FRAN SEPLER: HARASSMENT IN THE WORKPLACE

(Begin audio)

Joshua Holo: Welcome to the College Commons podcast, passionate perspectives from Judaism's leading thinkers, brought to you by the Hebrew Union College, Jewish Institute of Religion, America's first Jewish institution of higher learning. My name is Joshua Holo, Dean of HUC's Jack H. Skirball campus in Los Angeles, and your host.

JH: Welcome to this episode of the College Commons Podcast, and we have the great pleasure of having a conversation with Fran Sepler. Fran Sepler is the president of Sepler and Associates. For 30 years, she has advised employers on the essential actions necessary to provide employees with safe, fair, and respective workplaces. She has worked in every sector, and she is a workplace investigator herself, as well as having researched and written extensively on investigative practice, workplace bullying, implicit bias, and harassment in the workplace. Fran Sepler, thank you for joining us on the podcast.

Fran Sepler: Happy to be here.

JH: The three questions you say one should be able to ask of one's employers or they should be able to ask of themselves is, "Do you feel respected? Does your employer value you? And does your work matter?" Did I get that right?

FS: You did.

JH: Okay, so the first, really, about these questions, the thing I wanna ask you about, if you can tease out the difference between the first and the second questions.

FS: Okay. So when I ask, "Do you feel respected at work?", the gut answer that you give to that question, and by the way, when we ask these questions in real life, we force a choice, yes or no, not sometimes, or maybe. The first is really a visceral sense of whether you walk into your workplace and anticipate that most of your interactions are going to be positive. Not always easy, not always simple, but you walk into your work absent a sense of dread or fear. And rather, with some positive anticipation. That's how people get to the answer to, "Do you feel respected?" "Does your employer value you?" has to do with the way that your organization has responded to your needs and wants, whether that's your compensation or whether you've requested some flexibility and your organization has been willing to give it to you or not give it to you. Perhaps how your immediate supervisor treats you on a day-to-day basis, but it will come from feedback

from the organization that they welcome and value you on a regular basis.

JH: The third question, "Does your work matter?" I can see people who find themselves in an entire profession that they don't feel matters. Is that a possible distortion of the goal of the question, hopefully arriving at a yes, and then that the yes would indicate a healthy work environment?

FS: In concert with the other two questions, it does. And I always say that what we're asking here is, "Do you have even a tiny little sliver of a line of sight between the tasks that you perform every day and some beneficial outcome?" So whether that is a customer who's happy or a toilet that is clean, or the discovery of the next particle in a physics practice. But do you get a sense that somewhere, someone is benefiting from the work you do? And so that can be cast as narrowly or as widely as possible. And the fact is that if I'm toiling away meaninglessly every day, I'm probably putting out some pretty negative energy, and I'm probably feeling not very content in my pursuit. And so when we get a no to that question, that's an indicator that we don't have a fully respectful, healthy organization.

JH: What about people's temperament? What about people go through life that way, embittered or unmoored in any sense of meaning?

FS: Well, we know those folks can be really toxic in a workplace. It is, I think, every employer's job to find a way to create meaning. And I remember being at a large city sanitation department, and a fellow who'd been hauling trash for his whole life told me that their supervisor would sit them down and say, "This is why what we do is important," and paint it as a public health.

JH: It is a public health.

FS: Yeah, but most people won't have that conversation with somebody who's earning a minimum wage doing a job that is considered to be rather simple and...

JH: And difficult.

FS: Yeah, and so being reminded where they fit in that chain of public health really made them feel as though that hauling trash had meaning. And if you can do it for hauling trash, you can probably do it for peeling potatoes.

JH: Yeah, I appreciate the admonition that that's a part of the employer's task, which is to frame meaning. So that people can engage with it.

FS: Right, and that simply is a matter of humanizing your workforce and recognizing that they do need something meaningful to make their work matter to them.

JH: And that by definition, your definition of humanization itself, it means connecting and serving some kind of greater human good, which is quite beautiful. You also speak about a crazy, vexing problem, I speak from experience, which is what I'll call the moving target of confidentiality. Can you illustrate for our audience just how difficult it is

to understand confidentiality, both from the employer's perspective and from the employee's perspective in the context of a potential complaint?

FS: So there are troubles with confidentiality on both sides of the equation, from the vantage point of a complainant, we know that most people who are being harassed or bullied in their workplace will wait a very long time before they complain. Sometimes, well over a year. During that time, which I call the incubation period, they're generally afraid to complain. They're worried they'll be fired, they're worried that they won't be believed, they're worried that the wrong thing will happen. And so they decide that coping with the behavior is better than reporting it. So when things get really bad, they will often approach a supervisor, HR, if they have HR, and say, "I wanna tell you about something, but I don't want you to do anything about it."

