. (USA Today, April 3, 1995, section 5E)

The purpose of this article is to examine several seminal cases in compensation discrimination by looking at the coaches who brought the discrimination actions, the arguments and claims they raised, and the courts and their decisions concerning this issue. Hopefully the article will provide not only a background of the

issue, but also an examination into the question of why coaches in women's athletics are grossly underpaid compared to their male program counterparts, despite their equal duties.

The Equal Pay Act

Compensation discrimination in intercollegiate athletics has been challenged through the use of a variety of laws including Title IX of the Educational Amendments of 1972 and Title VII of the Civil Rights Act of 1964. However, one of the most popular legal weapons used by women's athletic coaches has become the Equal Pay Act of 1963 (29 U.S.C. §206 (d)(1)).

The Equal Pay Act amended the Fair Labor Standards Act of 1938 by inserting a new subsection which prohibited sex-based wage differentials of jobs which required equal skill, effort and responsibility (McDonald, 1980). The Act is not designed to eliminate wage differentials based on factors other than the sex of the employee (McDonald, 1980).

The basic theme underlying the act is "equal pay for equal work." The Act stipulates that an employer must pay equal salaries to men and women holding jobs that require equal skill, effort, and responsibility, and that are performed under similar working conditions (Wong, 1988). Section 1 of the Equal Pay Act of 1963, 29 U.S.C. §206(d)(1) prohibits discrimination:

between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires skill, effort and responsibility, and which are performed under similar working conditions. (29 U.S.C. §206(d)(1)).

In order to file a claim under the Equal Pay Act, an individual must clearly establish that his or her job is substantially equal to that of another employee of the opposite sex, who is being paid more for performing similar services and tasks. The Courts apply a "substantially equal test" for judging the equality of jobs under the Equal Pay Act. "The courts interpret this standard as consistent with the middle course intended by Congress between a requirement that

the jobs in question be exactly alike and a requirement that the jobs in question be exactly alike and a requirement that they merely be comparable. The plaintiff must show that any job differences are so insignificant that they do not contribute to the differences in pay. The courts will look behind job classifications to the substance of the work" (Wong, 1988).

When a court examines an Equal Pay Act claim, it will look at several factors including the overall responsibility of the coaches, revenue producing capabilities, funds generated, spectator interest, pressure to win, experience of the coaches, coaching honors received, and the level of recruiting a coach performs (Wong, & Barr, 1995). "Differing interpretations of the issues by the courts are potentially complicating factors. Pay can be difficult to define when coaches have intricate compensation packages involving a base salary, housing and clothing allowances, summer camp income, attendance guarantees, tournament appearance guarantees and country club memberships" (Wong, & Barr, 1995). On the other hand, a court could find that a discrepancy in pay is justified if the university or institution could show that the compensation is based entirely on differences in training, education, experience, or ability (Wong, & Barr, 1995).

While compensation discrimination claims appear to be on the increase, very few women coaches have challenged their respective institutions on the compensation discrepancies. As a result, the law concerning this issue has not been tested to a great extent. Therefore, an examination of the cases addressing this issue is essential in sorting out the issue and its ramifications.

Case History

Jacobs v. College of William and Mary, 517 F.Supp. 791 (E.D. Virginia, 1980): The case history of compensation discrimination began long before the million dollar law suits of the 1990s. One of the first coaches to challenge the discrimination was Eloise Jacobs at the College of William and Mary in the case of *Jacobs v. College of William and Mary* (517 F.Supp. 791, E.D. Va. 1980). Jacobs, the varsity women's basketball coach, initiated an action against the college

alleging, among other claims, that the college violated the Equal Pay Act because she was not given equal pay for equal work in relation to the men's basketball and baseball programs. She alleged that she had been discriminated against on the basis of her sex and age and that the institution had violated her constitutional rights by failing to give her proper notice that her contract would not be renewed.

The jury returned a verdict in favor of the former coach for \$51,200, but the U.S. District Court for the Eastern District of Virginia found that Jacobs could not succeed on her claim because she could not show that her position was equal to the higher paying positions of head baseball and head basketball coaches in the men's program (*Jacobs v. College of William & Mary*, 1980).

The District Court concluded that in order to make a claim under the Equal Pay Act, the "plaintiff must show, 'that an employer pays different wages to employees of different sexes for equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions'" (*Jacobs v. College of William and Mary*, 1980). According to the court, once the burden of showing an employer pays workers of one sex more than workers of another sex for equal work, the burden shifts to the defendant to show the difference is justified under the Equal Pay Act.

