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Women as Expert Witnesses: A Review of the Literature

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Abstract

This review of women's participation in the legal system as expert witnesses examines the empirical literature on the perceived credibility and persuasiveness of women compared to men experts. The effects of expert gender are complex and sometimes depend on the circumstances of the case. Some studies find no differences, some find favorable effects for women and others for men, and still others find that expert gender interacts with other circumstances of the case. The findings are interpreted through social role theory (Eagly, 1987) and the role incongruity theory of prejudice (Eagly & Karau, 2002, Eagly & Koenig, 2008). Future directions for research are identified and implications are considered for attorneys who select and prepare expert witnesses. Suggestions for men and women's behavior as expert witnesses are provided.

Keywords: gender, expert witness, women, credibility, testimony

Women as Expert Witnesses: A Review of the Literature

Who makes a better expert witness: a man or a woman? This review is motivated by the historical concern that women may not have the same “expert power” as men. Attorneys seem to think jurors regard men as more credible experts than women and they may prefer to retain men as expert witnesses (Memon & Shuman, 1998). And indeed, gender studies often show that men are more influential than women, partly because they are viewed as more credible sources of information (see e.g., Helgeson, 2009). Whether or not expert gender affects trial outcome is, however, an empirical question. The present paper reviews the literature to address two questions: does an expert’s gender affect jurors’ and judges’ perceptions of his or her credibility? And if so, does it make a difference in triers’-of-fact ultimate decisions?

This analysis begins with an overview of current theories about gender, gender stereotypes and roles, and prejudice, as well as the social psychological literature on the interpersonal influence of men and women. This theoretical background is important because it provides the foundation for understanding empirical findings regarding the effects of expert witness gender. Before detailing the data regarding men and women experts, the historical context of women’s and men’s involvement in the courts is reviewed. Finally, this review ends with a discussion that provides directions for future research, considers implications for attorneys who select and prepare expert witnesses, and provides suggestions to men and women experts about what behaviors they might engage in to maximize their credibility.

Stereotypes and Gender Roles

Consider this description of a famous person:

This individual is an accomplished 20th-century political figure who, prior to entering politics, worked as a research chemist and as a tax attorney.

Who is this person? Can you picture the person? Now read this description of a famous person:

This internationally recognized public figure was known to be a loving and involved parent, and had gained a reputation for always being well-coifed and tastefully dressed.

Who might this person be? Can you picture this person? Is the person in the second description unlike the person in the first? Could they possibly be the same person? You might be surprised that both passages refer to Britain's former Prime Minister, Margaret Thatcher (descriptions and example from Helgeson, 2009).

If it did not occur to you that both passages described the same person, it is because the first passage fits a male gender-role stereotype, whereas the second fits a female gender-role stereotype. A stereotype is a set of beliefs or expectations about a certain group of people. Gender-role stereotypes are the expectations we hold about what women and men should be like, features we assign them due to the social roles they hold in our society (Helgeson, 2009).

But what makes up a stereotype of a man or a woman? Broverman, Vogel, Broverman, Clarkson, & Rosenkrantz (1972) assessed people's perceptions of masculine and feminine behavior and found strong agreement about the characteristics people associate with men and women. They presented descriptive words and phrases to people, asking them to rate to what degree each was characteristic of men or women (e.g., aggressiveness, talkativeness).

Broverman and colleagues (1972) defined a stereotypical feature as any aspect that 75% or more of men and women agreed described one gender more than the other. This rule led to 41 items differentiating male from female gender stereotypes. The male stereotypes revolved around competence, assertion, and rationality; whereas female stereotypes focused on warmth and expressiveness. For example, masculine features included items like, "very logical," "can make decisions easily," "almost always acts as a leader," and "easily able to separate feelings from ideas." The corresponding feminine features were the opposite: "very illogical," "has

difficulty making decisions,” “almost never acts as a leader,” and “unable to separate feelings from ideas” (Broverman et al., 1972; Helgeson, 2009).

Which set of descriptors seems more socially desirable? As you might expect, the masculine characteristics are more highly valued than the feminine characteristics (Broverman et al., 1972; Eagly & Kite, 1987; Helgeson, 2009). For instance, one study demonstrated that masculine characteristics were rated as healthier by mental health professionals than feminine characteristics (Broverman et al., 1972). Another study indicated people’s stereotypes of entire nations were more similar to stereotypes of the nation’s men than the women, again demonstrating the superiority of “masculine” traits (Eagly & Kite, 1987).

