

# Psychological Explanations of How Gender Relates to Perceptions and Outcomes at Trial



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For decades, researchers and legal scholars have examined the relationships between gender and various aspects of the legal system (e.g., Villemur & Hyde, 1983; Yamamoto & Maeder, 2017). For instance, trial consultants are often hired by legal counsel in part to determine whether jurors with certain characteristics (e.g., gender, occupation, political beliefs) are likely to side with their client—even though attorneys are prohibited from using peremptory challenges during jury selection based solely on gender (*J.E.B. v. Alabama*, 1994). This practice—and anecdotal evidence—assumes that gender and other characteristics might influence how jurors perceive and evaluate case facts. In George Zimmerman’s trial for the shooting of Trayvon Martin, for example, the defendant’s trial consultants concluded that female jurors might be more empathetic than male jurors to Zimmerman’s claim that he was experiencing fear when he shot Martin (Alvarez & Buckley, 2013). Zimmerman’s six-person jury was composed entirely of women who found Zimmerman not guilty of second-degree murder and manslaughter (see Diamond, 2013).

The study of gender effects on trial outcomes is not exclusive to jurors, however. Male and female *defendants* might receive sentences that vary systematically, and *victim* gender might influence observers’ perceptions of the alleged crime. The gender of professional legal actors (i.e., attorneys and expert witnesses) might affect

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trial outcomes. Although legal decision-makers likely believe they do not consider gender in their deliberations, people are not always aware of their biases and the effects of those biases on decision-making (e.g., Chapman, Kaatz, & Carnes, 2013; Spencer, Charbonneau, & Glaser, 2016). This chapter explores the variety of ways that gender can affect legal outcomes.

Although some people identify with genders outside of a masculine–feminine binary, psychology and law research conducted to date has primarily examined gender as a dichotomous male–female variable. In our discussion of gender-related effects at trial, we use the word *gender* to refer to a set of either masculine or feminine traits primarily associated with men or women, respectively. All empirical research reviewed and discussed herein was conducted using cisgender samples, meaning that participants' self-reported gender identity was congruent with their biological sex (i.e., male or female). Additionally, the experimental studies reported here manipulated gender (i.e., of the attorney, victim, defendant) as a binary factor in simulated trials. Although a small (and growing) body of research explores effects related to gender nonconforming persons (e.g., Jackson, McDermott, & Miller, 2018), our discussion is limited to gender differences associated with biological sex and cisgender people.

The purpose of our chapter is to synthesize the legal and psychological literature regarding the relationship between gender and trial outcomes and perceptions, with specific emphasis on the effects of gender of these five primary legal actors. The chapter offers empirically and theoretically supported explanations for observed gender differences, synthesizing relevant social scientific research and identifying omissions in the field's current understanding of these issues.

## Gender and the Law

Judges, lawmakers, and even U. S. presidents have addressed the effects of gender in the legal system through court rulings, policymaking, and jury instructions. Most relevant to the current discussion are legal actions that address gender issues related to jurors. Some jurisdictions barred women from jury service until a 1975 U.S. Supreme Court ruling (*Taylor v. Louisiana*, 1975) forbade their categorical exclusion. Four years later, the court in *Duren v. Missouri* (1979) held that the defendant's request to exempt all women from the jury was unconstitutional. The most substantial ruling came in 1994, when the U. S. Supreme Court ruled that peremptory challenges based solely on the potential juror's gender were unconstitutional (*J.E.B. v. Alabama*, 1994). Since then, attorneys must demonstrate (if asked by opposing counsel or the judge) that the reason for the potential juror's exclusion was gender neutral. These rulings were largely intended to protect women's Equal Protection rights and the defendant's right to a fair trial (under the 14th and 6th Amendments, respectively).

More broadly, policymakers have passed laws that prohibit bias on the basis of gender. The Civil Rights Act of 1964 explicitly prohibits discrimination on the

basis of several demographic characteristics, including gender (see Title VII). Since then, the Act has protected women's rights and has expanded to a variety of gender-related circumstances. Employers may not refuse to hire women who have children while hiring men who have children (*Phillips v. Martin Marietta*, 1971); sexual harassment in the work environment is a valid claim under the Act (1986); same-sex sexual harassment falls under the Act (*Oncale v. Sundowner Offshore Serv., Inc.*, 1998); and the Act also applies to gender stereotypes (e.g., a woman who is discriminated against for being "too masculine;" *Price Waterhouse v. Hopkins*, 1989). Most recently, the Equal Employment Opportunity Commission (EEOC) ruled in 2012 that the Act extends to employees of varying gender identities (Quinones, 2012).

The Equal Protection Clause of the Fourteenth Amendment to the Constitution has also been the basis of court rulings regarding equal treatment based on gender (e.g., *United States v. Virginia*, 1996) and transgender status (*Glenn v. Brumby*, 2010). For instance, the Court in *U.S. v. Virginia* (1996) held that "separate but equal" military training units violated the Equal Protection Clause.

Although most of the above-discussed legal actions protect women's rights, some legal actions were designed to protect men's rights. In the late twentieth century, courts began abandoning the "tender years" doctrine, which was a principle derived from common law that favored women in divorce-related custody disputes (Vasterling, 1989). Courts now favor the "best interests of the child" standard which is presumed to be gender neutral. More recently, the Supreme Court in *Sessions v. Morales-Santana* (2017) held that the Immigration and Nationality Act violated the Equal Protection Clause of the Constitution on the basis that foreign-born children to single mothers could more easily gain U.S. citizenship than could foreign-born children to single fathers. At about the same time, the court in *Sassman v. Brown and Beard* (2015) held that, under the California Alternative Custody Program, men had to receive the same rights as women to serve the last 24 months of their sentence in the community.

