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JUSTICE, JUSTICE SHALL YOU PURSUE?
A Personal Journey Through the Legal Labyrinth of Gender Discrimination
Sisterhood Shabbat, November 14, 2008

Thank you, Carolyn, and my sincerest thanks to the sisterhood for giving me the honor to speak at our annual Sisterhood Shabbat Dinner. Before I begin I would like to thank our own Rabbi Steven Conn and Rabbi Moshe Taub of YI both for helping me with some of my discussion tonight. I hope that I do their wisdom and insights the “justice” they deserve. I also want to thank my husband Saul Greenfield, my three children, Jeremy, Dana and Becca, my friends and of course my legal counsel, Sam Shapiro, Elisha Burkard and most of all Janet Gunner, for sticking with me and pulling me through this ordeal.

In Parshat Shofetim, which we read several months ago, we are commanded by God, Tzedek, Tzedek Tirdof—Justice, justice thou shall pursue. The word Tzedek is repeated twice and this repetition is the topic of much discussion amongst The Rabbis. One explanation that resonated with me is given by Ibn Ezra who states that the repetition of this word teaches us that we must pursue justice, whether we personally profit or we incur losses *and* that whatever the outcome, we must continue to pursue justice time and again. This is not a choice, but a commandment and is considered one of the “three feet of the world”—justice, truth and peace. Thus the pursuit of justice is one of the cornerstones of Jewish identity and is therefore to be taken very seriously.

But while we are a people of laws, we are also a people of the book, and this book, our Torah is filled with the stories of our forefathers and mothers. It is through these stories on this stage of human drama that we are given divine insights into the complexities of the choices *and their repercussions* that everyone of us makes as we each proceed through life in our own unique way.

In the next 15-20 minutes, I want to share my personal journey through what only can be called the daunting legal labyrinth of gender discrimination. At the end I hope I will have answered 2 questions with which I have wrestled throughout the process and even today. These are:

When faced with the knowledge of injustice, *as a Jew*, did I have a choice in speaking out? Should I have remained silent? Could I have remained silent?

When one does choose to speak up, and then is faced with severe consequences, are there lessons from Torah to help overcome this distress and thereby bring peace to one’s life?

As many of you know, I am a practicing pediatric otolaryngologist, (in the vernacular that’s an ENT surgeon for kids). And until this year, I was a tenured, Full Professor of Otolaryngology and Pediatrics *and* the Director of Pediatric Otolaryngology at the Women and Children’s Hospital of Buffalo. These “*employment relationships*” (as the career I poured my heart and soul into is called in legal documents) came to an end after I completed a long and arduous journey as a plaintiff in several Federal Court lawsuits claiming gender based discrimination and equal pay act violations against my employers, two large and very powerful institutions. During my 25 year career as a physician, educator and researcher, I have given hundreds of lectures and have had the opportunity to present my work throughout the world. Usually I speak using slides filled with science, hypotheses, data and conclusions. Today is different because this evening first I am going to share some of my life experiences that shaped my beliefs about gender roles, about my dreams, and about my achievements, and then I will speak about the harsh awakening and the cutting hurt when I discovered that I was a victim of injustice and discrimination. I am also going to speak a bit about what happened during the years of litigation and about the positive, active steps I am now taking to confront and overcome that hurt.

A typical first born, I became a highly successful high school student—editor of the school newspaper, secretary of student council, member of the elite women’s athletic club, and participant in numerous other activities. I learned to juggle, to compartmentalize, to multi-task, to be a “team” player—all essential skills for any woman who seeks a career in science and medicine. In 1970, I graduated high school and entered Bryn Mawr College, during the height of the second wave of the women’s movement. At Bryn Mawr it was said, “Our failures **ONLY** marry.”

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Fully engaged in this spirit, I had to find a way to make my mark on the world. I applied to medical school and wisely chose to go to the Women's Medical College of Pennsylvania. Our class was 50% women and unlike most medical schools at the time—and regretfully even today—we were fortunate to have many women deans and professors to serve as mentors and role models. I saw many women who were valued leaders and participants.

At the end of my third year surgery clerkship, I knew that my personality, drive, and robust energy level, were best suited for a life in surgery. I loved fixing things, the fast pace, the palpable gratification. I chose ENT. After my interview at Albert Einstein, I knew I had found my place.

Dr. Robert Ruben, the chair at Einstein interviewed me on a cold December morning. His face lit up when he discovered I had gone to Bryn Mawr, and he immediately launched into an enthusiastic appraisal of the wonderful education his daughter Anne was receiving there. Aha! I thought, the old girl's network at work!

The Bronx was a great place to train. Without the present limitations placed on resident work hours, we were there day and night. Dr. Ruben made time for research and my best friend and fellow resident and I published a paper that won a prestigious prize for our work. I had also married and we had our first born when I was a chief resident. I thought that I was living proof that women could have it all.

I left the Bronx thinking that I could do anything, and I was ready for any challenge.

We arrived in Buffalo, New York in 1983, and I took a faculty position as a pediatric otolaryngologist at the State University medical school and at the Children's Hospital of Buffalo. In retrospect, I now realize that as a woman, I was treated differently from the moment I arrived. But sheltered from my years at Bryn Mawr, the Women's Medical College, and Einstein discrimination was inconceivable to me in those early years.

