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Women at work

DEALING WITH THE CONFLICT OF BEING A MOTHER IN THE COURTROOM

On October 12, 2016, Unnur Brá Konráðsdóttir, a member of the Icelandic parliament for the center-right Iceland Independence party, and new mother, breastfed her baby while responding to and voting for a bill in Parliament and on national television. She said that her daughter has been with her in Parliament since she was born, and that usually, the baby is calm and asleep when the members vote.

On this day, Unnur had started feeding her baby and was forced to respond when another member had a question about her bill. She had to choose whether to interrupt the baby or walk to the podium while still feeding. On national television, in parliament, this woman addressed legislature while breastfeeding her baby. The response? How did the other members of parliament, the public, the news outlets react? They didn't. (See photo on Page 30.)

Only a few months ago this year, the American Bar Association passed an amendment barring lawyers from engaging in harassment or discrimination "on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, marital status or socioeconomic status in conduct related to the practice of law." It is the first national standard to address these types of harassment and discrimination in our profession. Critics of the amendment, and there were a surprising amount of them, argued that such a rule would "change the attorney-client relationship and impair the ability to zealously represent clients." Their argument, from where I'm sitting, was that if lawyers aren't able to treat certain people unfairly, they won't be able to effectively do their jobs. They argued that it would inhibit 'free speech.' And all of this got me thinking.

Decorah, Iowa

My husband and I have a home in Northeast Iowa, Decorah. It's a small college town with shallow, winding, spring-fed, trout-filled rivers, potlucks

and school plays. The storms are tree breaking – fierce and beautiful. This is where we retreat and recharge from the life we live here as busy trial lawyers – where we recenter and reconnect with the core values that make us good at what we do, that make us love what we do. It's our calm before and after the storm – the next battle we fight for people who can't fight for themselves.

Looking down at my daughter's face, a sleeping monk, my second baby, I'm thinking how much I love her and what it is going to mean for her when I get back into the battles that define me as a professional and very much as a human. Outside, our little ones run across the grass.

We are here for our oldest son's high school graduation. He's not a child I bore, but he's equally my son. Like him, I would prefer to focus on our summer – travel, friends, bonfires – rather than the looming questions of future. I want to stay in the moment. It's safe here and I have control. The thought of trials coming in less than three months, depositions stacking up on a child wrongful-death case, and big questions I am afraid to answer – how do I do all of this? Who will I let down or fail? What will it look like to be back in trial as a breastfeeding mother?

Maintaining calm and certainty

The calm and certainty I have in this moment is precious to me. But it's interrupted, often, by the yearning for the addictive feelings of being a trial lawyer (something I have worked very hard to be): excitement, uncertainty, purpose, spontaneity, competition; the stimulation of the most intellectually challenging act I have ever experienced. I am, and have always wanted to be, a trial lawyer. Speaking on behalf of the downtrodden, the injured, the mistreated. It's righteous, a brush with something higher, intoxicating even. It can sometimes be as powerful as the feelings I get when I look

down into my baby's eyes and feel her tiny fingers play around my lips and mouth. Different, but so very powerful and irreplaceable.

Because this is my second child, I know just how hard it is going to be to go back – back into court, back into battle, and that knowledge makes the mountain much taller this go around.

As a mother having borne my own children, I finally understand the pull from two very different directions, the conflict so many women lawyers and mothers speak of. Now I understand something I never did before. I realize after speaking with so many female lawyers, that so many more have not had the courage to talk about this. It's those women who have given me the courage to write these words. It's scary to do, and I don't know what I'm hoping the outcome will be, but maybe sharing my story will keep another woman from feeling ashamed for being a mother in court.

Special treatment

Three months after my first child was born, I tried a case with my best friend, Theresa Bowen Hatch. It was a bifurcated trial about a fifteen-year-old boy who was hit in a crosswalk by an AT&T truck driver who was using his cell phone. He was in an unmarked crosswalk (our argument), on his bike, not wearing a helmet. A dart-out case with brain injury.

