

# Intrusive Gendered Acts in the Courtroom

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I was ordered by the court to complete a second opinion evaluation of a defendant at the request of defense counsel in a competency matter. It progressed to a contested competency hearing on a murder charge where both the opposing expert and I opined the defendant was competent. I had been practicing as a forensic psychologist for seven years and had overprepared for testimony in my typical manner. I had testified numerous times previously and was prepared for the scrutiny of high-profile cases, so I approached each case with equal consideration. I entered the courtroom feeling prepared and confident in my ability to present my findings to the court. Despite my best efforts at preparing, I was not ready for what happened next.

I had just finished my rather routine testimony. I recall the district attorney objecting to the public defender's "badgering of his own witness" because of his aggression toward me. Still, we had worked together on many previous cases (and more since) so I was not unsettled by the acrimony; I had anticipated it.

After being dismissed by the judge, I left the stand, confidence and dignity intact, and headed toward the exit. The court deputy, an older gentleman, gave me a brief physical escort in the form of a guiding pat on the back as I moved toward the exit door and he said, "That was hard."

I was astounded. A guiding pat on the back?! "That was *hard*?" In one fell swoop, it was patronizing, demeaning, and controlling. He thought I needed to be shored up or comforted in some way. In and of itself, it was not a shocking interaction. But the

emotional, social, and professional layers to work through had my head spinning. It made me feel small, yet I think he thought he was being kind.

There was little time to respond because it happened very quickly. To say it caught me off guard does not quite capture how paralyzed I felt in the moment. In an instant, the gesture made me question my performance and career choice. I automatically thought I must have looked like I was having a hard time. I must have portrayed some kind of fragility or vulnerability that I did not perceive. If he thought that, perhaps everyone else did.

I was confused. I had followed all the rules. I carefully picked my outfit; I was confident enough, but not overly so; I had smiled deferentially; and I tried not to appear defensive. I had prepared well for the testimony and knew the details of the evaluation inside and out. I had testified numerous times before and did not feel particularly anxious.

Given my penchant for the imposter syndrome, the deputy's gesture made me question my own perception that I was well prepared as well as my overall ability to do my job. Typically, after I testify, I think through what I said, what I could do better next time, and reflect on what went well. I feel the pressure of being a woman in the courtroom, often in a male-dominated environment, and am intentional in what I want to convey with my words and demeanor. In my normal reflection, I would have concluded in this instance I was properly prepared and did a good job. I maintained composure, conveyed the data, and answered difficult questions with confidence.

This time, there were so many questions, so little time. What did I do wrong? Did I look frazzled? Did I look weak? Maybe I am not cut out for this? What

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was I thinking, trying to be a grown-up, professional woman? Was I just playing dress up? And what do I do now? I felt I had lost my grounding and somehow did not know where reality lay. My years of experience and the confidence that comes from repeated courtroom appearances faded into the background.

Alas, I smiled politely (good girl!) and all I could muster was to curtly tell him I was fine. The words did not flow smoothly. I scurried away, trying to make sense of what just happened and what inspired such a reaction from a stranger.

I wanted to ask the deputy if he had offered the same gesture to my male psychiatrist colleague who had testified before me, even though I was pretty certain he had not; he did not view us as equals. I wanted to know if he thought I was having a hard time or whether he was just putting himself in my shoes and projecting.

My urge was to tell him that, even if he thought he was providing comfort, he needed to reflect on the inappropriate act of touching someone without their permission, without knowing their history, and without having even a slight familiarity with them. I wanted to ask whether he was aware of how it felt to be demeaned in a public forum by such a small but mighty microaggression, this thinly veiled sexism that froze me in time.

I had the desire to ask what he would have done if his perception was correct and I needed comfort. Was he prepared to step up and dry my tears and keep me steady on my feet as I dissolved into a puddle of self-doubt before his very eyes? Did he have the time to process my grief over the humiliating portrayal of my inefficacious professionalism? Could he help me improve my testimony skills? Forget the pat, can I have a hug? This was not a safe space; it was a courtroom where experts must be ready for attacks to their credibility and quality of their work product. Nobody prepared me for the lack of safety associated with my physical boundaries and gender identity.

In addition, the episode raised the gendered trope that I was less credible or qualified, compared with my male counterpart. Research continues to highlight the grim reality that female expert witnesses continue to be perceived as less believable and persuasive than male experts, despite women entering this work force in greater numbers. There is guidance for being more assertive when faced with aggressive and intrusive cross-examination, but it is unclear how such advice translates

to negative incidents outside the scrutiny of the witness stand or how to address the larger problem of women being undervalued as experts in general.

Upon reflecting on this incident, several times, if I am being honest, I still struggle with what I should have done. Something? Nothing? Would I be perceived as “hysterical”? It was a difficult situation because I was in a small town, it happened very quickly, and it caught me off guard. I was unsure if anybody else observed the interaction. Did that matter? Was I making much ado about nothing? Even writing this article gave me pause. I questioned whether my experience had substance or a deeper meaning. As isolating as this was, it also felt like a collective experience on some level; although the likelihood of others experiencing the exact same event was unlikely, the sexist microaggression was something to which many would relate.