Other gender-related legislation includes: (1) the Pregnancy Discrimination Act (1978), which protects women's employment rights before and during pregnancy; (2) the Fair Housing Act, which prevents gender discrimination in the sale, rental, or financing of housing; and (3) the Equal Pay Act (1963), which prevents gender discrimination in salaries. The enactment and affirmation of these policies demonstrate that men and women are legally entitled to equal treatment on the basis of their gender.

U.S. presidents can also dictate policies that directly relate to gender. A prime example is the rights of transgender people who want to serve in the military. In 2017, President Trump issued a policy banning transgender service members. However, courts in 2018 prevented the implementation of the ban (Holliday, 2018; *Karnoski v. Trump*, 2017).

Advocates for gender equity in the legal system recommend reducing gender bias in written materials as well, including legal statutes and jury instructions. To address concerns of gender-biased language that might inadvertently affect jurors' perceptions of case facts, legal experts and policymakers have removed gendered

language from domestic violence statutes (see Czapanaskiy, 1993). Domestic violence statutes now include gender-neutral language in reference to the victim and the aggressor in a dispute, which might reduce jurors' assumptions that men are more likely than women to commit domestic violence. These changes prompted legal experts and policymakers to provide updated jury instructions that used gender-neutral language rather than gender-specific nouns and pronouns (The Florida Bar, 2016). Guidelines written by the Florida Supreme Court include the recommended use of gender-neutral words such as "firefighter" rather than "fireman" in jury instructions to deemphasize the importance of gender during litigation (The Florida Bar, 2016).

These legal actions, among others, attempt to neutralize the effects of gender. Using this understanding as a legal foundation, this chapter will focus solely on gender effects on trial perceptions and outcomes. Despite advances aimed at reducing gender bias, gender-related extralegal factors still tend to influence trial outcomes implicitly and explicitly.

## The Effects of Gender at Trial

Although the gender of legal actors should not affect interpretation and application of the law, experimental research and real-world legal data suggest that it sometimes does (e.g., Starr, 2012; Wilczynski, 1997). The literature review below is concerned primarily with gender effects associated with five legal actors: the criminal defendant, the victim, the attorney, the expert witness, and the legal decision-maker (i.e., the jury or the judge). This typology provides the structure for this section, which synthesizes past research findings regarding the effects of gender on trial outcomes and perceptions.

### *Defendants*

There is much nuance to the ways in which gender can affect defendants' outcomes at trial. The concept of chivalry, used here to refer to courtesy extended to female defendants, often leads to less harsh verdict judgments and perceptions for female defendants compared to their male counterparts (e.g., Starr, 2012). Even so, other variables, such as a prior criminal history, can actually reverse this trend and lead to comparatively harsher outcomes for women (Tillyer, Hartley, & Ward, 2015). The main effects of gender—and exceptions to these effects—are discussed below, including possible explanations for these effects found in the empirical psychological literature.

**Main effect of defendant gender.** Perceptions of culpability can vary as a function of the defendant's gender (see Supriya, Sorensen, & Oaxaca, 2007).

Laboratory studies (Cox & Kopkin, 2016; Sommer, Reynolds, & Kehn, 2015) and real-world data (Starr, 2012) demonstrate that verdicts tend to be harsher for male than female defendants. Indeed, men received 60% longer sentences than women who committed similar crimes in one analysis of actual case outcomes (Starr, 2012). Even when the crime is held constant in a mock jury paradigm, male criminal defendants are likely to receive more guilty verdicts and longer sentences compared to female defendants (Wilczynski, 1997). This effect, often discussed in terms of chivalry, holds for cases of sex offenses (Mackelprang & Becker, 2017), assault (Meaux, Cox, & Kopkin, 2018), stalking (Gavin & Scott, 2016), murder (Strub & McKimmie, 2016), human trafficking (Francis, 2016), and domestic violence (Hodell, Wasarhaley, Lynch, & Golding, 2014). Chivalry can be attributed to legal decision-makers believing either that women require additional protections compared to men or women are too fragile for the harsh prison system (see Pollak, 1961). These beliefs lead to the conclusion that it is less appropriate to incarcerate a woman compared to a man, thus women should receive more lenient sentences (e.g., McCoy & Gray, 2007). A modest amount of research has supported the female leniency effect, though the next section highlights exceptions.

**Moderators and exceptions to the gender of defendant effect.** Findings related to defendant gender are mixed, and moderating variables alter these relationships. Although the leniency effect toward female defendants is common, some research has demonstrated null effects of defendant gender (e.g., Blais & Forth, 2014; Mossière & Dalby, 2008; Pozzulo, Dempsey, Maeder, & Allen, 2010), perhaps because gender effects are rightfully suppressed by case facts. An experimental test of the hypothesis that gender-stereotypic crimes (e.g., a man charged with auto theft or a woman charged with shoplifting) would be punished more harshly than gender-incongruent crimes also found no significant difference as a function of defendant gender (Maeder, McManus, Yamamoto, & McLaughlin, 2018). Yet other research shows that women receive *harsher* punishments compared to men (e.g., Tillyer et al., 2015), suggesting that case type and other defendant characteristics can moderate gender's effect on verdicts.

Other moderators, such as parental status and prior criminal history, also influence the effects of defendant gender on perceptions. Men are more likely than women to be found guilty of sexual abuse, especially when they are parents to the victim (McCoy & Gray, 2007; for review see Bottoms, Golding, Stevenson, Wiley & Yozwiak, 2007). These findings also provide further evidence in support of a female leniency effect in certain circumstances (Wilczynski, 1997). Among defendants who have short or no criminal histories, female defendants receive more lenient sentences compared to males. However, for defendants with long criminal histories, females are more likely to receive harsh punishment compared to male defendants (Tillyer et al., 2015). These data suggest that criminal history can moderate gender effects.

