

Compensation Issues in Coaching of Women's Amateur Sports: A Study of the Legal Precedents and an Evaluation of Three Methods of Relief

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Legal Issues in Sport
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EXECUTIVE SUMMARY

I. BACKGROUND

- A. Title IX has decreased the number of women coaches and administrators.**
 - 1. Male and female athletic departments merged after passage of Title IX, resulting each time in the male becoming the overall head of both departments. Men like to hire men (Old boys network)
 - 2. The extra resources Title IX forced schools to devote to women's athletics caused a large number of part-time positions to become full-time, making the job coaching women's teams more attractive to men.
 - 3. Women suffered from prejudices about their ability to do the job.
- B. Coaches of women's teams have historically been paid less than coaches of men's teams, even if the women's coach is a man.**
 - 1. Two studies done by the Women's Basketball Coaches Association and the University of Texas Athletic Department confirm the disparity in salary.
 - 2. Women's coaches typically receive less bonuses, perks and incentives in contracts.
 - 3. Women's teams receive less support from peripheral services like marketing department and sports information departments.

II. THE EQUAL PAY ACT

- A. Passed in 1963 as an amendment to the Fair Labor Standards Act of 1938.**
- B. Designed to end sex discrimination in employment**
- C. Required employers to pay both men and women the same for jobs which are substantially equal, meaning they require similar equal skill, effort, and responsibility and are performed under similar working conditions.**
- D. There are four affirmative defenses that justify paying men and women different salaries for equal work.**
 - 1. A seniority system
 - 2. A merit system
 - 3. A system that measures earnings by quantity or quality of production
 - 4. A differential based on any factor other than sex.
 - a. This is the most popular defense used in coaching cases.
 - b. They include: Revenue producing capabilities of the men's team, the salary is based on the gender of the team and not the coach, marketplace factors, the difference in media scrutiny, public relations and pressure in the men's game, etc.
- E. The narrow scope of the EPA makes it limited in its effectiveness.**
 - 1. This is because women are often segregated into women's jobs and therefore don't have a male to compare their job to.
 - 2. The EPA is based solely on the sex of the employee and that makes it impossible for a man who coaches a women's teams to seek legal relief for receiving lower wages than a man who coaches a men's teams.

III. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- A. Title VII was passed as a part of the Civil Rights Act of 1964.**

- B. It states that it is an unlawful employment practice for any employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual's race, color, religion, sex, or national origin
- C. Title VII is much broader in scope than the EPA.
- D. The plaintiff must prove Disparate Treatment which is intentional discrimination based on her sex or Disparate Impact which is a neutral policy that has resulted in a disproportionately adverse impact on female coaches.
- E. Title VII also has limitations including it only applies to employers with 15 or more employees and it also precludes members of the same sex seeking relief for receiving lower pay for equal work

IV. COMPARISON OF EQUAL PAY ACT AND TITLE VII

- A. **The Bennett Amendment**
 - 1. Written to prevent a conflict between the statutes nullifying the effectiveness of the EPA.
 - 2. It says it is not unlawful under [Title VII] for any employer to differentiate upon the basis of sex in determining the compensation paid if such differentiation is authorized by the provisions of the EPA.
 - 3. The Supreme Court determined in *Washington v. Gunther* that the Bennett Amendment incorporated only the four affirmative defenses of the EPA into Title VII and not the equal work standard.
- B. **There are numerous other differences between the two statutes**
 - 1. Under the EPA, wages can only be compared within a single establishment, while Title VII does not have any such restriction.
 - 2. The EPA deals strictly with sex and compensation while Title VII involves the other four protected classes and also covers hiring, firing, promotion, etc.
 - 3. The plaintiff maintains the burden of proof throughout the entire Title VII case, while the burden transfers to the defendant in an EPA case after the jobs have been found to be equal.

V. TITLE IX

- A. Passed in 1972 as part of the Education Amendments Act.
- B. Says that No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
- C. Subpart E of the OCR Policy Interpretation says that male and female athletes should be provided with coaching of equivalent quality, nature, and availability.
- D. Supreme Court ruled in *North Haven Board of Education v. Bell* that the HEW regulations in Subpart E were valid ending years of debate.
- E. Title IX prevents wage discrimination in coaching in two ways.
 - 1. It prohibits discrimination against a coach-employee based upon its statutory language.
 - 2. It prohibits compensation practices which result in the denial of equal athletic opportunities for student-athletes
- F. **The advantages of Title IX over Title VII and the EPA include:**
 - 1. Title IX is not restricted to claims based on the sex of the employee. A claim of discrimination based on the gender of the team is sufficient for a Title IX suit
 - 2. Title IX also has no revenue-producing exemption — The OCR has stated that revenue cannot be used as a reason for exemption from the regulations of Title IX and the courts have backed them up

VI. GROUND-BREAKING CASE: TYLER V. HOWARD UNIVERSITY

- A. Sanya Tyler won a \$2.4 million judgement in 1993 in suit against Howard University for violations of the EPA and Title IX.
 - 1. Tyler served as part-time women's basketball coach and full-time Associate Athletic Director at Howard at the time of the suit.
 - 2. Her salary for both jobs was \$15,000 less than men's basketball coach Butch Beard. She earned just over half of Beard's salary (\$44,000, \$78,000) when she became full-time basketball coach.
- B. The judge in the case pared the award to \$250,000, saying that only Title IX was violated.
- C. The case was decided by a jury with no appeal, so no formal judicial opinion interpreting the law exists.
- D. Was the pioneer case for redress in wage discrimination cases under Title IX.
- E. It was the first decided case to focus on the salary issue.
- F. It was also the first time a jury awarded monetary relief in a Title IX athletics case.
- G. It led many schools to increase the salaries of the women's coaches to the same level as the men.
- H. It caused many other coaches to seek legal relief in the courts and gave them hope for success.

VIII. CONCLUSION

I. INTRODUCTION

In July 1992 University of Virginia Athletic Director Jim Copeland increased the salary of Cavalier Women's Basketball Head Coach Debbie Ryan from \$70,000 to \$85,000. This step came four months after Ryan had led the Cavaliers to their third consecutive trip to the NCAA Final Four. Four months later, Ryan received another \$21,000 raise, making her salary \$106,000 a year equaling the salary of Jeff Jones, the men's basketball coach for Virginia (Reid, 1994).

Following Copeland's example, many of the top collegiate programs in the nation elevated the salary of the women's basketball coach to the same level as the men's coach. By March, 1994 (just one and one-half years after Ryan earned her raise) nine schools in California, Stanford, Texas, Virginia, Tennessee, Iowa, Rutgers, Auburn and Vanderbilt paid the women's coach at least the equivalent salary of the men's coach (Reid, 1994).

