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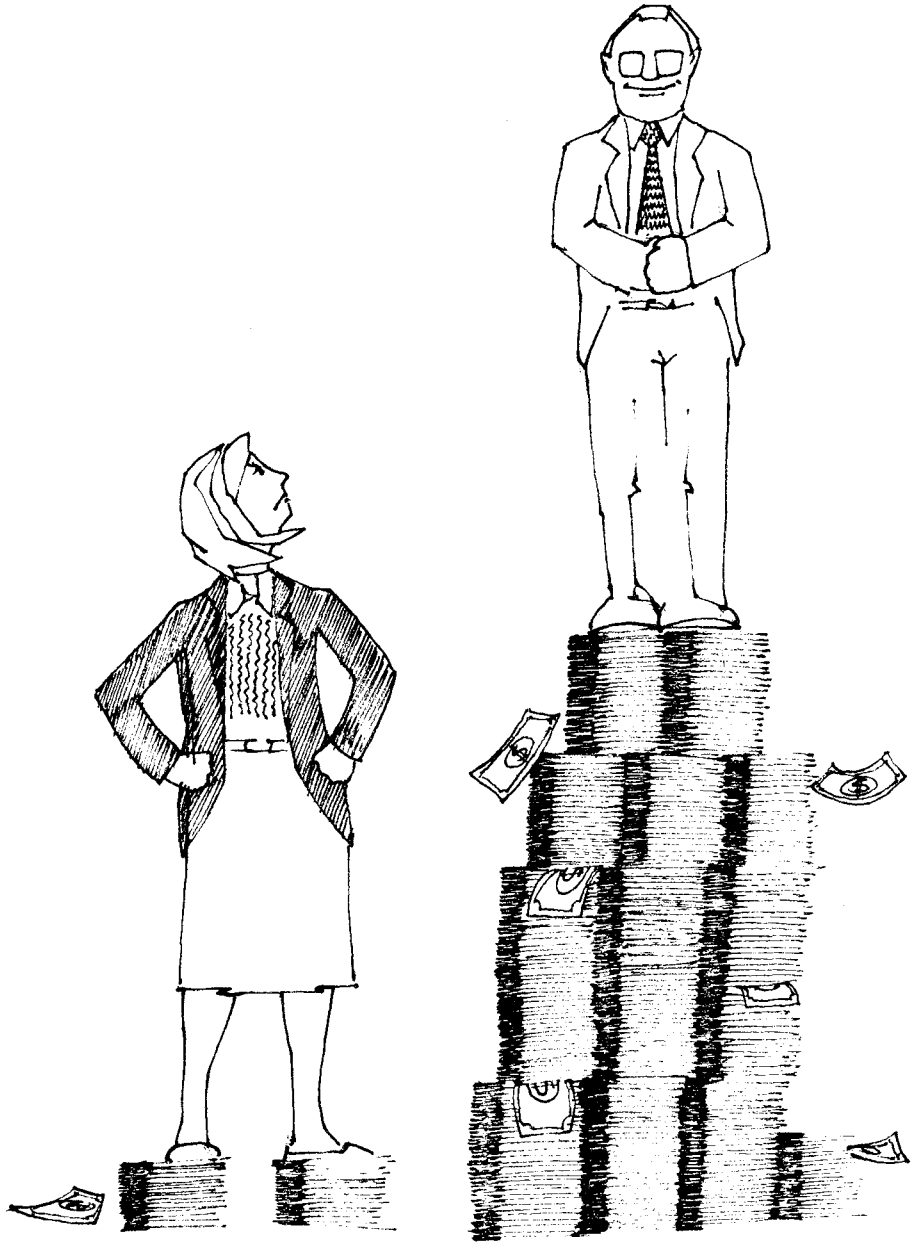

