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Susan Grover

*William & Mary Law School*, [ssgrov@wm.edu](mailto:ssgrov@wm.edu)

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# ZOE BAIRD, BETRAYAL AND FRAGMENTATION

SUSAN S. GROVER\*

I say "betrayal" in the title to catch your eye, but I might just as well have said "public service." When Zoe Baird told the Senate Judiciary Committee that she had acted as a mother, not as a lawyer, in employing illegal aliens to care for her children, she may have taken the women's movement a giant step backward. Yet her statement helped, too, by directing the nation's attention to an issue that needs attention.<sup>1</sup>

The giant step backward, if that is what it is, is Baird's use of motherhood as the reason why she broke the law. From Baird's statements, listeners may generalize that wage-earning women, (1) are so taxed by their involvement in the workplace that they will sink to any depth, including violating federal law, to get some relief; or else (2) that wage-earning women want it "both ways," to be full-fledged players in the workforce, but to fall back on motherhood to excuse otherwise unacceptable behaviors.<sup>2</sup>

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\* Associate Professor of Law, College of William and Mary. I would like to thank Martha Chamallas, Nancy Dowd, Neal Devins, and Michael Gerhardt for sharing their thoughts.

1. Baird apparently stated to the Senate Judiciary Committee: "Quite honestly, I was acting at that moment more as a mother than as a person who would be sitting here before you to be attorney general." Michael Isikoff, *Baird Admits 'Mistake,' Faces Tough Questioning: Senators Cite Calls Against Justice Choice*, WASH. POST, Jan. 20, 1993, at A1. If Zoe Baird had been in a position to answer the "nanny question" the way that Alan Simpson (sponsor of the immigration law that tripped up Baird) answered it, she might be Attorney General today. Asked by reporters whether he had "ever been in that situation illegal alien-wise," Senator Simpson was able to reply with impunity: "Not to my knowledge." Lloyd Grove, *The Man Who Set the Nanny Trap*, WASH. POST, Feb. 8, 1993, at B1. As a man, is he perhaps not expected to know the details of his household finances?

2. In her statements to the Senate Judiciary Committee, Baird stated:

. . . I had my first and only child, a then 8-month-old boy. I was beginning the most challenging job of my professional career as the new general counsel of a major company, I believe probably the first time a woman has taken on something like that for a company of that size and complexity, but probably more importantly in my circumstance, it was a major new challenge for me.

I had some of the credibility issues that people have referred to here, you know, here is a woman coming in who is younger than I am, and she has got a kid and can she really do this job. So I had a major commitment in those early days to trying . . . very hard not only to do the job well, but to deal with all the credibility issues that come with that.

REUTER TRANSCRIPT REP. OF HEARINGS BEFORE SENATE JUDICIARY COMM., 103d Cong., 1st Sess., Jan. 21, 1993. In fairness to Baird, it must be remembered that in the same Senate testimony,



Baird's public service, on the other hand, placed in stark relief the problems of duality and consequent fragmentation that characterize the lives of all professionals, but particularly female professionals who are parents.<sup>3</sup> The suggestion, implicit in Baird's statement, is that—when we act as mothers, we do not act as lawyers; and when we act as lawyers, we are not mothers. We leave pieces of ourselves at home when we come to work and pieces of ourselves at work when we go home.

Professionals have come to accept fragmentation, at many different levels, as the price we pay for being professionals.<sup>4</sup> For wage-earning mothers, the price can be exorbitant.<sup>5</sup> The antidote for this fragmentation is integration of our persons and our lives so that we can truly feel

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she admitted that such factors could not excuse her failure to pay attention to the childcare arrangements being made by her spouse. *See id.*

3. Other than the physical adjustments of pregnancy and lactation, of course, primary parents of both sexes arguably are similarly situated in the workplace and can be analyzed identically. This is true, however, only if male primary parents who are wage earners are subject to the same stereotypes that have haunted mothers in the workplace, stereotypes to the effect that women with child-rearing responsibilities are so distracted by those responsibilities that they cannot be effective workers. *Cf.* Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1122 (1986) (discussing development of the stereotype that women who have children sever their connection with the workplace as a result of parenthood). *But see* Leslie Bender, *Sex Discrimination or Gender Inequality?*, 57 FORD. L. REV. 941, 952 (1989) (explaining that men, like women, who undertake caretaking functions are undervalued and subordinated). If, however, the stereotypes in question are sex-specific, thus not generally applied to male primary parents, then the two groups cannot be similarly analyzed at all.

