

GUEST COLUMN

Transforming the workplace begins with lawyers

By Leonid M. Zilberman

I'm not a rabbi, but I am Jewish. The Torah (Five Books of Moses) is divided into weekly Parshahs or portions, which are read and discussed. If I were giving a sermon this week, the theme would be "transforming the workplace begins with lawyers."

In the Fall of 2017, the #MeToo movement went viral after actress Alyssa Milano tweeted the phrase in response to a New York Times article that detailed decades of sexual harassment allegations against Hollywood producer Harvey Weinstein. In the last six years, the #MeToo hashtag was used by tens of millions of people around the world to share their stories of sexual harassment and assault.

The result was a great reckoning, where people in power in a variety of industries began to be held accountable for their actions. While initially localized to entertainment, people in a variety of work environments were soon called out for inappropriate conduct. This movement has led to the downfall of mainly powerful men, the passage of new laws against harassment and discrimination, and a national conversation about the need to address a "Bro" culture that was allowed to run wild for decades without any repercussions. Candidly, it took too long for society to focus on this cancer, and excising it from our workplaces.

Many of the worst offenders were "hiding in plain sight." In other words, co-workers, subordinates,



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supervisors and others knew that they had engaged in unacceptable and vile conduct, but nobody bothered to come forward or call them out for their bad behavior. Soon, celebrity chefs, major news anchors, Silicon Valley CEOs, politicians of all stripes, and even Fortune 50 C-Suite leaders were either fired, resigned or made subject to legal consequences for their bad acts.

Glaringly missing was our own legal industry. Are lawyers somehow exempt? No. There has always been an unspoken rule at many law firms, both large and small: if you're a rainmaker, law firms will go to great lengths to protect and cater to you. If anyone doubts that,

go back twenty-five years to *Weeks v. Baker & McKenzie*, when in 1998 a jury found that Martin Greenstein, a partner at Baker & McKenzie, sexually harassed his secretary, and awarded her \$225,000 in punitive damages from Greenstein and \$6.9 million in punitive damages from Baker & McKenzie because the firm had known for years that Greenstein engaged in harassment against multiple women and covered it up.

This week, based on unearthed emails from 15+ years ago, we learn that two very high-profile former equity partners at an AmLaw 100 firm made vile, antisemitic, homophobic, racist and misogynistic comments about judges, co-workers,

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opposing counsel and others - and they did so in writing. To add insult to injury, these were 20+ year "Employment Lawyers" who likely counseled their clients and defended cases where the identical conduct was alleged.

Once the emails were revealed, the jig was up and they immediately resigned from the new firm that bore their names, which they created less than 60 days earlier. Is it really possible that nobody at their former firm knew about this conduct until now? Sadly, this is neither unique nor an outlier within the legal profession. As lawyers, we need to ask ourselves how many times have we encountered a lawyer who spouted words that we found not only offensive, but unacceptable? How many times have we simply looked the other way and stayed silent?

I provide anti-discrimination and harassment training to California employers, as mandated by AB-1825, which was enacted back in January 2005. Often, my clients ask me, "when will people finally get it and stop engaging in this sort of behavior?" I wish I had an answer to that question. But, here's what I do know. Lawyers, just like people in other professions, need to have the courage to speak up. We need to not let lawyers, who apparently feel comfortable using vile language

in private, be acceptable or normalized. We also have to look past the "buzz words" and platitudes of Diversity, Equity and Inclusion, Mansfield certifications and other clichés, where law firms try to make themselves "kinder and gentler" to the outside world, while continuing to hold on to attorneys who do not live or share those values and culture, simply because they are huge profit centers. We need to get past business as usual.

This week, it appears the #MeToo reckoning has reached the legal community; something that lawyers should all welcome and embrace. After all, whether you're representing aggrieved employees, labor unions, government agencies, nonprofits, or large public companies to small mom and pop businesses, the rules need to apply to everyone, including the lawyers.

I'm not naïve. I understand that as long as there will be humans, there will be bad actors who engage in hatred and vile language. Like all business, law is mainly about humans and our interactions with each other. Unfortunately, all too often we hear stories like the one that unfolded this week. Entire websites have been created to gossip about bad lawyer behavior. Hopefully, lawyers will now begin to change the work environment in law firms, as we must. Dr. Martin

Luther King Jr. famously said that "Our lives begin to end when we stay silent about things that matter." Followed by the even more powerful phrase that "In the end, we will remember not the words of our enemies, but the silence of our friends."

I must admit, I am not immune from silence. I reflected on my own silence, feeling uneasy to speak out when I should have. It was 2011 and I was in a deposition with an opposing counsel and at a break we began to speak about resolution of the case. I explained my client's position and the amount of money they thought the case was worth, when plaintiff's counsel looked at me and said, "Don't Jew me." I'm not usually at a loss for words, but I stood silent. In that split second, I didn't know what to say or how to respond. Did opposing counsel even know I was Jewish? I chose to simply walk away and disengage.

This week, as news was breaking about the vile emails exchanged between equity partners at a large law firm, my memory of that conversation (maybe a form of PTSD) snuck up on me from twelve years ago. And that's when it hit me. What could I possibly know about what it really means to be silenced? I'm an able-bodied white male facing no prejudice. I live in safe suburbia, reaping the privilege of a top-notch education. So, if I feel "silenced"

when I hear hate speech, then how might real silencing feel to a domestic violence victim? An African American or other POC? An undocumented immigrant? A non-binary or trans individual?

Judaism's core theology is the journey from silencing to speech - from slavery to freedom and from discrimination to empowerment. Jews have known the darkness of being silenced into submission. It's also a core human calling, to bring darkness into light. Just as my religious traditions command that I speak out against injustice, as lawyers we have a special duty to speak out and stand up to injustice, when we see or hear it. Elie Wiesel, in his 1986 Nobel Peace Prize acceptance speech put it this way:

We must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented. Sometimes we must interfere. When human lives are endangered, when human dignity is in jeopardy, national borders and sensitivities become irrelevant. Wherever men or women are persecuted because of their race, religion, or political views, that place must - at that moment - become the center of the universe.

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