Where There Is Smoke, Is There Always Fire?

The torrent of sexual abuse allegations against celebrities has shocked many. It should not. Sexual harassment and discrimination, as well as other forms of abuse based upon fear and human differences are as old as history. It is a good thing that bad behavior is getting so much attention, but undoubtedly some of those complaints are false.

I have looked at, and sometimes taken civil rights and discrimination cases since the beginning of my legal career. Some people are honest, even if their stories (at first) are unbelievable, and others are a total fraud. No one should be tried in the press, but that is the nature of our social media 24-hour news style.

Roy Moore, the failed candidate for Senator from Alabama, certainly smelled bad. Wise politicians abandoned him like the Bubonic Plague. However, let us remember that he had not been tried in any court. Does the fact that it takes somebody 10 or 20 years or more to report a crime mean that the crime did not happen? Sometimes it means that greedy, dishonest people are jumping on the financial bandwagon, but other times the delay is caused by suppressed memory, post-traumatic stress syndrome, or just a desire to forget a horrific past event.

When I filed the case of *Arnold v. BLaST* in the Middle District of Pennsylvania, it caused an uproar. The 10 teacher aides I represented were all women, paid half that of men. The women worked in home economics, sewing and other fields that were typically "female," while the men worked with their students in the shop setting. We took the position that the Equal Pay Act and Title VII of the Civil Rights laws applied. The judge was not favorably disposed to the claims, and contended that we were trying to raise a "comparable worth" allegation. That doctrine has not been adopted in the United States. The Equal Pay Act, fortunately, speaks of "substantial" equality between the job performed by men and women, applying criteria of skill among other factors. We took the position that the skillset was the same or substantially similar, regardless of the setting.

The trial took place right here in Billtown, in federal court. It was a real slog. The defense attorney referred to the women as "welfare mothers." The women I represented would never have known that they had a claim except for the fact that BLaST Intermediate Unit 17 published the salaries in the newspaper.

The EEOC, headed at the time by Clarence Thomas, now a Supreme Court Justice, was worthless. Ronald Reagan had appointed Clarence Thomas as head of the EEOC to disembowel the federal advocate which had been created to fight discrimination. Thomas told me to come back later if we won the case, and the EEOC would consider helping with

injunctive relief. Even if we won the case, we knew that we would only get the back-pay differences for the women, but that we could not necessarily change the system.

A union gave us $5,000 towards the case, which was a drop in the bucket. My partners stood by my side, especially Jack Humphrey, who said that he would rather see the firm bankrupted than let the case go for lack of money.

The jury consisted of 10 men and 2 women, local people. The jury not only found for the women, but even found intentional misconduct on the part of the BLaST Intermediate Unit 17.

When we spoke to some of the jurors after the verdict, all the men said, “We would not want our wives or girlfriends to be treated like that.” They also said, “Why should a working woman get any different pay than a man if she is basically doing the same job?” Many people were surprised at the decency of those hardworking blue collar jurors.

The saga did not end there. We had to drop the claim for an injunction to raise the pay of the women under Title VII, because the judge made it clear that he would rule differently than the jury. BLaST then refused to pay the verdict. When we tried to enforce the verdict, the trial judge sided with BLaST. We then took an appeal, and wound up before the United States Court of Appeals for the Third Circuit for the second time.

An outstanding panel heard the case. Judge Leon Higginbotham, an African-American, had been a leader in the groundbreaking desegregation case of *Brown v. Board of Education of Topeka, Kansas.* Judge Weiss was said to be a straight-laced, white Evangelical Christian. Judge Max Rosenn from Wilkes-Barre was a highly respected Jewish lawyer who became a trial judge and eventually went on the Third Circuit. The Court ruled unanimously that the *Arnold* plaintiffs deserved to be paid, and stated that the lower court, “permitted defense counsel to play cat and mouse with plaintiff’s counsel.” This famous “cat and mouse” opinion has been published in the archives of the law.

What happened next? Clarence Thomas, was gone from the EEOC. The EEOC came in, sought an injunction, and was successful in having the pay of the women raised. The women were paid their back-pay, and were treated equally with the men.

There have been some pleasant and some unpleasant long-term consequences from the case. For women in the area, it was a breakthrough decision. Other legitimate claimants realized that indeed they had civil rights in the northern part of the Middle District of Pennsylvania. Although the women had the right to have their verdict doubled, based upon the “liquidated damages” provision of the Equal Pay Act, the court refused to do that. The trial court judge based his resistance in this case on an experience he had serving in the Navy during World War II. He had been an officer on the first integrated ship in the United States Navy, personally commissioned by Eleanor Roosevelt. The judge was convinced that the captain, who was Black, was incompetent and only got the job because of his color. As a result of that, the judge was highly suspicious of this case or any claim where it might appear that a particular group or person was receiving a benefit they did not fully deserve.

Of course, I have seen and felt discrimination myself. One businessman in town asked me not to try a case because he thought the jury might be "prejudiced against Jews." Another man once testified on the stand in a derogatory way concerning a potential Jewish customer. Out of loyalty to my client, I had to let the remark go, and won the case anyway. One of the most memorable experiences was when I was moving, from one residence to another, I offered to find a tenant for the elderly landlord. He said to me, "You're lucky I rented to you; make sure you don't rent to no Black people." I looked as hard as I could for an African-American tenant. It is of some merit to the community that, in the years subsequent, all of those people apologized to me and asked for my forgiveness. I was happy to grant it.

We have not had a great history in the northern part of the Middle District of Pennsylvania when it comes to treatment of women, minorities, and others who are different. Yet, we have made enormous strides over the years.

As with all other claims of any kind, there will be honorable people and there will be lying frauds. It is the job of judges and courts to determine credibility, although the press and the gossip columnists will continue their nefarious assault depending upon where they fall on the political spectrum.

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