Linda Brodsky MD

AAUW Annual Meeting St. Louis

PANEL — THE NEW FACE OF GENDER DISCRIMINATION

SUNDAY, JUNE 28, 2009

I must begin by telling each and every one of you that without support from the AAUW, your support, I would not have been able to sustain myself through my nearly ten year legal battle, and I certainly could not have transformed into the advocate for gender equality in the healthcare workplace that I am today. This organization's ongoing commitment to the advancement of women across our society gives me hope that my individual struggle will soon be eclipsed by our collective triumphs. I am honored to be a panel participant and look forward to exchanging ideas with all of you today. I thank you.

Having said that, if I had the choice, I would not be here speaking before you today. Did I really have a choice? Should I have remained silent? Could I have remained silent? The answer clearly is no. But when I chose to speak out, I was not prepared for the enormity of the task, the inevitable attacks, the loss of self esteem and loss of friends and colleagues and the betrayals from people with legal expertise whom I should have been able to trust.

My tale is one of myth busting. I will tell you that gender discrimination is no longer about women not having education or skills. It is not about the inability to rise through the ranks. Or at least to a certain point. And it is not likely to be solved by individual litigation alone, even focused litigation. But don't despair, we can open avenues and make opportunities for change by re-examining and re-defining the problem so we can implement innovative solutions.

Let me first tell you about me—about my education and training, my career trajectory and then the cutting hurt when I first began to believe that I was a victim of gender discrimination. I will take you on my journey through the legal labyrinth of gender discrimination and then share my thoughts about the present status of this insidious and now more often hidden situation—not just for healthcare workers, but also for women as patients and caregivers. And finally, I hope to energize you with new approaches to break through these barriers to women's full and equal participation in healthcare, and indeed society as a whole.

I am and have been for the last 26 years, a practicing pediatric otolaryngologist—in the vernacular that's an ENT surgeon for kids. And until 2008, I was also a tenured, Full Professor of both 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.
My educational journey is not atypical. My parents did not attend college, so education was a top priority for my family. Finishing near the top of my class in high school, I was admitted to Bryn Mawr College, a small, elite women's college in suburban Philadelphia. I then began an intense medical education at the Medical College of Pennsylvania, formerly known as the Women's Medical College. I went on to survive another 4 years of grueling training in a surgical field. We had all night call every third night and in those days we did not go home until the next day's work was over. I trained in the Bronx, NY, at Albert Einstein college of Medicine/ MHMC. And then I pursued an additional year of training in Buffalo to become a pediatric otolaryngologist.

Clearly, education was not my barrier. And, it is no longer a barrier for most women. According to the World Economic Forum's 2008 Report entitled: The Global Gender Gap, a report on women, work and the economy across 130 nations, the United States (along with 23 other countries), has completely closed this gap, largely due to the hard work of many in this room.

Linda Brodsky, M.D. | 65 Lebrun Circle, Amherst,NY 14226 | linda@lindabrodskymd.com | **716**.362.9730 ext 206 | **716**.830.3357 (cell) | **www.LindaBrodskyMD.com**

My career aspirations continued In Buffalo in 1983, when I accepted a faculty position as a pediatric otolaryngologist at the State University medical school and at the Children's Hospital of Buffalo. At first, my income was derived exclusively from my clinical practice—money which I earned by caring for patients. I received no compensation from the hospital or university for my substantial teaching, research and administrative duties. But after my first year, when I learned that other academic surgeons (all males) received compensation from both the University and the hospital, I went to the Dean to request 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).

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. Seven years later, in 1990, I earned tenure and was promoted to Associate Professor, the first woman at that medical school to achieve that rank in a surgical field. Shortly thereafter a new chair was chosen for the department. And though I had applied, I was not chosen. My relationship with the new chair was very difficult. His ongoing harassment, both in the work environment and in my personal life was constant and crippling. I was singled out for "evaluations" at which 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, the quality and quantity of my work and my leadership capabilities were never in question.