The bottom line was that this physical touch was uninvited and inappropriate to the context. Unfortunately, as a woman, I have encountered unwanted touch in various locations as a function of my gender. Whether it is a lingering touch on public transportation or being touched on the lower back as a man tries to move past in a crowded bar, women are all too familiar with briefly losing autonomy over their own bodies. The responses in these situations are clear, and there is less need to read between the lines. The emotional reaction is specific to the situation and resolution is typically swift, assuming there is no trauma history to consider. In a professional context, however, this was particularly jarring. I had to reconcile the act (not to mention the impact of his words) with my professional identity. It was bigger than inappropriate touch; his gesture was laden with sexist and paternalistic baggage. There was no socially sanctioned response to which I could refer, and instead, the incident emotionally froze me in place.

My immediate response was wanting to evade his touch and tell him not to put his hands on me. I knew that response would not be well received and I did not want to make a reputation for myself in this small legal community. I certainly felt constrained by the possible perceptions of hysteria and over-reaction. It was too fine a line for me to address more assertively, especially as the courtroom was likely full of (unprogressive) men. And when considering that perpetrators of microaggression often are not even aware of having engaged in it, I did not want to make a further scene by not only objecting to the gesture but having to possibly educate this older man on the context of my complaint,

likely only adding to any perception of hysteria or over-reaction.

In my postmortem analysis, the Monday-morning quarterbacking of forensic psychology, I considered many alternatives. The action was so unexpected and so quick that I had no time to think about what to do in the moment. This is typical when there is an unexpected intrusion on our bodies.

If I whispered, "Don't touch me," how would that be perceived? Did I really need to explain, "I don't appreciate touch from unfamiliar people."? Would that have inspired a dismissal of my concern? What if I had whispered something stronger, like "Get off me!"? Would that have adequately righted the wrong for me? I could have brushed off the pat with a firm shrug. What if I had reciprocated with a slight push? How would a glare be received? Staying icily frozen and immobile was a possibility.

Of course, I could have done nothing. This one sticks because, in essence, that felt like what I did. My smile was permissive. I let all my sisters down. I let myself down. I did not assert my boundaries. I did not educate him. I felt I had no good options. I did not ensure it would not happen again.

At the end of the day, I have to concede that, no matter the degrees we hold, the professional accomplishments we accrue, or how we conform to androgynous preferences in the courtroom, we are women first. From a young age, we are told what to wear, how often to smile (no, more smiling), how to be confident (but not too much), and how to assert ourselves (but do not be aggressive). We are directed to conform to unrealistic ideals, to do it all, and not to complain. But no matter how well we try to walk the line, there is someone there to remind us that our façade is transparent.

So where do I go from here? I currently spend less time in the courtroom than previously because of the advent of video-conferencing testimony. I have limited others' physical access to me, intentionally or not. When I do find myself in court, I still have a host of other concerns to juggle and whether or not I am going to receive uninvited touch should not feature anywhere on that list. I know I spend more time picking out my outfit and figuring out my hairstyle compared with my male peers. I have to be prepared to be disrespected on the stand for being less than my esteemed male colleagues. I will be called "Ms." instead of my honorific. I will be dismissed by some parties before I even speak. I accept that I signed up for some of that. What was not in my training or the

supervision I received was being ready for unwanted touch.

It is apparent this is just the tip of the iceberg. For example, in considering gender differences, it is necessary to consider how such behavior may be both perpetrated on and perceived by those identifying all along the gender identity spectrum. What other microaggressions are being directed toward those not clearly aligning with expected gender norms? The need for social acceptance as well as anticipating unwanted behaviors may interfere with professionals' ability to focus on their jobs. Whatever the gender identity, unwanted touch and paternalism are typically not directed at gender-conforming men.

I reached out to a variety of colleagues to process my experience and heard similar stories of a different flavor. Some were subtle, others egregious. Each time, there was no consequence for the inappropriate behavior. Poor treatment of the female expert witness appears socially sanctioned behavior, in line with how society treats those not meeting the definition of the majority demographic. It was overwhelming, to say the least. I also received support from colleagues near and far. The interest in the topic gave me the courage to find my voice. I would like to especially acknowledge Stanley Brodsky for offering invaluable guidance and input on how to draft my story in a relatable manner, despite my feeling of isolation in recounting it.

My situation resulted from a small gesture with a large meaning, and I know that others have similar stories to tell. The experience and my subsequent reflection illustrate four major elements that apply especially to women in the courtroom. First, almost all such intrusions are unexpected and give little time for thinking through best responses. Second, such intrusions are typically not the product of malice but rather garden-variety sexist acts. Third, such experiences tend to have a long half-life and can represent continuing discomfort. Fourth, and finally, recipients of such body-boundary violations should share the events and their reactions more often to be able to make discussions a cogent topic for discourse and examination.

If we fail to name sexism as it occurs, we miss an opportunity to educate and change unacceptable behaviors. We miss the opportunity to share our discomfort and find a collective support system. It is not likely other women experts would have this same specific experience of being touched or spoken to in this way. It is a mistake, however, to think of gender-

intrusive actions as rare in the lives of professional women. Encouraging women to be prepared for the unexpected verbal or physical intrusion may be a first step toward awareness and thus preparedness. It may be prudent to address such topics in supervision with trainees to help prepare early professionals to navigate this element of professional practice. A broader approach is to begin to call for recipients of such

insidious personal violations to share the events in talks and in print and to begin to build a body of reports, research, and knowledge about such gendered acts and reactions. In the meantime, I am hoping to inspire ongoing conversation around gender inequality, one microaggression at a time. If we can call it out, maybe we are one step closer to manifesting cultural change.