

## **Equality for Women Taken for Granted?**

The President of Harvard University created quite a stir by questioning the intellectual capacity of women in its sciences. It was not so long ago that businesses and government agencies took for granted that women should be paid less than men for doing the same job. We do not hear much about the Equal Pay Act today, but one of the leading cases on the subject was tried in Williamsport, Pennsylvania, in the early 80's and it set a precedent that reverberated throughout the country.

Mary Jane Arnold and 10 other women were instructional aides in a multi-county intermediate unit in Pennsylvania. As instructional aides, they were paid half the starting salary of a man who was also an instructional aide. The defense was simple. The women were not equal to the men. The women worked in classrooms, home economic rooms, and recreation rooms with a variety of mentally and physically handicapped children. The difficulty of the work performed by these women ranged from attempts to impart educational skills to taking care of serious physical and emotional needs. Many of the teachers and administrators consider these women instructional aides the equivalent of special education teachers who had advanced degrees.

The male, whose starting salary was twice that of the women, worked with the same level of students but in a shop setting.

The key to the case was that the Equal Pay Act requires not identical functions but rather substantially equal work involving substantially equal skill, effort and responsibility in return for equal pay.

The development of this case was so daunting from a financial and time point of view that I first went to see Clarence Thomas, newly installed at the Equal Employment Opportunity Commission in Washington, D.C. I was told by the future Justice of the United States Supreme Court that the EEOC would not become involved in the wage disparity issue in Williamsport, Pennsylvania, because it reeked of "affirmative action" and he thought that the jobs of the men and women were probably not equal anyway. He left me with a kind handshake and the following words: "Go try your case and if a federal jury in upstate Pennsylvania agrees with you, you can come back to us for injunctive relief."

What this meant was very simple. Even if we won, we could only get back pay for the women so as to make them equal with the male but we could get nothing for the other 50 women who had not brought suit and we could not get the wages of the women permanently raised to equal that of the man. Only the federal government could obtain those functions by bringing its own case for what is called equitable relief.

The preparation and trial of the case was a Herculean task for a small law firm in Williamsport, Pennsylvania. The partners and associates who worked on that case, funded it and gave selflessly of their time, were truly outstanding. No one thought the case could be won in this area and only a token offer was ever made of settlement.

After several weeks of trial, a jury with only two women on it decided not only that the Equal Pay Act had been violated, but that the conduct of the Intermediate Unit was intentional. In other words, it was not merely a negligent failure to pay the women equally, but was an improper act based upon the motives involved.

The 10 women were awarded their back pay.

The most memorable aspect of the case is when the seven men crowded around the 10 plaintiff instructional aides and told them: "We would not want our wives and daughters treated the way you were." One man who was a truck driver said that he had met a woman truck driver at a truck stop one time, and even though her truck was somewhat different than his, he still felt she deserved to be treated like an equal. The two women on the jury were less sure of the result but, nevertheless, were convinced by the men that times had changed and it was not fair for the women to be paid less than the man for doing what was essentially the same job.

Justice came to Williamsport for women.

The Equal Employment Opportunity Commission did make good on its promise (Thomas was gone by then) and brought a case for injunctive relief. The wages of the women were raised and all of the women who were instructional aides received the relief they deserved.

The case went to the United States Court of Appeals for the Third Circuit, the second highest court in the land beneath the United States Supreme Court. The Court affirmed the judgment of the jury on the Equal Pay Act and in a separate published ruling said that the court had permitted defense counsel to play "cat and mouse" with the women.

Perhaps most eloquent was a comment made from the bench by the leader of the panel of the three judge Court of Appeals when he said: "Haven't they heard about the civil rights laws up there in Northcentral Pennsylvania?" Well, they had.

Employers in the government are much more careful today about how they pay women, and while there is still a disparity for what men and women are paid for doing the same work, the gap is closed substantially.

As a father of two daughters, both of whom have extremely strong math and science skills, I was not only offended by the remark of the President of Harvard University, but I could not help thinking about the case of *Arnold vs. BLaST*.

Antiquated thinking about women is not a thing of the past. Obviously, the President of Harvard University needs a bit of education and doubtless will receive it over time.

The University President's remark was not a matter of poor political correctness but rather was demonstratively ignorant and ill informed.

Women have fought a long and hard struggle for equal rights in this country, but fortunately a mostly male federal jury in the United States District Court for the Middle District of Pennsylvania helped pave the way to the rights that women currently enjoy.

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