Ryan may have been one of the first women's coaches to earn a paycheck equal to the men's coach; however, she did not start the salary revolution. The revolution actually began in the 1960's and 70's with the passage of three laws: *The Equal Pay Act of 1963*; *Title VII of the Civil Rights Act of 1964*; and *Title IX of the Education Amendments of 1972*, were all passed with the intent to end sex-based wage discrimination (Title VII does not deal exclusively with gender but includes it along with the other four protected classes of race, religion, natural origin, and color).

Despite the fact that the three laws were passed over a quarter century ago, progress has been extremely slow in developing gender equity in athletics, especially in coaching salaries. The case law is very limited and the results have been mixed for the few cases that have gone to trial. There were a small number of lawsuits claiming wage-based discrimination in coaching throughout the 1960's, 1970's and 1980's. Those who were daring enough to challenge the male establishment and sue for equal pay were, for the most part, rebuffed by the courts, who seemed very 'hesitant and often unwilling to deal with the complexities of the pay equity issue' (Luna, 1990, p. 372). Recently, there have been

some court cases which have shed some light on the subject.

This paper will provide background on the coaching compensation issue and discuss each of the three federal statutes a coach who is the victim of wage discrimination can utilize to obtain legal relief. The final section will discuss the most instructive case to date in the battle against salary discrimination.

II. THE BACKGROUND

The history of female coaches in athletics has taken some very interesting turns over the years. Prior to Title IX, it was generally accepted that men would coach men's teams and women would coach women's teams. While the resources given to the programs may have been inequitable, at least women were getting the opportunity to coach. Ironically, it was the money put into women's sports by Title IX that resulted in the number of female head coaches to drop dramatically. A study by Acosta and Carpenter of intercollegiate athletics in 1992 shows the dramatic negative impact Title IX had on women in coaching:

*In 1972, the year Title IX became law, 90% of the coaches of women's teams were women; In 1992 only 48.3% of the coaches of women's teams were women.

*Between 1982 and 1992 there was an increase of 812 head coaching jobs for women's teams. Women received just 181 of those jobs while men received 631.

*Over 90% of the women's programs in the nation had a woman director in 1972; by 1992 only 17% of women's programs had a woman director and only 28% had any type of woman administrator. Less than one female per school had a job as an administrator in women's sports.

*Only 1.3% of the coaches in men's programs are women.

*The decline in the proportion of women's coaches and administrators has been most dramatic in Division I-A. (Coakley, 1994, p. 218).

The reason for the decline in the number of women's coaches and administrators was that, following Title IX, most schools merged their

men's and women's athletic departments. With women's sports merged into the same department as the men's, there became just one athletic director. In every instance, that athletic director was the head of the men's program (i.e., a male) while the head of the women's program became his assistant. At the same time, funding was increased for women's programs, and coaching positions, which were previously part-time, became full-time. This made coaching women's teams attractive to men and they began to apply for the positions. The men had a much easier time securing these positions now that a man was in charge of the hiring decisions (the old boy network) (Williams, 1995).

'In addition to facing inertia, erroneous perceptions, and unconscious discrimination, female applicants often are confronted with overtly discriminatory practices' (Williams, 1995, p. 650). Donna Lopiano, Head of the Women's Sports Foundation and former head of the women's programs at the University of Texas, said in a hearing before the Subcommittee on Commerce, Consumer Protection, and Competitiveness of the House Committee on Energy and Commerce, that when women apply for coaching positions they hear,

If you are young, you are going to have child-bearing problems; if you are a parent, there is no way you can handle the time and recruiting demands of this job; if you do not have children, you are homosexual; and if you get to forty, you are too old because you are going to have all those hot flashes and everything (Williams, 1995, p. 650).

Not only were women not getting the coaching positions, but the head coach of the women's team (whether a man or a woman) made less than the head coach of the men's team. A confidential study by the University of Texas athletic department on salaries of athletic officials of 87 universities in 1997 revealed noteworthy facts about compensation in collegiate sports. According to the figures, in 1996-97, the median personnel income for men's athletics was more than \$1.9 million while the median for women's athletics was \$431,282 (a figure which was half the \$890,330 that was spent on football alone). Of the 10 sports researched in the

study, the men's coach had a higher median salary in all but volleyball (the women's volleyball coach earned \$47,500 while the men's coach earned \$46,566). The men's basketball coaches topped all sports (including football) with a median salary of \$290,000. The median salary for women's basketball coaches was \$98,600. In baseball, the median salary was \$79,570 which was almost double the women's softball coaches median of \$44,725 (Naughton, 1997).

A survey conducted by the Women's Basketball Coaches Association found similar discrepancies at the Division I and III level (interestingly, there was considerably less difference between men's and women's programs at the Division II level). Some highlights of the WCBA survey included:

- *74% of Division I, 69.9% of Division II, and 79% of Division III head women's basketball coaches were female while the percentages of female assistants was even greater.

- *Salary differences were statistically significant at the Division I and III levels. In Division I, 32% of women's team head coaches earned over \$60,000 while 88% of men's team head coaches were over that mark. There were similar discrepancies among Division I assistant coaches. At the Division III level, women coaches averaged 15% (\$5,200 per year) lower pay than men coaches. Men's team head coaches were also much more likely (49%-28%) to be given rollover clauses in their contracts.

- *Other coaching provisions in contracts were most significant at the Division I level (although there were differences found at the other two levels; e.g., men's coaches were more likely to receive tenure at Division III institutions than women's coaches). Under 10% of the coaches of women's teams earned additional income from television and radio shows while over 45% of the men's coaches received these advantages. Men's head coaches enjoyed amenities such as country club memberships, automobiles, and annuities far more often. Men's team head coaches were also much more likely to have bonus provisions in their contracts for

conference championships and Final Four appearances.

*Program support was found to be much greater for men's programs at the Division I level (Division II was found to be statistically insignificant and Division III was not studied). Men's teams enjoyed a 3:1 ratio in secretarial help over women's teams at the Division I level. Promotions and Sports Information Staffs were found to spend a much greater time on the men's team, although no figures were given.

*The operating budgets at the Division I level showed major differences at the extreme levels. For example, 18% of the operating budgets of women's teams were under \$60,000 while just 5% of the men's teams had similar budget limitations. At the high end, 38% of the men's teams operating budgets were over \$240,000 while only 9% of the women's programs enjoyed similar advantages. Major differences were also reported at the high and low ends for recruiting and travel budgets. At the Division III level, men's programs received, on average, \$4,300 more than women's programs (WCBA Salary Survey, 1994-95).