Social Role Theory. Eagly (1987) built on the findings about gender stereotypes described above in developing a comprehensive theory about gender and social roles. Her social role theory posits that people have different expectations for how men and women should behave. Women are expected to be more warm and communal than men; that is, more emotionally expressive, interpersonally sensitive, and concerned about others. Men are expected to be more competent and agentic than women; more controlling, independent, and assertive (Cuddy, Fiske, & Glick, 2004). Men and women who violate these expectations may be perceived negatively and may experience prejudice.

The Role Incongruity Theory of Prejudice

Prejudice was defined in 1954 by Allport as “an antipathy based upon a faulty and inflexible generalization” toward a person who belongs to a group, simply because he or she belongs to that group (p. 9). This static definition of prejudice was widely accepted and became the consensual view of prejudice in social psychology for many years. However, Alice Eagly and her colleagues (e.g., Eagly, 2004; Eagly & Diekmann, 2005; Eagly & Karau, 2002; Eagly &

Koenig, 2008) critiqued the definition, arguing that the static approach was not sufficient to encompass the complexities of prejudice. She and her colleagues asserted that people who experience discrimination may not belong to groups who elicit generalized negative attitudes. For instance, people generally hold positive attitudes toward women even though women are targets of discrimination in many contexts.

Eagly et al. (Eagly, 2004; Eagly & Diekmann, 2005; Eagly & Karau, 2002; Eagly & Koenig, 2008) developed an expanded theory of prejudice that rests upon the idea of role incongruity – that prejudice results from a mismatch between stereotypes about a person's group and beliefs about what is needed to succeed in a given social role. Rather than prejudice reflecting a static phenomenon, it is contextual and emerges in some situations but not in others.

When members of a group enter or attempt to enter roles that are stereotypically mismatched to characteristics ascribed to their group, prejudice may occur (Eagly & Koenig, 2008). The key eliciting condition for prejudice is the degree of incongruity: the greater the mismatch between the group stereotype and the role requirements, the greater the prejudice is likely to be. Eagly and Koenig (2008) described how even though an individual person might be evaluated favorably in a given role, the evaluations could still be prejudicial. This is because the evaluation of the particular well-liked (but role-incongruent) person may still be lower than evaluations of stereotypically matched individuals.

For example, consider a woman Chief Financial Officer of a large corporation. She would most likely elicit a positive attitude, given the prestige of her role, but the strength of the positive attitude would likely be less than an equivalent male executive (Eagly & Koenig, 2008). The less-positive attitude would be revealed by downward shifts in beliefs held about her (e.g., she is not competitive enough), emotions toward her (e.g., anxiety that she might not negotiate

well enough), and behaviors (e.g., reticence to give her the most important assignments). The phenomenon in this example occurs due to the conflict between the stereotypes associated with women – warmth, caring, sensitivity – and the more aggressive, competitive, agentic stereotypes associated with the masculine role she occupies (Eagly & Koenig, 2008).

Gender and Interpersonal Influence

In line with what social role theory and the role incongruity of prejudice would predict, studies have shown that men may be more influential and persuasive than women, especially in masculine roles (Eagly, Makhijani, & Klonsky, 1992; Helgeson, 2009). Should women in masculine roles adopt masculine behaviors to increase their influence? The answer appears to be no. Several studies (Buttner & McEnally, 1996; Carli, 1990; Reid, Keerie, & Palomares, 2003), including a meta-analysis (Eagly et al., 1992), have shown that women who act like men when in masculine or leadership roles (e.g., assertive language, dominant or directive interpersonal style) are perceived negatively compared to their male counterparts. The devaluation of women in these circumstances is greatest when the evaluators are men (Carli, 1990; Carli, LaFleur, & Loeber, 1995; Eagly et al., 1992; Matschiner & Murnen, 1999; Reid et al., 2003).

For instance, Carli (1990) asked college students to listen to a man or woman deliver an audiotaped speech arguing for a bus fare increase, an issue about which all respondents initially disagreed. Male respondents were more persuaded by women who used tentative speech, including tag questions, hedges, and disclaimers as compared to assertive speech, but women were more persuaded by women who used assertive speech. The male speaker's style did not make a difference in how persuasive he was: he was persuasive to both men and women either way. Although men evaluators were more receptive to the influence of non-assertive women who acted in traditional or stereotypical ways, they still judged these women as less competent

and knowledgeable than assertive and nontraditional women (e.g., Carli, 1990; Matschiner & Murnen 1999). Carli et al. (1995) found that the likeability of a female speaker led to increased influence but only for men respondents; again, men seem to be more influenced by women who use a feminine rather than masculine style of speaking. Thus, women may face a dilemma when they are expected to behave submissively but the situation requires assertive skills to succeed.

These background theories and social psychological bodies of research are critical to understanding how women experts may be perceived in the courtroom. Is being an “expert witness” perceived as a masculine social role? If so, how might women fare in this gender-incongruent social role? Would social role theory hold that she should she show feminine traits, or should she adopt masculine characteristics while serving in this role? These and other questions will be answered as we review data about women’s involvement in the courts and studies that have zeroed in on questions like these.

