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Behind the Gavel and Under the Robe: Gender Performance in the Courthouse

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Abstract

By looking at gender as an active performance through West and Zimmerman's "Doing Gender" (1987) as a theoretical framework, I aim to understand how men and women in judicial occupations navigate gender roles and power dynamics in a professional setting. Both men and women judges present themselves similarly in their attire and their completion of making rulings on cases. However, men and women show distinct differences in displays of emotion, professional behavior, and responses to challenges or conflicts in the courtroom. Female judges tend to operate in a poised, highly accountable, and emotionally restrained scope, while men tend to show more variation in their emotional displays and have a wider range of behaviors that they work within. I conducted 20 hours of ethnographic fieldwork over the span of eight weeks at a county courthouse in Portland, Oregon. This study contributes to theories of women's overt masculine performance in male-dominated workplaces, where women appropriate hegemonic masculine qualities as a mean for success in professional settings. This works to reinforce patriarchal gender hierarchy, rather than reconstruct it.

Key Words: Doing Gender, Gender, Judges, Gender Hegemony, Masculine Overcompensation

Introduction

This research aims to understand how judges and authority figures perform gender in legal professions, specifically in judicial positions. My analysis will be framed by West and Zimmerman's theory that gender differences have been constructed, and the constructs are then used to reinforce the "essentialness" of gender (1987). With women increasingly entering the professional sphere, and traditionally masculine spaces, it is important to examine if judges' gender performance adapts to the change, what that adaptation looks like, and who is doing the adapting. After spending weeks in the courthouse conducting ethnographic research, I focused on four themes indicated by the subjects: (1) gender presentation, (2) navigating challenge to their ruling, (3) professional behavior, (4) and display of emotion. By looking at gender as an active performance, and using gender hegemony (Connell, 1995; Schippers, 2007) as an additional theoretical lens, this study will contribute to existing studies of women's masculine performance in the workplace.

I will be analyzing the behaviors of judges by using hegemonic masculinity, hegemonic femininity, and pariah femininity. Hegemonic masculinity is defined as "the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees the dominant position of men and the subordination of women" (Connell, 1995). Meanwhile, "hegemonic femininity consists of the characteristics defined as womanly that establish and legitimate a hierarchical and complementary relationship to hegemonic masculinity and that, by doing so, guarantee the dominant position of men and the subordination of women" (Schippers, 2007). On the other hand, pariah femininities are a female embodiment of hegemonic masculine qualities which defy the hierarchy that is demanded by

gender hegemony (Schipper, 2007). Previous research on women in the workplace suggests that women face “complex negotiations regarding appearance, behavior, and interaction due to sex segregation in the workplace that influenced expectations of workers’ behavior and appearance” when they do not conform to the ideal standard of femininity (Dozier, 2007). I will be comparing my findings in my field notes to these concepts of gender performance in order to understand how judges navigate gendered structures in the courthouse.

Methods

For eight weeks, I conducted 20 hours of participant observation in the county courthouse in Portland, Oregon. My ethnographic fieldwork was heavier in observation than participation in the setting. Much of my time in the field was spent sitting in the back of various courtrooms, jotting down notes amidst hearings and trials of all kinds. I observed in the courthouse in the afternoons Monday through Friday, on account of government buildings being closed on weekends. I observed five male judges: Judge Miller, Judge Lewis, Judge Baker, Judge Reed, and Judge Gilbert. Additionally, I observed five female judges: Judge Mayer, Judge Hart, Judge Turner, Judge Sanders, and Judge Anderson. Subjects in this study were assigned pseudonyms. The names of these judges have been changed to pseudonyms. I documented their behaviors and demeanor in interactions. The method of ethnographic research provides insight through qualitative data collection via fieldnotes (Emerson et. al. 2011). Much of my effort was spent finding courtrooms to slip into without interrupting. I did not keep my identity as a researcher private. When my presence was questioned or interrogated, I was transparent with my subjects by telling them that I was observing and conducting research. This sometimes prompted conversations, but overall this did not detract from my findings.