At work, I was literally working two jobs—taking care of thousands of children each year, and funding the academic and administrative programs for the university and hospital from our hard earned clinical income. At work and at home I made every minute count, and in 1996 I was promoted to the rank of Full Professor of Otolaryngology and Pediatrics, one of only about 12 women nationally in ORL who at that time had ever achieved this highest rank of full professor.

Clearly, rising through the ranks, but only to a point, was also not my barrier. As long as the criteria are concrete, there is usually no question. But as soon as the criteria are less defined, or the position too powerful, or the decision lies in the hands of committees or individuals (usually men), women do not fare as well. According to data from the AMA, women still occupy the upper echelons of medical academia less frequently than their overall representation, and in some important areas actually lag behind what would be expected. While the number of women in medicine tripled from 1975 to 2005, now comprising almost 30% of doctors, they still compirse 15% of the full professors, and less than 10% of medical school chairs and deans.

Now for how I became a litigant. A year after my promotion, the chair lost his NYS license to practice medicine for patient care issues and was required to resign from the chairmanship. Of the nine members of our department, I was the only full professor and the only person with the seniority, qualifications and experience to run an academic department. Given the apparent inevitability, I dared to hope that I would be appointed as interim chair and compete for the permanent chair. I was beyond shocked when they chose a non-university, non-academic otolaryngologist, a male, as interim chair. I protested and was informed by the Dean that he had "no baggage" but that I still could apply for the permanent chair job. 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 towards which I had worked for the past 18 years.

With the change in leadership our residency training program underwent review. Having no experience in these matters, the new interim chair requested my guidance and help. Part of the review includes faculty salary data. I then learned that a recently hired male ENT faculty member with lower rank, no seniority and fewer responsibilities than I, 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 and seniority! Also, my male colleagues at the hospital, almost all of whom also had less seniority and fewer

responsibilities, received as much as 5 times the compensation that I received, even though by then I had been administrative head of one of the busiest and most successful 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 for that the position were arbitrarily 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 was I to do? Remain silent? Risk my status, my tenure, my practice, my reputation? By 2000, I hired a lawyer. 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.

My lawsuit became a third full time job. I studied salary levels, 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.

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 as early as 1970 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 even admitted that they failed to correct it!

Often I thought I did not have the strength to go on. During these 8 years I had to file at least 5 additional EEOC charges, 4 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. During this time I was also targeted as a disruptive physician and had my clinical privileges unfairly suspended for a month because I dared to speak up about substandard patient care.

In 2007 and 2008, I settled with the University—this is a public document, the details of which are on my website. All I can say about both federal claims against the hospital is that we "resolved our differences to the satisfaction of all parties" and "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 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. 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 all of you certainly know and as my experiences show—and in my opinion it appears to be getting worse. It is going underground and is being accomplished in the shadows. 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.

Just how pervasive are gender inequities and disparities in health care? Take the AMA's 2008 study that 75% of women doctors report experiencing gender discrimination and sexual harassment at some time during their career. From pay inequity to limited access to promotions to blacklisting to sexual harassment, women rising up in the medical ranks can and will, at any given time, encounter barriers and discover doors of opportunity shut in their faces. According to the US Census Bureau report as reported by the AMA, women physicians earn only 63 cents on the dollar that men physicians earn and that "no other profession in the US exhibits greater salary disparities by sex". Furthermore, gender stereotyping, misconceptions about their commitment to patient care, and male dominated positions of policy control are but a few of the barriers that prevent women physicians from having a substantial impact on the way medicine is practiced.

Beyond the toll being taken on our women physicians, gender discrimination in medicine has significant repercussions for the health of all Americans. Does gender matter when we are talking about the healthcare system or in the healthcare you receive from your physician? In an ideal world, no. But physicians and patients alike bring their own realities, their own experiences, and their own unique points of view to every highly personal medical encounter—and these biases can literally be a matter of a healthy life or, in the worst case, an untimely death.

Take the story of one terribly distraught mother, at her wits end, who was told by her male doctors that she should seek psychological counseling for herself because her 2 year old son was still waking up crying 15-20 times every night. Only when she rejected that advice and visited another doctor, a woman, who carefully listened to her and took her complaints seriously, was her son diagnosed with sleep disturbance due to severe abdominal pain from unrecognized acid reflux. Once treated, he slept.

