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## Expressing Anger Increases Male Jurors' Influence, but Decreases Female Jurors' Influence, During Mock Jury Deliberations

by Jessica Salerno, Ph.D., Liana Peter-Hagene, MA, and Justin Sanchez, BA

**I**N HER AUTOBIOGRAPHY, Justice Sonia Sotomayor highlights emotion expression as a powerful persuasion tool—an argument that dates back to the 4th century B.C.E. (Aristotle, Rhetoric). Yet, expressing emotion has not always served her well. Her minority dissent from the Supreme Court's decision to uphold Michigan's affirmative action ban (*Schuette v. Coalition to Defend Affirmative Action*, 2014) was discredited for being “fueled by emotion” and, as a result, “legally illiterate and logically indefensible” (Serwer, 2014). Many women who have sat in board meetings, classrooms, workplace groups, juries, and governing bodies might relate to this anecdotal evidence that women's opinions are less influential when presented with emotion—while men harness this powerful persuasion tool successfully.

As American juries become more diverse, with women and ethnic minorities serving alongside White men, it becomes increasingly important to determine whether all jurors have the same opportunity to influence jury verdicts during deliberation. A diverse and *participatory* jury helps reinforce the ideals of fair treatment and equality within the American justice system (Cornell & Hans, 2011). Women might experience less

Don't miss the responses at the end of the article from Carol Bauss, Sonia Chopra, and Charlotte A. Morris

opportunity to exert social influence during deliberation given that the longstanding perception that they are less influential and competent than men (Carli, 1999; Wood & Karten, 1986). The difficulty women face in being perceived as competent and having influence during the discussion might be exacerbated when they express emotion. We will draw upon social psychological theory and our own experimental research, to discuss the implications of delivering one's opinion with emotions like anger and fear during jury deliberation, and how this strategy can have differing effects for women and men jurors.

### Gender and Social Influence

Despite increased gender diversity on juries, women risk being relegated to mere token representation if they do not have an equal chance to contribute to the deliberation and exert social influence. Research dating back to the 1950s suggests that jurors of higher social status participate more in jury deliberation than jurors of lower social status (Cornwell & Hans, 2007).

For example, mock jury studies demonstrate that women, compared to men, participate less and are more likely to change their vote during deliberation—in other words, to yield to the social influence of male jurors (Golding, Bradshaw, Dunlap, & Hodell, 2007; Hastie et al., 1983; Kirchmeyer, 1993; Nemeth et al., 1976). In fact, jury scholars have identified a “White male dominance” effect, such that White males often exert the most influence over the jury’s final verdict (Bowers, Steiner, & Sandys, 2001; Lynch & Haney, 2009). Thus, it is important to determine how women gain or lose influence during group discussion, and whether powerful persuasion tools such as expressing emotion can backfire when utilized by women.

### **Anger Expression and Social Influence**

Research has provided examples of how expressing an opinion with anger can both increase one’s social influence (e.g., Van Kleef et al., 2001), but also decrease social influence (e.g., van Doorn, van Kleef, & van der Pligt, 2014). It is likely that whether people perceive others’ anger as warranted and appropriate will determine whether anger expression makes one more or less persuasive and influential. If the anger is perceived as appropriate, it can make the expresser seem more competent and strongly convicted, which can increase their influence over others’ opinions. If anger is perceived as inappropriate, it can make the expresser seem overly emotional and less rational, which can decrease their influence over other’s opinions. A jurors’ gender might determine whether anger is seen as inappropriate, as well as that juror’s ability to exert social influence.

Anger is perceived as a stereotypically male emotion (Hess et al., 2007), which means that when a woman expresses anger, she violates people’s expectations. As a result, people might perceive anger as more appropriate when expressed by a man versus expressed by a woman. Experimental research has indeed demonstrated that men are perceived as more competent when they express anger (Brescoll & Uhlmann, 2008; Tiedens, 2001), while women are perceived as less competent when they express anger (Brescoll & Uhlmann, 2008). Women are also penalized for behaving in a dominant manner (Carli, 2001) or when they violate a gender stereotype (Heilman, Wallen, Fuchs, & Tamkins, 2004; Rudman & Fairchild, 2004). Because anger is both a dominant emotion, and one that violates female gender stereotypes, women might be socially penalized for expressing it. Further, women’s emotion expressions are often attributed to an internal cause (i.e., they are overly emotional), while men’s emotion expressions are attributed to an external cause (i.e., aspects of the situation warrant an emotional response, Brescoll & Uhlmann, 2008; Barrett & Bliss-Moreau, 2009). Thus, there are several reasons to expect that the same anger expression will be interpreted differently when it comes from men versus women, which in turn, might determine whether that anger will increase or decrease their influence during group deliberation.