At first I received no compensation from the hospital or university, except income from my clinical practice, but when I later saw that others (all males) received compensation from both the University and the hospital, I requested and only then did I receive what I was told was the "usual" stipend for a surgeon from the university (funny how they'd forgot to mention when they hired me that there was a "usual" stipend).

However, with Dr. Ruben's long distance mentorship, I rapidly advanced my research, obtained grants, and participated in teaching and administrative service locally and nationally. My practice grew and soon I was one of the busiest surgeons at the hospital; I was also the only woman surgeon at the hospital.

In 1990, I earned tenure and was promoted to Associate Professor, the first woman in the medical school to achieve that rank in a surgical field. But soon my professional life radically changed—my former chair retired and a new chair was chosen. Our relationship was very difficult. I was harassed both in my work environment and in my personal life. As never before, I was demeaned and berated for my "style" and "inability to be a team player"—typical complaints about women who dare to achieve in a man's world. Yet interestingly, through this all the quality and quantity of my work and my leadership capabilities were never in question.

Funding to sustain our academic programs came from the income I earned from caring for patients. At work, I was literally working two jobs—taking care of thousands of children each year, and fuelling the academic and administrative programs for the university and hospital.

Despite my chair's attempts to stall me, in 1996 I was promoted by my peers and the administration at all levels of the university to the rank of full professor of ORL and pediatrics, one of only about 12 women nationally in ORL who had ever achieved this highest rank of full professor.

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A year later, the chair lost his NYS license to practice medicine for patient care issues and was fired from the chair's job. Of the nine members of our department, I was the only professor and the only person with the seniority, qualifications and experience to run an academic department. I was shocked they chose a non-university, non-academic otolaryngologist, a male, as interim chair. I protested and was informed by the new Dean that he had "no baggage" but that I could apply the permanent chair job. But once the initial shock of rejection receded, I thought, well, if I only worked harder, I would get what I wanted. Two subsequent, seminal events woke me up from my fantasy that gender equality really existed and that I would be afforded the career opportunity towards which I had worked for the past 18 years.

With the change in leadership we were required to undergo a residency program review. Having no experience in these matters, the new interim chair requested my guidance and help. Documentation of sources of faculty funding are part of the review and it was then that I learned that a recently hired male ENT faculty member with lower rank, no seniority and fewer responsibilities was being compensated by the university at twice my salary—yes, two-times what I was then being compensated by the university. Never mind my professorship and 14 years of service! As I dug deeper, I also learned that my male colleagues at the hospital, who had less seniority and fewer responsibilities, were compensated by the hospital as much as 5 times as was I, even though by then I had been administrative head of one of the busiest clinical services for more than a decade.

The second wake-up call came when the job description for the permanent chair was published. Their requirements that the position be filled only by a "head and neck oncologic" surgeon were so narrow that they precluded me (and almost every woman academic otolaryngologist in the country) from applying for the position.

I spent the next 2-3 years trying to resolve these issues informally and internally. During that time my only reward was escalating harassment and retaliation.

What should I do? Should I remain silent? Should I risk my status, my tenure, my practice, my reputation?

There are key figures in the Torah, when faced with seemingly great injustices, remain silent. There are two biblical Hebrew words for silence, "Yishtok and yidom". The word Yidom is particularly interesting because it is only used twice in the 5 books—and one of those times is when Aaron was silent after his sons were killed by God because they did not heed God's directions. It is often assumed that Aaron was silent because he had faith in God, but that may not be the case. Some Rabbis teach that one is allowed to be silent just because one just does not know the answer to a situation or question. Or one can "choose" to be silent. When one chooses to be silent it is because we want to question God. When we choose to be silent, we choose to accept the injustice, since the actions of God are unfathomable. But under ordinary circumstances, when we are questioning the injustices perpetrated by our fellow human, then we may have no choice. We cannot remain silent because we know the answer and it is not a matter of questioning God.

Also, from Leviticus chapter 19, verse 16, Lo Ta-amod al dam rayehchah, ani adonai, "Do not stand idly by the blood of your fellow". There is an obligation to do something when someone else is in danger. This includes unfair treatment of yourself, especially if you know there are others who are facing the same unfair and ultimately and potentially dangerous treatment.

Thus faced with my knowledge of this employment situation, which by now I knew was not affecting only me, and having exhausted the internal avenues for resolution, I felt it was time to get help, to take a stand, to find an attorney. In 2000 and 2001, we filed seven charges with the EEOC; eighteen months later we had our seven "right to sue" letters and in September, 2001, we filed our first claim in federal court.