A determination was made by the District Court that any attempt to compare Jacob's skill to her male counter[parts'] abilities was futile. The decision was based on an examination of several factors such as full-time versus part-time teaching; employment length/period; and a revenue versus non-revenue producing program. The court concluded that the differences in the skill, effort, duties, and responsibilities were too numerous to compare. "It is clearly apparent from the undisputed evidence that Parkhill and his assistants, and Jones, had greater responsibilities and were required to exercise greater skill in the performance of their jobs, than was the Plaintiff and the evidence fails to show sex discrimination" (*Jacobs v. College of William and Mary*, 1980).

Sanya Tyler v. Howard University

It was 1993 before the first landmark compensation discrimination case was decided in favor of a women's coach. In 1989, Sanya Tyler, an associate athletic director and successful head women's coach at Howard University, received a salary cut and the loss of all of her administrative and coaching authority without warning. While she and her male counterpart had identical job descriptions, Tyler's complete salary package in 1990 was \$44,000 a year. In contrast, the men's coach earned \$78,000 a year and the use of a car.

Tyler alleged discrimination because of a baseless salary discrepancy between her and the head men's basketball coach. She claimed she performed the same duties and held additional title and responsibilities of associate athletic director, yet was paid far less than her male counterpart and the University had not provided her with a car to use as it had provided for him (Narol, 1994).

On June 24, 1993, Sanya Tyler, an associate athletic director and head women's basketball coach at Howard University won a \$2.4 million dollar judgment (later reduced to \$1.1 million) against the University. Tyler's revised award of over \$1 million dollars consisted of \$138,000 which was for the University's violation of the Equal Pay Act, \$600,000 for lost wages, \$322,000 for emotional distress, and \$54,000 against an individual defendant for defamation. (*NCAA News*, Oct. 2, 1995, p. 6). Howard University moved to set aside the jury verdict.

The decision seemed to be landmark decision for women's collegiate athletic coaches. It appeared that finally, a women's coach received the retribution she deserved and it looked as if women's athletics would begin to climb the ladder of compensation equality. But during the research for this article, the landmark decision was substantially changed. A trial court, for the second consecutive time, reduced the 1993 Tyler award from \$1.6 million to \$250,000.

To begin with, the trial court found that Sanya Tyler had not established a violation of the Equal Pay Act. The court found that the head coach of the men's basketball team had

more experience, skill, and knowledge of the game of basketball than did Tyler, and that there was more pressure placed on the men's coach than on Tyler to generate revenue and to win. (*NCAA News*, Oct. 2, 1995, p. 6).

Second, while the court affirmed the jury's finding of sex discrimination by concluding that a plaintiff could still recover damages for sex discrimination even when jobs are not substantially equal, the trial court agreed with Howard University that Tyler had not shown that the university discriminated against her on the basis of sex in not selecting her as athletics director. The court granted Howard University's motion to set aside this portion of the verdict. The court also found the jury award for sex discrimination excessive and ruled that Howard University was entitled to a new trial solely on the issue of damages unless Tyler accepted a reduction in the amount of damages to \$250,000. (*NCAA News*, Oct. 2, 1995, p. 6).

Third, while the court affirmed the jury's finding of a Title IX violation by citing that the salary differential was a significant factor in female athletes not receiving the same quality and extent of coaching services as did the male basketball players, the court found that the judgment against the individual defendant for defamation was excessive and granted a motion for a new trial, limited to the damages issues, unless Tyler accepted a reduction in the amount of damages from \$54,000 to \$10,000. (*NCAA News*, Oct. 2, 1995, p. 6).

There is no doubt in that the Tyler case and controversy will continue. What started out as a landmark case in compensation discrimination has not turned out to be just another minor pay-off by a university to a women's athletic coach. But while this case has not turned out a million dollar award for women's coaches, it has propelled other women's athletics programs to examine compensation issues and has encouraged other law suits to be brought by collegiate women's coaches who felt they were being unjustly discriminated against.

Stanley v. University of Southern California, 13 F.3d 1313 (9th Cir. 1994).

Once again in 1993, one of the most highly publicized and heavily criticized cases involving the Equal Pay Act was commenced on behalf of Marianne Stanley, head women's basketball coach at the University of Southern California, against the University. Her lawsuit was based in part on the Equal Pay Act as she claimed that the University paid her far less and with fewer benefits than the men's basketball coaches (Narol, 1994). Furthermore, she claimed that she performed the same duties as the men's coaches, requiring substantially the same work, with equal responsibilities (Narol, 1994).