Although group decision-making occurs frequently in everyday life, we know very little about what happens when people

express anger in a decision-making group (Hareli & Rafaeli, 2008). Recently, Lynch and Haney (2015) analyzed mock jury deliberation transcripts and found that White male jurors effectively used emotion to influence jury decisions either by exerting their own emotion or by policing the emotions of others. This study highlights the need for an experimental test of the hypothesis that expressing anger will have a very different effect for men and women—more specifically that expressing anger will increase influence for men, but decrease influence for women even if they are expressing the exact same opinions and anger.

### **Present Research**

We designed a mock jury experiment to test the hypothesis that when a man expresses an opinion with anger he will make people doubt their own opinion compared to when he expresses the same opinion without anger. In contrast, when a woman makes the exact same arguments, people will become *more* confident in their own opinion when she expresses anger compared to when she does not. We also tested how expressing fear would affect social influence during mock jury deliberations to see if these effects would be specific to anger or would happen whenever negative emotion was expressed.

The study took place in a computer laboratory on campus, where groups of students were presented with a comprehensive summary of evidence and testimony from the real trial of a man accused of killing his wife ([R v. Valevski, 2000](#)). After the evidence presentation and jury instructions, participants were told that they would be randomly assigned to groups of six to discuss the case online via computer chatting. They were told to discuss the case until the group agreed on a verdict. In reality, the interaction was a computer simulation—each participant “interacted” with fictitious jurors with pre-written scripted comments. The scripted comments made by the “other jurors” were from a previous study in which participants provided us with their reasons for their verdict choices. By scripting the comments, we were able to have control over what the other jurors said during the discussion.

Participants were invited to create a username for joining the group, and then saw a list of 6 “usernames” (including their own) on the computer screen – the people who ostensibly made up their group. The participants chose a verdict, rated how confident they were in that verdict (from 0 to 100% confident), and submitted comments and arguments to the group to explain their verdict choice, as well as any comments and questions directed at other jurors. During the first round of deliberation, all participants always learned that they were in the majority. Four jurors always agreed with the participant and there was always one dissenting holdout disagreeing with the group. The study was programmed to display different versions of the script depending on the participants’ initial verdict. In other words, if the participant voted guilty they saw a script with four others voting guilty and one holdout voting not guilty; if the participant voted not guilty they saw a script with

four others voting not guilty and one holdout voting guilty. We experimentally manipulated holdout gender: For half of the participants the holdout had a male username (JasonS), for the other half a female username (AliciaS). The other four usernames were gender neutral (e.g., “JJohnson,” “syoun96”).

After reading the first round of comments, participants again rated their confidence in their verdict and submitted another set of comments to the group. This procedure was repeated for 7 rounds of deliberation. Starting with Round 2, we experimentally manipulated whether the holdout expressed anger, fear, or no emotion in their comments to the group. For example, participants in the anger condition might read that the holdout starts his or her argument with “Seriously, this just makes me angry...” Thus, each participant was randomly assigned to interact with a male or female holdout, and to read comments expressing anger, fear, or no emotion. At the end of the deliberation, in addition to reporting how confident they were in their own verdict, mock jurors also rated the holdout juror’s emotionality and credibility.

We used the participants’ confidence in their initial verdict as a way to measure how much influence the holdout was exerting on their opinion. Because the male/female holdout always argued the opposite viewpoint, decreases in verdict confidence throughout deliberation can be attributed to the holdouts’ exerting some level of influence over their opinion.

**Results.** When holdouts presented their opinions with no emotion or with fear, participants’ confidence in their own opinion did not change over the course of deliberation. In other words, the holdouts did not have influence over their opinion. This is not surprising, given that it is very difficult for a minority opinion (i.e., a holdout) to convince a majority to change their mind. We found something very different, however, when the holdouts express the exact same opinions with anger statements inserted throughout their comments. When the male holdout expressed anger, participants became significantly less confident in their verdict decision over the course of deliberation. Although participants became more confident after learning they were in the majority, after the male holdout started expressing anger, participants’ confidence in their own opinion dropped significantly. Anger was therefore a powerful persuasion tool for men—they were able to make participants doubt their opinion even though they were part of a 5-to-1 majority.