Or consider the care of your mothers, sisters and daughters—or, since most everyone in this room is a woman, your own care. Studies of the treatment of female patients have increasingly and alarmingly shown that women's complaints are more likely to be taken less seriously and are too often treated less vigorously, predominantly (though in fairness not exclusively) by male physicians. In a British study, physician gender resulted in more vigorous and appropriate cardiac care for the male patients of male physicians, but no difference for either gender patients of female physicians. Furthermore, women physicians may practice differently, be better listeners and communicators and thus give us even more reason to challenge the collective lack of will to optimize women's roles in the delivery of health care.

It should come as no surprise, then, that we should all be very concerned about the very real gender gap in healthcare. Less than optimal use of the talent of women physicians create enormous barriers that sap the medical system of its most important resources. But what is more troubling is that we—all Americans, not just women, are suffering for this abuse.

It's time for us to start asking—and getting answers to—the tough questions. Are some of the nation's best doctors being kept out or driven out simply because they are women? Are medical students more likely to pursue certain fields and specialties because of the guidance of their (more often male) mentors? Is the allocation of funds and intellectual resources being decided by an unrepresentative group? Why do women have difficulty obtaining and pay more for individual health insurance than men? And on a personal level, is your unborn child less likely to get good pre-natal care because ob-gyn—a "female" field—has been deemed less important when research and programmatic dollars are allocated?

It is not a matter of if but how the gender gap in medicine directly affects you. This is not a woman's issue but a public health issue. As patients, mothers, and colleagues, we can no longer squander our precious, limited and already beleaguered healthcare resources. If the social issue is not motivation enough, let's talk money. According to the World Economic Forum, social progress (e.g. women's rights and economic status) and economic growth (necessary to sustain societies) are highly linked. And this link may just be the silver bullet to penetrate the current ennui that surrounds gender equity.

So here's the hook! Everyone understands that being competitive in today's world is important because it is linked to one common denominator we all agree is important—money. Bottom line is that if we don't pay attention to women as valuable human resources and as the majority of consumers from the largest economic sector in our economy, we will ultimately fall behind in our abilities to compete. The danger of a healthcare gender gap resounds not only in our health and healthcare system, but also in the economic growth and stability of our society as a whole. This link is unequivocally stated in the World Economic Forum's Global Competiveness Report, and I quote "Efficient labor markets must also ensure the best use of available talent—which includes equity in the business environment between women and men". I firmly believe we need to address this fact as part of healthcare reform.

If it isn't education, and it isn't rising through the ranks, and litigation alone won't solve the problem, what can we do? Here are but a few of my suggestions. First, let's start by empowering already existing governmental institutions. In Ruth O'Brien's Telling Stories out of Court, Liza Featherstone's introduction informed me that the EEOC, that governmental agency which oversees issues of discrimination, is not as fully empowered as the other "quasi-legal" federal agencies. It has no authority to monitor much less to police, punish and thereby curb our rather large gender gap. This can and must be changed!

We need to shift the responsibility for abiding by the law onto employers who have found ever more clever ways to circumvent these laws we assiduously try to enact to gain equality. I am looking to partner with those of you who have the skills and drive to create a private sector oversight group for workplace gender equity modeled after the impactful work to improve hospital quality by the Joint Commission.

And while we still have to rely primarily on legal remedies, we must develop alternatives to litigation, such as mandated mediation. We must relieve the financial burdens on the litigant, and insist on full disclosure and careful monitoring against abuses by the legal profession. Retaliation, particularly with willful intent must be punished immediately in close proximity to the damage, and severely so as to truly protect the litigant.

In closing, I hope my story has given you some food for thought. 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. Along the way I learned about a new face of gender discrimination. It's one that we must confront and overcome before our children's children enter this world.

Thank you!

Linda Brodsky, M.D. | 65 Lebrun Circle, Amherst,NY 14226 | linda@lindabrodskymd.com | **716**.362.9730 ext 206 | **716**.830.3357 (cell) | **www.LindaBrodskyMD.com**