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Juror Perceptions of Women as Expert Witnesses:

Suggestions for the Effects of Testimony Complexity, Gender-Intrusive Questioning, and Perceived Credibility

by Brittany P. Bate



THE USE OF EXPERT WITNESSES has become commonplace within legal proceedings. As a result, research regarding how jurors perceive expert testimony has become of increasing importance. A variety of variables can influence juror perceptions of expert testimony, ranging from content-related variables (e.g., quality of the testimony, complexity of the testimony) to witness-related variables (e.g., age, race, gender, years of expertise, credibility, personality factors; Brodsky, 2009; Gardner, Titcomb, Cramer, Stroud, & Bate, 2013; Brodsky, Griffin, & Cramer, 2010). These factors have been thoroughly researched in a variety of contexts; however the present paper will provide an analysis of the literature pertaining to juror perceptions of testimony of women expert witnesses, compared to men. Issues involving gender-congruent case testimony, the effects of gender on juror processing of testimony, the relationship between gender and complexity of testimony, the interaction of race and gender, as well as the impact of gender-intrusive questioning will be examined. Implications and recommendations for attorneys will be discussed.

Gender Congruent Cases and Gender-Role Stereotyping

Some studies have found support for a female expert advantage, compared to male experts (Memon & Shuman, 1998; Schuller & Cripps, 1998; Swenson, Nash, & Roos, 1984); however female expert witness support was found within gender-congruent case domains. For example, Schuller and Cripps (1998) conducted a study involving a simulated homicide trial in which a battered woman had murdered her abuser. The expert in this case was a clinical psychologist testifying to information regarding the battered woman syndrome, including emotional and psychological reactions that occur as a result of spousal abuse. Results demonstrated that the female expert led to greater verdict leniency when compared to testimony given by the male expert. In a mock case involving child abuse, Swenson et al. (1984) found jurors rated the female expert as having a greater degree of expertise in comparison to her male counterpart, though these findings were marginally significant. As previously hypothesized, such findings could be a result of a societal stereotype that women, as opposed to men, are better at judging the needs of children.

Areas such as domestic violence or child custody may be viewed as more female-congruent, and as such expert testimony given by women may be perceived as more appropriate, trustworthy, and knowledgeable (i.e. more credible) than when given by male experts. However, gender-stereotyping and congruency works both ways. Schuller, Terry, and McKimmie (2001) investigated this gender-congruency hypothesis and found support for a male expert advantage, in a male-congruent case domain (i.e., construction industry). Participants read transcripts for a civil trial pertaining to a price-fixing agreement within the construction industry and were asked to award damages to the plaintiff. Researchers found that the male expert testimony resulted in significantly more favorable findings for the plaintiff, compared to female expert testimony.

Further, Schuller et al. (2001) also investigated the effect of expert gender in a female-congruent domain (i.e., women's clothing industry) and, although a pattern did exist in favor of the female expert, statistical significance pertaining to mock jurors' findings for the plaintiff based on expert gender were not found. It was considered that, although the type of business in which testimony was given was female-congruent (i.e. women's clothing), the true content of the testimony was far more male-congruent (i.e. price fixing in business and industry). Further, the expert witness in this case was a statistician; an area and career stereotypically viewed as more male dominated/male-congruent. Collectively, this idea suggests that congruency may well extend beyond case content, and may circle back to expert characteristics alone, such as occupation (statistician versus clinical psychologist) or expert testimony content (price-fixing agreements versus battered women syndrome).

Gender as a Heuristic Cue

Previous research has shown that gender plays a role in juror perceptions of expert testimony (Memon & Shuman, 1998; Schuller & Cripps, 1998); however, gender may play a particularly important part as expert testimony becomes increasingly more complicated. Drawing from the social psychological research regarding persuasion and processing routes (e.g., elaboration likelihood model, Petty & Cacioppo, 1986), individuals are able to engage in two types of processing: central or peripheral. Central route processing requires effort, and likely involves careful scrutiny of the information presented regarding quality and content, as well as having the motivation and ability to do so (Schuller et al., 2005). However, when individuals are unable or unmotivated to engage in systematic processing of the message, they utilize decisional shortcuts, or heuristic cues, to try to evaluate the quality of the message via the peripheral route (Petty, Cacioppo, & Goldman, 1981). As expert testimony can at times be quite complex, jurors may be especially apt to follow heuristic cues when evaluating such testimony (Cooper, Bennett, & Sukel, 1996). Research has found that when testimony was complex, mock jurors were more persuaded by experts they found to be more credible (i.e., those with higher credentials) compared to their lower credentialed counterparts (Cooper et al., 1996). Variables that con-