The opposite was true for female holdouts: When a woman expressed the exact same dissenting opinion with anger, participants actually became *more* confident in their verdict over the course of deliberation. Despite anger being a powerful persuasion tool for men, when a woman expressed the same opinions and anger she lost social influence and actually made people more confident of their initial verdict. In other words, anger expression created a gender gap in social influence between men and women that was absent when opinions were expressed with no emotion or with fear. This is even more trou-

bling considering the fact that holdouts made the exact same comments with the exact same emotion indicators, regardless of gender. This effect of anger expression was the same for male and female participants and for participants voting guilty or not guilty.

What are the potential explanations for this gender gap in influence? We hypothesized that the inferences people make about *why* someone expresses anger are different when they are observing men versus women. We conducted a statistical analysis to find out whether perceptions of emotionality and/or credibility explain the gender discrepancy. We found that participants perceived the female holdout to be more emotional when she expressed anger (versus no emotion), and in turn became more confident in their own opinion. In other words, the woman’s opinion was discounted when she expressed anger due to perceptions of emotionality. In contrast, participants perceived the male holdout to be more credible when he expressed anger (versus no emotion), and in turn became less confident in their own opinion. Thus, even though the men and women were expressing the same emotion, anger was a cue for emotionality for women holdouts, but was a cue for credibility for men holdouts.

## Implications

Through our experiment we were able to demonstrate the differing effects of anger expression on social influence for men and women, with implications for juries and other group decision contexts in which women’s voices risk being discounted. These findings are compelling given that minority dissenters often have difficulty influencing the majority due to the belief that their opinions are less valid (Moskowitz & Chaiken, 2001). This deficit was overcome for men when they expressed anger because anger increased their credibility. The male holdout’s anger was such a powerful persuasion tool that it made people significantly doubt their own opinion even when they were in the overwhelming 5-to-1 majority.

In stark contrast, women who expressed anger actually lost social influence because they were viewed as too emotional. In fact, the only condition in which participants became more confident in their own opinion over the course of deliberation was when a woman expressed anger. Thus, expressing anger created a gender gap in influence that did not exist before the holdout started expressing anger or when the holdouts expressed fear or no emotion. Further, this effect was specific to anger and not fear expressions, which reveals that the current results are not due to women being penalized for being more emotional in general—only for expressing a counter-stereotypical, dominant emotion typically associated with men. Overall, our research demonstrates that social influence is determined, in part, by the interactive effect between *what* emotion is expressed and *by whom*, with different inferences underlying the influences of emotion expression.

American juries were originally composed exclusively of White

men. Women now serve on juries, but our results suggest that they might not have the same ability to exert influence over legal outcomes in our culture as do men when they express anger. Jury deliberation is a critical part of the trial process, and it is important that everyone has an equal voice in the verdict decision. We entrust very important decisions to juries and reaching consensus often breeds frustration and anger ex-

pression. Our findings suggest that, in the cases that women are most passionate about, women might have less influence than men. Our results lend scientific support to a frequent claim voiced by women, sometimes dismissed as paranoia: that people would have listened to her impassioned argument, had she been a man.

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## Carol Bauss, J.D. responds:

### *Male and Female Jurors Are Not Equal in Social Influence*

This study examining one aspect of the effect of gender on jury deliberations is an important area of research and provides valuable insight into how male jurors can have more social influence in jury deliberations than female jurors. While the online format of the research and the use of college student participants has limitations, this research is a good start in examining how persuasive anger expression can be in a group setting depending on the gender of the juror expressing the anger. The results of the research – men who express anger in jury deliberations are more persuasive than women who express anger – are consistent with a vast body of research on differing communication styles between men and women and the social influence exerted by each gender in a group setting. It was also en-

lightening (and depressing) to learn that a female juror's expression of anger had the opposite effect of persuasion, causing jurors with opposing views to become more confident in their opinions. The findings of this study should be carefully considered when preparing for case presentation and jury selection.

These findings are not surprising. Generally speaking, emotional women are seen as weak. We have all been told that demonstrating emotions undercuts a woman's credibility – in personal interactions, in the workplace, and now on a jury. Emotionality, linked more closely to women, is seen as the opposite of and inferior to rationality, linked more closely to men. The legal realm is also more closely associated with rationality. How many times have we heard jurors say, "We have to focus on the facts, it doesn't matter how we feel about X."

