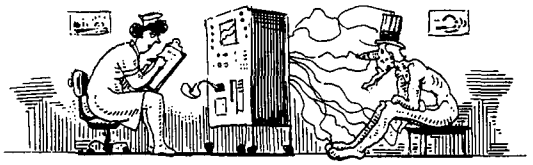


by Evan Gahr

Pay Equity Iniquity

Comparable worth—the doctrine that will not die.

It was hardly the stuff of mass demonstrations, but don't let the numbers fool you.

On April 8, 1999, small groups of protesters all across the country turned out for "Equal Pay Day." They huffed and puffed and demanded that the "wage gap" between men and women be solved through "comparable worth" laws. "Comparable worth" may connote consciousness-raising groups and other relics from feminism's heyday. The idea that men and women should be paid the same wages for different jobs that supposedly require equivalent skill has been defeated at the ballot box, vanquished in the courts, and discredited by numerous studies (the wage gap it would solve is a myth). But it would be a big mistake to dismiss the protesters as a bunch of hapless 1970's refugees. Cleverly re-packaged, comparable worth is back with a vengeance.

In a multi-pronged push for "pay equity" this year, the Clinton administration has joined forces with Big Labor and feminists. Meanwhile, under the guise of fighting discrimination, the U.S. Labor Department has forced what are essentially multi-million-dollar comparable-worth settlements on government contractors. Other companies are running scared and many more could well buckle under as recently unveiled comparable-worth legislation advances in state legislatures and Congress.

Most importantly, the private sector marks a new and far juicier target for this remarkably resilient movement. Until the last few years, comparable-worth settlements were mostly confined to the public sector. Feminist furor made comparable worth famous in the 1970's, but it was really union lawyers who brought home the bacon—with an ingenious strategy that made litigation part of the collective bargaining process. In the early 1980's, Winn Newman and other labor lawyers filed pay discrimination claims against municipalities that seemed doomed to fail—and usually did. No matter; once a city or state got bad press from a lawsuit, governments scurried to re-negotiate contracts and increase pay for predominantly female jobs. When a federal appeals court rejected an equal-pay lawsuit brought by the American Federation of State, County, and Municipal Employees (AFSCME) against Washington state, an AFSCME official could cry all the way to the bank: "Yeah, we lost in court, but then we turned around and won $101 million and 23-percent increases for nurses and secretaries, so is that really losing?"

Throughout the 1980's, similar antics in other cities and states led to an estimated $500 million in "pay equity" adjustments. In the nation's capital, though, Republican administrations leveled a jaundiced eye at comparable-worth schemes, which a Reagan appointee called "the looniest idea since Loony Tunes."

Yet comparable worth trudged along. Once largely pushed by public sector unions, the AFL-CIO signed on in 1993. The full-scale push began this year.

"Attitudes haven't caught up with the law," says Susan Bianchi-Sand, executive director of the union-backed National Committee on Pay Equity, as she explains the "cultural problem" of undervaluing women's work. Bianchi-Sand, a former AFL-CIO official, has a point. Plenty of folks in our sexist society still believe that a construction worker should earn more than a secretary, as if lugging bricks were tougher than pecking at a keyboard. In Minnesota, one of the several states with comparable worth laws for government employees, a study rated the jobs of firefighter and librarian equally. Yet an obtuse white male might dispute the proposition that placing books on a shelf is as perilous as navigating burning buildings. Bianchi-Sand's assumption of cultural bias is shared by U.S. Equal Employment Opportunities Commission Chairman Ida Castro. In comments earlier this year, she blamed the so-called pay gap on "*subliminal* gender discrimination [emphasis added]." So employers are a bunch of bigots who don't even realize it. For those lacking the proper "attitudes," Washington is happy to provide a quick education. Or is it re-education?

Under the Clinton administration, the Labor Department has essentially forced comparable worth on federal contractors in everything but name. It's a nifty trick that relies on a technique called the "DuBray analysis." The department's Office of Federal Contract Compliance Programs (OFCCP) looks at a company's "salary grade," which usually has several kinds of jobs. For each salary grade, the OFCCP calculates the median pay for men and women, plus the overall median. When women are paid above the median, the Department disregards the results, according to employment lawyer Paul Grossman, who has represented companies subjected to DuBray. After much combing through data, the government can usually find some pay grades where women are below the median. It is then assumed that discrimination is at work. Of course, some might offer different

Evan Gahr *is a contributing writer for* The American Enterprise *magazine.*

explanations. Perhaps the men just happened to work in a more profitable division. Or perhaps they had simply negotiated a higher settlement. (In a moment of candor, a National Committee on Pay Equity official once admitted to an interviewer that men ask for more money.) But such explanations do not matter.