vey information related to source credibility can be influential when individuals have limited ability to systematically process presented information (Schuller et al., 2005).

In this way, gender may operate as a heuristic cue, conveying information about supposed expertise within the confines of expert testimony. Schuller et al. (2005) asked participants to award monetary damages in an antitrust price-fixing violation case, in which guilt had already been established. Researchers manipulated the testimony by complexity (high vs. low) and gender of the expert (male vs. female). Results showed when jurors were unable to systematically process the testimony (i.e., in the high-complexity condition), mock jurors awarded higher damages to the plaintiff when the expert was male, in comparison to when the expert was female. Further, in the high-complexity condition, mock jurors rated the impact of price-fixing agreements significantly greater when the expert was male compared to when the expert was female. In the low-complexity condition, however, mock jurors rated the impact of price-fixing arrangements as higher when evidence was presented by a female expert, compared to her male counterpart (Schuller et al., 2005). Further, though statistical significance was not reached, mock jurors displayed a tendency to award higher damages to the plaintiff when the expert was female, compared to when the expert was male.

One explanation for the effect found in the low-complexity condition is that jurors engaged in flexible correction (Wegen er, Kerr, Fleming, & Petty, 2000), meaning that in an effort to appear unbiased, mock jurors instead overcompensated within their assessment of the female expert's testimony and thus offered her higher ratings than they felt she deserved. Another explanation of the female advantage in the low-complexity condition may again link back to gender stereotyping. It could be that the simplicity of the testimony was more gender-congruent to a language and presentation style that would be expected of a woman (Schuller et al., 2005). In the same vein, the more technical language used by the expert in the high-complexity condition may have been viewed far more negatively for the female expert, as it was stereotypically gender-incongruent. Combined, these findings may suggest jurors interpret and use gender differently, depending on the complexity of testimony offered and their ability to process such evidence.

The Interaction of Gender and Race: Gender Congruency, Stereotypes, and Flexible Correction

Integrating a number of the concepts discussed so far, Memon and Shuman (1998) examined the role of race and gender in juror's perceptions of perceived expertise and persuasiveness of an expert witness. A community jury sample from the Dallas, Texas area participated in a mock jury design in which they were presented with one of four experts – Black Female, Black Male, White Female, or White Male. The experts were testifying in a simulated medical malpractice case, in which the plaintiff was alleging negligence of her obstetrician/gynecologist, resulting in the profound birth defects of her daughter. Spe-

cifically, information pertaining to curettage and tubal ligation was discussed. The expert testified to the actions performed by the defendant (the OB/GYN), concluding that the defendant had acted appropriately. Results indicated the predominantly white jury sample was most likely to be persuaded by the black female expert. Further, of the participants exposed to the black female expert, white juror members rated the black female expert higher than the black jurors (Memon & Shuman, 1998). However, ratings on reasoning, believability, and objectivity did not vary with the race or gender of the expert. Further, the main effect of gender was not significant.

A number of explanations are posited to explain the results. First, it is again possible that flexible correction occurred. In an effort to provide socially desirable responses, white jurors rated the black female expert witness higher than what they truly believed she deserved. It is also possible that flexible correction interacted on some level with gender stereotyping, as previously discussed. As this case involved issues of pregnancy, gynecology, childbirth, and tubal ligation, it is possible that jurors tended to rate the testimony of women as being overall better than their male counterparts. Taken together, the interaction of flexible correction with gender-role stereotyping may account for the highest persuasion ratings being given to the black female expert witness.