Over the weeks, I began noticing patterns in how I was being treated by guards in the courthouse. They act as very literal gatekeepers, since they preside over the metal detectors, X-rays, and all other security in the building. In regard to my own gender performance, I identify as a woman, but my appearance tends to come across as more ambiguous. I rarely wore makeup to the courthouse, I had a buzz cut, and I generally dressed in looser, layered up clothing. As I came to the courthouse more often, I began noticing the eyes of the guards on me. I found myself acting more “innocent” by raising the pitch of my voice to transcend the visible suspicion that some of the subjects had of me. For example, I was directed to the Sheriff’s office to find ongoing criminal cases to observe. Upon entry, the buzz of chatter immediately ceased. I recognized all the guards in the room as men, and they all turned to look at me with a mix of confusion and suspicion, which was indicated by their tilted heads and furrowed brows. One guard that was closer to the door asked if he could help me, and I replied with a higher pitch in my voice and a grin as I attempted to gain information. They turned me away, claiming they had nothing going on. In another instance, a guard tried to turn me away, telling me to come back the next morning even though the courthouse was open for two more hours. This was a common occurrence, as some of the guards, judges, and even the lawyers would question my presence, and I always responded with a smile and my “sweet” tone of voice. In a way, that was my own compensation for my ambiguous gender performance, which seemed to warrant mistrust. Due to my position as a woman lacking in femme performance, I had to jump through a few social hoops to obtain data.

Results

Gender Presentation

Regardless of gender, the judges all wore a standard uniform. The judges wore the same long black robe. Clothing is a common method of expressing gender identity. Other physical performances can be exhibited through hair and makeup, and the judges presented themselves normatively within the gender binary. Female judges did not wear noticeable amounts of makeup; male judges also did not wear any noticeable makeup. None of the judges had any outlandish or distracting hairstyles. The men tended to have short, clean cut hair, while women showed a bit more variation in length of hair, but generally their hair was worn down, rather than pulled back or put up into a style. Because of the lack of noticeable variation in physical presentation, the gendered differences between the judges are conveyed through their reactions and behaviors. Most of the judges were older. I estimate that their ages all fell somewhere between 50 and 70 years old. The majority of observed judges were white, with two of the sample being Hispanic.

Professional Behavior

The way that judges behave sets an example for the demeanor of the entire courtroom. In my time at the courthouse, I noticed more outlying deviance from typical notions of professional behavior in male performing judges versus female performing judges. Judge Baker, a male judge, was late for a case. When he finally came in, he did not apologize for his tardiness. He slouched and rested his head on his open hand with his head almost completely resting sideways. He rested his cheek on his hand on and around his face. He did not say much, but when he did speak, he spoke monotonously with various “um’s” drawn out between phrases. These actions together came across as bored and uninterested. He quietly said, “let’s get you the paperwork,” handed off a stack of papers to the clerk sitting below him, and then stood and left the courtroom. Judge Baker got the job done, but he seemed to be putting in a minimal amount of effort and visibly lacking in interest. In another male judge’s courtroom, Judge Reed was also late, and also did not apologize for his tardiness. He leaned forward, and after a bit of testimony by an attorney, Judge Reed actively engaged in a discussion with the defense attorney. The judge and the attorneys began talking over each other, interrupting to the point that the conversation was almost incoherent. Judge Reed did not look offended or stop the attorney from speaking over him. Judge Reed also took the liberty to interject and interrupt the attorney as well, so it became an agreed-upon chaos. Judge Reed kept bringing new concerns to light about removing the defendant, which then transformed into banter and smiling between Judge Reed and the defense attorney. In the end, Judge Reed casually requested more thorough evidence by chuckling and saying, “just get it to me.” When Judge Reed allowed the attorney to interrupt him, this indicated security in his position. Judge Reed did not treat the interjections as a challenge to his authority, and therefore conveyed a feeling of invulnerability in his position.

The final and most prominent display of unprofessional behavior came from Judge Gilbert, a male performing judge, who came into the courtroom without his robes on. He was dressed in a dress shirt, tie, and slacks. He came out of his chambers and started a conversation with the single attorney in the room. I was the only person in the room besides the two of them

and a law clerk at her desk. The attorney was a young man, and Judge Gilbert appeared considerably older. Judge Gilbert and the attorney talked and laughed about clients sabotaging their cases and attorneys.

Judge Gilbert: “There’s one thing I always tell prospective attorneys. It’s that the client is their own worst enemy.”

He elaborated on this by joking about how defendants will speak out of turn and try to appeal to the judge and plead their case when they are not on the stand, or how they interrupt the judge, which only makes them look bad, if not worse, and weakens their chances of winning a case. This stood out as a contradiction to the behavior I previously observed in Judge Reed’s courtroom, where the attorney interrupted the judge and faced no sanctions. After Judge Gilbert and the young attorney went back and forth for a bit another attorney finally walked in. The incoming attorney asked if he could speak with the young attorney and the judge in Judge Gilbert’s chambers, so they all migrated, but they left the door open. I heard laughter coming from the chambers and echoing into the courtroom. From my seat in the courtroom, I could hear them discussing clients and how frustrating it is to deal with them. Amidst the conversation, I heard a voice interject “shit!” loudly at one point. The same voice dismissed dealing with clients with an exasperated “whatever” and their laughter continued to echo through the courtroom. This fraternal dialogue showed a freedom and willingness to speak ill of patrons and clients with no perceived chance of facing negative consequences as a result of the behavior. Judge Gilbert’s involvement in this conversation showed a tolerance of inappropriate language and criticism of clients at work, rather than keeping such opinions outside of the professional sphere.