The comparable worth theory has emerged as one of the most controversial subjects in the area of employment rights in this decade. This article will focus upon the developing concept of comparable worth in sex-based wage discrimination cases under Title VII of the Equal Rights Act of 1964.[1] Statistics indicate that in the last twenty years there has been an unprecedented gain in the number of women in the workforce.[2] However, despite anti-discriminatory regulation in payment of wages, the ratio of women's to men's median earnings has remained relatively unchanged since 1939.[3] At every level of educational achievement, women's median earnings continue to lag far behind men's earnings. "On [the] average, whether college graduates or high school dropouts, women earned about 60 cents for every dollar their male counterparts were paid" in 1981.[4] Despite some inroads into male dominated fields,[5] the disparity in wages is largely attributable to the fact that the majority of women remain concentrated in "traditionally" female[6] and lower paying occupations.[7]

The comparable worth theory is an attempt to redress the wage disparity that exists as a result of sex segregation in the workplace. This comparable worth doctrine has been defined as a "controversial concept under which a plaintiff might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community."[8]

Wage discrimination cases can be brought under either Title VII or the Equal Pay Act.[9] In order to analyze comparable worth under Title VII, it is necessary to understand the relationship between Title VII and the Equal Pay Act and how they separately address wage discrimination.

Equal Pay Act

Enacted in 1963, the Equal Pay Act sought to provide legal remedies for victims of gender-based wage discrimination. The Act represented the

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first step in acknowledging the growing pattern of women permanently in the workforce and the move to eliminate past paternalistic attitudes toward women.[10] Intended as a "broad charter of women's rights in the economic field,"[11] the Act is limited in scope to addressing wage discrimination. The well-known phrase "equal pay for equal work" is the thrust of the Act. However, it is well settled that the jobs to be compared need not be identical in all respects before the Equal Pay Act is applicable.[12] "Equal work" has been judicially defined to mean that the jobs must be substantially similar.[13]

In order to prove that a violation of the Act has occurred, the employee must show that "her salary was lower than that paid by the employer to employees of the opposite sex...for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions."[14] Minor differences in the degrees of skill, effort or responsibility required for the performance of the job will not render the equal pay standard inapplicable.[15]

Application of this test necessarily requires a case-by-case analysis of the factual issues involved. The requirements of equal skill, effort and responsibility have been defined broadly enough to allow proof of any characteristic which makes one job harder than or qualitatively different from another. Skill includes such variables as the experience, training, education, and ability required for the job.[16] Effort includes mental or physical exertion.[17] Responsibility includes the degree of accountability and other matters which might reflect on the employee's importance or authority.[18]

The Act specifically allows employers to maintain different wages for men and women in substantially equal jobs if payment is based on: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex. Thus, a prima facie showing of unequal pay for equal work may be rebutted by the employer proving that the payment of different wages is based on one of the affirmative defenses enumerated above.

In keeping with the narrow scope of the Act, it is generally accepted that if the jobs being compared are not equal in content it is unnecessary to compare their skill, effort or responsibility.[19] Specifically, the legislative history of the Equal Pay Act makes it clear that there is to be no comparison of the skill, effort or responsibility of different jobs. In fact, a 1962 draft of the equal pay bill called for "equal pay for comparable work." The word "equal," however, was substituted for "comparable" so as to reduce the amount of latitude the word "comparable" allowed.[20]

While the Equal Pay Act took the first step in addressing wage disparities between men and women, it does not offer relief in any circumstance except where the employer also employs a male to perform substantially equal work. The Equal Pay Act does not address "the problem of job segregation, and therefore does not provide a remedy for those women who are trapped in low paying, largely sex-segregated jobs."[21]

At every level of educational achievement, women's median earnings continue to lag far behind men's earnings.

Title VII

In further recognition of the problems facing minorities in employment, Congress passed Title VII of the Equal Rights Act of 1964.[22] It is interesting to note that at the time, the inclusion of sex in Title VII as a prohibited basis of discrimination was offered as a House floor amendment, without prior hearings or investigations, for the purpose of gaining opposition to Title VII and thus insuring its demise.