Juror Perceptions of Gender-Intrusive Questioning

Jurors are continuously forming judgments of witnesses that aid in determining differential perceptions and perceived credibility of that witness (Brodsky et al., 2010; Gardner et al., 2013). Due to the adversarial nature of the interaction, how a witness handles cross-examination is particularly important to juror perceptions (Brodsky, 2004). Further, personally-intrusive questioning has become more common, especially with women witnesses. Larson & Brodsky (2010) examined the effects of personally-intrusive questioning of both male and female expert witnesses on juror perceptions. First, their research found in both the non-intrusive and intrusive questioning conditions, jurors perceived the female expert as being less credible than the male expert. The female expert was also rated as less believable, likeable, trustworthy, and confident when compared to her male counterpart. However, the female expert was not perceived as less credible in the intrusive questioning condition compared to the female in the non-intrusive questioning condition. To the contrary, researchers found that intrusive questioning of both experts increased juror perceptions of experts as more believable, trustworthy, and credible compared to when they were asked non-intrusive questions (Larson & Brodsky, 2010). This countered the expectation that such questioning would diminish or devalue the experts' competence.

Implications For Trial Lawyers and Considerations for Practice

Though gender is just one way in which an expert may be per-

ceived and, consequently, have their testimony rated as more or less credible, it is an important area of research nonetheless. Gender is static, and no amount of witness preparation or training is going to be able to change an expert's gender. Because of this, it becomes even more important to realize how gender impacts juror perceptions of expert testimony. It is clear from the research presented that stereotyping, case-congruency, testimony complexity, race, and intrusive questioning all play some role in differential juror perceptions of credibility of male and female expert witnesses.

Gender-congruency is important to think about when considering juror perceptions of expert witnesses. As the research has found a female expert advantage within female congruent legal cases (i.e., domestic violence, child custody, tubal ligation) and a male expert advantage within male congruent cases (construction industry), the attorney should contemplate this information when considering expert testimony and witness preparation (Schuller & Cripps, 1998; Swenson et al., 1984). However, the literature suggests gender-congruency may go beyond case facts, and extend into expert occupation and testimony content. Schuller and colleagues (2001) were unable to find statistical significance between male and female expert testimony pertaining to mock jurors' findings for the plaintiff in a female-congruent domain (i.e., women's clothing industry) when the true content of the testimony was more male congruent (i.e., price-fixing in business and industry), as was the occupation of the expert (i.e., statistician). A similar null expert gender effect was observed in a mock jury study in which the testimony content was female congruent (i.e., gynecology and tubal ligation) but the case content (i.e., medical malpractice) and occupation (i.e., medicine) were more male-congruent (Memon & Shuman, 1998).

Taken collectively, attorneys and their trial consultants must consider the impact of gender-congruency among case, testimony, and occupationally related content when choosing and prepping a witness. While an attorney surely would prefer to obtain the best-qualified expert for the job, the literature suggests that unfortunately juror perceptions of credibility, and thus decision-making, have less to do with qualifications or background and more to do with congruency and stereotyping. Put bluntly, a possible reason for the often seen lower credibility ratings of female expert witnesses in comparison to men is that society continues to hold an expectation of men as being the appropriate sex to be in positions of authority and influence, suggesting sexism is alive and well in mock jurors (Larson & Brodsky, 2010).

Both Cooper et al. (1996) and Schuller et al. (2005) found results suggesting that mock jurors use gender as a heuristic cue when the evidence presented is complex, resulting in higher credibility ratings for the male expert, compared to his female counterpart. This suggests a need for women as expert witnesses to be particularly cognizant of the level of complexity within the evidence they are presenting. Attorneys retaining a female expert witness should consider this research in wit-

ness preparation. If possible, when delivering expert testimony, women should strive to make their testimony as simple as possible, to allow for systematic processing by all jurors. As suggested by Schuller et al. (2005), testimony of the female expert was indeed rated more negatively when presented in a complex, rather than simplistic, way. Further, women may even obtain an advantage when presenting low-complexity testimony, in comparison to their male counterparts. Taken cumulatively, evidence exists to suggest that female experts are most credible when the evidence they present is less complex, and sometimes female experts gain an advantage over their male counterparts when testimony is presented in such a manner. This is an important finding for attorneys to keep in mind.