In comparison to the men, I hardly observed any unprofessional behavior exhibited by female judges. Female judges tended to be curt and quiet. When they would speak, it would rarely deviate from the task at hand. The women were generally punctual, they did not engage in personal discussions, and they did not interrupt speakers. One exception came up where Judge Mayer, a female judge, was late. When she entered, she apologized promptly and explained that she was in a meeting that ran long. As she went through the docket, she apologized for the wait to every person that approached the bench. Judge Mayer’s failure to meet the professional standard of timeliness resulted in her making amends with every person that had to wait for her to arrive. When male judges came into the courtroom late, they offered no apologies or even a regard for their tardiness, which indicates that they do not feel the need to save face when they act unprofessionally. This provides a concrete example of overcompensation in the workplace, and a higher expectation for women to maintain a professional demeanor.

Display/restraint of emotion

Tied to professional behavior, there is a bureaucratic expectation of workers to keep their emotions separate from their work. In the courthouse, some areas of law can involve very personal and difficult situations. When I sat in on family, drug, and mental health court, I found that there were distinct gendered differences in dealing with such intimate cases. In drug court, Judge Miller took the liberty to make light of hard situations. When speaking to an inmate that was facing more jail time he said things like: “I gotta get some of those shoes” and “you don’t get

to take them (the shoes) home as a souvenir?" The inmates all wore bright orange sandals. Judge Miller smiled and chuckled when he spoke. He made jokes and used humor in his interactions.

Mental health court also contained cases with unfortunate circumstances. Judge Lewis, a male performing judge, entered the courtroom with his arms extended, and a smile on his face. He greeted everyone with "it's good to see you all." The first person he called up sat at the table for attorneys to speak with Judge Lewis. He said to the defendant, "you relapsed, but I'm *proud* you owned up to it and are making progress." Then set out the rules for continued treatment and told the client to take care as they stood and walked away. "You gotta take two steps forward with every step back," he preached to the entire courtroom with a smile on his face. One man was wearing a T-shirt and no coat and Lewis stated, "I hope you have a good coat, you're dressed awfully summerish." Judge Lewis came across as sunny and compassionate. He acted very paternal in the way he talked about appreciating honesty and encouraging people to get on the right track. He shortly went off on a tangent about how he loves summer and the winter weather made him sad, but how there is something beautiful about the cold season, too. Judge Lewis said, "there's something good in everyone and everything." He started a round of applause for every person that completed their treatment program and every person that found a sponsor for their treatment and housing.

Judge Mayer presided over family court, which dealt with divorce, restraining orders, custody battles, et cetera. Compared to Judge Miller and Judge Lewis, she remained serious. She did not smile often, and she did not make any comments that deviated from the cases she was hearing. Judge Mayer only pried into personal matters when she needed more evidence about a case. For example, a young woman was trying to get a restraining order against a man that was living in his trailer parked on the street outside her home. She expressed a feeling of uncertainty regarding her safety to the judge. Judge Mayer asked for concrete examples of altercations or situations that would warrant a restraining order, but when the client would trail off into a description of her relationship to the man, Judge Mayer would stop her and ask her to only describe situations where the man made the woman feel unsafe. The woman described one altercation where the man slammed his hands on her car and threatened violence. Judge Mayer found that she could not use that situation because it fell outside of the six month statute of limitations. Judge Mayer apologized for her limited abilities and directed her to a young law clerk to assist with the paperwork. This behavior contrasts to the behavior of the male judges. Judge Mayer expressed a desire to help the people in her courtroom, but she still kept a firm grip on the conversation. She did not let things trail off into off-topic discussions, which Judge Lewis and Judge Miller encouraged with their humor and small talk.