Men and women might receive different legal outcomes for similar crimes in part because mock jurors believe men and women commit crimes for different reasons. For instance, women are less likely than men to be prosecuted for filicide (i.e., the killing of one's child; Wilczynski, 1997). When women *are* prosecuted for filicide, they often receive more psychiatric and noncustodial sentences compared to men,

in line with the stereotype that “men are bad and normal, women are mad and abnormal” (Wilczynski, 1997, p. 419). Mock jurors more often attributed filicide to perversity when the defendant was a man, and more often attributed the same crime to mental illness when the defendant was a woman (Saavedra, Cameira, Rebelo, & Sebastião, 2017). These attributions led to harsher punishments for men compared to women. Such studies indicate that attributions—like other factors discussed above—complicate the relationship between defendant gender and trial outcomes.

**Summary of defendant gender effects.** The literature reviewed above suggests that perceptions of culpability and sentences can vary based on the defendant’s gender, generally resulting in decreased punitiveness toward women compared to men (Supriya et al., 2007). Researchers often attribute these observed leniency effects to a modern conceptualization of chivalry (Visher, 1983), although leniency effects are sometimes suppressed by case facts (e.g., Mossière & Dalby, 2008) or reversed when female defendants have criminal histories (Tillyer et al., 2015). Juries might have less sympathy for women who violate gender roles by acting aggressively compared to men who act aggressively (see Gilbert, 2002). Legal decision-makers do not consider the gender of defendants in isolation, however: Empirical research has examined the effect of *victim* gender in the context of mock jury paradigms and secondary analyses of real case verdicts, as discussed next.

## *Victims*

Victim gender can affect trial outcomes. Although legal decision-makers likely believe they do not consider the gender of the victim, people are not always aware of their biases and the effects of those biases on decision-making (e.g., Chapman et al., 2013; Spencer et al., 2016). Experimental research suggests that, in general, the leniency effect for female *defendants* appears to hold for female *victims* as well, in a variety of situations. This effect manifests as more severe sentences for defendants who injure female victims, more favorable attitudes toward female victims, and increased support for female victims as compared to their male counterparts (Henning & Feder, 2005; Judson, Johnson, & Perez, 2013). The main effects of gender and exceptions to these effects are discussed below, including possible explanations for these effects found in the empirical psychological literature.

**Main effect of victim gender.** Two general case types—sexual assault and death penalty cases—are discussed herein. Leniency effects are observed across both case types. Lay observers tend to have more negative attitudes toward male victims of sexual coercion compared to female victims (for review see Davies, 2000), and mock jurors are more likely to recommend that female victims receive support services compared to male victims (Judson et al., 2013). When perpetrator gender was held constant (i.e., the perpetrator was a man), observers reported more sympathy for female versus male sexual assault victims (Burczyk & Standing, 1989) and perceived male victims as more blameworthy (Groth & Burgess, 1980).

The disparity in how male and female victims of sexual assault are perceived could be due to gender-based expectations regarding sex, such as beliefs that (a) male victims of sexual assault by a female were more likely to have invited the sexual contact compared to female victims of sexual assault perpetrated by a male, or (b) only “weak” men are sexually assaulted (see Stanko & Hobdell, 1993).

Effects of victim gender are also prevalent in cases that involve the death penalty, domestic abuse, or both. The finding that female (vs. male) victims of domestic abuse are more likely to be acquitted of murdering their abuser (Hodell et al., 2014) is consistent with evidence that jurors tend to consider domestic assault against women to be a more serious crime compared to domestic assault against men. Assaults of female (vs. male) victims are also more likely to receive guilt judgments and longer sentences (Henning & Feder, 2005).

**Moderators and exceptions to victim gender effects.** Case characteristics can moderate the main effects of victim gender on perceptions and outcomes at trial (see Mazzella & Feingold, 1994). In fact, in Mazzella and Feingold’s (1994) meta-analysis of victim characteristics that affect mock juror judgments, victim gender emerged as one of the most consequential variables, such that female (vs. male) victims elicited the harshest verdicts. An analysis of cases that went to trial in Georgia revealed that raping a victim, forcing a victim to disrobe, and killing an unclothed victim exacerbated the effect of victim gender on sentencing decisions (Williams, Demuth, & Holocomb, 2007). That is, sex-related crimes strengthened the relationship between victim gender and legal outcomes such that they increased verdict harshness, but only when the victim was a woman. The defendant’s gender can also moderate victim gender effects: Female victims elicit more sympathy and harsher sentences for defendants when the defendant is a male (Cox & Kopkin, 2016).

Findings related to victim gender are not entirely consistent, as evidenced by studies finding null effects in the context of mock sexual assault cases (e.g., Bottoms & Goodman, 1994; Pozzulo et al., 2010). In contrast to previous research (e.g., Smith, Pine, & Hawley, 1988), these studies demonstrated that mock jurors perceived male and female victims as equally credible in the presence of relatively serious allegations (i.e., gender differences only emerged when allegations were less serious). Researchers have also observed null effects in analyses of actual cases; indeed, a large-scale study of Georgia’s death penalty demonstrated that female victims elicited harsher *jury* decisions (vs. male victims), but victim gender was not associated with *prosecutorial* decisions (Williams et al., 2007).

**Summary of victim gender effects.** This body of research demonstrates that jurors implicitly or explicitly consider victim gender in their decision-making processes at trial. Generally, women victims receive more favorable jury perceptions, garner more sympathy, and elicit longer sentences for their assailants compared to male victims (Hodell et al., 2014; Judson et al., 2013; Stanko & Hobdell, 1993). Other data have revealed only null effects of victim gender on jury perceptions (see Pozzulo et al., 2010). Variables that moderate the potential relationship between victim gender and legal outcomes are less commonly observed compared to moderating variables of other gender-outcome relationships (i.e., those

involving defendants, attorneys, etc.), but sexualized crimes seem to exacerbate existing gender effects (Williams et al., 2007). The effects of attorney gender, discussed in the following section, tend to be somewhat more complicated.