Marianne Stanley was a two-time Kodak All-American Basketball Player and an international women's basketball coach. As USC's women's basketball coach she was responsible for the recruiting of student athletes, administering the basketball program, coaching and disciplining team members, supervising the academic and personal lives of her players, as well as supervising assistant coaches and other personnel. In addition, she directed the women's basketball program and reported directly to the Athletic Director. Stanley coordinated the duties and responsibilities of the entire basketball staff. She prepared and managed every aspect of the budget. Furthermore, she developed the practice plans and scheduling, promoted and directed summer camps, and cultivated community support through season ticket sales, promotions, and fundraising. Finally, during her 17 years as a coach, she won four national championships (Ahman, 1993).

In April of 1993, contract negotiations began between Stanley and University of Southern California Athletic Director, Make Garret. Stanley sought a contract at that time which was equal to the one that USC paid to the men's basketball coach, George Raveling (Ahman, 1993). After contract negotiations fell through, Garrett announced he would not renew Stanley's contract. Stanley initiated her first action in Los Angeles Superior Court, alleging sexual discrimination in violation of: the Equal Pay Act; Title IX of the 1972 Civil Rights Act; Article I, Section 8

of the California Constitution; the Fair Employment and Housing Act; as well as retaliation, wrongful discharge, breach of employment contract, intentional infliction of emotional distress, and conspiracy charges. She also applied for a temporary restraining order to require USC to install her as head coach of the women's basketball team (Ahman, 1993). Her initial lawsuit named both the University of Southern California and Garrett as defendants.

As relief for the alleged conduct, Stanley sought a declaratory judgment that USC's actions constituted sex discrimination, a permanent injunction restraining the Defendants from discrimination and retaliation, an order "requiring immediate installation of plaintiff as Head Coach of Women's Basketball at USC," three million in punitive damages.

The University's position was that there were substantial differences between Raveling's and Stanley's credentials, seniority, and responsibilities (Narol, 1994). Among the differences noted by the University included: greater revenue produced by the men's program; greater media interest in the men's program; greater spectator interest in the men's program; and greater pressure exerted upon Raveling the men's program which created greater public relation responsibilities and speaking engagements. Finally, the University noted that Raveling had been employed longer and won more awards and honors than Stanley (Narol, 1994).

The Los Angeles Superior Court granted Stanley's request for a temporary restraining order, pending a hearing on her motion for a preliminary injunction. The TRO required USC to pay Stanley \$96,000 for her services as coach and all benefits under her initial contract were to remain in effect. The order kept the University from firing Stanley or interfering with her job. However, on the same day the temporary restraining order was issued, USC removed the action to federal court into the District Court for the Central District of California. Meanwhile, Stanley continued employment at the University, pending a hearing on a preliminary injunction (Narol, 1994).

The Federal District Court would later deny Stanley's motion for a preliminary injunction and

rejected her appeal for reinstatement, ruling that men's and women's coaches performed different duties and that disparate compensation alone was not clear evidence of sexual discrimination (Wong, Athletic Business, 1994). Stanley continued to fight and upon USC's hiring of a new women's basketball coach, Stanley submitted an immediate emergency appeal to the United States Supreme Court. Justice Sandra Day O'Connor rejected the appeal without written explanation.

Finally, Stanley sought to appeal the Federal District Court's decision to the United States Court of Appeals for the Ninth Circuit (*Stanley v. University of Southern California*, 13 F.3d 1313, 9th Cir. 1994). The Court of Appeals affirmed the lower courts decision to deny the preliminary injunction. The Ninth Circuit echoed the district court's conclusion that "Coach Stanley had failed to demonstrate that there is a likelihood that she would prevail on the merits of her claim of a denial of equal pay for equal work because she failed to present facts clearly showing that USC was guilty of sex discrimination in its negotiation for a new employment contract" (*Stanley v. USC*, 1994). According to the appellate court, coach Stanley failed to offer proof to contradict USC's evidence that there were differences in the responsibilities between the men's and women's coaching staff. The appellate court stated, "the record shows that there were significant differences between Coach Stanley's and Coach Raveling's public relation skills, credentials, experience, and qualifications; there also were substantial differences between their responsibilities and working conditions. The district court's finding that the head coach positions were not substantially equal is not a 'clear error of judgment'" (*Stanley v. USC*, 1994).

Since the Tyler and Stanley decisions, compensation discrimination claims in intercollegiate athletics seem to be on the increase. Through judicial involvement, the courts have recognized claims like Sanya Tyler's through an examination of the Equal Pay Act. However, as the next case illustrates, courts are not as willing to recognize compensation discrimination claims against individuals based exclusively on Title IX.