Challenge to their ruling

Judges in the courthouse deal with a wide variety of cases. The docket can range from civil suits, to civil lawsuits, to homicide cases. In some cases, the material could get very personal and sometimes disturbing. Legal proceedings can have heavy implications on lives and judges make rulings that are not ideal to the defense; therefore, the judges were sometimes confronted with a challenge to their ruling. In one instance, Judge Miller, a male judge, was presiding over drug court where he heard an inmate's case about whether or not she would be released from jail. The inmate kept interrupting Judge Miller with comments like "I'm not going back," and "I need my program." Judge Miller and the attorneys discussed the most effective way of keeping the inmate

on track and off drugs. The inmate became more distressed about the idea of going back to jail for another month. She began to cry and plead for personal matters, and she started promising that she will complete her 60 days clean out of custody. After listening to her concerns, Judge Miller eventually issued an order that had her to go back to jail for 30 days with early release and applied credit from her time she's already served. She continued to argue with Judge Miller claiming that he was "setting (her) up for failure," and she cried out, "I get nothing over there." He was firm in his finding and explains to the inmate his reasoning based on his previous experience with drug treatment cases. He also attempted to console her by telling her that his ruling would give the state some time to find a treatment bed for her. The defendant wept as she was handcuffed and led out of the courtroom. After the inmate was escorted out, Judge Miller stood up and left for his chambers.

In comparison, Judge Sanders, a female judge, also judged a criminal case about releasing an inmate from custody and faced a challenge to her ruling. Judge Sanders listened quietly to the arguments from both sides. She said nothing and only nodded her head every so often, which indicated active listening. When the attorneys finished presenting the case to her with their requests and arguments, she referred to the defendant's record of noncompliance with previous court orders. Based on this, she denied the motion to release him from state custody. The inmate, who appeared to be a man, scoffed and began to question Judge Sanders. He asked her what was wrong with him staying in a shelter and getting out of jail. She stood, briefly and curtly reiterated her point that she had no evidence that would lead her to believe that he would show up for court, thanked the attorneys, and immediately exited the courtroom. Judge Sanders's interaction with the inmate was almost nonexistent compared to Judge Miller's interaction. Judge Miller engaged with the inmate, attempting to console her. He sat and listened to the challenge and offered his reasoning as a response. On the other hand, Judge Sanders cut off the inmate, and repeated her ruling as she gathered her things and left the room. Judge Sanders did not engage with the challenge beyond repeating what she had already stated. When she exited, she physically did not allow for the discussion to carry on any further. The difference in engaging or dismissing disruptions is another example of male judges having more flexibility in the courtroom in their dialogue and behaviors, while female judges act more rigid and maintain structure by not deviating from their official script.

Discussion

Judges dress uniformly and therefore the differences in their gender performance lie within their behaviors and actions. Women tended to act more professionally by being prepared and following scripts, while men took the liberty to personalize their position of power with a variety of styles, such as expressing a sense of humor. In general, male judges showed more variance in their behavior than the female judges did. The female judges mostly tended to operate within the same scope of strictness or firmness. Meanwhile, male judges showed a wide range of emotions such as amusement, boredom, sympathy, dismissiveness, and paternal supportiveness. Women made noticeable efforts to maintain an outward professionalism by staying on task, maintaining a general script in most interactions, and not indulging in personal chatter. Male judges, again, showed variety by taking the liberty to make jokes, to comment on personal matters such as a client's dress, or even to indulge in gossip or fraternal trash talking. Men also tended not to conceal their feelings about clients or cases, while women did seem to restrain themselves even when faced with troubling comments or responses. Based on my findings, I argue that in a

professional setting, female judges tend to be firm or rigid in an attempt to earn, maintain, and enforce their control in the courtroom, while men tend to take their authority as implicit and therefore act with more flexibility.

When female judges appropriate hegemonic masculine qualities, they reinforce patriarchal performance as being the correct figure of authority in the public sector through their actions. This aligns with the notion that “[g]ender is a powerful ideological device, which produces, reproduces, and legitimates the choices and limits that are predicated on sex category” (West and Zimmerman, 1987). The judges’ adherence to patriarchal gender roles reproduces and legitimates the gender binary. The women in this study skirt the lines of hegemonic masculinity and femininity, since they hold a position with authority, yet they still employ masculine behaviors to legitimate that authority rather than to create a platform for feminine power. While women do engage in masculine practices, these practices are not sanctioned as undesirable, and ultimately reinforce patriarchal hierarchy. Therefore, the performance of female judges cannot fit into the definition of pariah femininity (Schippers, 2007). Instead, their masculine behavior is supported by the system, works in their favor, and maintains hegemonic subordination of femininity (Connell, 1995). The women in this study showed a limited range of behaviors, due to a stigmatization of femininity, that only work to perpetuate the connection between masculinity and power over others. The findings of this study contribute to existing literature on women’s performance of masculinity in the workplace, where women appropriating masculine qualities tend to characterize gender in a stereotyped and dichotomous way. This study has limited generalizability due to the relatively short amount of time spent in the field, lack of random sampling, and very few conversations with the judges that may provide insight to perceptions of their performance in the environment. Future research may employ semi-structured interviews or an extended ethnography to better understand the meaning behind the gendered actions of judges.

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