Gender in the Court

Women have not always been welcome to participate in the legal process; in fact, historically women were excluded from access to every role in the courts and were subjected to systematic negative biases in every facet of the legal process (Goodman-Delahunty, 1998; Price, Recupero, Strong, & Gutheil, 2004; Walters, 1994). This exclusion was based on the notion that women lacked the required physical fortitude and discerning intellect and would “skew the otherwise reliable factfinding process” (Babcock, 1993, p. 1168). These attitudes reflected the social consensus at the time that women’s place was in the home. For instance, in the 19th century, physicians and educators warned that young women who studied long, hard hours would badly damage their reproductive systems and perhaps go insane (Distant, 1875; Fausto-Sterling, 1992; Maudsley, 1874).

The boundaries of women's social roles have changed over time. The courts now officially view gender discrimination and bias as adversely affecting the quality of the factfinding mission of the courts (Walters, 1994). However, surveys have continued to find that professional women within the court system report experiencing gender discrimination (e.g., Price et al., 2004; Riger, Foster-Fishman, Nelson-Kuna, & Curran, 1995). Price et al. (2004) surveyed forensic psychiatry expert witnesses about perceptions of gender bias in the courts, finding that women experts were almost twice as likely as men to believe that gender is a factor in the selection of an expert witnesses (80% versus 41%; Odds Ratio = 5.8). Although sometimes men experts were preferred, the women also reported that attorneys at times explicitly told them they wanted a woman expert because they thought it would help their case. For example, in cases involving sexual harassment and rape, defense attorneys might retain women experts to bolster the credibility of male defendants (Price et al., 2004).

In the 1980s and 1990s, several state and federal courts commissioned studies on gender-based discrimination in the courts. The Minnesota Supreme Court Task Force for Gender Fairness in the Courts (1989), for example, found that 55% of female attorneys, compared to 13% of male attorneys, believed judges assigned more credibility to male than female expert witnesses. Studies examining gender bias in the Ninth Circuit and by the Texas Supreme Court found that whereas male attorneys and judges generally believed gender prejudice had virtually disappeared over time, their female counterparts reported many continuing areas of bias (Coughenour et al., 1994; Texas Supreme Court Gender Bias Task Force, 2004).

Other gender biases identified by the Texas Supreme Court task force (2004) and by Riger et al. (1995) included attorneys addressing female expert witnesses with patronizing language and improper titles (e.g., Ms. instead of Dr.) and judges expecting greater credentials before qualifying

women as expert witnesses compared to men in the same profession. The latter example is consistent with the role incongruity theory as described above. Given that courtroom roles were traditionally masculine domains, women who enter the expert witness role may face a double standard in terms of how competent they must be to successfully participate in the court process (see also Foschi, 2000).

These data raise questions about to what degree women are retained as experts compared to men, and whether women expert witnesses can be as effective as their male counterparts. Walters (1994) answered the first question by examining federal case law opinions for cases between 1980 and 1993 in the U.S. District Court and the U.S. Circuit Court of Appeals for the District of Columbia. Her findings showed that women appeared infrequently as experts compared to men; making up 11% of experts identified in written court opinions and testifying in 21% of cases overall. However, because of the longitudinal nature of her data, she was also able to show that more women experts were being retained in the later years of the analysis than the earlier years. This trend has likely continued in the years since 1994. Several other studies have investigated the second question, whether women experts can be as effective as men, by examining their perceived credibility and effects on trier-of-fact decision making. We now turn to those studies.

Effects of Expert Witness Gender

Prior research has found inconsistencies in whether expert gender affects perceptions of expert witness credibility and persuasion: sometimes it does and sometimes it does not. As gender researchers have found in many other domains, context is critically important for understanding how women and men will be perceived (e.g., Eagly & Diekmann, 2005; Goodman-Delahunty, 1998). Although main effects have emerged in some studies of expert witness gender, interactions emerge in most others. Null findings are reviewed first, followed by main

effect findings (e.g., either favoring men or women outright), followed by studies that have identified boundary conditions showing when and how expert gender interacts with other aspects of cases (e.g., favoring men under some conditions and favoring women in others).