As a jury consultant who works on behalf of plaintiffs in personal injury cases, I am often looking for jurors who will be angered by the wrongdoing of the defendant. Research has shown that anger can be a motivating factor in increasing damage awards. In addition, jurors who are more emotional generally tend to be more sympathetic to an injured party. The goal is to harness those emotions in a productive way, and this study suggests what I have long known from anecdotal evidence, that \*jurors who are traditionally more emotional may be better for the plaintiff but are often unable to make arguments in deliberations that will convince other jurors\*.

Jury deliberations are about communication and persuasion within a group setting, and group dynamics play a critical role in the verdict. Having research participants interact online in writing only cannot fully replicate the complex face-

to-face dynamics that happen in jury deliberations. A significant part of face-to-face communication is non-verbal. Assessing verbal and non-verbal communication together is important in how emotion is perceived. Non-verbal cues can serve to temper an emotional display or increase credibility. Some women may inherently have more credibility and express anger in a way that communicates confidence and competence while others may express anger in a more stereotypically emotional way.

I can think of examples from my own practice where angry women were strong leaders in the jury room and persuaded other jurors to their side of the case. But I can also think of, probably more, examples where female jurors who were on our side in deliberations could not make headway in the deliberation room, and their social influence was likely diminished because of their gender, and their inability to effectively communicate with jurors of opposing viewpoints.

I frequently interview jurors after they have served on a jury and always ask for the juror's impression of how the other jurors saw the issues in dispute, the role they played in the group, and their leadership ability in deliberations. In my experience, male jurors are most apt to criticize female jurors' competence. Most often I hear, "She did not understand the issues," or "She did not seem to know what she was talking about." When male jurors criticize other male jurors they disagreed with, it is usually because, "He had an agenda." Most recently, a male juror discredited another female juror by saying, "She was outspoken, but I am not sure she was accurate." The female juror's anger expression may very well have factored into the male juror's assessment of her 'accuracy.' I have no doubt that the level of emotion exhibited by female jurors decreases their perceived competence and in turn their credibility and persuasiveness, and it is nice to have solid evidence to back that up.

### ***What Do These Findings Say About Trial Presentation and Jury Selection?***

First, emotionality is an important com-

ponent of leadership and the ability to persuade others and should be considered when rating prospective jurors in jury selection. This is not to say that women jurors who appear to have a propensity to express their anger with more emotion should be struck because they will be unpersuasive. Rather, an assessment of each jurors' competence, confidence, knowledge that may be relevant to the subject matter of the litigation, and likability, should be evaluated as they all play a role in credibility. A female juror with more credibility may be more persuasive even when angry. Also consider the other prospective jurors who will be on the jury and how they may respond to a female who may passionately express her opinions. In a recent jury selection, a male juror complained in open court about a female juror who had difficulty explaining her thoughts in English, her second language. He said he did not feel comfortable being on a jury with someone who could not communicate clearly in English. Given that our strongest jurors in that panel were women who were likely to be very angry with the defendant, that juror would have come under scrutiny when making our strike list. He was less likely to pay attention to a strong woman who exhibited anger—since, for him, it was not a persuasive form of communication when uttered by a woman.

I agree with the authors when they say, "Jury deliberation is a critical part of the trial process, and it is important that everyone has an equal voice in the verdict decision." Attorneys have to empower women jurors to make their voices heard in the deliberations room. One way to do that is to translate the emotion behind their positions into measured, reasoned arguments that will appeal to everyone on the jury and can be used by their advocates to persuade others.

Attorneys can also remind jurors in closing arguments that it is their responsibility to participate in the process of deliberations and to voice their opinions, and it is also their responsibility to listen carefully to the opinions of others and to give them full consideration.

I have seen the suggestion that juror edu-

cation videos tackle the topic of group participation with the goal of ensuring that all jurors have a voice. Such an effort may be used to encourage jurors to be more mindful of considering everyone's opinions no matter how it is expressed.

Likewise, judges could also read a jury instruction that all jurors are expected to participate, and it is each juror's job to listen respectfully to the opinions of others and to give full consideration to everyone's viewpoint. Calling attention to the issue of giving full consideration to all viewpoints may cause some jurors to pause before attempting to dismiss the arguments of a woman they think is arguing from the stereotypical male domain of anger.