4. I believe that lawyers are particularly adept at fragmentation because so much of our problem-solving has to do with breaking the whole of problems into manageable parts.

It is worth noting that professional parents' tendency to split, in essence hiding the parent portion while at work, is well-grounded in the pragmatic realities of the workplace. "Because of role expectations and gendered socialization into marital and parenting roles, the ideal woman lawyer or professional is unmarried and childless, whereas the ideal male lawyer has a wife who cares for him and their children." Leslie Bender, *supra* note 3, at 942 n.4. Women who feel that motherhood is perceived as a disqualification in the workplace are not making that up. The workplace perceives motherhood as a disqualification.

5. Wage-earning fathers who are primary parents no doubt share a similar burden. *See infra* note 14. What I am talking about in this essay is the duality and resultant fragmentation that faces all professionals, perhaps all wage-earners, a duality that finds its epitome in the situation of the wage-earning mother. *See* Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1222-23 (1989) (women are accepted into the workplace only on the condition that they conform to male model of worker; if women with children are to achieve equality, then we must challenge the notion of a natural line that divides work and family). This should not be confused with the simple changes in role playing that any worker goes through as she moves from the workplace to, for example, the golf course. The worker's secondary role as golfer is not perceived as a threat to her ability to perform her primary role. No one really worries that the professional will whip out her five-iron in the middle of the board meeting. For several reasons, mothers' roles as mothers are perceived as more intrusive. Emergencies forcing parental action may arise at any time. In addition, for many people, the role as parent is actually the primary role, more important than the workplace role. Although the golfer takes off the golfer's hat during the workday, the primary parent wears two hats at all times during the workday.

that the person who changes the diapers and nurses the infant is actually the same person who argues to the court, negotiates with opposing counsel and lectures to the bar. Integration would mean we had nothing to hide.<sup>6</sup>

## I. THE ARDUOUS PATH TO INTEGRATION

I will tell you my own story, not because I have been successful at the integration that I advocate,<sup>7</sup> but for two other reasons. One is that my story graphically, and hyperbolically, depicts the fragmentation that rips the lives of professional women in half. The other is that I would like to believe that the telling of the story might benefit others who walk a path similar to mine.

My son was due on the day of my graduation from law school, but he arrived two weeks late. Despite a six week hiatus between Jake's arrival and the start of my judicial clerkship, I did not feel fully recovered when I entered employment. Subsequently, I came to understand that part of what I sensed as a failure to recover was in fact just "how it felt" to have my life as a non-parent end and the all-consuming crusade of parenthood begin.

In any event, six weeks after Jake came into the world, it was time to begin work, in a manner of speaking. I was not yet on the payroll and the Judge was on vacation. As the incoming clerk, I was required to work for two weeks as a volunteer in chambers, answering phones and sorting incoming mail, before the Judge returned from vacation. Because I was not yet on the payroll, I did not have the money to pay a child-care provider or to go forward with our plan for my spouse to resign his job in order for him to stay home with Jake. Thus, as I took the subway to the courthouse to begin my legal career, I had in tow a stroller containing my newborn son.

I do not know to what extent I was aware at the time of the duality evidenced by my behavior with Jake at the courthouse. I treated Jake the way one would treat any other contraband: I tried to hide him. Now, the

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6. This is not to say that women need to care for or nurse their infants in front of clients or accept non-emergency phone calls from their children during meetings. Rather, I advocate an acknowledgment and acceptance of the whole person.

7. Actually, I am not sure that I advocate such integration because I am not sure that it is possible. Rather, I think I should say that I await it, recognizing that it probably will not arrive in my lifetime. I await it, rather than advocating it, because I recognize that society may not be ready to see lawyers as mere humans, and the legal profession may not yet be ready to give up the mantle of appearing perfect.



guards at the courthouse door caught on after very few days that the little guy in the blue stroller was going to be a fixture for a while. I was not too worried about them, anyway. I worried only that they might tell the Judge upon his return or some other authority that I had brought contraband into the building.