The differences found in these two studies will become important factors when determining whether a school is in violation of the Equal Pay Act, Title VII, or Title IX.

III. THE EQUAL PAY ACT

The Equal Pay Act (EPA) was passed in 1963 as an amendment to the Fair Labor Standards Act of 1938 (Luna, 1990). It required that there should be no sex discrimination in pay for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions" (Greenlaw, 1994). Congress established four exceptions where an organization could pay one sex more than the other for equal work. These became known as the four affirmative defenses, and include: (i) a seniority system, (ii) a merit system, (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any factor other than sex (29 U.S.C.6206 (d) (1) (1982)).

It is important to realize the Act does not require the jobs to be identical, but only 'substantially equal'. The Department of Labor regulations stipulate that job content, not job classification or title, should be used when analyzing the equality of work. The Department of Labor bases equal skill upon the experience, training, education, and ability required in performing the job; effort is the amount or degree of physical or mental exertion required to perform the job successfully while responsibility is the degree of accountability required. The DOE gives no criteria for similar working conditions, however, it suggests that "practical judgement" should be made as to whether these differences are enough to warrant the unequal salaries. The EEOC, in its enforcement guidelines, states that most coaches work under similar working conditions (Enforcement guidance on sex discrimination in the compensation of sports coaches in educational institutions, 1997). The Supreme Court shed more light on the definition of similar working conditions in *Corning Glass Works v. Brennan* 417 U.S. 188 (1974) when it held that working conditions encompassed the physical surrounding and hazards of the job (Luna, 1990).

The Equal Pay Act is very limited in its ability to provide relief for gender-based wage discrimination in employment. The narrow scope of the EPA makes gaining a judgement extremely difficult. Luna says,

"Though Congress" purpose in enacting the EPA was to remedy what was perceived as 'a serious and endemic problem of employment discrimination (*Corning Glass v. Brennan*),' the EPA has been wholly unsuccessful in attacking gender-based wage discrimination against historically perceived 'women's jobs' in the American economy. Because women are heavily segregated into these occupational categories and there are rarely male counterparts to whom their wages can be unfavorably compared, little relief for this problem has been obtained for the EPA" (Luna, 1990, 374).

The limitations extend even further as the Equal Pay Act is based solely on the sex of the employee. Therefore, a male cannot sue another male and a female cannot sue another female

under the EPA if they make a lower salary than their counterpart for substantially equal work. This precludes all male coaches of women's teams from gaining relief through the EPA if they earn a lower salary than a male coach of the men's team.

IV. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

While there is much overlap between the EPA and Title VII of the Civil Rights Act, there are also distinct differences. Title VII is much broader in scope than the EPA. Title VII was passed as a part of the Civil Rights Act of 1964 and it states that:

It shall be an unlawful employment practice for any employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...(42 U.S.C. §2000 2(a) (1) (2) 1982).

The act was primarily racially oriented and sex did not even appear in the original version as one of the protected classes (Greenlaw, 1994). "The addition of 'sex' as a protected category under Title VII was an eleventh hour amendment to the legislation — indeed, the amendment was a failed attempt (by Representative Smith) to defeat the statute altogether. Nevertheless, Title VII has in many ways been the legal backbone of the American women's movement" (George, 1993, p. 556).

The plaintiff "must prove either intentional discrimination against her based on her sex, or that a neutral policy has resulted in a disproportionately adverse impact on female coaches" (Williams, 1995, p. 664). The two categories are called disparate treatment and disparate impact.

Disparate Treatment requires that the coach show the employer has a policy of not hiring women to coach the higher paying men's teams, or of discouraging women from applying for such positions (Williams, 1995, p. 664). The policy does not have to be written, as long as it can be proven to exist. If this happens the defendant would have to prove that the policy

exists because gender is a bona fide occupational qualification (BFOQ) (Williams, 1995, p. 664).

Disparate Impact only requires the plaintiff to show that a neutral policy disproportionately affects members of one gender. There is no requirement to prove there was any intent to cause the discrimination (Williams, 1995, p. 666). For example, a hiring/promotion policy regarding educational level which was not intended to favor one racial group over another yet, as an end result, only whites were hired/promoted could be discriminatory based on the difference in impact on one racial group over another. Of course, this would only be discriminatory if educational level is not a legitimate BFOQ for the job/promotion.

Title VII also has its limitations. First, the statute only applies to an employer with 15 or more employees. Second, it shares the same limitation as the Equal Pay Act in that it covers the gender of the employee and not the gender of the team being coached.

V. COMPARISON OF EQUAL PAY ACT AND TITLE VII

Once the word sex was added to Title VII, it became very similar in nature to the EPA, with some distinct differences. There was fear that in the event of a conflict between the two statutes, the provisions of the EPA would be nullified (Greenlaw, 1994). To prevent this from happening, Senator Bennett added what has become known as the Bennett Amendment one year after the passage of Title VII. The Amendment states:

...it shall not be an unlawful employment practice under [Title VII] for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of the [Equal Pay Act" (42 USC 2000e-2(h)).

In an inserted memorandum in the *Congressional Record*, Senator Bennett wrote: "Simply stated, the [Bennett] Amendment means that discrimination and compensation on the account of sex does not violate Title VII unless it also violates the Equal Pay Act" (Luna, 1990, p.

375). In other words, the Bennett Amendment provided that a pay differential "authorized" by the Equal Pay Act would not be in violation of Title VII (Luna, 1990).

What was intended to clear up the potential conflict between the two acts further muddied the waters. It was the term "authorized" which created the confusion. Different interpretations of the word could create different meanings for the relationship between the statutes. One interpretation would incorporate just the EPA's four affirmative defenses — merit, seniority, productivity, or any factor other than sex — into Title VII. Another interpretation would incorporate the "substantially equal" job requirement into Title VII (Luna, 1990).

It was more than a decade later before the Supreme Court resolved the conflict. In *Washington v. Gunther* (452 U.S. 161 (1981)) four women jail guards filed suit under Title VII claiming they were victims of intentional sex discrimination because they were paid less than male guards. The Federal District Court in Oregon ruled against the women, however, the Ninth Circuit overturned the decision on appeal. The Supreme Court affirmed. In its decision, the Supreme Court established the relationship between the Bennett Amendment and the EPA. The Court stated that the Bennett Amendment only incorporated the EPA's four affirmative defenses into Title VII and not the "equal work standard" (Luna, 1990). In making this decision the Court rejected the view that only claims satisfying the "equal work" standards of the EPA could be brought under Title VII because this would mean that "a woman who is discriminatorily underpaid could obtain no relief — no matter how egregious the discrimination might be — unless her employer also employed a man in an equal job, in the same establishment, at a higher rate of pay" (452 U.S. 161 at 178-9). This decision was very important as it made it easier for victims of wage discrimination to obtain relief under Title VII. An employee could sue under Title VII and not have to meet the strict "equal work standard" (Williams, 1995).