It was the first time either of us had been in a courtroom since our babies were born. Theresa's daughter was about nine months old. We were both still breastfeeding every three hours. I remember how difficult it was to ask for accommodation. Afraid, embarrassed, and even ashamed. So, I did the cowardly thing and let my husband ask for me. I'm ashamed of that too. I was worried about screwing up my kid, screwing up the trial, worried about the jurors seeing us, or being viewed as using our babies to

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gain sympathy. I was terribly insecure that we could ruin our client's trial, ruin the opportunity a referring lawyer I respect had given us to try this case. I was afraid to let anyone know I was anything other than the two men Theresa and I were trying the case against. I did not want us to be looked at differently as women, certainly not as breastfeeding mothers. I had worked so hard to be viewed as a good trial lawyer – not a female lawyer – a trial lawyer.

Back when my husband asked the judge for accommodation, I couldn't look up. I couldn't look across the table to the defense lawyers, both men. Up to this point I had been, and had earned my place, at the "boys' table." No one thought of me as a woman in my mind. I was simply a trial lawyer of equal accomplishment, standing and ability. That's what I had myself convinced to believe anyhow. I needed to believe that and still do.

Accommodation

There are no set protocols or procedures for breastfeeding a baby during trial. But we wanted to make sure the judge was aware that since we couldn't have a break longer than the standard 10-15 minutes, if we were late getting back from breaks, it was because we were breastfeeding our babies. At first, the court was accommodating, and, the truth is, I felt badly about it every time she took us to the private courtroom where we could lift up our shirts and feed the babies. At each break, during the first few days of trial, the courtroom clerk would take us to a vacant courtroom on another floor, and we could sit quietly and nurse our babies.

But a few days into the trial we were doing great in the trial; we were obviously winning the case. Suddenly, the court stopped giving us access to the room, the empty room was now locked, and the Court began clearly ignoring us. It was obvious. The clock was shortened, the clerk would disappear, and the breaks were shortened. We were now a burden, or our accommodation was not something the Court wanted to do anymore. So we spent the rest of the breaks breastfeeding

in one of the stalls of the public bathrooms on a separate floor. We would try to organize our case and witnesses from the bathroom in between flushing toilets while we fed our children. We chose not to bring it up on the record and complain because we were not going to give the Court the satisfaction. And, there was no written rule requiring that we be accommodated. Maybe I was weak, because a large part of me felt I didn't want, or deserve, the accommodation. I felt like I was asking for special treatment and doing something wrong, asking for special treatment.

During voir dire, a particularly aggressive juror called me a liar. He had said that my every smile, every word I had said, was a lie, and that I was putting on an act. Of course, this is nothing abnormal. We all have encountered this with juries before. Yet, I could feel tears welling up in my eyes. Here I am, trying to do the job which I am most qualified for, most suited for, and have been successful at, and things are happening to my body that I can't control. I am standing in the well of the court, fighting back tears, with breastmilk leaking from my body and drenching my cheap maternity business casual wear because it's not time for a scheduled break yet, but my body doesn't know that or care. My son, my first child, is in the courthouse, waiting for the scheduled breastfeeding break because he needs the nutrition my body provides him and, frankly, that my body needs to give.

So, here I am, in response to this juror's comments, beginning to cry in public, *like a girl*. I couldn't believe I was so out of control. I decided that I didn't know what I was doing, I didn't deserve to be there. I certainly shouldn't have come back so soon after having a baby, if at all.

Misconduct?

I said, "I'm sorry, I have a lot of hormones going on, I need to step away from you right now," and I walked to the other side of the juror box, sucked it up, and continued. That was it. We won the trial on liability. No special treatment, we would go to different floors to avoid

jurors and breast-feed our children in the bathroom.

After the liability phase my husband tried the damages phase with Theresa. We won a very deserved \$10 million verdict for our client. The judge then granted a new trial. She cited attorney misconduct against me, Theresa, and my husband. I am certain, legally, morally, ethically, that none of the three of us committed misconduct or anything approaching misconduct. That aside, on the first page of the judge's order, she discusses me and my 'breastfeeding' despite the fact that the word appeared exactly zero times in the transcript of the trial.

Two months later, at a hearing on a different case, my husband's case, a defense lawyer made a motion to the judge asking that neither my husband nor 'his wife,' make any reference to breastfeeding. He told the judge orally, and in writing, that I 'used breastfeeding' to get a favorable jury verdict. A few months later, in another wrongful-death trial about a man who was killed by an MTA vehicle, the defense lawyers filed a similar motion, representing to the judge that I 'used breastfeeding' to get a favorable jury verdict, and as a result am no longer trustworthy. We have had the same motion filed against us now, over and over, in subsequent trials, including the most recent one, filed in a tiny farming town in Cresco, Iowa. The motion sat on my kitchen table for three days before I could get myself to read it.