The truth is, though, that woman's voices can carry less weight in the deliberation room where the nature of the issues in dispute and the nature of the process of deliberating with fellow jurors calls for impassioned rhetoric. We have to be aware that social influence is not equal among men and women jurors.

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### **Sonia Chopra, Ph.D. responds:**

The authors should be commended for devising a clever study with a unique experimental design. While the results of the research will be disheartening to most if not all readers, the outcome is not entirely surprising. Women are

judged differently from men in every arena of social interaction, as the current presidential campaign has borne out. In the employment realm, women who are exacting bosses are denigrated by their subordinates and called “the b word” while men are considered authoritative and assertive. Women attorneys report that they have to work twice as hard to get the same respect as their male counterparts, from clients, judges, opposing counsel and coworkers alike.<sup>[1]</sup> Unfortunately, in much of our human interactions, this disparate treatment is the way of the world.

But that does not mean that there are not steps that women can take to be perceived as more competent, credible and persuasive. This study has implications reaching beyond jury selection. The finding that women who display anger not only were not persuasive but in fact solidified positions in the opposite direction is something that must be shared with female witnesses when preparing them for deposition and trial. Advising witnesses to avoid becoming angry on the stand is good advice for almost everyone who testifies, but it is likely to be even more detrimental for women to lose their temper or argue with opposing counsel while testifying.

Most women attorneys I meet are already cognizant of the tendency for them to be judged by a double standard compared to their male counterparts, and many already modify their public persona to reflect that reality. Women advocates worry about coming across as too emotional in terms of being perceived as “soft.” They also express concerns about the opposite end of the spectrum, being labeled the “b word” when they take on a more aggressive style. This research suggests that becoming angry or indignant in front of the judge or jury may not be an effective strategy for women litigators. Instead, women should strive to adopt a “powerful” speech style, which is characterized by a lack of modifiers, intensifiers, hesitations and hedges; all of which are present in powerless speech.<sup>[2]</sup> How you speak can also influence whether or not your message will be well received. Use of a rising intonation when making a de-

clarative statement, making everything sound like a question, also lessens the persuasive power of a message. Women in any profession can benefit from evaluating the spoken and written words with an eye towards cultivating a more powerful speech style.

Lastly, what does this study mean for jury selection? I would hate to think that as a result of this research, some attorneys and consultants will start to believe that they don’t want women on their juries because they will not be persuasive. That has absolutely not been the case in my experience. What struck me while reading the article is that the majority of the participants were likely college students in their early 20’s. This is of course not unusual in the world of social science research, but there could be a modifying effect of age and social status that would make the authors’ statement that, “... our results suggest that [women jurors] might not have the same ability to exert influence over legal outcomes in our culture as do men when they express anger” be less dire than it seems. An older professional female may be deemed more persuasive than a young male student regardless of the expression of anger, based simply on perceptions of each jurors’ relative life experiences. I look forward to further research which manipulates other socio-demographic variables in order to test the generalizability of these results.

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#### Footnotes

[1]: Deborah Chang and Sonia Chopra, “Where are all the Women Lawyers? Diversity in the Legal Profession in California,” 2015 *FORUM* (September/October 2015) p.18-25.

[2]: Erickson, B., E.A. Lind, B.C. Johnson, and W.M. O’Barr 1978 “Speech Style and Impression Formation in a Court Setting: The Effects of “Powerful” and “Powerless” Speech. *Journal of Experimental and Social Psychology* 14:266-279.

**By Charlotte A. Morris, M.A. responds:**

### ***Gender Bias in Jury Deliberations: What’s a Girl to Do?***

In the wake of Justice Scalia’s death and the controversy over nominating someone to fill the vacancy, I saw more than one social media post quoting Justice Ginsberg on how she responds when asked about when there will be enough women on the Supreme Court: “And my answer is when there are nine.” Imagine if the same could be said for juries someday: would we all be anticipating the sequel called, “Twelve Angry Women?”

### ***This is Madness!***

Before I could get to the experiment itself, I confess I was more than a little distracted by the ideas about gender, emotion and communication that are laid out by the authors in their review of prior research. They begin the article with a reference to criticism leveled at Justice Sotomayor for expressing emotion in her dissenting opinion on a case about affirmative action.<sup>[1]</sup> From there, the researchers zero in on just two very specific emotions: fear and anger.