How did I cope? My lawsuit became my fourth child and my newest challenge. I learned everything I could about gender discrimination, especially at these two institutions. I was astounded to learn that the university had studied the status of their women since 1987 and that not only did our taxpayer-supported state university have a definable history of gender disparity, but also—by their own admission in documents as late as 2001—that they had studied it, admitted to it and admitted that they failed to correct it! Often I thought I did not have the strength to go on. During these past 8 years I have had to file at least 5 additional EEOC charges, 4

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claims in federal court, I was in the NYS supreme court 3 times, the court of appeals twice and a party to at least 5 union grievances against the university, one of which was highly successful and of which I am very proud, as it resulted in a pay increase to all clinical faculty at all four SUNY medical schools costing the state an additional \$8-12 million yearly. This “correction” in the interpretation of the negotiated contract between the university and the faculty was particularly beneficial to women, who more often received lower salaries. And although retaliation is reputedly unlawful, during this time, I would claim more than 50 separate incidents of retaliation, including my being fired as head of pediatric ENT at the Children’s Hospital after 20 years of service.

I reviewed 40,000 pages of discovery documents, dealt with expert witnesses and data consultants, and attended or read more than 30 depositions. I constantly worried about how I was going to do all of this and still have time for my family, my work, my friends, and myself. The emotional toll was compounded the enormous economic toll.

But in 2007 and 2008, I settled with the University—this is a public document. The hospital and I “resolved our differences to the satisfaction of all parties” on both federal claims. The parties have chosen to keep the terms of the resolution confidential.

A triumph? I am not so sure. By this time my national reputation had suffered. I had been branded a troublemaker. I was marginalized, demeaned, ignored, demoralized, and often felt very alone. When I began the lawsuit, I was not prepared for how much my life would change. But I continued on the litigant’s path because I thought I could make a difference and because the status quo was and frankly still is unacceptable.

But I soon learned that I was not so alone. Women physicians and scientists from all over the country began to contact me with their stories after they had heard of mine. They had heard I could help, that I was a “trail blazer”. Some of these women were in very early stages of their careers—medical students, residents, and junior faculty—others were established and successful. I started to counsel, to advocate and then to organize. Only by sharing in the stories of these other women did I begin to see a new light at the end of the tunnel.

Now I find myself channeling what could have been crippling, demoralizing and depressing into helping individuals and organizations overcome gender discrimination. The fight for gender equity is far from over—as my experiences show—and in my opinion it appears to be getting worse. As I listen to so many women’s stories of injustice, I am convinced that equality will never be realized as long as the victim has to police the system, be the whistleblower and then spend an average of ten years navigating a complicated legal system at great personal and financial cost.

How do I live with the ravages of my litigation?

Let’s turn to the story of Pinchas. God tells the leaders of Israel to publicly impale the ringleaders who have attached themselves to Baal-peor, a crime against the Lord. Then one of the Israelites transgresses and brings a Midianite woman into the community. Pinchas stabs both of them, the Isrealite and the woman, through the belly, and the plague against the Israelites was checked.

Pinchas commits this gruesome act because he believes he is following God’s instructions. And for this God granted to Pinchas one of the four Brits (that is covenants) granted to the Jewish people--the Brit Shalom. This is the inner peace for standing up for what he truly believed was right.

What is relevant to my journey is that while the Israelite leadership knew what to do, they failed to act. It is Pinchas who challenges both the unlawful behavior of Zimri, the Israelite chieftan and the unwillingness of Isreal’s leaders to enforce God’s severe decree. Since 1964 laws against gender discrimination and equal pay for equal work have been “on the books”. Like Pinchas, I really believed I had no choice but to confront the fact that these laws were widely and openly being broken.

Now I am committed to mentoring, advocating and creating additional channels to help women, especially women physicians, overcome years of institutionalized bias and outright discrimination. Shining a light on their stories and helping each one to speak out against these injustices is important if we are going to move forward.

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This evening I have spoken about my journey, my triumphs, my frustrations, my failures and my future. In closing, I would like to share with you a few of the many lessons I have learned. First, the legal labyrinth is a very difficult and dangerous journey. It needs to be changed. I propose better oversight and prevention of injustice as essential. Retroactive legal remedies will never change the status quo, and are too costly to individuals and to society. Second, widespread gender discrimination **is** unfortunately alive and well. It has a new face. Instead of “women need not apply”, we are told that we “don’t fit in, have baggage, or have an unsuitable “style”. This new approach has been labeled “gender stereotyping”, and is a more focused lens through which we can view these hazards. Third, and finally, 3) breaking through these barriers is critical because of individuals like me and the many others—your daughters and granddaughters, sisters, wives, and mothers—who are facing this problem. Frankly, it is also critical because it is our public health that is at stake. 50% of physicians will soon be women. If these women are not allowed to realize their full potential, the health and well-being of our entire society is headed for a dangerously unhealthy future.

So to conclude, as Jews, we have a long tradition and an obligation to speak out against injustice, and our silence is not warranted. Sometimes we need the passion of Pinchas who when faced with a difficult situation, took drastic action. Of course, not every injustice requires drastic action; and not everyone has the multitude of internal and external resources necessary to embark on a difficult, draining, and dangerous journey. But I do believe that everyone of us in this room, has opportunities everyday *to bring* greater justice to this world (in small ways or large), *to choose **not*** to remain silent, *to pursue* justice and, thereby *to share* in the brit shalom, the inner peace of your convictions for doing the right thing. Thank you and Shabbat Shalom.