Title VII encompasses a much broader range of discriminatory practices in employment. The central focus of these cases is whether an employer is treating some people less favorably than others because of their race, color, religion, sex or national origin.[23]

Specifically as to wages, under Section 703 (a)(1) of the Civil Rights Act of 1964, it is an unlawful employment practice for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's...sex...."[24]

Two distinct methods of establishing discrimination under Title VII are disparate treatment and disparate impact. The differences between disparate treatment cases and disparate impact cases set forth by the court in *International Brotherhood of Teamsters v. United States*,[25] are as follows:

> 'Disparate treatment'...is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or national origin. Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment (citation omitted). Undoubtedly disparate treatment was the most obvious evil Congress had in mind when it enacted Title VII.... Claims of disparate treatment may be distinguished from claims that stress 'disparate impact.' The latter involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity (citation omitted). Proof of discriminatory motive, we have held, is not required under a disparate impact theory.
>
> The disparate impact doctrine, aimed at covert intentional discrimination, 'was designed to insure more perfect realization of the beneficient purposes of Title VII by making plain that discriminatory consequences as well as discriminatory intent fall under the bank of this remedial legislation, and by providing a relatively easy burden of proof of discriminatory consequences to overcome difficulties that might normally obtain in proving discrimination in employment....'[26]

In order for a plaintiff to establish a prima facie case of discrimination under this theory, she need only prove the existence of "an employment policy or practice which, though facially neutral or even benign in actual purpose, nevertheless imposes a substantially disproportionate burden upon a claimant's protected group as compared to a favored group within the total set of persons to whom it is applied."[27] For

example, an employer might require that the applicant meet certain height and weight requirements in order to qualify for the job.[28] Such a requirement may effectively exclude most females while not having the same impact on males.

An employer may overcome a showing of disparate impact by showing that the different treatment is justified by a business necessity.[29] Under the business necessity defense, the employer must show that the challenged requirment has a manifest relationship to the employment in question.[30]

Plaintiffs proceeding under a disparate treatment theory must show "proof of actions taken by the employer from which [the court] can infer discriminatory animus because experience has proved that in the absence of any other explanation, it is more likely than not that those actions were bottomed on impermissable [sex-based] considerations."[31] As noted earlier, disparate treatment cases require direct or circumstantial proof of discriminatory motive, whereas no such proof of motive is required in disparate impact cases.[32]

Once a plaintiff has shown a difference in treatment, the employer can rebut the inference of discrimination by showing a legitimate business reason for its action. If the defendant responds with a legitimate, nondiscriminatory reason for the action, the plaintiff then has a chance to show that the proffered reasons are merely pretextual.[33]

While Title VII is arguably broad enough to encompass claims based on a comparable worth theory, until 1981 such claims were not legally recognizable due to the judicial construction of the Bennett Amendment to Title VII.

The Bennett Amendment

The Bennett Amendment to Title VII provides that it is not unlawful "for an employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid...to employees of such employer if such differentiation is authorized by the provisions of...[the Equal Pay Act]."[34] The intent of the Bennett Amendment is to reconcile conflicts between the Equal Pay Act and Title VII and ensure that the Equal Pay Act would not be nullified.[35] Due to the lack of significant legislative history, courts differ on the effect of the Bennett Amendment. Some courts interpreted it as incorporating the equal pay standard of the Equal Pay Act into Title VII. As a result, a plaintiff cannot prove a violation of Title VII unless she can also prove that there was a violation of the Equal Pay Act.[36]

Courts later opined that the Amendment only incorporated the four affirmative defenses of the Equal Pay Act into Title VII.[37]

Gunther: Opening the Door for Comparable Worth?

In *County of Washington v. Gunther*,[38] the Supreme Court resolved the uncertainty created by the Bennett Amendment. Respondents in *Gunther*, female prison guards in the female section of the Washington County Prison, alleged that wage disparity between male and female guards was the result of intentional sex discrimination.

The primary problem with the comparable worth theory lies in defining the "value" to assign to the work performed.