There are numerous other differences outlined between the two statutes, some of which would pertain to the coaching profession:

1. Under the EPA, wages can only be compared within a single "establishment", while Title VII does not have any such restriction.
2. The EPA deals strictly with sex and compensation while Title VII involves the other four protected classes and also covers hiring, firing, promotion, etc.
3. The plaintiff maintains the burden of proof throughout the entire Title VII case, while the burden transfers to the defendant in an EPA case after the jobs have been found to be equal (Greenlaw, 1994).

VI. TITLE IX

Title IX of the Education Amendments Act was passed in 1972. It says, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance" (86. Stat. 235 (codified at 20 U.S.C. § 1681-1688 (1990))).

Although Title IX does not specifically mention athletics or athletic programs, it has become the cornerstone for providing equal treatment to female athletes at educational institutions. Title IX has gone through numerous challenges as schools have tried to exempt themselves from its application. In a 1984 decision, the Supreme Court ruled that only the specific programs which receive federal assistance were subject to the requirements of Title IX (*Grove City v. Bell*, 465 U.S. 555 (1984)). As most athletic departments did not receive direct federal aid, Title IX was rendered virtually useless. As a result of that decision, the Office of Civil Rights (the administrative body in charge of Title IX investigations) suspended all its current and pending Title IX inquiries. Cases against the University of Maryland, Auburn University the New York School System and at least 20 other institutions were either dropped or narrowed (Berry, 1993).

Congress stepped in to save Title IX when it passed the Civil Rights Restoration Act in March, 1988, overriding a veto by President Ronald Reagan (Wilde, 1994). The Civil Rights Restoration Act stated that the guidelines of Title IX apply to the entire institution, if any part of the institution received any amount of federal

aid (George, 1993). Since there were no educational institutions which did not benefit from some form of aid from the Federal Government, this meant that they were all under the reach of Title IX.

To assist administrators in understanding the requirements of Title IX, the Department of Education, through the OCR, issued a Title IX Policy Interpretation in 1979. The section of the policy interpretation that specifically relates to coaching issues is Subpart E which stated:

Assignment and Compensation of Coaches and Tutors. In general, a violation of ...will be found only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature or availability. Nondiscriminatory factors can affect the compensation of coaches. In determining whether differences are caused by permissible factors, the range and nature of the duties, the experience of individual coaches, the number of participants for particular sports, the number of assistant coaches supervised and the level of competition will be considered.

Where these or similar factors represent valid differences in skill, effort responsibility, or working conditions they may, in specific circumstances justify differences in compensation. Similarly, there may be unique circumstances in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary...(Federal Register Vol. 44. No. 239, 1979, 71416).

The use of Title IX in wage discrimination cases has been very limited. This may be because the Department of Education's (DOE) jurisdiction over employment practices had been successfully challenged through several cases (e.g., *Romeo Community Sch. v. HEW*, 600 F.2d 581 (6th Cir., 1979), cert. Denied (444 U.S. 972, 100, S. Ct. 467 (1979)); *Junior College Dist. of St. Louis v. Califano*, 597 F. 2d. 119 (8th Cir. 1979), cert. Denied 444 U.S. 972, 100 S. Ct. 467 [both held that HEW Regulations were unauthorized by Title IX] (Williams, 1995). The DOE consequently suspended enforcement of Subpart E. (Federal Register Vol. 44. No. 239, 1979, 71416).

Following these developments, HEW stated in the policy interpretation that the Department could still "consider the compensation of coaches of men and women in the determination of the equality of athletic opportunity provided to male and female athletes" (Federal Register Vol. 44. No. 239, 1979, 71416).

In 1982, the Supreme Court overturned the previous interpretation of Subpart E in *North Haven Board of Education v. Bell* 456 U.S. 512, 102 S. Ct. 1912 (1982). The Court ruled that Subpart E regulations were valid under Title IX. The court stated, "Title IX proscribes employment discrimination in federally funded education programs..." It went on to state, "Because Section 901(a) neither expressly or impliedly excludes employees from its reach, we should interpret the provisions as covering and protecting these 'persons' unless other considerations counsel to the contrary" (Williams, 1995, p. 673).

Title IX prevents wage discrimination in coaching in two ways. First, it prohibits discrimination against a coach-employee based upon its statutory language, which was upheld by the Supreme Court. Second, Title IX prohibits compensation practices which result in the denial of equal athletic opportunities for student-athletes (Williams, 1995). In this situation the employment issue would be one of many in a program-wide evaluation of Title IX compliance. The second situation, therefore, may not be a very effective remedy for gender wage discrimination (Claussen, 1995).

Title IX should be an extremely valuable weapon in the battle against gender discrimination because the statute does not possess many of the limitations which are found in the EPA and Title VII. Claussen states:

"...Both Title VII and the Equal Pay Act probably have limited applicability in the context of intercollegiate athletics.... Courts generally hold that Title VII and the Equal Pay Act apply to discrimination based on the sex of the employee, not the team. Yet, the reality of intercollegiate coaching salaries are that not only do women typically earn less than men, but also salaries are lower for coaches of women's teams regardless of the coach's

sex. Because many males coach women's teams, it would be difficult under both laws to prove that a women's coach was discriminated against simply on the basis of being female, rather than because the team she coached was female" (1995).

The advantages of utilizing Title IX in sex-based discrimination claims include:

*Title IX is not restricted to claims based on the sex of the employee. A claim of discrimination based on the gender of the team is sufficient for a Title IX suit — This means that male coaches who coach female teams can seek relief under Title IX.

*Title IX also has no revenue-producing exemption — The OCR has stated that revenue cannot be used as a reason for exemption from the regulations of Title IX and the courts have concurred. The Supreme Court of Washington ruled in *Blair v. Washington State University* (740 P.2d 1379 (Wash. 1987) that football is not exempt from Title IX despite the fact that it is "operated for profit under business principles" (Williams, 1995). In *Haffer v. Temple University* 678 F. Supp. 517 (E.D. Pa. 1987), modified, 1988 WL 3845, (E.D. Pa. 1988) the court stated, "it is clear that financial concerns alone cannot justify gender discrimination" (Williams, 1995, p. 678).