As women are increasingly becoming victims of personally-intrusive cross-examination, this has important implications when utilizing a female expert witnesses. Larson and Brodsky (2010) showed when the female expert was assertive in identifying these types of questions as rude or outside the scope of the case, it is possible that this identification increased the awareness to the intrusiveness of such questioning for the mock jurors, resulting in higher ratings of the expert and lower ratings for the cross-examining attorney (Larson & Brodsky, 2010). It is important for female experts to recognize, then, that it is far better to be appropriately assertive in denying personally-intrusive questioning as opposed to giving a submissive, or purposefully avoidant, response. It is imperative to make a female expert aware of this research during witness preparation, especially if opposing counsel has a reputation for being aggressive or personally-intrusive. Similarly, this is an important consideration for an attorney to remember when cross-examining any witness, especially one who is female.

Future Directions: Does Juror Gender Make a Difference?

Research has found that men and women perceive the credibility of male speakers and female speakers differently. In legal contexts, a juror's perception of an attorney's credibility can itself be influenced by the attorney's gender, the juror's gender, or a combination of these two variables. Hahn and Clayton (1996) assessed the relationship between attorney gender, attorney presentation style, and juror gender. Mock jurors viewed videotape of either a passive or aggressive male or female defense attorney interrogating a witness, and subsequently rendered a verdict. Additionally, participants rated attorney competency, assertiveness, and credibility. Results suggested both juror gender and attorney presentation style affected ver-

dict rendered. Male mock jurors were more influenced in the aggressive defense attorney condition, compared to the passive defense attorney condition, and even more so if the attorney was male. Specifically, male jurors found the defendant guilty significantly more often when the defense attorney was aggressive. This result was not duplicated among female mock juror participants, who found the defendant equally as guilty in both the aggressive and passive defense attorney conditions. As such, researchers concluded while men were clearly influenced by the attorney's presentation style, women might consider trial evidence to be more important than presentation style of the attorney. This finding may extend into the larger legal picture, and is perhaps applicable when considering how juror gender may interact with gender of the expert witness.

Few studies have empirically assessed the relationship between juror gender, expert gender, and juror decision-making. In the aforementioned simulated homicide case in which the defendant was a battered woman who had murdered her abuser (Schuller & Cripps, 1998), male mock jurors were more likely to believe the defendant's claim, hold the defendant less responsible, and hold the husband more responsible when the expert witness was a female. However, these same differences were not found among female mock jurors. Further, in a medical malpractice case involving tubal ligation (Memon & Shuman, 1998) no significant differences were found in regards to ratings given of the expert witnesses as a factor of juror gender. Finally, in a mock case involving child abuse, female participants rated *all* experts as being more credible than did male participants. While expert gender seemingly made no difference for female jurors in terms of credibility within this realm, it provides an interesting consideration for potential effects of juror gender in considerations of expert testimony and indicates an explicit need for further research investigating the relationship between gender of the juror and gender of the expert.

More research is needed to further explore the relationships between expert gender, juror gender, and juror decision-making. Further, research is needed in other areas pertaining to expert gender, such as dress, years of expertise/credentials, age, and/or the interaction of a number of those factors. All in all, jury research is still in its infancy. Further research pertaining to women as expert witnesses has an infinite number of directions in which it can expand. With the aforementioned studies as a small but sturdy base, this area of research will prove necessary for informing the practice of attorneys and trial consultants alike for quite some time.

Brittany P. Bate is a fourth year Ph.D. student studying Clinical Psychology with a forensic emphasis at Sam Houston State University. During her time at Sam Houston State University, she has been involved in several research projects, ranging from witness preparation and jury selection to hate crimes and legal issues. Additionally, Brittany has worked on various trial consulting projects with the Veritas Research team, including mock trial preparation, assisting in conducting mock trial research, client report writing, as well as the review and development of SJQs. You can see more information concerning Ms. Bate's educational background and research interests [at her LinkedIn page](#).

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