## *Attorneys*

Attorneys are jurors' primary source of contact with the information presented at trial, and therefore attorney characteristics such as gender are likely salient to jurors. It might seem intuitive that attorney gender could influence perceptions and decisions. For instance, Republican leaders in the U.S. Senate Judiciary Committee hired a female attorney to question Christine Blasey Ford following her allegations of sexual assault committed by Supreme Court nominee Brett Kavanaugh (Birnbbaum, 2018). Republican leadership likely believed that observers would perceive a female attorney more favorably than a male attorney in the context of sexual assault allegations, and this notion is supported by some research (e.g., Szmer, Sarver, & Kaheny, 2010). The main effects of attorney gender—and exceptions to these effects—are discussed below, including possible explanations for these effects found in the empirical psychological literature.

**Main effects of attorney gender.** Attorney gender can influence jurors' perceptions of case facts as well as jurors' verdict judgments (e.g., Hodgson & Pryor, 1984). Results of studies about attorney gender effects on case outcomes are mixed: Sometimes men are perceived more favorably and achieve better outcomes than women (Salerno, Phalen, Reyes, & Schweitzer, 2018), and sometimes women outperform men in these respects (Szmer et al., 2010). Yet other times, attorney gender does not affect attorney success (Abrams & Yoon, 2007). Mixed results indicate a lack of universal bias against a specific gender. Specific investigations that have illuminated bias, however, show that observers do not always perceive male and female attorneys equally. Some studies that revealed potential biases are reviewed below.

Indicating that female attorneys might fare better than their male counterparts, a review of judgments in U.S. Courts of Appeals found that judges were significantly more likely to side with female attorneys compared to male attorneys (Szmer, Kaheny, Sarver, & DeCamillis, 2013). Experimental studies support this analysis, demonstrating that female attorneys were more effective than male attorneys, contrary to the researchers' hypotheses (Abramson, Goldberg, Greenberg, & Abramson, 1979; Villemur & Hyde, 1983).

In one study finding opposite effects (Hodgson & Pryor, 1984), researchers presented mock jurors with the same arguments from male and female attorneys in the form of audio recordings. Male and female mock jurors responded to items assessing their perceptions of attorney credibility. The male and female voices did not differ significantly in actual rate of speech, pitch, accent, or nonfluencies (e.g., "um..."). Female participants rated the female attorney as less intelligent, less friendly, less pleasant, less capable, less of an expert, and less experienced than the



male attorney. In addition, both male and female participants indicated that they would be more likely to retain the services of the male attorney than the female attorney. Because the arguments of the male and female attorneys were held constant, these findings are likely due to stereotypes that suggest men are more aggressive and effective at arguing their points in court.

Survey research conducted with both the general public and attorneys supports Hodgson and Pryor's (1984) experimental findings. One survey of laypersons found that 45% of respondents believed male attorneys were taken more seriously than female attorneys (vs. 10% of respondents who believed female attorneys were taken more seriously; Brown & Campbell, 1997). Another survey conducted with a sample of attorneys showed that 37% of surveyed female attorneys reported receiving unfair treatment in court due to their gender, compared to just 0.8% of males (Collins, Dumas, & Moyer, 2017).

Gender differences in speech patterns might explain differential outcomes in court for male versus female attorneys. Overall, observers rated three forms of speaking primarily associated with women (e.g., tag questions: "It's hot outside, right?"; hedging: "I guess it's hot outside"; and the use of interrogative rather than declarative requests: "Will you hand me that pen?" vs. "Hand me that pen") as less assertive than alternative forms of speaking primarily associated with men (i.e., fewer tag questions, less hedging, and more declarative statements; Newcombe & Arnkoff, 1979). These findings might explain why attorneys who are more assertive—usually men—tend to achieve better outcomes for their clients (Sigal, Braden-Maguire, Hayden, & Mosley, 1985).

Speech interruptions are also characteristics of interpersonal communication that can influence jurors' perceptions of male and female attorneys in the courtroom (see Reed & Bornstein, 2018). When attorneys object to evidence presented during testimony or to arguments presented by opposing counsel, they must interrupt the proceeding to declare their objection. Jurors might perceive an objecting male attorney more favorably than an objecting female attorney because interruption is considered an act of dominance in communication (Kennedy & Camden, 1983; Orcutt & Harvey, 1985) typically associated with men (Youngquist, 2009). Gender differences in perceptions of interruptions might mean that female attorneys have to be more careful about when and how to object compared to their male counterparts (Reed & Bornstein, 2018).

**Moderators and exceptions to the attorney gender effect.** Several variables can moderate the effects of attorney gender on case perceptions and outcomes. An attorney's presentation style can affect jurors differently depending on the attorney's gender. Hahn and Clayton (1996) found a three-way interaction between attorney gender, attorney presentation style, and juror gender. Their results indicated that male and female mock jurors responded most favorably to attorneys of their own gender, but male mock jurors in particular rated the effectiveness of aggressive male attorneys as *lower* than that of aggressive female attorneys. Female mock jurors were not significantly influenced by attorney aggressiveness (Hahn & Clayton, 1996).

Case type can also moderate the effects of attorney gender on legal outcomes. Although men might be more effective at arguing their cases due to increased baseline rates of assertiveness, female attorneys are more effective than their male counterparts specifically in women's issues cases (Szmer et al., 2010). This finding indicates that observers might perceive female attorneys to be more credible than male attorneys in cases that make gender salient, perhaps because women are considered to have unique expertise in these areas.