Jeffrey Norris, president of the pro-business Equal Employment Advisory Council, says that "it appears that OFCCP's methodology is to try and convince federal contractors that there is a pattern of pay disparities that should be remedied by back pay. The agency does not appear to believe that it is necessary to establish a legal basis for discrimination—all they need to do is establish facts" that convince the company it is better to settle than fight.

In other words, the department is on a fishing expedition and in recent months has landed some prize catches, including a $1.5-million settlement from CoreStates Financial Bank in Philadelphia and $3.1 million from Texaco this January. There is plenty more where that came from. After Texaco agreed to plunk down several million dollars to get the feds off its back, Shirley Wilcher, OFCCP director, vowed to "review corporate policies to ensure that women are paid equally with men who have *similar* responsibilities [emphasis added]."

That's no idle threat. This April, the EEOC granted the Labor Department unprecedented authority to seek punitive damages in so-called pay discrimination cases.

Corporations stand to face even more government pressure and threats of lawsuits if legislation before Congress and state legislatures succeeds. This February, the AFL-CIO kicked off a 24-state campaign for pay equity. Leading the effort is Karen Nussbaum, a former 60's radical who served in the women's bureau of the Labor Department before she joined the AFL-CIO. At the union, Nussbaum is helping to push a model bill for states that bars wage differences for "equivalent" jobs, even if they are "based on varying market rates and [differing] economic benefits." Nussbaum has gloated that the AFL-CIO campaign is the "biggest thing to happen to equal pay since the Equal Pay Act was passed." When that passed in 1963,

> *"Democrats now stand poised to pervert the Equal Pay Act under the guise of strengthening it."*

legislators, sticklers for detail, took "equal pay" to mean exactly that. It would be illegal to pay men and women different salaries for the same job. Pay differences were allowed due to seniority, a merit system, or for any reasons "other than sex." Comparable worth was expressly rejected. But just as the 1964 Civil Rights Act was twisted to support "affirmative action,"—although sponsor Hubert Humphrey vowed to literally eat the bill if it did—Democrats, with the apparent acquiescence of the GOP, now stand poised to pervert the Equal Pay Act under the guise of strengthening it. Senator Tom Harkin's (D-Iowa) Fair Pay Act bars paying women less than men for jobs that "require comparable skills, effort, responsibility, and working conditions." The Paycheck Fairness Act, a somewhat less stringent bill proposed by Senate Minority Leader Tom Daschle (D-S.D.) and Rep. Rosa DeLauro (D-Conn.), would require the Labor Department to prepare "voluntary" guidelines for companies to compare wages paid for different jobs, to eliminate "unfair pay disparities between occupations traditionally dominated by men or women."

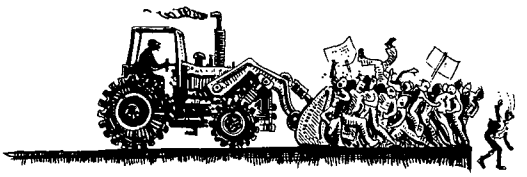
The legislation could prove a huge boondoggle for trial lawyers. Not only would any employer who didn't follow or adopt the "voluntary" guidelines be vulnerable to lawsuits; according to legal experts, the Daschle bill allows unlimited punitive damages for "victims" of wage discrimination. (Currently, only back pay is allowed.) It also includes provisions, quietly added this spring, that would make it even easier for plaintiffs to win so-called "pay discrimination" lawsuits. President Clinton endorsed the Daschle bill this April. In an apparent pay-off to feminists for their support during the impeachment process, Clinton has thrown his weight behind pay equity, promising more money to fight discrimination (i.e., hire more quota mongers for the EEOC) and educate women about their rights. In his State of the Union address, Clinton called for "equal pay for equal work," winning applause from Democrats and Republicans alike.

The sympathetic response from the GOP shouldn't surprise anyone. In the last decade, the GOP has supported all sorts of dubious measures that ostensibly benefit women and minorities—but are actually bait-and-switch efforts in which alleged discrimination is used to justify elaborate "affirmative action" schemes that dramatically increase government power and further fuel the litigation explosion. In addition to supporting the Civil Rights Act of 1991, which encouraged a system of quotas, Republicans have helped Democrats enact the Family Leave Act and raise the minimum wage. Amy Habib, counsel to the pro-business Labor Policy Association, notes that Republicans are "scared" to oppose pay equity lest they alienate female voters.

Despite the implication that women are underpaid due to some vast right-wing conspiracy, the nation hardly faces an epidemic of pay discrimination. In the past five fiscal years, allegations of Equal Pay Act violations accounted for less than 1.5 percent of charges filed with the EEOC, according to Habib. Moreover, the EEOC, which administers the Act, found reasonable cause for determining discrimination in less than four out of 100 charges filed.