Null Findings. Some studies have found that expert gender does not affect credibility, suggesting that it may make no difference to a case whether a woman or a man expert witness is retained (e.g., Memon & Shuman, 1998; Titcomb-Parrott, Neal, Wilson, & Brodsky, in press; Vondergeest, Honts, & Devitt, 1993). For example, Vondergeest and colleagues (1993) found that expert gender did not affect mock jurors' verdicts in an armed robbery trial in which the expert witness testified about conducting a polygraph examination of the defendant. However, the Vondergeest et al. (1993) study may have included a relatively weak manipulation of expert gender, as the transcripts were written and the manipulation included only a description of the expert as either a "he" or a "she." Memon and Shuman (1998) also found no differences based on expert gender despite an arguably stronger manipulation. They showed photographs of their male and female expert witnesses while an audio presentation of the trial transcript presented mock jurors with information about a civil medical malpractice suit. The authors noted in their "limitations" section that the gender manipulation may have been weakened by the audio transcript, which was read by a male narrator in both conditions.

Titcomb-Parrott and colleagues (in press) presented the trial transcript through a video tape, a medium through which even stronger gender cues were present, as visual, verbal, and nonverbal cues associated with gender were involved. This study involved a criminal trial in which a violent offender was facing potential capital punishment sentencing. The expert witness testified about the defendant's likelihood of reoffending. Despite the stronger manipulation of

expert gender, these authors found it had no effect on and did not interact with other variables (e.g., knowledge) on perceptions of credibility or mock juror decisions.

Main Effect Findings. Main effect findings are straightforward and easy to interpret, but sometimes they can brush over underlying differences between contexts or situations if the context or situation is not accounted for in the analysis. Some main effect findings regarding men and women experts have been uncovered. For example, Larson & Brodsky (2010) exposed mock jurors to a videotaped summary of a criminal murder trial and an excerpt of a cross-examination of a forensic mental health expert. They found a main effect advantage favoring male experts over female experts. Specifically, male experts were rated as more likeable, believable, trustworthy, confident, and credible than female experts in their study. The authors also examined whether non-intrusive cross-examination vs. intrusive questions (i.e., “Have you ever treated on your husband/wife, Doctor?”) would differentially affect how men and women experts were perceived. They found no interaction between expert gender and style of cross-examination questions on ratings of the experts.

A few studies have found female expert witnesses have a main effect advantage for women experts over her male counterparts. For example, Couch and Sigler (2002) presented mock jurors with a written summary of a civil case involving an automobile accident. Plaintiff’s evidence came from an automobile engineer who was either a male or female expert. The authors predicted that the female automotive engineer expert witness would not be as persuasive as a male, a hypothesis that was not supported. Expert gender made no difference in terms of verdict. However, expert gender did affect in the amount of compensatory damages awarded to the plaintiff, but in the opposite direction than predicted. Specifically, the female expert witness elicited more compensatory damages than did the male.

Swenson, Nash, and Roos (1984) asked mock jurors to listen to an audiotape of a simulated child custody hearing to evaluate the effects of expert witness gender. The testimony concerned the witness's opinion about the parents in the custody dispute. They found a trend suggesting that female expert witnesses may be judged as more expert than males. The trend favoring women might be influenced by the type of case; a case that took place in family court and involved family matters, a feminine type of domain (Walters, 1994). Swenson et al. (1984) tentatively suggested that the finding may be consistent with gender-role stereotypes that women are better judges of the needs of children than men.

Although these main effect findings do exist in the literature, it seems they do not well represent the whole story of expert gender effects. Rather, the story seems to lie more in the boundary conditions under which interactive effects, or contextual effects, emerge. That is, in some kinds of cases or situations, women systematically outperform men as experts. In other kinds of cases or situations, men systematically outperform women. Some of these contexts have been identified, which we review here. However, much work remains to be done to further understand the conditions under which men and women can be powerful experts.

Contextual Interactions. The majority of the studies that have examined the effects of expert gender on persuasion and perceptions of credibility show more complexity than simple main effects. Some of these conditions include the gender "domain" of the case itself, the complexity of the information the expert needs to convey to the trier of fact, whether or not deliberation is required, the timing of the expert testimony, and the degree to which expectations for behavior are violated by experts. Examples of these kinds of studies are presented below. Although there are labels representing different kinds of contextual effects, several of these studies overlap and could fit under the other subtitles.

Domain of the case. A series of studies examined the gender congruency of the case; that is, the congruency between the domain of the case and the experts' gender (McKimmie, Newton, Terry, & Schuller, 2004; Schuller & Cripps, 1998; Schuller, Terrie, & McKimmie, 2001). For example, Schuller et al. (2001) presented men and women testifying as plaintiff experts in a civil antitrust price-fixing case reflecting either the "masculine" field of construction (i.e., the supply of crushed rock to a road construction company) or the "feminine" women's clothing industry (i.e., supply of fine cotton to a women's clothing company). The authors expected the woman expert to be more persuasive than the man in the female congruent case and the man to be more persuasive than the women in the male congruent case. Consistent with predictions, the male expert was more persuasive in the male-dominated domain, but in the female-dominated domain, there was not a significant difference in damage awards.

