

POLITICS

Before #MeToo Was a Movement

BY ALICE OLLSTEIN '10

DECADES BEFORE THE #METOO MOVEMENT lifted up long-buried stories of sexual harassment and assault, leading to the downfall of several powerful men in politics, journalism, and the corporate world, attorney Robert Adler '65 argued a series of cases that helped lay the legal groundwork for the revolution to come. The lawsuits he brought on behalf of three women who worked for the District of Columbia established the concept of the hostile work environment, strengthened discrimination victims' right to back pay, and made explicitly illegal the kind of gender-based favoritism that was routine for women at the time.

Though he says he was "not really an activist" during his college years, Adler couldn't help but be impacted by the social movements swirling around campus in the 1960s, especially conversations about sex discrimination. So when asked nearly a decade later to go out on a legal limb and represent working class women of color in cases without established precedent, his Oberlin values pushed him to say yes.

"I thought, there's a basic wrong here," he says. "And here was a chance to actually do some good."

But amid a national conversation of how far we have come on workplace gender equality and how far we still have to go, Adler says his initial optimism now appears misplaced.

"I was young and naive. I thought that we would really change behavior in the workplace," he says. "Obviously, we didn't. Look at all the outrageous behavior that has recently come out, from Harvey Weinstein and the others, demanding back massages at work and all this craziness. What were they thinking? The message clearly didn't get through."

SANDRA, DEBORAH, AND MABEL

It all started during the political and cultural upheaval of the 1970s. After several years working at the Justice Department, Adler left to start his own private law firm with a couple of friends who had previously worked as public defenders. At first, he focused mainly on breach of contract and personal injury cases, not sex discrimination, which was a nearly uncharted area of the law.

"There hadn't been much litigation, and there was very little law," Adler explains, other than

one ruling barring explicit quid-pro-quo discrimination, such as a boss offering a woman a promotion only if she agreed to have an affair with him.

There were also few guideposts for attorneys on what *exactly* Congress meant when it banned employment discrimination on the basis of sex in Title VII of the Civil Rights Act, because the provision was thrown into the landmark law at the eleventh hour.

"We didn't have committee reports to shed light on it, nothing on what the congressional intent was," Adler says.

But when D.C. Department of Corrections employee Sandra Bundy walked into his office and told him that multiple male supervisors were making her life a living hell, he offered to represent her, even though he had no background or experience in that area. Adler points out that neither did most other lawyers at the time since it was so new.

"There were two or three supervisors hitting on her, including the head of the agency, and she was miserable," he says. "She had tried to transfer to another agency but had been blackballed. They wouldn't let her move. She

was stuck. And we interviewed some of her coworkers, who supported her story."

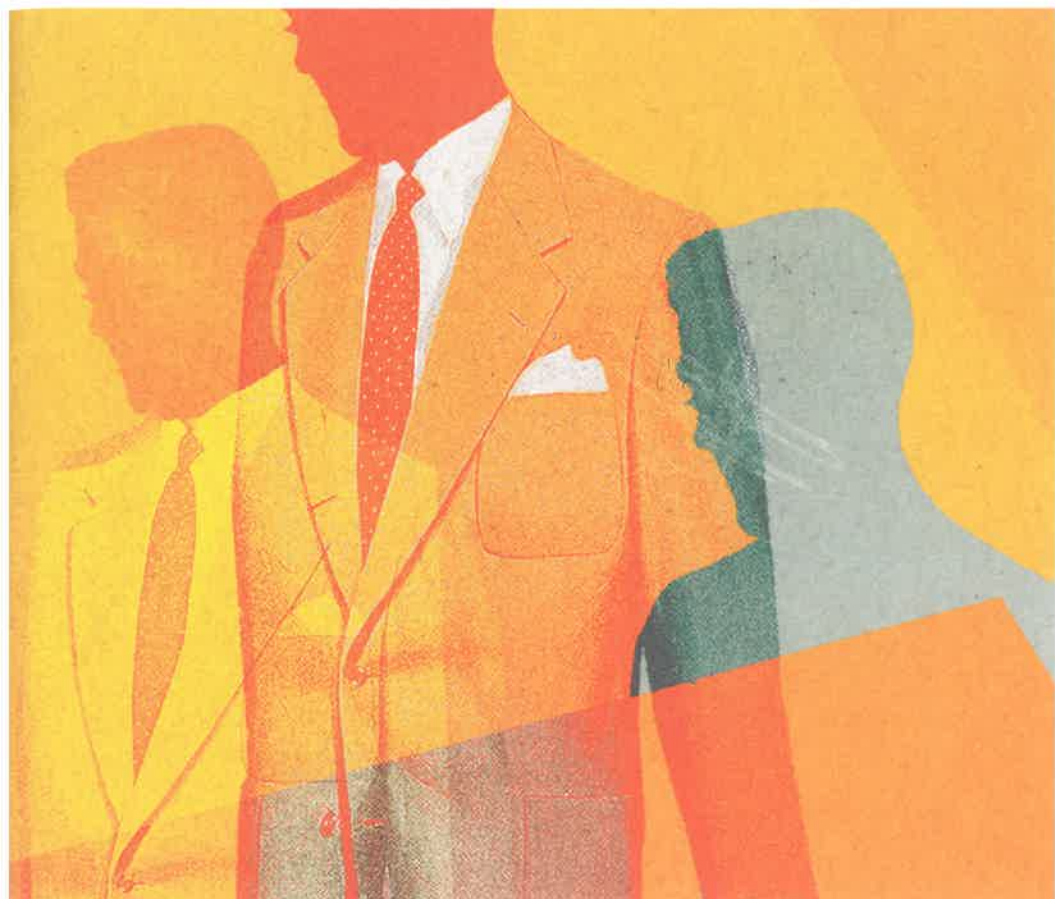
Still, because Bundy hadn't been explicitly offered job benefits in return for sexual favors, it took Adler several years and a loss in the trial court before he could get judges to agree that what happened to her was illegal. Thus, the concept of the hostile work environment was born in 1981.