Too emotional for the courtroom?

Throughout these last two years of buildup towards the 2016 elections, I had been feeling like I should be more engaged than I am. Like I should be feeling some sort of automatic enthusiasm just because a woman was running for president. I wonder how much my experience and fear of tokenism played into my feelings surrounding the potential of a first woman president. I know I haven't supported women as much as I should have over the years for fear of losing my (perceived or not) status of 'one of the guys.' I have focused on trial, and

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PHOTO: SCREENSHOT FROM RUV

teaching trial skills, which to me, naively, was a gender-neutral endeavor.

A woman I respect very much, one of the first jury consultants in this country, Wendy Saxon, talked to me the other night about the rarity that was ‘the woman lawyer’ in the seventies when she started in this business. How when a woman showed emotion, got upset, yelled, the courthouse would reverberate with the confirmation, “See? They *are* too emotional.” She talked about how hard women have had to work in order to simply be permitted to practice law, let alone have a place at the table.

Over the past three decades, women have accounted for over 40 percent of law school graduates. And yet, very few women are in leadership positions in both private practice and corporate law. The ABA’s research found that today, a man is three times more likely to appear as a lead counsel on a civil case than a woman. Of those identifying themselves as ‘trial lawyers,’ 73 percent are men and only 27 percent are women. Why is that? Efficacy isn’t the problem.

“Significantly, jurors are highly receptive to women trial lawyers. The underrepresentation of women among lead counsel is not attributable to a disparity in talent or ability between male and female litigators. To the contrary, women trial lawyers are as effective, if not more so, than their male counterparts.”

And what about all that emotion? Is that why we do okay, exploiting our tears,

our high voices, twirling our hair and flaunting our sex? No. “Research consistently shows that women are often perceived by jurors to be more credible and ethical. Therefore, women lawyers can use this to their advantage in relating to jurors, especially women jurors.” Women

jurors. “Who often comprise a majority of the jury.”

It isn’t just misogyny

Women trial lawyers aren’t scarce because of misogyny, though that is a factor. Think about it, it wasn’t until 1994 that lawyers were legally prevented from using gender as a basis for a peremptory challenge. That’s not misogyny, that’s institutional. And we all, as stewards of this institution, have obligations to recognize any potentialities for its improvement. But, as with everything, there’s more to the story. And part of this story for some women, a big part, a biologically significant to the point of the survival of our species part, is that we choose to have babies. Beautiful, precious babies. Our jobs, both professionally and as mothers, need not be so at odds.

I see the ABA’s anti-discrimination policy as a step in the right direction. This is not about inhibiting somebody’s free speech so much as encouraging a significant portion of our bar to recognize that there are differences between us and to respect those differences as opposed to exploiting them.

Being in Iowa, spending time with my family, it’s better than I ever could have imagined. As a mother, and as a trial lawyer, I look forward to showing them how much I love what I do. As I hope that what they teach me will bring more empathy and compassion to my own work. I think no one would argue

with the fact that we want our kids to have the passion we have for our practice, in whatever they do. I believe there is room in our profession to accommodate a new mother, or father, and all the stresses and responsibilities that entails, with grace and respect.

Making it *our* issue

Having said all that, my fear is that this may be perceived as having only been about women who are pregnant or have children or breastfeed. And it’s not. Pregnancy and raising a child is just one part of womanhood, experienced by only some women. These are choices I have been fortunate enough to have had, and I realize that I am swimming in these waters alongside countless other women who either have not been so fortunate, or have made their own completely different decisions based on their own path or circumstances.

This is about one of the many facets, about one role human beings in our offices, in our trials, in our lives, experience. Jessica Shortall phrased it best when she said, “We have to stop framing this as a mother’s issue, or even a women’s issue, this is an American issue.” As trial lawyers, people who have elected to be the voice for the voiceless, I think we are just the ones to start making it our issue.

Some of us might see what Unnur Brá Konráðsdóttir did as brave, an act of courage. Or, we could choose to see it for what it is, the most natural thing in the world, something barely even remarkable these days – a mother at work.

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