**Summary of attorney gender effects.** Survey data using layperson and attorney samples demonstrate a bias in favor of male attorneys (Brown & Campbell, 1997; Collins et al., 2017). Mixed experimental findings provide only partial empirical support for conclusions drawn from these survey data: Although some investigations show that male attorneys are advantaged (e.g., Salerno et al., 2018), others show that female attorneys are more likely to win their cases (Szmer et al., 2010, 2013). Attorney gender effects might only occur in some male participant samples and when the attorney is aggressive (Szmer et al., 2010). Other legal actors, such as expert witnesses, might similarly affect outcomes, as discussed next.

### *Expert Witnesses*

The gender of an expert witness can affect an expert's perceived credibility, which is essential to the expert's persuasiveness (Brodsky, Griffin, & Cramer, 2010). Research on the effect of gender on perceptions of credibility of a witness has revealed mixed findings. Moderators such as complexity, case type, and behavior during testimony help explain these inconsistencies (see Neal, 2014). The main effects of gender and exceptions to these effects are discussed below, including possible explanations for these effects found in the empirical psychological literature.

**Main effects of expert witness gender.** Expert witnesses are regarded as authorities on the topic of their testimony. Ideally, expert gender would not influence observers' perceptions of their expertise. However, there is some evidence to support the notion that men and women are perceived as more credible when the area of their expertise is congruent with gender stereotypes: Research demonstrates that women are more effective than men when their expertise is consistent with gender stereotypes (e.g., for battered woman syndrome, see Schuller & Cripps, 1998; for child custody, see Swensen, Nash, & Roots, 1984), and men are more effective when their expertise is congruent with expectations associated with masculinity (e.g., for tire/automotive service, see McKimmie, Newton, Terry, & Schuller, 2004).

Experts sometimes must field intrusive questions that seem personal or gender-specific and irrelevant to their objective expertise. The way experts respond to these questions can influence observers' perceptions of their knowledge and character (Larson & Brodsky, 2010). Experts of both genders are more likely to be asked gender-intrusive questions by the opposing attorney merely by working on a

gender-related case compared to a case that does not make gender salient (Daftary-Kapur, O'Connor, & Mechanic, 2014). Examples of these questions include inquiries about the female expert's family life, past victimization, or personal involvement in feminist movements. When expert gender is irrelevant to the proceeding, women are still more likely than men to field gender-intrusive questions (Daftary-Kapur et al., 2014). When experts feel that they are under personal attack, they might assume the proceeding is about their personal ability to respond to questions rather than the importance of their answers to the case—sometimes leading female experts to appear more biased, less qualified, or less prepared than a male counterpart (Gutheil & Simon, 2005). Gender-intrusive questions can sometimes have the opposite effect—that is, they can *bolster* a female expert's effectiveness—if she calmly points out that the questions are inappropriate and outside the scope of the case (Larson & Brodsky, 2010).

In a survey of expert witnesses, women did not report experiencing gender-based treatment more than male experts (Kaempf, Baxter, Packer, & Pinals, 2015). This finding suggests that male and female experts receive gender-intrusive questions—one form of gender-based treatment—at approximately equal rates. Male experts too can benefit from the appropriate fielding of intrusive questions by responding assertively and pointing out the inappropriateness of the questions (Larson & Brodsky, 2010). Although the absolute effects of expert gender on perceptions and case outcomes are mixed, research to date has specified moderating variables of interest that more consistently influence perceptions and outcomes, as discussed next.

**Moderators and exceptions to the expert witness gender effect.** Two studies indicate that case complexity might moderate the relationship between expert gender and juror decisions. First, in highly complex cases, the testimony of a male expert witness is judged to be more persuasive than the testimony of a female expert. However, in less complex cases, female experts are judged to be more persuasive than male experts (Schuller, Terry, & McKimmie, 2001). Second, when mock jurors are under conditions of high cognitive load and the expert uses complex rather than simple language, a female expert for the plaintiff yields lower damage awards than a male expert (McKimmie, Newton, Schuller, & Terry, 2013). This pattern of results might be an indicator that mock jurors perceive men to be more capable than women at very complex tasks. However, female expert witnesses in other research were *more* effective than males, but only when the complexity of their testimony was high; when complexity was low, male and female experts were equally effective (e.g., Maeder, McManus, McLaughlin, Yamamoto, & Stewart, 2016).

Other research has demonstrated that an expert's gender might interact with case type. For example, female experts are judged to be more convincing than male experts when testifying in cases involving battered woman syndrome (Schuller & Cripps, 1998), sexual discrimination (with a female plaintiff; Carson, 2008), or child custody disputes (Swenson et al., 1984). In a mock civil trial, male experts garnered greater damages than female experts in a trial involving a construction company, but female experts garnered greater damages in a trial involving the women's clothing industry (Schuller et al., 2001). Researchers hypothesize that

experts are generally perceived as more credible when their gender is congruent with the type of case in which they are testifying (e.g., McKimmie et al., 2004).

The expert's character and behavior can also moderate the effects of expert gender on trial perceptions and outcomes. People have different expectations for the behavior of men and women, and those expectations sometimes influence their perceptions of experts' behavior (Rudman & Glick, 2001). For example, eye contact between the expert and observers can moderate experts' effectiveness, such that less eye contact hindered a male expert's effectiveness (relative to more eye contact) but did not significantly influence a female expert's effectiveness (Neal & Brodsky, 2008). Likeability and perceived knowledge similarly moderate the effect of gender on perceptions of an expert's credibility. When the expert was rated as having low likeability and knowledge, observers perceived male experts to be more credible than female experts; however, when likeability and knowledge were high, there were no gender differences (Neal, Guadagno, Eno, & Brodsky, 2012). Other research indicates that gender does not influence perceptions of an expert witness across several areas of expertise (e.g., see Couch & Sigler, 2002, for automotive engineering; Memon & Shuman, 1998, for medical malpractice; Vondergeest, Honts, & Devitt, 1993, for polygraph examination; see also Parrot, Neal, Wilson, & Brodsky, 2015).