Although Schuller et al.'s (2001) findings suggest that men experts have a differential advantage over women in male congruent cases but that women and men may be equally persuasive in "feminine" cases, other studies have found that women may in fact have a differential advantage over men in female congruent cases (e.g., McKimmie et al, 2004; Schuller & Cripps, 1998). One reason the woman may not have been as persuasive as expected in Schuller et al.'s (2001) feminine domain is because the testimony in this particular cases revolved around price-fixing, a topic that may have been perceived as masculine.

Complexity of testimony. A follow-up study by Schuller, Terrie, & McKimmie, (2005) investigated expert gender and complexity of the experts' testimony. They used the same antitrust price-fixing agreement civil case. They expected to find that the male expert would be more persuasive than the woman, but only when the testimony to be presented was complex. The results were consistent with the hypothesis; the man elicited higher damage awards for the

plaintiff in the high-complexity condition. However, they also found (unexpectedly) that the woman elicited higher awards than the man in the low-complexity condition.

Effects of deliberation. McKimmie et al. (2004) extended these findings into group discussions by having mock jurors deliberate before filling out the measures. The case again involved the price-fixing allegation in either a male or female oriented domain (i.e., tire/automotive service business vs. cosmetics sales business) and the plaintiff expert testimony was provided either by a male or female expert witness. Mock jurors were asked initially to complete the measures independently and then to engage in a group deliberation in which they were asked to try to reach an agreement with regards to the appropriate amount of damages to be awarded. After group discussion, they were asked to rate the same items they had rated prior to deliberation. Results indicated that experts whose gender was congruent with the case domain were more persuasive than incongruent experts (for men and women). They also found that group deliberation exaggerated these effects, which appeared to be mediated through participants' evaluations of the expert witness.

Timing of expert testimony. The impact of expert gender and timing of testimony was investigated by Schuller and Cripps (1998) in a simulated audiotaped homicide trial involving a battered woman who had killed her abuser and claimed self-defense. The authors examined timing of testimony because they hypothesized that hearing the expert testimony about battered woman syndrome before the defendant's account would provide jurors with an organizing framework for understanding the battered woman's perceptions and actions. Findings revealed that when the expert was a woman, mock jurors found the defendant's claim more believable, the defendant less responsible, the husband more responsible, and their verdicts were more lenient.

This effect was, however, qualified by a two-way interaction between expert gender and timing of testimony. When the expert testified early, participants were more likely to believe the defendant's claim and hold the husband responsible, but only when the expert was female. When the testimony was presented late, expert gender and testimony had no effect on mock jurors' ratings. The pattern of results suggests that female experts may be more favorable to a defendant's battered woman syndrome case, particularly when the testimony is presented early. The authors speculated that "jurors may believe a woman has a better understanding of a battered woman's position than a man, and thus the testimony she conveys [may be] seen as more trustworthy than the identical testimony provided by a man" (Schuller & Cripps, 1998, p. 28).

Violations of normative expectations for behavior. A series of studies has shown that expert gender may matter, but only when the expert somehow violates the trier-of-fact's expectations for the expert's behavior (Brodsky, Neal, Cramer, & Zeimke, 2009; Neal, Guadagno, Eno, & Brodsky, 2012). For example, Neal et al. (2012) found that experts who met threshold expectations of likeability and knowledge were not perceived differently based on their gender; however, when they were not likeable, male experts were perceived significantly more positively and were more persuasive than female experts. That is, likeability may be important especially for women, but it may not matter much if men experts are unlikeable. These studies suggest only women may fare poorly in the expert witness role if she is not perceived as both likeable and competent. The authors took a social role theory perspective (Eagly, 1987) and suggested that the woman was in a masculine occupational role – an expert witness – but that performance suffered when she violated normative *gender expectations* for likeability. This rationale was further supported by pilot studies finding that without the occupational role, participants evaluated images of the experts' similarly.

Neal and Brodsky (2008) exposed mock jurors to a videotaped excerpt of an expert mental health witness testifying about a defendant's recidivism likelihood in a capital murder sentencing hearing. They varied the amount of eye contact the expert made with the mock jurors (i.e., by looking directly at the camera) and with the questioning attorney, with conditions of low, medium, and high eye contact. Based on previous literature about gender and nonverbal behavior norms, the authors expected that the men experts would be rated as credible in the medium and high eye contact conditions (but not in the passively low condition), and that the women would be rated as credible only in the medium conditions (not the low or the assertively high conditions). They also expected that men would be rated as more credible than women in the high eye contact condition.