The county had conducted a market survey which showed that the female guards should have been paid 95% of the wages of male guards based on their worth to the employer. Subsequent to the study, the county implemented the recommended wages for male guards but only paid female guards 70% of the wages paid to the male guards.[39]

Respondents asserted that they did not have to meet the equal work standards of the Equal Pay Act because the Bennett Amendment should only incorporate the four affirmative defenses of the Act. The Court agreed, holding that the Amendment does not restrict Title VII cases to the equal pay for equal work standards.[40]

The Court concluded that the plaintiffs were seeking to show by direct evidence that they were victims of intentional discrimination and accordingly held that the plaintiffs should be permitted to proceed under the disparate treatment theory of Title VII. The Court recognized that its decision could be viewed as support for comparable worth claims, but specifically declined to reach the issue of that doctrine's viability under Title VII, stating that "respondents' claim is not based on the controversial concept of comparable worth."[41] Thus, the debate continues; the Court appears to have broadened the contours of prohibitory sex-based wage discrimination under Title VII but has not yet identified its boundaries.

The Post-Gunther Debate

The Supreme Court seems to have opened the door to comparable worth claims under Title VII, but it is unclear whether that extends beyond cases in which plaintiffs can prove intentional discrimination. Without a clear mandate on the validity of comparable worth, lower courts continue to struggle with the precise parameters of a Title VII wage discrimination case.

The court in *Spaulding v. University of Washington*,[42] stated that *Gunther's* "recognition of intentional discrimination may well signal the outer limit of legal theories cognizable under Title VII. This conclusion is supported by considerations of precedent, prudence and judicial competence."[43]

Appellants in *Spaulding*, members of the faculty of the University of Washington School of Nursing, alleged that the University engaged in discriminatory compensation practices against them in comparison to male faculty members in other academic disciplines. In holding that the appellants failed to establish a prima facie case under the disparate treatment theory, the court stated that "evidence of comparable work, although not necessarily irrelevant in proving discrimination under some alternative theory, will not alone be sufficient to establish a prima facie case."[44] The court rejected the appellants' suggestion that *Gunther* provided for a "comparability plus" test, requiring only some degree of job comparability plus some combination of factors including direct and circumstantial evidence of discriminatory conduct and pay disparities. The court stated that "[s]uch an unwieldy test might allow plaintiffs to bolster inadequate showings of comparability with a confusing potpourri of 'plus factors,' plunging courts into standardless supervision of employer/employee relations."[45]

Similarly, in *Power v. Barry County, Michigan*,[46] the court held that in the absence of an allegation of intentional

discrimination on the part of the employer to depress the wages of female prison matrons, a claim for comparable worth was not a viable independent legal theory under Title VII. The court stated that it "cannot and will not, evaluate different jobs and determine their worth to an employer or to society and then, on that basis alone, determine whether Title VII has been violated...".[47]

The *Power* court noted that there are "inherent problems and other ramifications in making such a subjective evaluation of the intrinsic worth of different jobs...".[48]

The primary problem with the comparable worth theory lies in defining the "value" to assign to the work perfomed.[49] Opponents of the theory believe that to take the value of a job out of the market where it is regulated by supply and demand and assign a value based on mathematical calculations will reek havoc on the economy.[50] Comparable worth has even been analogized to Marx's socialist concepts of labor where all jobs are politically defined, mathematically related, measured values.[51]

Of course it is not surprising that the primary opponents to the theory are businessmen. While businessmen will argue that they base their compensation plans on market determinants, job evaluation studies are employed in business, industry and government.[52]

One such job evaluation study led to a court upholding a claim based on the comparable worth theory. The court in *AFSCME v. State of Wash.*[53] addressed a comparable worth claim in which the State of Washington had commissioned a comprehensive study of all government positions, comparing the pay differences between predominantly male and predominantly female positions. The study, conducted in 1974, found 59 predominantly male classifications and 62 predominantly female classifications.[54]

The methodology used to value each employment classification was based on four factors: knowledge and skills, mental demands, accountability, and working conditions. The study revealed that the predominantly female classifications were compensated with an average salary of 20% less than predominantly male classifications of similar complexity and value.[55]

The conclusions of the study were affirmed by two governors, by a resolution of one of the two state personnel boards, and by amendment to the state's compensation statutes. However, although the study was completed in 1974, no appropriation was passed to implement the comparable worth salary system developed pursuant to the study until after the *AFSCME* suit was filed in 1983. Even then, the plan adopted was described by the court as providing "nothing more than a token appropriation of $1.5 million...and a ten-year remedial" plan.[56]

