

The judiciary as a producer of racial microaggressions? Observing racial and gender dynamics in family courts in Arizona, United States

O poder judiciário como produtor de microagressões raciais? Observando as dinâmicas raciais e de gênero nas varas de família no Arizona, Estados Unidos

DRUMMOND, Julia dos Santos¹

Abstract

Family courts are a field of sensitive disputes involving spouses, children, and property conflicts. But if you are a Black (or non-White) person, interaction with court officials such as judges, lawyers and clerks can pose an additional concern due to what is called racial microaggression. Racism is structural and, in that sense, is based on hierarchical differences based on the exercise of power. That said, one of the premises of the initial research proposal is that racial microaggressions are independent of the intention of members of the judiciary, since, as it is naturalized by individuals through ideology, racism permeates all social relations, whether in the institutional sphere or in interpersonal relationships. Another hypothesis is that the judges' race interferes in the interpretation of social relations and, therefore, in the construction of stereotypes attributed to Black women as plaintiffs in family lawsuits, as well as in the expectations placed on them. That said, I developed a research, embodied in this article, which aimed to analyze the experiences of people who use the family justice system in the city of Phoenix, in the state of Arizona, United States. Between October 2022 and April 2023, participant observations and interviews were conducted with people who passed through the family courts of the central court of Maricopa County, AZ. In court, judicial rites were observed, interactions

¹ Doutoranda em Direito e Desenvolvimento | FGV Direito SP | São Paulo | juliasantosdrummond@gmail.com

between people present in the courtrooms and outside them, as well as the paths that an ordinary person should take to find useful information related to their case. With the interviews, I sought to apprehend the reasons that led people to seek the judiciary, the level of information to which they had access, as well as the evaluation of the experience with judges, lawyers and other parties in the process. The material will be analyzed and I intend to present the preliminary results of this analysis at the time of the Meeting.

Keywords: racial microaggressions; access to justice; family court; anti-discrimination law; empirical research in law.

Resumo

As varas de família são um campo de disputas sensíveis que envolvem cônjuges, filhos e discussões sobre bens. Mas se você é uma pessoa negra (ou não branca), a interação com os funcionários do tribunal, como juízes, advogados – privados ou públicos –, e escreventes pode representar uma preocupação adicional, devido ao que é chamado de microagressão racial. O racismo é estrutural e, nesse sentido, baseia-se em diferenças hierárquicas fundadas no exercício do poder. Dito isso, uma das premissas da proposta inicial de pesquisa é que as microagressões raciais independem da intenção dos membros do judiciário, uma vez que, por ser naturalizado pelos indivíduos por meio da ideologia, o racismo permeia todas as relações sociais, seja na esfera institucional ou nas relações interpessoais. Outra hipótese é que a raça dos juízes interfere na interpretação das relações sociais e, portanto, na construção de estereótipos atribuídos às mulheres negras como demandantes de ações judiciais de família, bem como nas expectativas depositadas sobre elas. Dito isto, desenvolvi uma pesquisa, consubstanciada neste artigo, que teve por objetivo analisar as experiências de pessoas usuárias do sistema de justiça familiar da cidade de Phoenix, no estado do Arizona, Estados Unidos. Entre outubro de 2022 e abril de 2023, foram feitas observações participantes e entrevistas com pessoas que passaram pelas varas de família do fórum central de Maricopa County, AZ. No fórum, foram observados os ritos judiciais, as interações entre as pessoas presentes nas salas de audiência e fora delas, bem como os caminhos que uma pessoa comum deve tomar para encontrar informações úteis

relacionadas ao seu processo. Com as entrevistas, buscou-se apreender os motivos que levaram as pessoas a buscarem o poder judiciário, o nível de informação a que tiveram acesso, bem como a avaliação da experiência com juízes, advogados e demais partes no processo. O material coletado será analisado e pretende-se apresentar os resultados preliminares desta análise ao tempo do Encontro.

Palavras-chave: microagressões raciais; acesso à justiça; varas de família; direito antidiscriminatório; pesquisa empírica em direito.