**Summary of expert witness gender effects.** Men and women are likely to be considered credible when their expert testimony is consistent with gender stereotypes (McKimmie et al., 2004). Gender-intrusive questions during cross-examination sometimes disadvantage female experts (Daftary-Kapur et al., 2014). Nevertheless, these questions can also *bolster* expert testimony when experts effectively field such questions in front of the jury (see Larson & Brodsky, 2010). Experts of either gender can diminish gender effects during testimony via displays of assertiveness (Larson & Brodsky, 2014), knowledge, and likeability (Neal et al., 2012). Mock jurors might perceive male experts to have more authority than female experts when testimony is complex, indicating a bias among mock jurors in favor of male experts (Schuller et al., 2001, 2005). Observers also differentially perceive the meaning of eye contact from male versus female experts (Neal & Brodsky, 2008). Observed effects of expert gender depend on the perceptions and decisions of legal decision-makers who make judgments in real-world and mock-jury cases (Carson, 2008; McKimmie et al., 2004). As such, it is important to consider the similarities and differences among verdict judgments made by men and women, as discussed next.

### ***Legal Decision-Makers: Jurors and Judges***

Jurors' gender can influence their attention to particular case facts during trial, as well as what jurors later remember during deliberation (Maeder et al., 2016). Gender effects have been mixed in studies examining decisions made by judges (e.g., Boyd, 2016; Steffensmeier & Hebert, 1999). The main effects of juror and

judge gender—and exceptions to these effects—are discussed below, including possible explanations for these effects found in the empirical psychological literature.

**Main effects of juror gender.** Male jurors, in general, are more punitive than female jurors (e.g., Batchelder, Koski, & Byxbe, 2004; Haney, 2005). This generalization, however, neglects the nuances of legal cases and the many ways that mock juror gender is made salient in the context of trial. Women, in fact, tend to be more punitive than men when the contents of the case seem especially relevant to their gender such as cases involving sexual assault (Anwar, Bayer, & Hjalmarsson, 2017; Batchelder et al., 2004; Osborn, Davis, Button, & Foster, 2018), child abuse (Golding, Bradshaw, Dunlap, & Hodell, 2007; Kovera, Levy, Borgida, & Penrod, 1994; McCauley & Parker, 2001), or stalking (Dunlap, Hodell, Golding, & Wasarhaley, 2012; Dunlap, Lynch, Jewell, Wasarhaley, & Golding, 2015). Conversely, when the defendant is a battered woman, women (compared to men) give less harsh punishments (Schuller, 1992), acquit the defendant more often (Mossière, Maeder, & Pica, 2016), and believe the defendant's actions were more reasonable (Terrance, Matheson, & Spanos, 2000). Together, these findings demonstrate that women and men are equally capable of rendering harsh verdicts and assigning blame when the topic of litigation is personally relevant.

As mentioned above, victim gender can produce differences in the way men and women jurors perceive sexual assault cases (Hodell et al., 2014; Stanko & Hobdell, 1993). Women are also more pro-prosecution than men in response to allegations of sex crimes (e.g., Fischer, 1997; Golding, Bradshaw, Dunlap, & Hodell, 2007). Male mock jurors were more likely than female mock jurors to hold negative views of male victims who are sexually assaulted by females (Davies, Walker, Archer, & Pollard, 2013). Specifically, male mock jurors were more likely to blame the male victim, were less likely to have sympathy for the male victim, and were less likely to perceive adverse consequences for the male victim compared to female mock jurors (Davies et al., 2013). Regarding sex crimes in general, female mock jurors are often more punitive than male mock jurors when the case involves sexual assault allegations (Bottoms et al., 2014; Quas, Bottoms, Haegerich, & Nysse-Carris, 2002).

Extralegal variables such as defendant attractiveness can affect both male and female jurors' perceptions and decisions (Beckham, Spray, & Pietz, 2007; Coons & Espinoza, 2018), although women are more sensitive than men to emotional testimony in the context of a murder trial simulation (Voss & Van Dyke, 2001). The effects described in this section, however, are very broadly stated and often moderated by factors such as case characteristics and displays of emotion during the trial.

**Moderators and exceptions to the juror gender effect.** Although men are generally more likely than women to vote for the death penalty (vs. life without parole; O'Neil, Patry, & Penrod, 2004), juror empathy can reverse this relationship. Whereas the experience of empathy does not significantly alter men's legal decisions, women who experience empathy for the victim are more likely than women who do not experience empathy to vote in favor of the death penalty (Myers, Lynn, & Arbuthnot, 2002). This finding is consistent with social

neuroscience research indicating that women express and experience more empathetic arousal compared to men (see Rueckert & Naybar, 2008).

Interactions among actual jurors can also alter the effects of juror gender on decisions. In a secondary data analysis of 675 capital cases in North Carolina between 1991 and 2016, juries consisting of equal numbers of men and women were more likely to recommend the death penalty than either female-majority or male-majority juries (Richards, Bjerregaard, Cochran, Smith, & Fogel, 2016). Richards and colleagues (2016) suggested that factors related to the group dynamics of gender-equal juries contributed to increased punitiveness compared to other jury gender compositions.

Juror gender might become especially relevant in cases in which sexuality and gender are salient. For example, in a study involving a male victim accusing a female defendant of sexual harassment, the victim's attractiveness significantly influenced *female* jurors' individual verdicts when the defendant was unattractive, but not when she was attractive (Wuensch & Moore, 2004). Findings were the opposite for *male* mock jurors: Attractiveness only influenced males' verdicts when the defendant was attractive. When the victim and the defendant were differentially attractive, female jurors were significantly more likely than male jurors to conclude that sexual harassment had taken place (Wuensch & Moore, 2004). Other research has yielded null effects of juror gender on verdict judgments (Braden-Maguire, Sigal, & Perrino, 2005; Najdowski & Bottoms, 2015).