The *AFSCME* court found that the state's failure to pay the plaintiffs their evaluated worth in accordance with the comparable worth study constituted discrimination in violation of Title VII under both the disparate treatment and disparate impact doctrines.[57] Specifically, the court found that the state's system of compensation, while facially neutral, had a disparate impact upon employees in predominantly female job classifications. The state failed to demonstrate a legitimate and overriding business consideration justifying the policy.[58] In addition, the court found that the state's implementation and perpetuation of its system of compensation was intentional and resulted in unfavorable treatment of employees in predominantly female classifications. The discriminatory intent required by the disparate treatment theory was evidenced by the "deliberate perpetuation of an approximately 20% disparity in salaries between predominantly male and predominantly female job classifications with the same number of job evaluation points."[59]

Although the court stated at the beginning of its decision that *AFSCME* "is more accurately characterized [as] a straightforward 'failure to pay' case,"[60] than a comparable worth case, it represents the first reported decision in which liability has been imposed under Title VII for sex discrimination in compensation involving dissimilar jobs.

AFSCME is also the first case in which a court has applied the disparate impact analysis to a compensation system. It is doubtful, however, whether jurisdictions that have rejected disparate impact analysis where an employer's subjective decision making is involved would consider it applicable to compensation systems based on job evaluation studies.[62]

The question of whether other courts will be persuaded by the *AFSCME* decision to embrace comparable worth analysis in Title VII wage discrimination cases was answered negatively by at least one court thus far. In *Cox v. American Cast Iron Pipe Company*,[63] the Court stated that

> [t]he superficially plausible analysis in *[AFSCME]* (citation omitted) is fundamentally implausible. It is impractical and violative of market conditions to attempt to correct all disparity between the pay for so called "women's jobs" and the pay for so called "men's jobs" by stretching the Equal Pay Act or Title VII beyond their langauge. The correct remedy is to make sure that all jobs are open to both sexes.[64]

The *Cox* court's opinion patterns the general reluctance of the courts to become involved in the subjective decision making process of evaluating dissimilar jobs based on their intrinsic value to the employer.

Conclusion

The civil rights of women in the area of employment-based wage discrimination are still unfolding. Business and governmental entities have conducted numerous job evaluation studies to determine the pay disparity between predominantly female and predominantly male positions. It is anticipated that *AFSCME* represents only a single case in a wave of litigation based upon failure of an employer to implement a job evaluation study. Whether such claims are based upon a comparable worth theory or a disparate treatment theory of intentional discrimination for failure to implement the results of the study, the result will be the same under the majority's current *Gunther* interpretation.

In the absence of a job evaluation study, I believe that the courts will continue to be reluctant, without evidence of intentional discrimination, to intervene in subjective market determinations made by employers in setting wages. Courts will find it difficult, if not impossible, within the limits of the judicial system and litigation practices to arrive at the essentially subjective value comparison of differing jobs within the workforce. The vestiges from past paternalistic policies and pay inequities will continue to pervade predominantly female positions until comparable worth is recognized as a viable independent theory or the market adjusts itself.

Notes

[1] Pub. L. No. 88-352, §§ 701-718, 78 Stat. 253-266 (1964), amended by Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (current version at 42 U.S.C. §§ 2000e-1 to -17 (1976 & Supp. 222, 1979)).

continued on page 30

[117] Md. Code Ann. art. 88A, § 20(b)(1) (1979 Repl. Vol.).
[118] Md. Health-General Code Ann. § 4-207(b) (1982).
[119] Md. Health-General Code Ann. § 4-226 (1982).
[120] Md. Health-General Code Ann. § 4-206 (1982).
[121] Md. Code Ann. art. 16, § 71 (Supp. 1983).
[122] Md. Health-General Code Ann. § 4-217 (1982).
[123] Md. Est. & Trusts Code Ann. § I-206(b) (1974).
[124] *In Re Shirk's Estate*, 186 Kan. 311, 350 P.2d 1, 11 (1960); *Clark v. Clark*, 122 Md. 114, 119, 89 A. 405, 407 (1913); *Enders v. Enders*, 164 Pa. 266, 30 A. 129, 130 (1894).
[125] A.B. 5537, 206th Sess. (1983).
[126] A.B. 6624, 206th Sess. (1983).
[127] H.R. 109, 167th Sess. (1983).
[128] H.B. 6132, 35th day of Mar. 10, 1983 Sess. (1983).
[129] H.B. 2098, 105th Sess. (1983).
[130] H.B. 4114, 82nd Sess. (1983).
[131] S.B. 481, 201st Sess. (1984).
[132] A.B. 3139, 200th Sess. (1983).
[133] U.S. CONST. amend. XIV, § 1.
[134] Id.