1. Introduction

[People centered access to justice]

[Unmet legal need: gender and racial inequality in family issues]

[objective of this paper: to contribute with this broad literature]

2. Literature review

3. Objectives

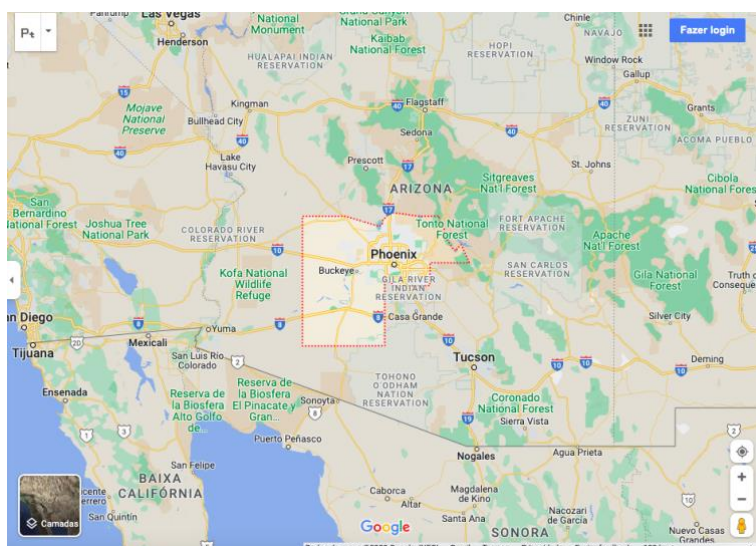
4. Data and Method

In this paper, I aim to show the results of the research conducted in Phoenix, Arizona, as part of my doctorate internship in the United States. The main objective of this work was to analyze the interactions between Family Court's users and its staff, especially judges, under the lenses of race, gender and class.

First, I need to explain who I am. My name is Julia and I developed this research as part of my experience living abroad during my doctorate program. I am a lawyer and a law researcher, which means I am trying to do my best when it comes to ethnography so I can one day call myself an expert in the field. My program in Brazil is called Law and Development and, in Arizona, I was a researcher at the Sociology program of the Arizona State University, studying the works within the field of Law and Society.

Choosing Phoenix as my field site, then, was a natural outcome of my location in the United States: Tempe, Arizona.

I designed this study initially to compare the Brazilian and the United States' Family Court Systems, something that came to be quite difficult due to the lack of sufficient time for me to deepen my engagement in the field. ASU's Institutional Review Board demanded that I obtained the Court's authorization to interview judges and to recruit the parties in Court, which was impossible since I had such a short schedule (nine months). So, I chose to do what I was able to: observe Family Court hearings, which are open to the public, and to interview people that are or have been parties in the Family Court system in Maricopa County.



From September 2022 until May 2023, I conducted fieldwork concentrated in Maricopa County, Arizona, combining both participant observations in Family Court and interviews with its users. I went to court nine times, observed ten

hearings, and interviewed four people that either filed a petition or were served to go to court, recruited externally.

With the observations, I aimed to, first, become familiar with the court rituals, both formal and informal. For example, how to get to the buildings, how they are divided and how it is to obtain information to get to the courtrooms. Then, my goal was to actually observe the hearings and try to understand the judicial procedures regarding people dealing with their family matters in court. In this sense, I was guided by questions such as: can the parties speak? Do they need a lawyer? Are the judges respectful? Is there something they would call unexpected in these rituals? Is there any manifestation of biases during the procedures or out of them?

The answers for these questions are, evidently, subjective, since I cannot reduce one, sometimes two-time observations, to specific explanations, meaning: can I attribute specific behaviors to racial biases or could the formal rules of this court be its cause? In this sense, while the observations give us an overview of the environment the parties have to deal with, the interviews are the opportunity for us to listen to their stories, their feelings and their perceptions.

The interviews did not come without challenges though. I had to either cancel or dismiss fourteen interviews before I could actually reach the people eligible for the study. That is because, differently from Brazil, in the United States you can compensate people for their time dedicated to the study. Although I cannot affirm that was the sole motivation, several people were not eligible for the study and still applied to participate, something that, according to my colleagues, is quite common in the recruiting process. After I reviewed the process and asked for some colleagues' help, I was able to send my recruitment flyer to some organizations that fight violence against women. Only then I was able to schedule and do interviews within the scope of the project.

Before I move to the results, some disclaimers must be done. I do not intend to deeply review the institutional processes of Family Court in Arizona and, even if I wanted to, I would not be able to. That is because I am not a lawyer in the US or have any formal background in the American legal field. My goal, therefore, is to look at the interactions between court staff members and the parties through

the lens of sociolegal studies, an interdisciplinary field that combines Sociology with Law to provide us with analyzes of the law in action.

I aim to contribute to the field as a foreigner with a research background in Family Law in action and people's views of it, especially Black women.

The empirical data is organized in the following way: first, I will describe the Family Court in Maricopa County and what I have seen through the observations. Then, I will move on to the cases. Each case represents a person that I interviewed. Sometimes I have other sources of information about the case, such as the case file, but the interviews are the main source consulted for the analysis.

5. The court

6. Cases

6.1. Cassandra

6.2. Helena

6.3. Caroline

6.4. John

7. Discussion

8. Conclusion

References