Results provide information about the relative importance of eye contact for men and women expert witnesses: eye contact appears to be especially important for men experts' credibility. Only men experts in the high eye contact condition had high credibility ratings, whereas the female experts' credibility was not affected by how much eye contact she made. These results suggest it may not matter what a female witness' eye contact behavior is like, but that male experts should maintain high levels of eye contact for maximum credibility.

Discussion

The expert witness role appears to be a traditionally masculine social role, given the historical exclusion of women from all aspects of the trial process. With time, the rigidity of this gendered role is relaxing, as more and more women participate as expert witnesses and other roles in the trial process. Nevertheless, there remain potential consequences for women serving in this role. For example, in her analysis of federal court trials, Walters (1994) found that women testified infrequently as the sole expert for a party, accounting for only 7% of solo appearances.

She explained, “This skewed ratio may indicate that litigants feel testimony by women must be supplemented to satisfy the same evidentiary burden” (p. 638). This finding is consistent with Eagly and colleagues’ role incongruity theory of prejudice (Eagly, 2004; Eagly & Diekmann, 2005; Eagly & Karau, 2002; Eagly & Koenig, 2008).

The role incongruity theory predicts that the greater the mismatch between the gender stereotype and the social role requirements, the greater the prejudice is likely to be (Eagly & Koenig, 2008). These consequences are most likely to occur in situations that heighten the salience of the incongruity between the female gender role and the masculine occupational role (Eagly & Karau, 2002). Consistent with this prediction, many of the studies reviewed in this paper demonstrate that the domain of the case and the experts’ area of expertise may matter.

For example, Walters (1994) found a discernible division of labor among experts along traditional gender lines. Specifically, women were more likely to participate in “human” disputes involving education, family services, and social services. For instance, women experts accounted for 75% of the experts involved in education controversies. In contrast, in masculine domains such as economic controversies, female experts were virtually unrepresented. Women accounted for 4% of the experts in corporate cases and 0% of contract disputes.

Experimental studies demonstrated that men were more persuasive to mock jurors than women in “masculine” domain cases, such as price-fixing in the construction and tire/automotive service industries (McKimmie et al., 2004; Schuller et al., 2001). However, for cases requiring expert testimony pertaining to areas that women may be perceived as more knowledgeable about than men, such as in child custody and battered women cases, some findings suggest women may be somewhat more persuasive than men (e.g., McKimmie et al., 2004; Schuller & Cripps, 1998). Areas of expertise such as child custody and battered women may be seen as appropriate for

women experts but less appropriate for men, and as a consequence, men's testimony may be devalued in these kinds of cases (Schuller & Cripps, 1998).

Professional women may face a trade-off between their professional and gender role expectations (see Figure 1). If they fulfill gender role expectations, they may be perceived as less competent or powerful professionals, whereas if they adhere to their professional role expectations they may violate gender role expectations and be perceived negatively as a woman (e.g., Cuddy, Fiske, & Glick, 2004; Eagly, Makhijani, & Klonsky, 1992).

[Insert Figure 1 about here]

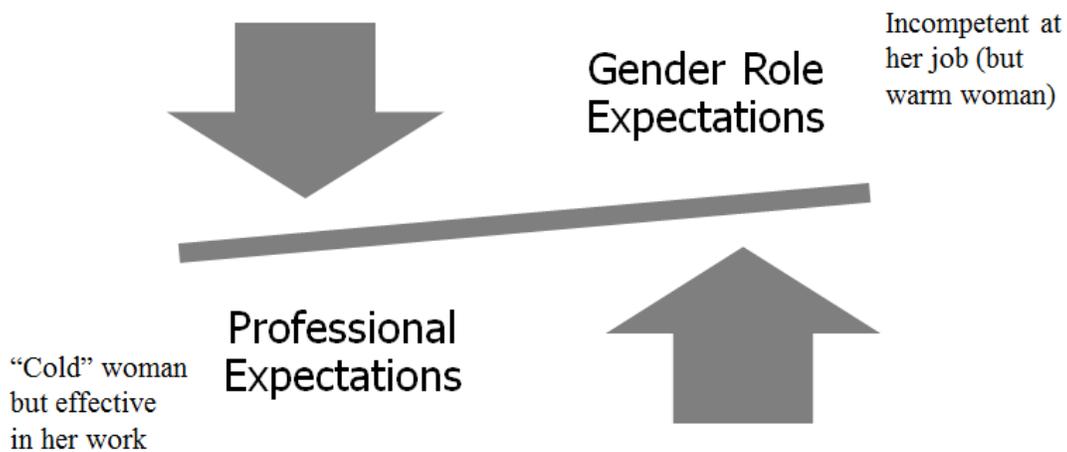


Figure 1. A Professional Woman's Dilemma.