**Main effects of judge gender.** Findings regarding the effects of judge gender on legal decisions are mixed. Broadly speaking, male judges are significantly less likely to rule in favor of plaintiffs than female judges (Chew, 2017). In sex discrimination cases specifically, a large-scale analysis of judicial decisions in 13 different legal jurisdictions found that male judges were 10% less likely than female judges to rule in favor of a plaintiff alleging sex discrimination (Boyd, Epstein, & Martin, 2010; see also Boyd, 2016). Female judges were also significantly more likely to rule in favor of the plaintiff in sexual harassment cases than their male colleagues (Peresie, 2004). These results could be due to increased personal relevance for female judges compared to male judges. Female judges likely have more personal experience with these issues, which are more relevant to the daily lives of women than men. Even so, there is some evidence that the effect is broader than sexual harassment and discrimination cases. In criminal courts, some evidence suggests that female judges are more punitive than male judges (see Steffensmeier & Hebert, 1999).

Indirect effects of judge gender on trial outcomes also exist. The mere presence of a female judge on an appellate panel can influence male judges' decisions (see Peresie, 2004 for review). The presence of one or more female judges on federal appellate panels increased the likelihood that male judges favored the plaintiff (Massie, Johnson, & Gubala, 2002). This finding was supplemented by a second study demonstrating that all-male panels were less likely than gender-mixed panels to favor plaintiffs in employment discrimination cases (Farhang & Wawro, 2004). These studies suggest that female judges influence their male counterparts and indirectly affect case outcomes. Despite these findings, research has found support for the opposite main effect of judge gender on rulings: Male judges in one study

were more likely to side with plaintiffs on women's issues than were female judges (Segal, 2000). It is possible that female judges, who have succeeded in a historically male profession, feel less empathy for women (compared to men and less-powerful women) with regard to women-specific issues.

**Moderating effects of judge gender.** Relatively sparse research has examined variables that could moderate the effects of judge gender on judges' perceptions and decisions. These studies have mainly examined how interpersonal contact between male and female judges can moderate existing effects. Although male judges might be less likely to side with plaintiffs than female judges (Chew, 2017), this effect is moderated by the interaction between male and female judges (Peresie, 2004). For instance, the presence of a female judge on an appellate panel can be conceptualized as a moderator of the relationship between male judge gender and trial outcomes (see Boyd et al., 2010; Peresie, 2004). Male judges might temper their opinions in the presence of female judges in an implicit or explicit effort not to appear gender-biased. Thus, regardless of the position a female judge takes, male judges might be more likely to favor the plaintiff when sitting on a panel with a female judge (vs. an all-male panel).

Yet other analyses of judge decisions found no significant effects of judge gender on rulings when controlling for other variables such as presidential appointment and the judge's religious ideology (Gottschall, 1983; Songer, Davis, & Haire, 1994). Inconsistent findings demonstrating opposite or null effects of judge gender on case outcomes indicate a need for more research in this area to explain how other variables might moderate these relationships.

**Summary of jury and judge gender effects.** A review of research regarding the effects of juror gender on perceptions and verdict judgments suggests that men are more punitive than women in general (see Haney, 2005), but women are more punitive than men when the topic of the legal proceeding is especially relevant to women's lives (e.g., Anwar et al., 2017; Golding et al., 2007; Osborn et al., 2018). Alternatively, women are more likely to acquit defendants accused of gender-relevant crimes (e.g., battered women who kill; Mossière et al., 2016; Terrance et al., 2000), less likely to favor the death penalty (Cochran & Sanders, 2009; Lambert et al., 2016), and more likely to take a pro-prosecution stance in sexual assault cases compared to men (Golding et al., 2007). Juror empathy can moderate the relationship between gender and death penalty sentencing, increasing the likelihood that women compared to men will vote for capital punishment (Myers et al., 2002).

The effects of judge gender are mixed. Female judges are generally more favorable toward plaintiffs than are male judges (Chew, 2017), especially in cases that make gender issues salient (e.g., sex discrimination; Boyd et al., 2010; sexual harassment; Peresie, 2004). The presence of a woman judge on an appellate court panel can indirectly affect case outcomes by increasing the likelihood that male judges favor the plaintiff (Massie et al., 2002). The effects of decision-makers' gender are of unique importance to trial consultants and attorneys who can tailor selection procedures and arguments to appeal to men and women.

## ***Summary of the Reviewed Literature***

Experimental investigations (e.g., Coons & Espinoza, 2018; Cox & Kopkin, 2016) and real-world court data (e.g., Anwar et al., 2017; Chew, 2017) suggest that the gender of legal actors tends to influence verdicts and sentences as an extralegal variable. Perceptions of culpability sometimes vary as a function of the defendant's gender, often leading to leniency toward female defendants (Starr, 2012). Victims sometimes also receive differential treatment on the basis of their gender, particularly when the facts of the case make gender salient (e.g., sexual assault cases; Schutte & Hosch, 1997). Attorney gender also influences perceptions at trial because legal decision-makers are exposed to attorneys' arguments and presentation styles, which are differentially effective depending on whether attorneys act in accordance with gendered expectations (Hahn & Clayton, 1996). The effects of defendant, victim, and attorney gender often interact with juror gender because men and women on the jury sometimes attend to and remember different information from trial (Maeder et al., 2016). Although studies demonstrate mixed findings regarding the influence of judge gender on the outcomes of civil cases, psychological perspectives on gender roles and gender stereotyping might elucidate the origin of these relationships. Psychological explanations, discussed next, can provide an overarching theoretical account of the effects described above.