Sex-Based Wage Discrimination
continued from page 6

For a discussion of comparable worth under the Equal Pay Act, See, Equal Work, Comparable Worth and Disparate Treatment: An Argument For Narrowly Construing *County of Washington v. Gunther*, 22 Duq. L. Rev. 65 (1983).

[2] In 1960, there were 23 million women in the work force. As of the second quarter of 1982 that figure had risen to 48 million. U.S. Department of Labor, Bureau of Labor Statistics, The Female — Male Earnings Gap: A Review of Employment and Earnings Issues (1982).

[3] In 1939, median earnings for women who worked year round, full time, were 58 percent of the median earnings for men. Similar figures for 1981 showed women's earnings at 59% of the median for men. Id., U.S. Department of Labor, Bureau of Labor Statistics.

[4] Id., U.S. Department of Labor, Bureau of Labor Statistics.

[5] The percent of women in predominantly male fields in 1970 and 1981 are as follows:

	1970	1981
accountants	25.3	38.5
engineers	1.6	4.3
lawyers-judges	4.7	14.0
physicians	8.9	13.8
carpenters	4.9	6.3
truck drivers	1.5	2.7
protective service	6.2	10.1

Id., U.S. Department of Labor, Bureau of Labor Statistics.

[6] Percentages of women in female dominated fields in 1970 and 1981 were as follows:

	1970	1981
registered nurses	97.4	96.8
sales clerks	64.8	71.3
secretaries	96.6	98.6
service workers	60.5	62.2
teachers, except college and university	70.4	70.6

Id., U.S. Department of Labor, Bureau of Labor Statistics.

[7] In a recent study of wages in 250 occupations, seven of the lowest paying occupation groups were the same for men and women: farm laborers, food service workers, cashiers, waiters, waitresses, cooks, nurses' aides and orderlies and bartenders, all of these occupations were both female intensive and relatively low paying. Rytine, Earnings of Men and Women: A Look at Specific Occupations, Monthly Labor Review, April 1982.

[8] County of Washington v. Gunther, 452 U.S. 161, 102 S.Ct. 2242, 68 L.Ed.2d 751 (1981).

[9] Pub. L. No. 88-38, 77 Stat. 56 codified at 29 U.S.C. § 206(d)(1) (1976)). The Equal Pay Act is an amendment to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (1976). The Equal Pay Act provides in pertinent part:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, 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 equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

Id. § 206(d) (1) (1976).

[10] For a discussion of the historical treatment of women in the workforce, See, Pollack & Smith, Civil Liberties and Civil Rights in the United States, 263-277, (West, 1978).

[11] Shultz v. Wheaton Glass Co., 421 F.2d 259 (3rd Cir.), *cert. denied*, 398 U.S. 905 (1970).

[12] Corning Glass Works v. Brennan, 417 U.S. 188, 195, 94 S.Ct. 2223, 91 L.Ed.2d 1 (1974).

[13] Shultz v. Wheaton Glass Co., 421 F.2d 259, (3rd Cir. 1970).

[14] Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 449 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

[15] Id. at 449.

[16] See, 29 CFR §§ 800.125, .126.

[17] Id. § 800.127.

[18] Id. §§ 800.129, .130.

[19] Id. § 800.120. "[I]t is clear that congress did not intent to apply equal pay standards to jobs substantially differing in their terms and conditions."

[20] 108 Cong. Rec. 14, 767 (1962).

[21] Comment, Market Conditions as a Factor Other Than Sex in Title VII Disparate Impact Litigation, 86 W. Va. L. Rev. 165, 170 (1983).