Bowers v. Baylor University, 862 F.Supp. 142 (W.D. Texas 1994)

Pam Bowers, Baylor University's head women's basketball coach, sued the university for disparity between her salary and that of Baylor men's basketball coach Darrel Johnson. In 1994, Bowers filed a lawsuit in federal court against the university and other individual administrators and employees of the university for sex discrimination and its prohibition in education programs which receive federal financial assistance (*Bowers v. Baylor, 862 F.Supp. 142, W.D.Tex. 1994*). The suit was designed to profile how Bowers did not get equal treatment but was expected to do essentially the same job as her male counterpart. Bowers claims, however, were asserted exclusively under Title IX and she raised no claim under Title VII or under the Equal Pay Act.

Bowers was hired by Baylor University in 1979 as head women's basketball coach. In 1989, Bowers began to complain about the disparate allocation of resources in the men's and women's basketball programs, including the disparate terms and conditions of her employment versus the terms and conditions of employment by and between Baylor and the men's basketball coach (*Bowers v. Baylor, 1994*). At this time, Bowers began a series of contacts with the Office of Civil Rights of the Department of Education, and the University was aware of her communication with the agency.

After two separate terminations which Bowers contended were in retaliation for exposing alleged irregularities in Baylor's men's programs, Bowers decided to file suit against the University contending that Baylor and various members of its administration violated Title IX by discriminating against her on the basis of sex and by retaliating against her for challenging Baylor's discriminatory actions (*Bowers v. Baylor, 1994*). "Bowers sought a declaratory judgment that Baylor's practices were unlawful, a permanent injunction to reinstate her as Baylor's head women's basketball coach, back pay and benefits, compensatory damages of \$1 million, and punitive damages in excess of \$3 million" (*Bowers v. Baylor, 1994*).

In August of 1994, the District Court held

that Bowers did have a private cause of action for damages under Title IX against Baylor University, but failed to state a cause of action against any individual defendants.

Harker v. Utica College of Syracuse University, 855 F.Supp. 378 (N.D.N.Y. 1995)

One of the most recent cases involving compensation and gender discrimination was brought by Utica College women's basketball coach, Phyllis Harker, who sued the school under Title VII, Title IX, and the Equal Pay Act, alleging not only that the school had discriminated against her based on her gender, but also that her contract was not renewed after she complained about inequities between her job and that of the men's basketball coach. (Hoening, 1995).

Harker was hired as Utica's College's women's basketball coach in 1990. She was hired with nine years of coaching experience, received \$25,000 for ten months of employment as basketball coach, and received an additional \$3,000 for coaching softball. During each year of her employment, Harker received an increase in salary and her compensation in 1992 was over \$29,000. (Hoening, 1995). In comparison, the men's head basketball coach had 17 years of coaching experience (nine years with Utica College, possessed a master's degree, received a salary of \$32,500 a year, was given a monthly auto allowance, and was reimbursed for recruiting expenses. (Hoening, 1995).

In her third year of coaching, Harker began to face questions about her coaching abilities. Evaluations were conducted by the athletic director into the performance of the respective coaches, and in April of 1993, the athletic director informed Harker that their employment contract for the 1994-95 season would not be renewed. It was at this time that Harker expressed her concerns to the Utica College President about the inequalities that allegedly existed between her employment and that of her male counterpart. (Honing, 1995). Utica President, Michael Simpson, followed the recommendations of his athletic director, and confirmed that Harker's employment contract would not be re-

newed. As a result, Harker later resigned.

In April of 1995, the federal district court for the Northern District of New York ruled against Harker. (*Harker v. Utica College of Syracuse*, 855 F.Supp. 378, (N.D.Y.Y. 1995)). The court dismissed her Title VII claim of illegal employer retaliation, Title IX claim, and granted summary judgment for the school on Harker's claim that the school had violated Title VII's prohibition against gender discrimination in employment. Furthermore, the court ruled against Harker on her Equal Pay Act Claim.

While Harker succeeded in proving that Utica paid different salaries to her male counterpart, that Harker and the men's coach performed similar jobs, and that the jobs were conducted under similar working conditions, the court nonetheless found that the College "successfully demonstrated legitimate justifications for the pay differences, including the differences in the two coaches' education, experience, and the length of service with the school." (Houning, 1995).