*Title IX is not as limited as the EPA or Title VII and was intended as a separate remedy for employment discrimination. The author of the provisions which became Title IX, Senator Birch Bayh, was very explicit in making clear that Title IX's ban on gender discrimination in employment was meant to be separate from Title VII and the EPA (Williams, 1995, p. 672).

VII. GROUND-BREAKING CASE: TYLER v. HOWARD UNIVERSITY

With the limited case law in this area and many new lawsuits having recently been filed, the landmark case is bound to change an increasing number of times over the next few years. Presently, the most important case is *Tyler v. Howard University* (No. 91-CA11239 (D.C. Super. Ct. 1993). Tyler is one of just two Title IX

jury decisions (*Pitts v. Oklahoma* is the other) that examines employment discrimination in the area of intercollegiate athletics (Claussen, 1995). The difficulty with using Tyler as the most pertinent case is that the jury decision was never appealed. That means there is no appellate opinion, and therefore little guidance is given as to how Title IX was applied to the facts of the case and precedential value is limited (Claussen, 1995).

Background of Tyler Case

Sanya Tyler brought suit against Howard University seeking compensatory and punitive damages under the District of Columbia Human Rights Act, the Equal Pay Act, and Title IX. Tyler was hired by Howard in 1975 and began coaching the women's basketball team on a part-time basis in 1980. In 1986, Tyler was made full-time Associate Athletic Director and remained part-time women's basketball coach. She continued in this status until 1991, earning approximately \$62,000 per year. (\$20,000 for her coaching duties and \$42,000 for her A.D. duties) (Memorandum of points and authorities in support of motion of defendants..., 1993, 4).

In 1990, Howard hired Alfred "Butch" Beard as the school's full-time men's basketball coach at an annual salary of \$78,500. Beard was given a four-year contract and was also furnished with a leased car from the University. Beard's qualifications included a stint as an Assistant Coach for the New Jersey Nets and a 10-year career in the National Basketball Association (Memorandum of points and Authorities in support of motion of defendants..., 1993, 4).

Later that year, Howard Athletic Director William Moultrie resigned and a search committee was formed to seek out qualified candidates. Six candidates were interviewed including Tyler. Dr. Richard Hill was the unanimous selection to replace Moultrie. After Hill refused the position, the committee decided not to offer the position to any of the other candidates. Instead, attorney David Simmons was invited for an interview and offered the job, which he accepted (Memorandum of points and authorities in support of motion of defendants..., 1993, 6).

In 1991, Tyler requested to be elevated to full-time women's basketball coach and was of-

ferred the position at a salary of \$44,436, although she was told she could not be a full-time coach and Associate Athletic Director (Memorandum of points and authorities in support of motion of defendants..., 1993, 6). During her tenure as women's basketball coach, Tyler led Howard to five Mid-Eastern Athletic Conference Championships and one NCAA Tournament appearance (Hente, Washington Post, 1993). She decided to sue the school.

Legal Issues

A. Equal Pay Act

Before discussing the Tyler case as it relates to the EPA, it is important to outline the specific issues facing the courts including whether the jobs are substantially equal and the four affirmative defenses (especially the "any factor other than sex" defense). There have been many important precedents handed down on these issues and an overview of the key ones follows:

Are the jobs are substantially equal?

To decide a case under the Equal Pay Act, the first test is to determine if the jobs are substantially equal. This means the jobs should require similar effort, skill and responsibility and be performed under similar working conditions. Several courts have held that the job of coaching a men's sports team is "substantially equal" to coaching a women's sports team, although most of the time this has been at the high school level.

*In *Burkey v. Marshall Country Board of Education* (513 F. Supp. 1084 (N.D. W.Va. D.Ct. Wheeling Div. 1981)), the court ruled that Linda Burkey's position as coach of the girls basketball team at Moundsville Junior High School required work, skills, effort and responsibility equal to the male coaches of boys' basketball at Moundsville. The court stated, "As were the male coaches of boys basketball, Mrs. Burkey was responsible for selecting, training, and coaching in interscholastic competition a junior high school basketball team." It went on to state that Burkey needed a command of the rules of girls' junior high school basketball and proper techniques of coaching and teaching athletes, just like the boys' coaches. She held daily practice sessions with her team and the season lasted a similar

length of time (513 F. Supp. at 1092).

*In *Brennan vs. Woodbridge School District* (74 Lab. Cas. 33, 121 (D. Del. 1974)), the United States District Court for the District of Delaware concluded "that the jobs performed by the female girls' softball coach and the male boys' baseball coach were substantially equal and that any incidental differences in the positions did not justify the pay differential" and therefore the higher salary for the baseball coach was a violation of the EPA (Sarver, 1995, p. 894).

*In *EEOC v. Madison Community School District No.12* (818 F. 2d 577 (7th Cir. 1987)), the court ruled that boys' and girls' coaches of similar sports had substantially equal jobs, however, the court said that comparing boys' and girls' coaches of different sports was arbitrary and was not a violation of the EPA (Sarver. 1995, p. 899).

Conversely, several courts have found that coaches of men's team and coaches of women's team do not have jobs that are "substantially equal." The most telling case is *Stanley v. University of Southern California* (13 F.3d 1313 (9th Cir. 1994)). In this case, the court determined that the position of head men's basketball coach and head women's basketball coach at USC had different and unequal responsibilities. The men's basketball coach had more public relations, promotional activities, and these extra responsibilities created more pressure. It further said that the men's basketball program had greater attendance, media scrutiny, and raised more revenue. The court felt that the differences between the jobs were enough to account for the higher pay of the men's coach although no formal determination on the issues was made (13 F.3d at 1321).

Once the court decides that the jobs are substantially equal, the burden of proof shifts from the plaintiff to the defendant. The defendant must show that the salary difference is based on one of the four affirmative defenses. In cases of coaching, the defense most often applied is the fourth one, which is 'any factor other than sex' (Claussen, 1995). When discussing factors other than sex, universities will usually try to show one or more of the following arguments: the difference in salary is based on the gender of the team, not the coach; the men's

team produces revenue, and the women's team does not; the men's coach has extra duties; the men's coach has more pressure and responsibility placed on his shoulders; and the men's coach can command a higher salary in the marketplace (Williams, 1995, p. 654).

Once again, the courts, with no guidance from the Supreme Court, have ruled in different ways. There are many key court decisions which have been handed down for each of the factors mentioned above.

The difference in salary is based on the gender of the team and not the coach.