[22] 110 Cong. Rec. 2581 (1964).

[23] Furnco Const. Corp. v. Waters, 438 U.S. 567, 577, 98 S.Ct. 2943, 576 L.Ed. 2d 957 (1978).

[24] 42 U.S.C. § 200e-2(a) (1).

[25] 431 U.S. 324, 335 n.15, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977).

[26] Wright v. National Archives and Records Service, 609 F.2d 702, 712-13 (4th Cir. 1979).

[27] Id.

[28] See, e.g., Dothard v. Raulinson, 433 U.S. 321, 97 S.Ct. 2720, 53 L.Ed.2d 786 (1977) (height and weight requirements had discriminatory impact since they would exclude 41.13% of the female population but less than 1% of the male population.

[29] For a discussion of the business necessity defense See, Comment, Business Necessity Defense to Disparate Impact Liability, 46 U. Chi. L. Rev. 911 (1979).

[30] Milton v. Weinberger, 646 F.2d 94 (C.A.D.C. 1982) (female employee was refused promotion for failure to answer a question during a final selection interview adequately justified her for non-selection as the question bore some relevancy to the job).

[31] Spaulding v. University of Washington, 704 F.2d 686, 700 (9th Cir. 1984).

[32] Id.

[33] Id.

[34] 42 U.S.C. § 200e-2(h) (1976).

[35] 110 Cong. Rec. 13, 647 (1964).

[36] Orr v. Frank R. MacNeill & Son, Inc., 511 F.2d 166 (5th Cir.) *cert. denied*, 423 U.S. 865 (1965); Ammons v. Zia Co., 448 F.2d 117 (10th Cir. 1971).

[37] See, International Union of Elec., Radio & Mach. Workers v. Westinghouse Elec. Corp., 631 F.2d 1094, 1099 (3d Cir.), *cert. denied*, 449 U.S. 1009 (1980).

[38] 452 U.S. 161, 102 S.Ct. 2242, 68 L.Ed.2d 751 (1981).

[39] Id. at 180-81.

[40] Id. at 181.

[41] Id. at 166-67.

[42] 740 F.2d 686 (9th Cir. 1984).

[43] Id. at 706. See, also, Lemons v. City and County of Denver, 620 F.2d 228 (10th Cir.), *cert. denied*, 449 U.S. 888 (1980).

[44] Id. at 700.

[45] Id. at 701.

[46] 539 F.Supp. 721 (W.D.Mich. 1982).

[47] Id. at 727.

[48] Id.

[49] See, Comment, Comparable Worth: Proving Sex-Based Wage Discrimination, 69 Iowa L. Rev. 618 (1984); Tough Comparable Worth Questions Remain Unresolved, Legal Times (June 18, 1984).

[50] See, Comment, Comparable Worth Theory of Title VII Sex Discrimination in Comprehension, 47 Mo. L. Rev. 495 (1982). See, also, Pay Bias Enters A New Age, The National Law Journal, Vol. 6 - No. 17 (January 2, 1984).

[51] Majors, The Comparable Worth Muddle, Journal of Contemporary Studies, Volume VII, Number 3 (1984).

[52] As of January 1984, 18 states were conducting pay equity studies. The State of Maryland is currently conducting such a study.

[53] AFSCME v. State of Washington, 578 F.Supp. 846 (W.D. Wash. 1983) (currently on appeal). Class action initiated by the American Federation of State, County and Municipal Employees and the Washington Federation of State Employees on behlaf of 15,500 workers in jobs primarily held by females.

[54] Id. Predominantly was defined as 70% one sex.

[55] Id. at 862.

[56] Id. at 867.

[57] Id. at 864.

[58] Id. See discussion at footnote 29 infra.

[59] Id. at 864.

[60] Id. at 865.

[62] Tough Comparable Worth Questions Remain Unresolved, Legal Times (June 18, 1984).

[63] 585 F.Supp. 1152 (N.D.Ala. 1984).

[64] Id. at 1152; See, also, Spaulding, 740 F.2d at 708 (9th Cir. 1984) ["Relying on competitive market prices does not qualify as a facially neutral policy or practice for the purposes of the disparate impact analysis..."].