While the equal pay issue is obviously most prevalent in women's basketball where there is often huge salary and budgetary discrepancies between men's and women's programs, the issue is found throughout women's athletics and across many sports.

Ann Pitts v. University of Oklahoma

An equal pay lawsuit was recently filed by Ann Pitts, women's golf coach at Oklahoma State University where Pitts was paid \$35,712, while men's golf coach Mike Holder was paid \$63,000 (USA Today, Jan. 25, 1994). Pitts' compensation discrimination claim stated that the jobs required equal skill, effort, and responsibility, and were performed under similar working conditions (Wong, & Barr, *Athletic Business*, 1994).

Pitts received a jury award of \$30,000 in back pay and \$6,000 for mental and emotional distress damages, but did not prevail on an Equal Pay Act claim. The jury found that she did not prove that gender was the sole factor affecting the salary. Therefore, the jury held that Pitts was not entitled to the same salary as the men's coach (Wong, & Barr, *Athletic Business*, 1994). An appeal is currently pending.

Katalin Deli v. University of Minnesota, 863 F.Supp. 958 (D. Minn. 1994)

In addition to Pitts' lawsuit, Katalin Deli, the former head coach of the University of Minnesota's women's gymnastic team, recently brought an action against the University, alleging that it improperly paid her less than the head coaches of men's football, hockey and basketball. (*Deli v. University of Minnesota*, 863 F.Supp. 958, D. Minn., 1994). Deli contended that her pay discrepancy constituted prohibited sex discrimination in violation of Title VII of the Civil Rights Act, the Equal Pay Act, and Title IX.

However, unlike the aforementioned claims, Deli based her sex discrimination claim on the contention that the Defendant school discriminated in the compensation it paid her on the basis of the **gender of the athletes she coached** (*Deli v. University of Minnesota*, 1994). The University of Minnesota moved for summary judgment on all three of the claims. The United States District Court dismissed each of Deli's claims and granted summary judgment in favor of the University of Minnesota.

To begin with, the court dismissed the Title VII claim holding, "the statute does not proscribe salary discrimination based on the sex of other persons over whom the employee has supervision or oversight responsibilities ... to be actionable under Title VII, claim must be that claimant was victim of discrimination on basis of claimant's gender, not that of athletes coached by claimant" (*Deli v. University of Minnesota*, 1994). Similarly, the court held that because the Plaintiff's complaint alleged discrimination based on the gender of the athletes she coached, she also failed to state a claim under the Equal Pay Act, and that even if she had alleged discrimination in salary based on her gender, the Stanley decision warranted summary judgment. According to the court, "in order to state an Equal Pay Act claim, a Plaintiff must show her position was substantially equal to that of the comparator positions with respect to each of the foregoing attributes" (*Deli v. University of Minnesota*, 1994). The court found that the Plaintiff's job compared to that of the head coaches of men's basketball, football and hockey were not

substantially equal in terms of responsibility and working conditions.

Finally, the district court dismissed Deli's Title IX claim on the basis that it was barred by the Statute of Limitations and alternatively, that the Title IX claim failed on its merits as the Plaintiff failed to make out a prima facie claim for a Title IX violation. The court looked to the Title IX implementing regulations and found that "unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams alone ... will not constitute noncompliance with Title IX" (*Deli v. University of Minnesota*, 1994). Therefore, the court concluded the University of Minnesota was entitled summary judgment.

Conclusion

These seminal cases, if nothing else, have caused attorneys who represent women's collegiate athletic coaches to ask a new question when they represent their coaching clients in contract talks. According to Martin Greenberg, a director of the National Sports Law Institute at Marquette University, the sports law attorney must now ask the women's coach: "How does your pay compare to the pay of a men's coach and how are your duties either similar or different?" (Trumbull, 1994).

While the recent cases seem to consistently require the women's coaches to prove that they perform substantially equivalent work in order to make the inequity salary claim, the problem remains that the factors that the courts use to make its determination, are nonetheless examined through subjective decision making. The Equal Pay Act only requires that an employer pay equal salaries to men and women holding jobs that require **equal skill, effort and responsibility** and that are performed under similar conditions. But really, what does it mean to possess the same skill, exercise the same effort, and acquire the same responsibility? While courts continue to uphold the decisions of universities to grossly underpay women's coaches, clearly the actions taken by women such as Eloise Jacobs, Sanya Tyler, Marianne Stanley, Pam Bowers, Phyllis Harker, Ann Pitts, and Katalin Deli have now sparked the compensation discrimi-

nation issue and have addressed an issue which will only help to improve collegiate coaching and athletic programs across the country.

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