FS: What nobody has told that employee is that once they inform a supervisor or a manager that behavior that violates the organization's policy is happening, that supervisor or manager cannot keep it a secret. So they're putting the supervisor in a place that I liken to handing somebody a live bomb, they can't offer the confidentiality that the employee is asking for, they can't say, "No, no, don't tell me," because that would be refusing a complaint, so they have to sort of do this complex explanation to employees that, "You can tell me a lot of things, but if you tell me you're being harassed, I'm going to have to do something about it." I think the thorniest part of confidentiality is that employers do complex investigations into complicated complaints. We do fact-finding, we do a credibility analysis, ultimately, there's a set of findings of fact. And if those findings of fact lead to a finding that in fact the policy was violated, and somebody was, in fact, harassed, the employer has to address it. But the employer can't tell the complainant what they've done, because the privacy of the accused is essential, and it must be protected.

JH: So the person who is not merely accused but fully found to have indeed violated policy, they maintain rights of confidentiality?

FS: Yes. So for instance, if I were to have investigated you, we found you used inappropriate language, you've been issued a written warning, you've been warned that if it happens again, you'll be terminated. I can't tell your accuser that you've been disciplined, that if you do it again you'll be fired, because you're my employee too, and it's nobody else's business that you've been disciplined.

JH: I understand, from what you're saying, that the accuser cannot know what remediation was taken vis-a-vis the accused/person violated. Does the accuser get to know the result of the investigation as a factual matter?

FS: In most cases, no.

JH: So it's not merely that they don't know the remediation, they don't know the determination even.

FS: Some employers have become more liberal about sharing, "We investigated your complaint, we found that a policy was violated," or, "We found no policy was violated," some will not.

JH: Okay. But that's not a legal matter, that's a policy matter?

FS: It depends on the kind of legal advice they've been given.

JH: Or the state, yeah.

FS: The most prudent thing is to say nothing. The other place that confidentiality gets really interesting is when we're doing investigations. Investigations are very fraught, you're talking to people who work with the complainant and the accused, they are witnesses, it's very stressful for them. And one of the things we used to be able to count on is that I could say, "This is an entirely confidential conversation, you may not discuss this with anyone else." We could therefore contain that investigation, not have people running around sharing their perspectives, we wouldn't have witness tampering, we wouldn't have people sharing theories. But several years ago, the NLRB found that an instruction to an employee to not discuss an investigation with anyone else was a violation of their Section 7 rights under the Fair Labor Standards Act. That is a section that says, "You have the right to discuss the terms and conditions of your employment," and it's called Concerted Activity. And so in a case called Banner, they essentially said that employers may not issue confidentiality instructions to individuals participating in an investigation, absent a specific threat. So we have basically done away with the notion that we can have a clean set of witnesses that we can speak to since all of our witnesses can talk with each other now, and that's really thrown a interesting wrench in our investigations.

JH: And confidentiality as an idea, or as something that you can count on or not?

FS: Correct.

JH: How recent is this?

FS: This was 2015, I believe.

JH: It does beg the question though, how reliable was the exhortation to confidentiality in the first place back when you could exhort it?

FS: When I'm teaching investigative skills, I usually make a sort of snarky remark that when we used to exhort them not to discuss things, they would leave the room and discuss things anyway.

[music]

JH: Before we return to the podcast, we wanna let you know about digital learning on the College Commons platform. Beyond this podcast, which is available to the public at large, check out the online courses at collegecommons.huc.edu, for in-depth learning,

digital syllabi, assignments, inspiration for teaching, and one of our most influential courses called, "Making Prayer Real." Subscribe with your synagogue for all this and more, just click, "Sign up," at collegecommons.huc.edu. Oh, and one more thing, help us out and rate us on iTunes. But whatever you do, do not give us five stars, unless we deserve it. Now, back to our podcast.

[music]

JH: In answering the question about confidentiality, you pointed out something I find incredibly compelling, which is that there is a statistical incubation period where people accept the weight or the pain or the discomfort of the fear and dread such as you described it before for months, even surpassing a year, between the point when they really feel something wrong is happening and when they decide to do something about it. And to put a really, really fine point on it, I hear what you're saying to be the following, "They don't act until the current situation gets worse than the reprisal, because they're expecting a reprisal."

FS: Well, there's one other factor in there.

JH: Yeah.

FS: When employees are working in an environment that is as stressful as experiencing daily or weekly incidents of harassment, they start destabilizing. Think about it, if you were walking into a workplace everyday, and you know it's going to be a source of threat and fear. You're a mammal, you have very good instincts to try and stay away, so you start calling in sick, you start leaving early, you start taking longer breaks, and now your employer is giving you feedback that you've got problems with your attendance. So you drag your sorry self to work. But now you've got an attitude, you're angry all the time, or you're sullen and withdrawn, you're depressed, people start staying away from you because you're not a very happy person, you're very negative, you're very angry all the time.

FS: And so now you're getting feedback that you have a bad attitude. And if you've bad attitude and you're not showing up at work, you're probably not doing a very good job, so you start getting performance feedback. So I think it's both, that the behavior you're experiencing becomes less and less tolerable, but also you're starting to recognize that retaliation or no retaliation, you're at risk of losing your job, and that you'd better do something about it, now.

JH: So even if it's not retaliation, you expected some kind of consequence that's gonna count against you because performance is suffered.