Since I did not have a pressing workload during the two week period, Jake's presence did not interfere too significantly with my work.<sup>8</sup> Several times, attorneys with cases pending before the Judge called with questions when Jake was crying loudly, but this yielded nothing worse than embarrassment. I was embarrassed because the attorneys on the telephone had discovered my terrible secret: the contraband: the truth: that I was a mother, not an attorney.

The greatest challenge was nursing. In the beginning, I locked the door to chambers and sat at the desk assigned to me while nursing Jake, but then I realized that people working in the municipal building across the street could probably see me. In response to this realization, I stayed in my desk chair, but turned the chair to face the wall, rather than the window. When I discovered that others had keys to chambers, I moved my nursing operation across the hall to the women's room adjoining the jury deliberation room. There, seated on the toilet lid, I was safe from discovery.

When our two weeks alone in chambers concluded and my spouse took over Jake's care, I felt relieved. If the Judge did discover that my son had been in chambers it would now be history rather than an ongoing crime. On my last day alone in chambers with Jake, I used my foot to smooth over the tracks left in the Judge's thick carpet by the wheels of the stroller that I had pushed around chambers endlessly to calm my little one.

## II. WHAT MY STORY SHOWS

The above story shows how far from integration I was when I came into this profession. I viewed motherhood and lawyering as mutually exclusive. This may have been partly in response to the tales I had been told about motherhood and lawyering, and how these are often mutually exclusive, but I think I also had a very concrete, physical basis as well.

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8. Obviously, I could have been moving ahead in my work for the Judge if I had not been caring for Jake, but such advances were not necessarily required of one during the two weeks in question.

We women who give birth and nurse our offspring cannot easily adopt the facade of professionalism that we often assume is necessary to successful functioning as attorneys. Clients and judges, we assume, do not want advice and representation from those who are weak, distracted, and vulnerable. They want counsel from people who seem to be right, in charge, strong, in the know, invulnerable. Nursing mothers, whose swollen breasts are aching long before the end of the workday, feel unable to hide their vulnerability under the gray flannel they so diligently don.

This is the duality. To serve our clients,<sup>9</sup> we think we must permit them the illusion of our infallibility, imperfect though we and they know all human beings are. By our involvement in childbirth and nursing, we women professionals find it impossible to internalize the fantasy that we feel compelled to create for the benefit of our clients. We are more transparently human and vulnerable than we feel we should be. The duality causes fragmentation, and the fragmentation hurts.<sup>10</sup>

### III. ZOE BAIRD'S PUBLIC SERVICE

What does all this have to do with Zoe Baird? Her statement to the Senate Judiciary Committee seems to suggest that we benefit from our duality. Particularly if one is a woman, it appears, one can engage in behaviors as a parent that one could not engage in as a lawyer. Being a parent (or at least a female parent) is an excuse, an exemption to be invoked when otherwise improper conduct is at issue.<sup>11</sup>

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9. There is actually a separate, but related question, about trying to appear infallible to the boss. It is one thing to join together with one's employer to create an illusionary facade of supercompetence for the client's benefit. It is another thing to have a boss who expects one to maintain that facade even when no outsiders are present. If the standard to which the employer actually holds its employees is one of "perfection," then (given that no one is perfect) the employer has no standard at all. When employers make employment decisions without benefit of standards, then there is some danger that employer prejudices—based on race, sex, or other factors—may play a role in the decisionmaking process. *See* *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 1009 (1988) (Blackmun, J., concurring in part and concurring in the judgment) ("the less defined the particular criteria involved . . . the more difficult [for the reviewing court to find job relatedness]").

10. Is this fragmentation limited to parents in the workplace? Of course not. It extends to the full range of human experience. Whenever we create a facade, we fragment ourselves. Admittedly, there are areas of experience that we prefer to keep private; that is another matter. Privacy is very different from pretense. I simply do not agree with the argument that some parts of our experience are legitimate (thus presentable) while other parts are not, any more than I agree with the notion that some children are legitimate and some are not.

11. This duality seems to have persuaded members of the Senate Judiciary Committee, but not the public, which buried Congress in a deluge of mail criticizing Baird for her illegal conduct, and ultimately succeeded in ousting her nomination.