Yet pro-business groups are nervous. In Indiana, where the AFL-CIO's comparable worth bill has already passed the House, as it has in a number of other states, Brian Burton of the Indiana Chamber of Commerce wonders how far things will go. "Is government going to establish a wage for all jobs in the state of Indiana? If we are going in that direction, maybe the state ought to establish production quotas for all goods and services in the private sector."

Let's hope that feminists and labor unions won't take Burton up on the dare. Production quotas may sound absurdly outdated, but not long ago, so did comparable worth.



by James Bovard

They Couldn't SWAT a Fly

But police commando teams are still a menace to society.

Federal and Colorado officials have transformed the April 20 killings at Columbine High School into a law enforcement triumph. Attorney General Janet Reno praised the local police response as "extraordinary," "a textbook" example of "how to do it the right way." President Clinton declared on the Saturday after the shooting that "we look with admiration at...the police officers who rushed to the scene to save lives."

In fact, the excruciatingly slow response by Special Weapons and Tactics (SWAT) teams and other lawmen to the killings in progress turned a multiple homicide into a historic massacre. And federal aid to local law enforcement, by spawning the proliferation of heavily armed but often flat-footed SWAT teams, may actually undermine public safety.

In Littleton, the sheriff's department has shifted official explanations more often than the Clinton legal defense team. Eric Harris and Dylan Klebold began their rampage around 11:20 a.m. on April 20. Jefferson County sheriff's spokesmen initially claimed the killers had committed suicide at around 12:30 p.m. After the police came under harsh criticism for the slowness of their response, spokesmen announced that the killers may have committed suicide much earlier—though no precise information has yet been released. Local officials at first also greatly exaggerated the number of fatalities—thus causing the story to have a greater initial impact.

JAMES BOVARD *is the author of* Freedom in Chains: The Rise of the State and the Demise of the Citizen *(St. Martin's Press).*

For the first four days after the shooting, the sheriff's department claimed that, as the *Rocky Mountain News* reported, once the boys' attack began, Deputy Neil Gardner "ran into a [school] hallway and faced off with one of the two gun-toting teenagers. Gardner and the gunman shot it out before the Jefferson County deputy retreated to call for help." Law enforcement was criticized by Denver radio hosts and others for the failure of the deputy to stand his ground. Five days after the shooting stopped, Gardner went on "Dateline NBC" and revealed that he had been outside in his patrol car—had driven up when he heard shooting—and that he stopped 50 yards away and fired several shots at Harris, but missed. When I asked him about this discrepancy, Steve Davis, spokesman for the Jefferson County Sheriff's Department, attributed it to the initial confusion just after the shooting.

Much of the press is treating the lawmen as heroes, or at least failing to challenge their more bizarre claims. For instance, Gardner said on "Dateline": "I think with exchanging fire, it did allow some—some people that are—that were fleeing the scene to get out of the building. I always will have to live with the fact that, maybe if I could have dropped him, maybe it would have saved one or two more lives." Yet, at the time of this gunfire exchange, the teens had killed only two people. If Gardner had hit Harris, Klebold (described as a follower of Harris) might have been unnerved and surrendered, and thus saved up to eleven lives. Two other officers arrived, fired at one of the teens, and missed.

Jefferson County Sheriff John Stone later explained: "We had initial people there right away, but we couldn't get in. We were way outgunned." Jefferson County SWAT Commander Terry Manwaring, whose team entered the school but proceeded at a glacial pace, said: "I just knew [the killers] were armed and were better equipped than we were." SWAT team members had flak jackets, submachine guns, and fully automatic M-16s—rather more formidable protection and weaponry than the teenagers' shotguns, semiautomatic rifle, and shoddy TEC-9 handgun (which Clinton ludicrously described as an "assault pistol").

SWAT teams made no effort to confront the killers in action, but devoted their efforts to repeatedly frisking students and marching them out of the building with their hands on their heads. Jefferson County Undersheriff John Dunaway bragged to the *Denver Post* that the evacuation of students "was about as close to perfect under the circumstances as it could be." Even though none of the SWAT teams came under hostile fire, Denver SWAT officer Jamie Smith claimed: "I don't know how you could have thrown in another factor that would have made things more difficult for us."

Television cameras captured a SWAT team creeping toward the school behind a firetruck, each officer taking one small step after another, with the group hunched together as if expecting an attack at any moment. This maneuver occurred long after the perpetrators were dead.

SWAT team members did not reach the room where the killers lay until at least three hours after the shooting stopped. Wounded teacher Dave Sanders died, perhaps because the team took four hours to reach the room he was in, even though students had placed a large sign announcing "1 Bleeding to Death" in the window.

Many local SWAT teams descended on the high school parking lot and vicinity after the shooting started. Police spokesmen said most of the SWAT teams were