In *Jackson v. Armstrong School District* (430 F. Supp. 1050 (W.D. Pa. D.Ct. 1977)) the court found that two female coaches of women's basketball could be paid less than coaches of men's basketball even if their job responsibilities were similar or greater. There were four male and four female coaches of women's basketball in the school district and the females were paid the same amount as the male coaches of women's basketball. The court said,

Because plaintiffs are faced with a situation — male coaches of women's basketball being paid the exact same amount as female coaches of women's basketball — that really cannot be squared with a charge of discrimination based on sex, they apparently seek to satisfy that element of the claim by relying on the sex of the sport's participants....It is clear from the statute that the sex of the claimants must be the basis of the discriminatory conduct.

In *Kenneweg v. Hampton Township School District* (438 F. Supp. 575 (W. D. Pa. 1977)), the court cited Jackson in coming to the same conclusion. According to the court in Kenneweg:

'It is clear from the statute that the sex of the plaintiffs must be the basis of the discriminatory conduct. . . . If plaintiffs coaching female sports are being paid less than individuals coaching male sports, there is no valid claim of gender based discrimination as to these plaintiffs. Here plaintiffs are not being discriminated against because of their sex' (Claussen, 1995).

More recent decisions have stated that the gender of the team can only be used as an affir-

mative defense of different wages if the coach who is receiving the lower pay has the opportunity to coach the group that provides the higher salary. The key decision came in *EEOC v. Madison Community Unit School District No. 12* (818 F.2d (7th Cir. 1987)). While the court agreed that the gender of the team could be used as a factor other than sex, it could not be done in a vacuum. The employer would have to show that women were not prohibited or discouraged from coaching the boys' teams for the salary difference to be justified. The court said, "[a]n employer cannot divide equal work into two job classifications that carry unequal pay, forbid women to compete for one of the classifications, and defend the resulting inequality in pay between men and women by reference to a 'factor other than [the] sex' of the employees' (818 F.2d at 585).

In *McCullar v. Human Rights Commission* (511 N.E.2d 1375 (Ill. App. 4 Dist. 1987) and *Kings Park Central School District v. State Division of Human Rights* (424 N.Y.S.2d 293 (1980)), two different courts held that the gender of the team could be used because there was no evidence that women were being discouraged or prohibited from coaching men's teams.

The men's team produces revenue, and the women's team does not.

*In *Bartges v. University of North Carolina at Charlotte* (908 F. Supp. 1312 (1995)), the United States District Court in North Carolina Charlotte Division, in siding with U.N.C.C., ruled that the University gave numerous factors other than sex to show why Ellyn Bartges was paid less as softball coach and assistant basketball coach than male coaches for substantially equal work, including that the basketball team generated the greatest revenue for the school (908 F. Supp. At 1326).

*In *Jacobs v. College of William & Mary* (517 F.Supp. 791)(E.D. Va. D.Ct. 1980)), the court states, "Further, and of importance, is the fact that men's basketball is a revenue producing sport and women's basketball is not," in deciding in favor of William & Mary (517 F.Supp. at 797).

*The Ninth Circuit court in California agreed with the Jacobs decision in denying Stanley a

preliminary injunction in *Stanley v. University of Southern California* (13 F.3d 1313 (9th Cir. 1994)). **The men's coach has extra duties, pressure, and responsibility.**

*The Ninth Circuit also relied on this in denying Marianne Stanley her preliminary injunction in *Stanley v. University of Southern California* (13 F.3d 1313 (9th Cir. 1994)). The court stated, "The record also demonstrates that the USC men's basketball team generated greater attendance, media interest... As a result, USC placed greater pressure on Coach Raveling to promote his team and to win. The responsibility to produce a larger amount of revenue is evidence of a substantial difference in responsibility" (13 F.3d at 1322).

In *Jacobs vs. William & Mary* (517 F.Supp. 791)(E.D. Va. D.Ct. 1980)), the court came to the conclusion that, "the differences in skill, effort, and responsibility are numerous, as are the duties" [between the men's and women's coaches at the school]. The men's coach was hired for 12 months while the plaintiff was only employed for nine. The men's coach had to recruit while the women's coach was not required to recruit (517 F.Supp. at 797).

The men's coach can command a higher salary in the marketplace

This defense has come under attack in some court cases, including a non-athletics case in the Supreme Court. In *Corning Glass Works v. Brennan* (94 S. Ct. 2223 (1974)), Justice Marshall, in writing for the majority, warned against salary differences that support "a job market in which [the employer can] pay women less than men for the same work" (Williams, 1995, p. 661).

In *Brock v. Georgia Southwestern College* (765 F.2d 1026 (11th Cir. 1985)), the court rejected Georgia Southwestern's supply and demand defense in justifying the differences in salary. The court stated, "Indeed, the argument that supply and demand dictates that women qua women may be paid less is exactly the kind of evil that the Act was designed to eliminate and has been rejected (765 F.2d at 1037).

Not all courts have ruled against the marketplace defense. The Ninth Circuit Court of Appeals in *Stanley v. University of Southern Cali-*

fornia ruled that an employer may consider marketplace value of the skills of an individual when considering salary (13 F.3d at 1314, 1322).

The U.S. Court of Appeals Eighth Circuit came to the same conclusion in *Horner v. Mary Institute* (613 F.2d 706 (8th Cir. 1980)) when it stated, "it is our view that an employer may consider market place value of the skills of a particular individual when determining his or her salary" (613 F.2d at 714).

B. Tyler and the EPA

In claiming that the jobs of men's and women's basketball coach are substantially equal, Tyler alleged in her complaint that Howard paid "disparate wages and benefits to male employees for equal work..." (*Tyler v. Howard Complaint, 1991*).

The defense in the Tyler case countered that the job of men's basketball coach was different and not substantially equal in terms of skill, effort, or responsibility with the women's basketball coach. It stated that beyond coaching, the men's head coach also had to generate revenue for the University, was under much greater scrutiny and, therefore, had endured increased pressure and accountability. It further stated that Tyler's job should not even be compared to the job of the men's basketball coach, however, it should be compared to the job of other part-time coaches, since she was also part-time (Memorandum of points and Authorities in support of motion of defendants..., 1993, 9-10).

The plaintiff and defense both established arguments for or against the factors other than sex related above.

The difference in salary is based on the gender of the team and not the coach.

In regard to the difference in salary being based on the gender of the team and not the coach, the complaint by the plaintiff reads:

In August, 1980, and continuing to date, Defendant Howard University has had a policy or practice of excluding female employees from occupying certain high level jobs in the Athletics Department and restricting female employees to part-time jobs and paying them disparate wages and benefits compared to male employees for equal work

(Howard v. Tyler, Complaint, 1991).