So I was curious: was Sotomayor expressing anger or fear in her written dissenting opinion? Was there even anything emotional about it at all?

I skimmed the **dissent** (closely, but quickly) to see if I could tell why this example may serve as a logical leap from expressing emotion to expressing anger and the difference between genders. I have to say I find nothing angry or especially emotional about the opinion. Sotomayor is firm. She is direct. She systematically takes Justice Scalia and the concurring majority to task for their legal conclusions. She backs that up with case law, and quotes prior Supreme Court opinions to support her dissent. She addresses accusations about her made by Justice Scalia in the majority opinion. And then she ends with a *scathing*, “I respectfully dissent.”

So is it possible that anger – like beauty – is in the eye of the beholder? Is it just an unfortunate shortcut when describing a

woman on the Supreme Court expressing her emotion generally, to go directly to research about women expressing “anger?” The authors have brought to light the serious bias that sometimes occurs when strong women express their opposing viewpoints (with or without any emotion at all) and then are too often perceived by others as being angry. And to make matters worse, once women are perceived as angry (whether they are or not), they also lose their ability to influence the debate.

First and foremost, we must be careful in our research and in the conclusions we draw to define what we mean by “expressing emotion” and “expressing anger.” In their experiment the authors take a direct approach by having the holdouts express their emotions clearly and succinctly. But in real-life conversations, jury deliberations and even in Supreme Court decisions, it isn’t always so easy to know exactly what we see and hear.

### ***We’re Not Angry, We’re Just Disappointed***

Any time I am working with attorneys and witnesses to overcome their emotional expressions of anger we spend time looking behind the anger to identify what fuels it. Are they frustrated? Insulted? Outraged? Disappointed? Insecure, scared, nervous, or worried? If so, we talk about how that feels and why, because there are more effective ways to express these underlying emotions. Frankly, the act of identifying the reasons behind expressions of anger changes for the better both language and delivery, which changes how others receive them. Given how potentially off-putting anger can truly be for all of us, this process of naming and claiming the source of one’s anger is an effective communication strategy for both genders, and may be the best recommendation that flows from the research reported by Peter-Hagene, et al.

In the present study, researchers manipulate the simulated deliberations by having the holdout juror (a male or female computer surrogate) express his/her emotion by way of pre-scripted typed phrases such as, “Seriously, this just makes me angry...” As an experiment this is im-

portant because it leaves no uncertainty about what emotion is being expressed for the purpose of measuring participant responses and finding the gender bias in the results.

Unfortunately, such an explicit expression of anger is unlike most conversations or deliberations I’ve seen. It treats anger as an emotion that is independent, separate or different from all of the other emotions that we can discover behind it. The research also cannot measure the importance of human interaction where anger can be shaped, changed and mitigated until it has little to no influence – for men or women – on deliberation outcomes or the perceptions of others<sup>21</sup>. Future research would do well to feature live deliberations where the verbal and non-verbal clues for anger are more layered and nuanced, as others’ reactions to it would also surely be.

### ***Not Just Gender Differences***

In the section called “Gender and Social Influence,” I have trouble making sense of the authors’ discussion of concepts from prior research including social influence, social status, and race.

For example, the authors comment on research findings that “women participate less [than men]” and findings that “jurors of higher social status participate more.” I think the connection they make between these studies would suggest – by some transitive law of juries – that because women participate less they must also be of lower social status than men. But I can’t be sure that is a conclusion the research would support. It also leaves me with questions about how status is defined.

Likewise, the authors point to the difference between white males and all other jurors, citing research on the “White male dominance effect” which suggests – contrary to the section heading – gender alone cannot account for differences in social influence.

In my experience watching live mock jury deliberations and conducting post-verdict interviews, there are multiple factors not identified in the article that

may also account for differences in social influence during deliberations such as age, case-related life experience, education, occupation, personality and others. It would be hard for most jurors to self-report which one of these many factors – present in any of their peers on a jury – made anyone more or less influential. In short, there are serious limitations on the conclusions we might draw about the effect of gender on jury deliberations from a body of research that may or may not control for the variety of factors at play.