On its face, then, Baird's statement may seem to suggest the availability of a motherhood exemption from lawful behavior.<sup>12</sup> In fact, the statement illuminates a pathological sort of schizophrenia that plagues professionals generally, whether they are men or women, but that is most painfully felt by mothers.<sup>13</sup> We know we are human, we know we are less than perfect, we know "you win some and you lose some," we know a lot. Yet, we believe (perhaps correctly) that if the client (and maybe the boss) finds this out, we will be out of work. Mothers have an especially difficult time maintaining the image of impenetrable professional perfection.<sup>14</sup>

#### IV. THE ARDUOUS PATH TO INTEGRATION

Today, I personally suffer far less than I once did from the duality that professional life demands. My son is ten, and I am teaching law, rather than practicing it. In my students, moreover, I have a clientele that, in my judgment, will benefit more from witnessing my humanity than it would benefit from the illusion that I am professionally perfect and personally nonexistent. Because of my commitment to address the fragmentation problem, I—like many parent/professors—bring my son into my classes, not physically, but in my hypotheticals. I do this largely because I want my students to be ready to remain whole in the face of professional demands for fragmentation.

If workers believe that their immutable<sup>15</sup> traits are viewed in the workplace as something to be hidden, then they feel forced to be less than who they are. Energy gets wasted in the perfection subterfuge, and energy gets wasted in the hiding. The loss is not just workers', because employers lose productivity. On the other hand, when people can openly be who they are, then they have the freedom to bring their full powers,

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12. Baird's statement equally suggests that the duties of motherhood trump those imposed by the law. Colman McCarthy is among those who have suggested that people in Baird's career situation should not procreate because, in his view, performance of parenting duties will necessarily suffer when a parent puts work first. See Colman McCarthy, *When Baby Comes In Second to Career*, WASH. POST, Feb. 2, 1993, at D14.

13. But see Felice N. Schwartz, *Management Women and the New Facts of Life*, HARV. BUS. REV., Jan.-Feb. 1989, 65, 67 (noting employer prejudice against men who take advantage of parental leave).

14. Unfortunately, there also runs rampant in our society a myth that perfection at motherhood is achievable. See Nancy Chodorow & Susan Contratto, *The Fantasy of the Perfect Mother*, in *RETHINKING THE FAMILY* (B. Thorne & M. Yalom eds., 1982). Needless to say, those who feel that they should live up to, or create the impression of living up to, these impossible standards on both fronts are likely to feel considerable stress.

15. As one who has never once seriously considered getting rid of my son, I like to consider parenthood an immutable quality, though the choice to enter the state was my own.

energy and creative force to their work. The closer we can come to bringing our whole selves to our work as professionals and to our work as parents, the richer will become our contribution to both.

There is much to be gained, then, from curing the fragmentation. The more difficult question is selecting the cure. There are many arguments in favor of making concrete changes in the structure of the wage-earning experience that would help alleviate the fragmentation problem.<sup>16</sup> More to the point, but harder to achieve, will be attitude changes in those workers and employers who presently feel such discomfort when they confront the duality in the lives of mothers that they insist on fragmentation to ease their discomfort.

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16. Most recommendations focus on alleviating the concrete disadvantages experienced by those who do double duty as employees and caregivers, rather than on the psychological duality. See Kathryn Abrams, *supra* note 5, at 1223 (explaining that the current workplace structure is predicated on the supposition that a wage-earner has a wife at home to tend to parenting responsibilities, and advocating restructuring the workplace to accommodate workers with parenting responsibilities); Maxine N. Eichner, Note, *Getting Women Work That Isn't Women's Work: Challenging Gender Biases in the Workplace Under Title VII*, 97 YALE L.J. 1397, 1403 (1988)(discussing physical characteristics that lead to job "misstructuring"); Nancy E. Dowd, *Maternity Leave: Taking Sex Differences Into Account*, 54 FORD. L. REV. 699 (1986); Mary Joe Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U. L. REV. 55, 56-61 (1979). Cf. Joan Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559, 1599 (1991)("societal norm that women perform the large bulk of child and elder care contributes substantially to women's economic marginalization"). Even when the most immediate physical demands of motherhood—pregnancy and lactation—are concluded, the taboo on family devotion may remain. Parents of either sex thus may feel they have a choice: Be a professional or be a parent.