This dilemma stems from a conflict between the stereotypes associated with women – warmth, caring, sensitivity – and the more aggressive, competitive, agentic stereotypes associated with the masculine role she occupies when she adopts the expert witness role (Eagly, 1987; Eagly & Koenig, 2008). Given this conflict, she is likely to face a double standard where she must meet the expectations required of her due to her gender, but also must meet (or more likely, exceed) the expectations required for competence as an expert witness. Many of the

findings reviewed in this paper support these predictions, which emerge from both social role theory (Eagly, 1987) and the role incongruity theory of prejudice (e.g., Eagly & Koenig, 2008).

For example, judges sometimes required greater credentials of women before qualifying them as experts compared to men in the same profession (Riger et al., 1995; Texas Supreme Court Task Force, 2004). Neal et al. (2012) showed that women experts must not only be competent, but they must also be likeable in order to be effective witnesses. In contrast, men did not have to be likeable in order to be persuasive experts – they only had to be competent.

Across these studies, gender stereotypes sometimes influenced perceptions of the experts, but were usually not determinative of the ultimate case decision (e.g., verdict, sentence, damage awards). This is good news: peripheral variables like expert gender should not determine triers of facts' decisions. Rather, their decisions should be based on the content of testimony, the substance of a case, and the strength of evidence. A variable like expert witness gender is one of many pieces of information decision makers must integrate in formulating a decision.

Although expert gender did not often affect ultimate decisions, it did affect perceptions of credibility. Credibility is an intermediate decision: it is not an ultimate legal decision, though it is certainly part of the process through which triers-of-fact reach their ultimate decisions. Specifically, in criminal cases where the ultimate decisions were categorical (i.e., guilt and sentencing), expert gender typically did not influence the ultimate decision. However, in civil cases where the ultimate decision were continuous (i.e., damage awards), expert gender sometimes did influence the decision. These findings suggest that although stereotypes of men and women may influence intermediate judgments, ultimate decisions that are absolute categories may not be as influenced by such stereotypic cues.

Directions for Future Research

Additional high-quality research can shed light on several remaining questions. For example, what is the relative balance women experts should strive for in terms of demonstrating feminine characteristics while serving in the “masculine” role of expert witness? Should she wear a skirt suit instead of a pant suit? Should she use tentative language? How should men experts behave in cases that are traditionally within the feminine domain of expertise? How might the leaders who emerge as influential in jury deliberations affect the perceptions of men and women experts?

The existing studies reviewed in this paper each have limitations, and thus research studies that use innovative methods or generate answers to creative questions that address some of these limitations have the most potential to contribute meaningfully to this literature. For instance, most of the studies focused on the trial process itself, a rare event in the criminal justice process. Most cases are pled out or settle prior to this phase. How might expert gender affect a defendant’s likelihood of pleading guilty, or affect the likelihood that a case will settle prior to trial? Another common limitation is that almost none of these studies examined the effects of jury deliberation, a reality of many trials. And the one study that did examine how the process of deliberation might diminish or exaggerate the effects of expert gender suggested that the deliberation process had a real impact on jurors’ decisions, which appeared to be mediated through participants’ evaluations of the expert (McKimmie et al., 2004).

Another remaining question is, “Might composition of the jury be relevant?” Some studies have suggested that the way jurors perceive men and women experts might be affected by the juror’s gender or the gender role stereotypes they hold. For instance, Schuller and Cripps (1998) found that men seemed to be more persuaded than women jurors by a woman expert in a battered woman syndrome case. Kovera, Levy, Borgida, and Penrod (1994) found that women

jurors rated expert testimony more positively than men, judged the credibility of the expert more positively, found the testimony more helpful and important, and perceived psychological evidence to be more scientifically sound. In contrast, Memon and Shuman (1998) found no significant differences between men and women participants' perceptions or ratings of male and female experts (though again, they noted their manipulation may not have been very strong). Either way, it appears there more research can shed light on the conditions under which jurors might be more or less likely to be influenced by a source characteristic like expert gender. Perhaps questionnaires measuring sexism or gender role ideology could be useful for inclusion during jury selection procedures.

Might expert gender effects be stronger in cases with salient gender cues? The studies that have looked at domain of case have begun to investigate this question, but perhaps there are other ways it might be addressed. For instance, a rape case or a child abuse case might elicit results in which both intermediate and ultimate judgments are affected by stereotypic cues. Future research should clarify under what conditions women and men experts might affect ultimate trial issues. Furthermore, we need research that will uncover how the courts might reduce the salience of expert gender cues or otherwise effectively cue decision makers to correct for potential gender bias.