FS: Right. Look, the EEOC, the Equal Employment Opportunity Commission, receives over 20,000 complaints a year. They are charged with handling all federal claims of discrimination and harassment. In calendar year 2018, 51% of their complaints were not harassment, were not discrimination, they were retaliation. And so we very literally teach supervisors that an employee complaint is a gift, and we talk about the process for receiving it as such. If a person can tell you about it, you can do something about it.

If they don't, they can just sit and get more and more and more damaged, and.

JH: Everybody loses.

FS: Right. And so we actually teach the language of receiving complaints because without that coaching, supervisors go dark places.

JH: In introducing you, I pointed out that you have worked in all sectors of the American marketplace, and I wanna ask if there are sectors that are worse or better than others, or is this just the human condition and we have to work with it and improve as best we can?

FS: So I think there are some kinds of work environments that are more vulnerable to problems of harassment and bullying. Any place that you have extreme hierarchy or you have classes of people who are considered to be, sort of on the expense side of the ledger, or the revenue side of the ledger. So the professions where you have the attorneys being the revenue bringers, and all of the clerical staff as costs, you end up with the front of the house, back of the house mentality, and a lot of permission for abuse of that power and authority.

JH: Because being on the cost side of the ledger implies you're expendable.

FS: You're expendable, you're not valuable. You must be deferential to those who are the big earners, and the bigger earner you are, the more unearned privilege you tend to have in terms of the latitude with which you treat people. And although statistically, the gender equity in professions like law and medicine, we're starting to see some parity in terms of the presence in the profession, you still see enormous differences in compensation and authority between men and women as well. Another place that I think are a risk factor for organizations is very decentralized operations. This would go to, for instance, a university, where departments and labs often become fiefdoms that are run by tyrannical faculty members, often faculty members who bring in lots of grant dollars and therefore have pretty free reign for how they treat people.

FS: This isn't limited to academia, but it's probably the best example of a very decentralized place where there is no central authority that's monitoring and enforcing a shared standard. So you can have pockets of incivility, pockets of abuse, pockets of bad behavior that go on, un-addressed.

JH: In addition to very, very traditionally entrenched hierarchies.

FS: Correct.

JH: Part of your wisdom, if I understand it correctly, is to take a side door to some of these problems. The front door is very legalese, the rules, the standards, the remediations, it's hard to identify with any of these things, the way it's presented to us through traditional trainings, or frankly, through the culture. So I wanna draw you out a little bit in a more narrative way about your approach to dealing with these highly, highly charged issues that are more or less ubiquitous, but that we haven't been presented to

in particularly helpful ways in general.

FS: So I've come to start thinking of certainly unlawful harassment kind of like a cockroach, and all of the legislation, and training, and policies, and all of the legalistic compliance apparatus is like the bug spray, and we keep trying to eradicate harassment with an inadequate tool, and it'll go away for a while and then it'll pop back up. You're never gonna get rid of cockroaches and you're never gonna get rid of harassment, and certainly you're not gonna do it through legal compliance. In fact, all the research about compliance training says it may be making things worse, it may not be making things better. And it certainly doesn't stop anyone from harassing anyone.

FS: So, where I have taken my work and I where I speak loudly and preach loudly, is that you have to start with creating a culture that is kryptonite to harassment. You have to start building a set of norms in which if you were to treat somebody in a way that was harassing, or bullying, or engaging in casual sexism or racism, that there would be several people, not just one, and not just the ally of the target, but several people who would turn and look at you aghast and say, "What are you doing, where did that come from?" There has to be a sense in the organization that everybody's psychological safety is the most essential thing to a healthy organization, and that every single day people have to be behaving in ways, enforcing norms, governing the organization, and modeling things like in the moment feedback. And social queueing to demonstrate respect and deep inquiry to start to develop empathy with each other. And it is only by building those sort of behavioral norms and expectations that we're ever gonna get to an organization that is self-correcting.

JH: Right. You want a world in which casually cruel things would be as unacceptable as it would be to ask someone their salary.

FS: Right. And it's not just what we no longer tolerate or permit, it's what substitutes in its place.

JH: Right. The code and the...

FS: We, yeah, and we engage in affirmative communications. We deliberately express respect, we say to one another, "You know, I really respect your opinion, how do I show up in that meeting? Is there anything I could have done better? Is there anything you thought that I did well?" And those conversations become part of the DNA of the organization. So once we've learned that we can ask for and give each other feedback, then if I'm doing something bone-headed, you're gonna know I can take feedback and you're gonna tell me. And I'm gonna say, "Thank you," and we're gonna move on rather than have this be an attack on my character, or have me afraid that I'm gonna get in trouble. And this happens by a commitment to practice those skills every day, and again, when the leaders model them, people start emulating.

JH: Right, create the habits.

FS: Yeah.

JH: Well, Fran Sepler, thank you very much for taking the time to join us on the podcast. I learned a lot, and I know that we will be partnering at Hebrew Union College with you, and so thank you for that.

FS: Thank you.

[music]

JH: We hope you've enjoyed this episode of The College Commons podcast. Available wherever you listen to your podcasts or at the college Commons website, collegecommons.huc.edu, where you can also stay tuned for future episodes.

(End of audio)