And what none of the prior or current research on this topic has yet addressed are the relatively new questions about what happens when jurors self-identify as transgender or choose not to identify with gender at all. In a recent focus group of my own, all the talk during the breaks by participants was about whether one of our participants was male or female. Bets were made both ways. I knew only that the participant had been recruited as female, but not whether he or she had a preference for being regarded as one or the other. I also saw how difficult other jurors found it to navigate around this in deliberations. So how will a person’s expression of emotion be evaluated when he or she does not claim gender? And what happens to negotiations when jurors struggle with their own perceptions of others because gender norms and stereotypes cannot apply?

### ***Which Comes First?***

In the section called “Anger Expression and Social Influence” the authors cite research on the question of whether a juror’s expression of anger is “warranted and appropriate” and link it to research findings that there is also gender bias at play when people are asked about their perceptions of a male or female person’s reasons for - and expressions of - anger.

Just as the authors ultimately conclude that “we know very little about what happens when people express anger in a decision-making group,” I would also like to see more research that measures the relationship between fear and anger – expressed by men and women in jury deliberations – and the messages delivered during trial that are designed and in-



tended to provoke these very responses<sup>[3]</sup>.

Fear and anger have certainly been effective as political persuasion devices, and I suspect there are times when fear and anger are entirely appropriate juror emotions (whether a juror is male or female) because that's precisely what the attorneys wanted to evoke. I would be interested to know if we see the same or similar gender differences in results when the emotional expressions by male and female jurors are consistent with the evidence and arguments they receive.

### ***How Can Women Overcome This Kind of Gender Gap?***

The results of Peter-Hagene, et al.'s study don't surprise me. It turns out that hold-out men in this study were effective at using anger as a powerful persuasion tool and hold-out women who tried to do the same had the completely opposite effect. Men were perceived to be more competent because of their anger while women were perceived to be merely more emotional. Sadly, it seems that anger in its purest form is off-limits for women when it comes to persuasion. We women may be getting cheated out of one of our most cathartic emotions. (For the record: I'm not mad, but I *am* disappointed.)

For encouragement I look to all the other good research on gender differences in communication that highlights the best of what women have to offer – empathy, collaboration, nurturing, supportive speech habits, and more.<sup>[4]</sup> While men may have more influence when expressing anger, ultimately woman may have more tricks up their sleeves that help make them more effective, more persuasive and more influential.

Likewise, women jurors armed with the results of this research might also dismantle and diffuse the anger of a man who is exerting more influence on deliberations by unpacking it a bit, just as we do during witness prep. Consider what may happen to the confidence of an angry male juror when a compassionate female juror helps him (and others) see that the emotions behind his anger are jealousy, insecurity or disappointment. He may no longer be perceived as more competent or influential than his female peers once his angry expression is revealed to be nothing more (or less) than a collection of the very real emotions we all share.

### ***What Does the Future Hold?***

And finally, here's what might be another next best question for research to address: the influence of age on questions of gender and emotion. I spent a week recently with my niece who is a sophomore at college in upstate New York. I noticed how often she muttered or exclaimed – in reaction to what she saw or heard, in conversation or on TV – “Don't Gender That!” I started to notice all the little things our family said or did that caught her attention and provoked her response.

When she heard me say I didn't like “those *women's* sunglasses on that *guy*” she called me out. A day later, I was still mulling it over and we talked about it. I believed those were women's sunglasses because glasses like those have been marketed by advertisers exclusively to women for decades. She is more acutely aware that those lines are getting blurry. And we both care deeply about doing away with the problem of labels and the assumptions that tend to come with them.

As our youngest of today's jurors comes of age in a world that is more enlightened and better informed on a wide variety of gender issues, they are also becoming increasingly aware of the role that gender plays in their everyday lives and increasingly resistant to letting it dictate the results. For the most socially conscious of next-generation jurors, there may be fewer barriers for women to express emotions that have previously been more effective for men. And vice versa.

Do we want more angry jurors? Maybe not. But as with all differences that have the potential to diminish one sex while elevating another: the first step is acknowledging that we may have a problem. Good research like this is a great start.

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### **Footnotes**

[1]: Note that Sotomayor was joined in her dissent by another woman, Justice Ginsburg.

[2]: The experiment did not allow the research participants to shape or influence the expressions of anger of male/female computer jurors.

[3]: Ball, D. and Keenan, D. *Reptile: The 2009 Manual of the Plaintiff's Revolution*, 2009.

[4]: Tannen, Deborah. *You Just Don't Understand: Women and Men in Conversation*, 2007.