
Stepping out of the ivory tower with contemptuous breasts

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Direct action in the Ballina Local Court.

In a patriarchal society, breasts are associated with sex and with male gratification, and the exposure of a woman's breasts in public is viewed with disfavour. The prevalence of patriarchal concepts in our society, and more specifically, in our legal system, was freshly revealed in the somewhat notorious incident in the Ballina Local Court on 13 May 1994, when magistrate Pat Caldwell suggested to a young mother that she breastfeed in an exterior room, rather than in his court.

The official reaction

The media seized on the incident, and it was reported in the national press, and even internationally. The magistrate's attitude was widely condemned and health professionals, women's organisations, and the Nursing Mothers Association of Australia reported hundreds of phone calls from outraged mothers, and other women (*Northern Star*, 18.5.94, p.4). According to one spokeswoman, the Association 'has a policy which states that women have the right to breastfeed wherever and whenever they need to and we certainly support this young Ballina mother'. In fact, as it transpired, the extent of their support was limited by a desire to avoid an overtly political stance.

The New South Wales Attorney-General, Mr Hannaford, sought to pacify an outraged public by declaring that all women had the right to breastfeed in a public place if they so wished. He further commented that some people might expect a certain degree of decorum in a public place but that the decision to breastfeed was up to the mother (*Australian*, 18.5.94, p.3). The Chief Magistrate, Mr Ian Pike, expressed similar views, claiming that this was the first time that he had heard of any problem involving breastfeeding in local courts, and stating that he had no doubt that 'mothers have fed babies in the court in the past without a problem' (*SMH*, 18.5.94, p.5).

Later Mr Pike downplayed the significance of the incident. According to the court transcript, the magistrate returned from morning tea and noticed the mother, Ms Smidt, breastfeeding her child at the back of the court. Mr Caldwell then said, 'Oh look madam, there's a lady at the back of the courtroom breastfeeding. No, no, madam, there's a room out there that's available for you, if you like' (*SMH*, 18.5.94, p.5). An embarrassed Ms Smidt handed the crying child to her sister. Mr Pike dismissed the significance of the incident after discussing it with Mr Caldwell. He told the media that the magistrate had simply acted out of concern for Ms Smidt's comfort, and in no way ordered her to leave the courtroom. 'He simply pointed out that as she was sitting up towards the front of the court he offered her the availability of a room. But she left before he had even finished speaking' (*Weekend Australian*, 21-22.5.94, p.9). Mr Pike attributed the publicity surrounding Ms Smidt's claim to the public desire to attack courts and magistrates (*Northern Star*, 20.5.94, p.3).

Mr Pike's insensitivity to the perceptions of a young woman (Ms Smidt is 19) is remarkable. Ms Smidt was in the courtroom as a victim in a domestic violence case (*Northern Star*, 18.5.94, p.4), and was no doubt feeling fairly vulnerable. According to reporters she is shy and has found

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it difficult to cope with the recent public exposure. If the magistrate's comments were merely suggestions, and not orders, he nevertheless lacks tact and imagination if he believes that his forthright statements from the bench would not have intimidated a woman in Ms Smidt's position. From Ms Smidt's perspective, she had been singled out for judicial attention in a completely unexpected fashion. It is hardly surprising that she promptly handed the baby to her sister and ignored its cries.

The public reaction

There have been roughly three different public reactions to the incident. The first is best summed up from a male perspective by the president of the New South Wales Anti-Discrimination Board, Mr Steve Mark, who felt that any opposition to breastfeeding in public was not only wrong, but also rare. He stated that 'in 1994, Australia is a mature enough country to be able to recognise that breastfeeding is a natural part of life. It is not ugly, it is not embarrassing and it is not, within the general view of society, anti-social'. Mr Mark also made the reassuring comment that anyone who discriminated against a woman who breastfed in public was 'in a minority at the very least' (*Weekend Australian*, 21-22.5.94, p.9). From this perspective, the principles of equality espoused in liberal ideology have been wholeheartedly embraced and incorporated into the social framework.

The second group felt that breastfeeding in public was permissible, but only if unavoidable, and only within certain clear-cut parameters dictated by discretion and good taste. The widespread assumption that public breastfeeding should be discreet was apparent in the following comment which appeared on the front page of a local newspaper before the controversy erupted: 'Sometimes it is necessary to breastfeed your child in public and doing so *discreetly* is one of the things (a new mother) . . . learned after joining the Nursing Mothers Association of Australia' (*Lismore Echo*, 28.4.94, p.1) (my italics). In the view of the second group, the mother should have used the external room, rather than breastfeed in an inappropriate public setting. This view was expressed by travelling court staff and by the Grafton police prosecutor, Bill Larden, who were present in the courtroom at the time of the incident. They supported the magistrate's action, stating that the mother had not been sufficiently discreet (*Northern Star*, 18.5.94, p.4). Some members of the public who held this second view also queried the necessity to breastfeed a 19-month-old toddler with 'sharp little teeth' (*Northern Star*, 20.5.94, p.6). Others commented on the need to avoid distracting (male) legal counsel and the (male) judge, and felt that 'nice quiet privacy is better for bother [sic] mother and child than a busy crowded public place'.