The men's team produces revenue, and the women's team does not.

Howard University used revenue-generation as one of its defenses for the pay disparity:

As the testimony in the case revealed, the men's basketball program has the potential for participating in various conference championship tournaments. If successful, the University benefits by receiving significant sums of money. For example, under Coach Beard, the men's basketball team won the Mid East Athletic Conference championship and therefore earned \$250,000 (Memorandum of points and authorities in support of motion of defendants, 1993, 10).

It continued at another point,

...the head coach of the men's basketball team was required to generate revenue for the university. This additional requirement places the position of men's basketball coach on an entirely different plane from that of the women's basketball coach with the result that the two positions are different to a substantial degree (Memorandum of points and Authorities in support of motion of defendants, 1993, 9).

The men's coach has extra duties, pressure, and responsibility.

In the Tyler case, the complaint states that she has been paid a lower salary than the men's basketball and football coaches despite the fact that she is performing the same duties and has shown better results (*Tyler v. Howard Complaint*). The defense countered by saying that the responsibility of generating revenue for the school places higher scrutiny on the men's coach. This higher scrutiny carries with it extra effort plus pressure and accountability for the person in that position (Memorandum of points and Authorities in support of motion of defendants, 1993, 10).

The Men's Coach Can Command A Higher Salary in the Marketplace

In the Tyler case, the defendants stated, the University embarked on a search for a coach for its men's program who could accomplish what was necessary to generate this revenue. In order to accomplish this goal, the University was forced to compete with market forces which

place a greater value on men's basketball programs than on women's (Memorandum of points and Authorities in support of motion of defendants, 1993, 10-11).

C. Title IX

As previously stated, seeking relief under Title IX has many advantages over the Equal Pay Act and Title VII, however, there is not much case law in this area. The Tyler case was the first one to be decided on the issues and little judicial opinion is available guiding the legal interpretations and future cases. (Claussen, 1995)

Among the factors examined to determine whether institutions are in compliance with Title IX regarding the compensation of coaches are:

- (a) Rate of compensation (per sport, per season);
- (b) Duration of contracts;
- (c) Conditions relating to contract renewal;
- (d) Experience;
- (e) Nature of coaching duties performed;
- (f) Working conditions; and
- (g) Other terms and conditions of employment. (New York Law School Journal of Human Rights, Winter, 1997).

a. Disparity of Compensation of Coaches

The coaching survey studies by the WBCA and Jim Naughton of the University of Texas revealed the disparity in salaries between coaches of men's sports and women's sports which exists today. The reasons given for the disparity are mostly due to the fact that men's sports generate revenue and women's do not (New York Law School Journal of Human Rights, Winter, 1997). This is not a good argument because the fact is that the majority of men's intercollegiate programs are not profitable. Football is not offered or does not cover its own expenses at ninety-one percent of NCAA institutions across all divisions. Thirty-four percent of the Division I men's basketball institutions post a deficit of \$238,000 a year while the majority of basketball programs at the Division II and II level are also in the red (Williams, 1995, p. 656-657).

More importantly, the revenue-generating factor may have bearing in EPA and Title VII cases, however, the courts have already decided that revenue cannot be used as an escape from the confines of Title IX (*Blair v. Washington State University* (740 P.2d 1379 (Wash. 1987))). HEW also declared in its Policy Interpretation that football or other revenue producing sports cannot

be exempted from coverage of Title IX (Williams, 1995, p. 672).

b. Duration and Types of Contracts

There is evidence that there is a major discrepancy between the length of contracts for coaches of men's teams versus coaches of women's teams. One study showed that three-fourths of Division I women's coaches have informal contracts which can be terminated on three months notice (New York Law School Journal of Human Rights, Winter, 1997).

c. Conditions Relating to Contract Renewal

The WBCA Coaches survey discusses this issue. It revealed that 49% of the coaches of men's teams have a roll-over clauses in their contract as compared with just 28% of the coaches of women's teams (WBCA Salary Survey, 1995).

d. Experience

The experience and qualifications of the coach is something which has been mentioned as a factor other than sex which can justify a difference in salary between a men's coach and a women's coach in EPA and Title VII cases. The Ninth Circuit Court of Appeals ruled in the Stanley case that George Raveling's 31 years of coaching experience to Stanley's 17 years is a factor that can be used to differentiate salaries. Raveling's experience also included serving on an NCAA Subcommittee on Recruiting, writing two bestselling novels, and national television appearances to discuss recruiting. Stanley lacked the same degree of experience in those areas. The court concluded that, Employers may reward professional experience and education without violating the EPA (*Stanley v. University of Southern California, 1994, at 1322*).

e. Nature of Coaching Duties Performed

The standard for this is very similar to the standards under the EPA. The HEW Policy Interpretation also recognizes that there are certain nondiscriminatory factors including differences in duties, which can serve as a defense against wage differentials between coaches of men's teams and women's teams. The question is whether these differences in duty represent differences in skill, effort, responsibility, or work-

ing conditions (the same criteria for determining whether jobs are substantially equal under the EPA) (HEW Policy Interpretation, 1979).

f. Working Conditions

The standard for working conditions is also similar to the language in the EPA. The working conditions are typically similar in coaching positions (Enforcement Guidance on Sex Discrimination, 1997). It can focus on such things as the differences in pressure to win and media scrutiny.

g. Other Terms and Conditions of Employment

Although it is not clear what HEW means by this, it could be some of the other items they mentioned as possible nondiscriminatory factors including number of participants of the sports, number of assistant coaches supervised, and level of competition. All of these issues were mentioned as factors other than sex in previous EPA and Title VII cases.

D. Tyler and Title IX

It is clear that the rate of compensation between Tyler and Beard is not equal. Beard earned a base salary of \$78,500 and a new car while Tyler was a part-time coach at the time of Beard's hiring and was offered just over \$44,000 to become the full-time women's coach. Her dual duties of Associate Athletic Director and part-time women's basketball coach still left her \$15,000 short of Beard's salary for coaching men's basketball only.

There are also major differences between the duration of Tyler and Beard's contracts. The complaint reads, Plaintiff has been continuously denied a full and fair opportunity to compete for and occupy available advanced management positions at a salary and duration as is offered to the male employees similarly situated (*Tyler v. Howard Complaint*). The complaint also reads that Howard tried to remove her from her position as Associate Athletic Director and place her on a one year contract to become the full-time women's basketball coach (*Tyler v. Howard Complaint*). Beard was under contract for four years with an option for a one-year renewal (Memorandum of points and Authorities in support of motion of defendants, 1993, 4).