"It established that if there are repeated unwanted sexual advances that affect your work in a negative way, it's a violation of Title VII," he explained. "It can't just be a one-time suggestion of going out for a drink. It has to be repeated."

Next came Mabel King, a nurse at the D.C. jail who lost out on a promotion to a much younger, less-experienced coworker who'd had an intimate relationship with their supervisor.

"The difficulty there was arguing sex discrimination, because my client is a woman and the person who got the job was also a woman," Adler says. "We lost in the trial court; the judge said what we were trying to do was make flirtation in the workplace unlawful. He said it's commonplace to develop relationships in the workplace, and that people are going to





naturally favor and promote people they like working with.”

But when the case came up to the Court of Appeals for the D.C. Circuit, the judges were more sympathetic to the argument that King had experienced a form of sex discrimination.

“The case established that you can’t make a promotion decision based on a personal or sexual relationship, even if it’s consensual, because then you’re discriminating against other applicants,” Adler explained. “It was a huge advancement.”

A third corrections department employee, Deborah Bryant, whose case Adler took on in 1990, waited nearly three decades for justice. An assistant to the warden at the Lorton Reformatory prison who was denied a promotion after refusing the warden’s sexual advances, Bryant was suing for the amount of money she would have been paid all those years had she been given the promotion.

But what should have been a clear-cut case of harassment and retaliation dragged on for longer than any other case of its kind in the country, even after multiple judges agreed Bryant was owed back pay.

“After we won, and established that there was sex discrimination, the D.C. institutions just circled the wagons,” Adler says. “They just sat on it and did everything possible to delay this thing. Their strategy must have been: if we do nothing, one of these days they’ll just give up and go away.”

Adler and Bryant did not go away, and with the help of a *Washington Post* reporter who called attention to the city’s foot-dragging in a front-page story, she finally received a settlement. However, they first attempted to pay her those decades of back pay with no interest.

“Obviously, that money she would have made back then is worth a lot more now,” Adler says, explaining why they continued to press the case. “But after another two years, I got the decision for the first time that when there is substantial delay, employees are entitled to the interest.”

THE UNFINISHED WORK OF #METOO

Sitting in his K Street office in Washington D.C., where he is now a partner at the Nossaman LLP law firm, Adler says that when he looks back at these three cases, he sees both major advancements for women’s rights and

signs of why much of the same predatory behavior continues unchecked today. The years of draining court battles—during which neither he nor his clients saw a dime—is just one of the many disincentives for victims of harassment to bring such cases and for lawyers to take them on.

“People should not get any ideas that there are quick solutions or remedies,” he says.

Many victims of sex discrimination, he adds, may not even realize they are being paid less or denied promotions. And many corporations are not explicit enough about what kind of behavior is unacceptable and what the consequences are if someone steps out of line.

“You have to remind people that there are laws and in-house rules of a workplace, and if you want to act like that, you can go somewhere else—go find another job,” Adler says. “But there’s such an institutional resistance to putting out too strong a message about it.”

And while high-profile perpetrators like Harvey Weinstein and Bill Cosby have faced professional and criminal consequences for their actions over the past few years, Adler says lower-level bureaucrats like Bundy, King, and Bryant never get the same level of public attention and support as survivors who are Hollywood stars.

“It’s somewhat better if the perpetrator is a celebrity,” he says. “But if it’s Joe the Manager? Not so easy.”

While politicians and pundits are currently asking why women who experience harassment do not come forward to report it, Adler says the retribution and dismissal he witnessed when investigating these cases made him see such a decision as completely reasonable.

“I had a very difficult time getting other women in the workplace to corroborate the victims’ stories,” he says. “So it turned into he-said, she-said, and most times, the male supervisor would be believed.”

Instead of asking why so many women do not come forward, Adler wants people to understand how scary it is to do so, and why he is in awe of trailblazing women like Bundy who took a great risk for those who came after her.

“Talk about real courage,” he marvels. “She was just a mid-to-low-level staff person and she named, by name, the head of the agency. It’s just unimaginable how much courage that woman had.”

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