The third reaction to the incident was a condemnation of the magistrate's attitudes as evidence of wider structural inequality in the legal system and in the professional world generally. While some critics of the magistrate concentrated on the archaic sexism of a man who had already been featured in a full page spread in the *Sun-Herald* for his ability to incur 'the ire of a log of lawyers over his courtroom manner' (*Sun-Herald*, 18.8.91, p.22), members of the third group felt that his behaviour was symptomatic of a widespread intolerance of breastfeeding in professional zones. They felt that it was important to emphasise that most breastfeeding mothers do not venture into these zones, and even more rarely do so as breastfeeding professionals. Members of the third group were also concerned that although members of government and of the judiciary supported a woman's right to breastfeed in the public gallery of the courtroom, there was no mention of a female solicitor's right to breastfeed at the Bar table, nor of a female magistrate's right to breastfeed

at the bench.

As a law lecturer, I had already personally experienced opposition to breastfeeding in my professional capacity, opposition which indicated that Mr Caldwell's desire to protect the professional zone from breastfeeding women was perhaps more common than Mr Mark from the Anti-Discrimination Board had indicated. My young baby was on campus with my partner for my entire teaching load this year, and I breastfed her between lectures and tutorials in full view of my students. Occasionally, if necessary, I fed her in front of the class while I was teaching. Student evaluations of my teaching included the 'suggested improvements' from roughly 10% of my audience:

'Not teaching whilst breastfeeding infant.'

'To do one job at a time, not two.'

'Could appear more devoted to role as a uni. teacher.'

'Nicki's child should be in a pre-school *not* a university.'

'Why should a whole course be inconvenienced for the sake of one child's breastfeeding timetable.'

It was clearly obvious from these comments that some students felt that breastfeeding detracted from my ability to instruct, and from my credibility as a lecturer in law. Since breastfeeding women are not commonly seen in professional environments, perhaps Mr Caldwell's comments were provoked by the rarity of the sight of contemptuous breasts in his courtroom. Although Mr Pike had stated that breastfeeding mothers were acceptable in courtrooms, he was presumably not referring to breastfeeding members of the legal profession. My first reaction to the media reports of the incident in Mr Caldwell's courtroom was the desire to take my baby, and as many contemptuous breasts as I could find, back into court. This was precisely what I did.

Lactating in court: feminist direct action

I received a wide range of reactions from breastfeeding mothers whom I informed about the protest. The reaction from the Nursing Mothers Association of Australia was the most disappointing. A counsellor informed me that although the Association fully supported Ms Smidt, its policy was to avoid taking a political stance on any issue. The Association could not, therefore, assist me in organising a breastfeeding sit-in nor lend its official endorsement to the action. Two members of the Association did in fact join in the protest in their personal capacity.

Other women told me that they lacked the energy to participate, and many stated that since they had not encountered any opposition to breastfeeding in their own environments, they lacked any incentive to protest. One said that she had even breastfed in front of a bank manager when she and her partner were asking for a loan. It is interesting that what is socially acceptable in a client or customer in a professional environment is unacceptable behaviour on the part of the professional. While a breastfeeding potential customer of a bank suggests a reassuring stability about the circumstances of the family, a breastfeeding bank manager would no doubt appear pre-occupied, messy and disorganised.

Although the protest was organised at extremely short notice, in the end five breastfeeding mothers entered Pat Caldwell's courtroom on 20 May 1994. We were accompanied by various supportive observers, and by a few eager reporters anxious to catch a suggestion of discomfort on the part of the magistrate. Our solicitor, my colleague David Heilpern, waited outside, ready to intervene if the magistrate mentioned contempt. My expectation of possible contempt charges from a



Breastfeeding mothers and babies and friends outside Ballina Local Court. Photo courtesy of the *Northern Star*.

magistrate notorious for his short temper had caused me to bring a breast pump and a bottle of expressed milk. One solicitor's account of the magistrate in the past describes him losing 'all self-control, thumping the bench with his fist and shouting . . . in threatening tones: "Get on with it, get on with it"' (*Sun-Herald*, 18.8.91, p.22). Babies on hips, we entered the courtroom, observed by an incredulous Mr Caldwell. While we quietly breastfed our babies and watched the proceedings, according to ABC reporter, Alan Rawson, the magistrate 'looked every which way but at the ladies feeding their babies' (*Weekend Australian*, 21-22.5.94, p.9). When the matter before him concluded, the magistrate announced that the Children's Court matter would now be heard and the court was closed. We dutifully exited, our babies contented and replete.

The furore over Pat Caldwell's actions will no doubt die down, although Ms Smidt has claimed that she will take legal action against him, possibly through the New South Wales Anti-Discrimination Board, and further breastfeeding protests in the courtroom are being planned at the time of writing. The incident should have opened up some wider questions for society about the circumstances in which breastfeeding is acceptable. While breastfeeding is not fully condoned within professional zones, and while those zones are not safe and healthy environments for babies, our society lacks structural equality. If

a breast-feeding woman in a professional environment is to receive complete social acceptance, the public/private dichotomy needs to be deconstructed. Similar issues arise in relation to other working environments.

Deconstruction of the private/public dichotomy is best achieved by feminist direct action. Take your babies and those contemptuous lactating breasts into professional and other working environments. Ignore authority figures who bleat about discretion. In a matriarchal society breasts are revered as sources of nourishment for the next generation, and breast milk, as with other natural resources, is valued rather than taken for granted. As one breastfeeding woman with whom I spoke after the incident said, 'I breathe, I breastfeed'. Another commented that 'breastfeeding is just another way to love my baby. I don't look on my breasts as having sexual connotations any more'. A breastfeeding woman should neither titillate nor disgust a male audience. Breastfeeding by itself does not impact on the working abilities of women, although the exhaustion caused by the absence of appropriate support systems within society may do so. Women must not allow themselves to be silenced by the widespread assumption that breastfeeding is inappropriate in a professional setting. A breastfeeding woman has the freedom to do whatever she wants, in whatever environment she chooses.