We already have some indication of how gender bias might be corrected. Take for example, Schuller et al.'s (2005) study that found men experts elicited higher damage awards when the testimony was complex, but that women experts elicited higher damage awards when the testimony was not complex. This finding might be interpreted through Wegener and Petty's (1997) flexible correction model. This model predicts that people will correct for their own perceived bias *when they recognize* potentially biasing cues, and that at times, people may

overcorrect, which may manifest as bias in the opposite direction. Perhaps the mock jurors exposed to complex testimony in Schuller et al.' (2005) study were not cued about potential gender bias. But perhaps when they were exposed to a woman expert, especially one testifying about simple matters, the jurors might have been cued to correct for potential bias against the woman. They might have thought something like, "I'm going to prove to the world that I'm not biased against women" and over-adjusted their judgments accordingly, so that men were actually perceived as less persuasive than women in that low-complexity condition.

Couch and Sigler's (2002) study showing that a woman automobile engineer elicited higher damage awards than a man expert in a civil case may also have included a salient gender cue that highlighted the issue of potential gender bias and assisted mock jurors in (over)correcting their biased judgments. The research questions that remain are whether there were gender bias cues in these studies (and what they might have been), as well as how courts, judges, attorneys, and perhaps even experts themselves might cue triers of fact to correct (but not over-correct) for potential gender biases.

Implications for Men and Women Experts and Attorneys Selecting Experts

Although many questions about the expert power of men and women experts remain, some suggestions for men and women experts and for attorneys who retain them can be generated based on the data currently available. Note that as time passes and the boundaries of social roles change, many of these suggestions may become obsolete. Nevertheless, for now they may be useful to consider (although ironically, by writing these suggestions I may be delaying progress in this area. I hope this is not the case).

The studies reviewed suggest that men experts may have a slight advantage overall in terms of perceived credibility and persuasiveness to jurors. However, there are several situations

in which this slight advantage is likely to disappear (or even invert, so that women have an advantage). Thus, attorneys might be well-advised to consider the domain of the case. Does the case revolve around a traditionally masculine issue, like the construction industry, taxes, or contracts? If so, a man expert may have a slight advantage (depending on the composition of the jury or the judge's proclivities). If the case revolves around a traditionally feminine issue, like child custody or domestic violence, a woman expert may have a slight advantage (again, depending on the trier of fact). Attorneys might also consider the complexity of the data that must be conveyed to the trier of fact. When the testimony is complex, men may have an advantage. When it is not complex, women may have an advantage.

For both men and women, competence is an important prerequisite for credibility as an expert witness. However, both men and women experts may also need to attend to gender role expectations in order to maintain their perceived credibility as expert witnesses. For example, for men, it appears that maintaining high levels of eye contact ("assertive eye contact") with whomever is asking questions and with the trier of fact is important for credibility (Neal & Brodsky, 2008). This requirement did not hold for women experts – women were perceived as credible whether they had low, medium, or high levels of eye contact (Neal & Brodsky, 2008).

In contrast, likeability appears to be especially important for women experts, but does not appear to be as important for men experts (Brodsky et al., 2009; Neal et al., 2012). The studies that have examined expert witness likeability suggest that witnesses should strive to use informal speech, such as minimizing technical jargon, explaining key terms, and using the name of the defendant or plaintiff rather than referring to him or her as "the defendant" or "the plaintiff." Experts attending to their likeability should also use modest rather than excessively certain statements, be willing to smile on occasion if appropriate to the situation or context, and use

inclusive statements (e.g., the words “we” or “us” when discussing members of the scientific community; Brodsky et al., 2009; Neal et al., 2012).

Women experts might also be mindful of the social psychological literature showing that women leaders are perceived negatively when they adopt masculine characteristics while serving in “masculine” roles. Given that the expert witness role is traditionally a masculine social role, the literature suggests women who adopt the role should demonstrate some feminine traits while in the role (e.g., Buttner & McEnally, 1996; Carli, 1990; Carli et al., 1995; Eagly et al., 1992; Reid et al., 2003). The particulars of how this might look are not well understood, and thus research is needed to shed light on this question as well. Might women who wear skirt suits instead of pant suits be perceived as more feminine, and thus be less likely to be penalized for violating traditional gender roles? How about women who are deferential and respectful in their speech on the stand? Or would this “submissive” speech style backfire and impair her perceived competence and persuasiveness? How might the answers to these questions depend, again, on the preferences or biases of the trier of fact?

In sum, the data available to date indicate there are some gender differences in how men and women experts may be perceived, but most of these differences are relatively small and are contextually determined. The existing body of data provides some implications for how men and women experts might behave in order to maximize their perceived credibility, which is reviewed above. Nevertheless, every expert witness is an individual and each case is unique. Perceived credibility may vary by audience, case context, testimony material, and so forth. Thus, each new opportunity to hire an expert or to adopt the expert witness role is a fresh opportunity to learn and adjust to the environment.

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