Beard's coaching and playing experience was a major part of the defense in the Tyler case. Beard had served as an assistant coach with the New Jersey Nets, played for 10 years in the NBA, was an All-American college player, author of a book, and was a color commentator for NBA television broadcasts (Memorandum of points and Authorities in support of motion of defendants, 1993, p. 11).

The nature of coaching duties performed and working conditions as related to the Tyler case were previously discussed during the EPA section.

Decision

The six-person jury needed just two hours of deliberation to find in favor of Tyler on all counts (Williams, 1995). The \$2.4 million judgment included \$600,000 for the unlawful sex discrimination claim under the District of Columbia Human Rights Act, \$600,000 for the retaliation claim under the same act, and \$600,000 under Title IX. Tyler was awarded \$138,000 for lost wages for unequal pay under the Equal Pay Act, \$72,000 for emotional distress under Title IX, and \$250,000 for emotional distress under the retaliation claim (*Tyler v. Howard, Memorandum and order for entry of judgment, 1993*).

Just five days after the jury decision, Judge Arthur L. Burnett, Sr. reduced the award to \$1.06 million stating the jury awarded the same damages for overlapping remedies. The Judge said that the three \$600,000 awards for violations of the D.C. Human Rights Act and Title IX should actually have resulted in just one \$600,000 judgment (*Tyler v. Howard, 91-CA11239, Memorandum and order for entry of judgment, 1993*).

In September, 1995, Burnett slashed the award for the second time, making it \$250,000. He stated that Howard had not violated the D.C. Human Rights Act or the Equal Pay Act, but had only violated Title IX. (Hente, Washington Post, 9/21/95).

Analysis

The Tyler case was significant for many reasons. It was the pioneer case for redress in wage discrimination cases under Title IX. It was the first decided case to focus on the salary issue (Claussen, 1995). It was also the first time a

jury awarded monetary relief in a Title IX athletics case (New York Law School Journal of Human Rights, Winter, 1997). The decision came just one year after the Supreme Court ruled unanimously in *Franklin v. Gwinnett County Public Schools, 112 S.Ct. 1028(1992)*, in a momentous non-athletics Title IX decision, that compensatory damages can be awarded for victims of deliberate Title IX discrimination (Wilde, 1994).

Although Tyler gives no judicial opinion or interpretation, it did have two major effects. First, it led many schools to increase the salaries of their women's coaches to the same level as the men. Besides Debbie Ryan of Virginia, the University of Iowa awarded Vivian Stringer a five-year contract at \$117,860, the same base salary as men's coach Tom Davis, Virginia Tech gave Carol Alfano a four-year contract for the 1993-94 season at \$ 55,000 with five percent raises each year, and Tennessee awarded Pat Summitt a salary of \$ 110,000, \$10,000 more than the men's coach (Claussen, 1995). Second, it caused many other coaches to seek legal relief in the courts and gave them hope for success. This case lends a glimmer of hope to all the coaches in similar situations because it was the first time a jury awarded monetary relief in a Title IX athletics case, and it demonstrates that universities will no longer be allowed to discriminate on the basis of sex (New York Law School Journal of Human Rights, Winter, 1997, p. 391).

Complaints have subsequently been made against Bowdoin College, the University of North Carolina at Charlotte, and Eastern Kentucky University. Pam Bowers, former women's basketball coach at Baylor University, sued under Title IX, claiming, among other things, that she has been compensated with an inequitable salary compared to the men's basketball coach (Claussen, 1995). The Bowers suit was settled by an agreed order of dismissal with prejudice. The terms of the settlement were not disclosed (New York Law School Journal of Human Rights, Winter, 1997). The suit against UNCC was decided by the United States District Court in favor of the school. The court found that Elyn Bartges had failed in proving a prime facie case under the EPA, Title VII, Title IX and North Carolina state laws (*Bartges v. University of North Caro-*

lina at Charlotte, 908 F.Supp 1312 (W.D. N.C. Charlotte Div. 1995)).

CONCLUSION

Recent developments have shed even more light on the issue of sex discrimination in the wages of coaches. On October 29, 1997, the EEOC published Enforcement Guidance on Sex Discrimination in the Compensation of Sports Coaches in Educational Institutions. In the guidelines the EEOC tackled one of the most controversial issues facing the courts in equal pay cases. The EEOC said that revenue can only be used as a factor other than sex to pay male coaches more than female coaches if the female teams are provided with the same chances to produce revenue that the men's team has. This includes assistant coaches, marketing and promotions staff, sport information resources, and advertising budgets. This will be analyzed on a program-wide basis and not just between two coaches. In other words, if the men's basketball and women's volleyball coaches are provided with similar resources, but the women's basketball coach is not, revenue could still be used as a factor other than sex. (Enforcement guidance on sex discrimination in the compensation of sports coaches in educational institutions, 1997).

The EEOC also distinguished between marketplace value and market rate value when using marketplace as a defense. Marketplace value is not gender-based and is based on the employer's consideration of an individual's value in setting wages. This is an acceptable defense. The Market Rate defense, which has been rejected by the EEOC and the courts, is based on the assumption that women are available for employment at lower rates of pay due to market factors such as the principle of supply and demand (enforcement guidance on sex discrimination in the compensation of sports coaches in educational institutions, 1997).

The employee's prior salary is not an acceptable defense in a vacuum. The employer must have researched to see if the employee was worth this salary and based the salary on some type of indication of the employee's ability (enforcement guidance on sex discrimination in the compensation of sports coaches in educational

institutions, 1997).

The new EEOC guidelines will have a tremendous impact on the future in the battle for equal pay in coaching. "You're going to see [the guidelines used] immediately in ongoing lawsuits where plaintiff attorneys are going to have some real ammunition," Lopiano said. "This is equivalent for what the Title IX regulations meant for women's athletics. This interprets how our nation's employment laws will apply to athletic coaches. And this is an area that has been in terrible disarray, leaving people confused and not knowing what to do" (Asher, Washington Post, November 5, 1997).

The battle for equal pay in coaching is only in its infancy. The near future will be very telling on the direction this battle will take and should prove very interesting.

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SSLASPA AWARDS
1999

Honor Award:

Criteria: Presented to a person who has given outstanding service to the association.

Nomination Form: No specific form is required. A 1-5 page description of the individuals contributions and outstanding service is required.

Nominations must be postmarked on or before Friday, **December 4, 1998.**

Send to: Dr. Carolyn Lehr

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