## **Psychological Explanations for Gender Differences at Trial**

The empirical findings discussed above demonstrate that gender differences are repeatedly observed in the context of trial. Although it is important to continue researching gender differences, it is also important to apply psychological theory to explain why researchers observe these main effects. Social scientific theory can guide further empirical examinations of gender differences on trial outcomes and improve social scientists' and legal scholars' understandings of the psychological processes that underlie the gender effects observed in the context of simulated jury studies and during litigation of actual civil and criminal cases. Through a comprehensive understanding of theory, experts can design sound studies and recommend changes to the legal system to reduce gender biases.

Symbolic interactionism serves as the overarching and primary basis for our proposed explanations for the underlying gender effects discussed above. The symbolic interaction framework suggests that gender differences might emerge due to the way in which gender is socially constructed through repeated interpersonal interaction (see McCall, 2006). The symbolic interaction framework can describe how gender differences emerge in society and how this process and its outcomes affect perceptions of men and women at trial (Brenner, Serpe, & Stryker, 2014; Lorber, 2007). The framework suggests that sociocultural characteristics establish



gender roles that govern socially accepted behavior of men and women (Witt & Wood, 2010). The establishment and performance of these gender roles can influence the behavior of men and women, as well as the way in which they are perceived by others, sometimes as a function of the perceiver's gender (e.g., Bennett, Gottesman, Rock, & Cerullo, 1993). In turn, preconceived expectations for how men and women should act in accordance with their gender roles can influence others' perceptions of the appropriateness of their behavior. Actions that are consistent with gender-based expectations might be perceived more favorably by legal decision-makers compared to behavior that counters gendered expectations (Herzog & Oreg, 2008; Nemeth, Endicott, & Wachtler, 1976). Stereotypes that emerge via social cognitive bias can influence spontaneous judgments of legal actors (see Bodenhausen, 1988). These judgments can affect trial proceedings and the outcome of the decision-making process. Although rapid and sometimes automatic, these judgments have the ability to influence verdicts and perceptions.

The ensuing subsections describe the symbolic interaction framework and how it applies to the formation of gender roles and gender stereotypes. These psychological perspectives help explain the main effects of gender on perceptions and outcomes at trial. Where applicable, each psychological explanation is applied to the five legal actors who are the primary focus of this chapter: defendants, victims, attorneys, experts, and decision-makers. The aim of these applications is to promulgate social scientific explanations and encourage further research that examines the extralegal effects of gender on the trial process.

### ***Symbolic Interaction and the Social Construction of Gender***

Symbolic interactionism, a primarily sociological framework proposed by Mead (1929) and further developed by Blumer (1973), was designed to help social scientists interpret social interactions (see Alver & Caglar, 2015). The symbolic interaction framework proposes that human behavior is guided by the ascribed meanings given to items (i.e., objects and other people) in a person's environment (Blumer, 1973). How people interact with these items depends on the meaning these items convey. Therefore, *meaning* is of central relevance to symbolic interactionists because meaning helps determine how people perceive and react toward targets in their social worlds. The determinant relationship between meaning and behavior, however, is conceptualized as bidirectional. Just as meaning guides behavior, the framework proposes that the meaning of a given object is socially derived and modified through interpersonal interaction (Blumer, 1973). Thus, the meanings of items in the environment are often conceptualized as socially constructed: An object, an action, or an idea is only as meaningful as social actors and society at large determine it to be.

The symbolic interaction framework suggests that gender is one of these socially constructed concepts of which meaning is emergent and modified through ongoing social interaction (Lorber, 2007). Gender, like other concepts, items, and ideas,

is not inherently meaningful to symbolic interactionists. Rather, the gender differences that social scientists and legal experts observe at trial are attributable to processes of meaning-making that occur interpersonally and through interactions with society at large. Whereas the symbolic interaction framework serves as a good explanation of gender differences in court for defendants, victims, and experts due to the nature of meaning-making for these legal actors, the symbolic interaction framework is less relevant to attorneys and legal decision-makers because construal of the meaning of their actions is less prominent compared to that of other legal actors. Thus, the following sections describe the symbolic interactionist account of how the gender of defendants, victims, and experts can influence perceptions in the court room.

**Defendants and the meaning of criminal actions.** Differences in perceptions of criminal culpability could in part be due to the way in which the meaning of crimes is differentially constructed on the basis of the defendant's gender. Through socialization, people learn that men and women commit crime for different reasons (e.g., a man who hurts a child is evil, but a woman who hurts a child is ill; Wilczynski, 1997; Yamamoto & Maeder, 2017). These differences in the attributions and meaning of crime influence jurors' perceptions. Even when the type of crime and the severity of the crime are held constant, men are more likely to receive harsher verdict judgments and longer sentences compared to women (Starr, 2012; Wilczynski, 1997). Empirical examples of this differential might be attributable to the way in which defendant gender influences observers' perceptions of the meaning of alleged illegal activities. These inequities in perceptions of criminal intent can result in more lenient punishment for female defendants compared to male defendants.

**Victims and the meaning of victimhood.** The social construction of victimhood can affect the way in which male and female victims are perceived in court. Through social interaction with others and with news media, potential jurors create representations of what it means to be a victim of crime. These representations can differ depending on the victim's gender: In sex crimes that involve child victims, researchers often observe differences in mock jurors' perceived credibility and perceived responsibility of the child victim dependent on that victim's gender (Pozzulo et al., 2010). The gender effects might be explained by the sociocultural meaning of sexual contact with an older, opposite-gender perpetrator. Whereas the victimhood of female child sexual assault victims is more well recognized by mock jurors, male victims are perceived as less credible witnesses and more responsible for their victimhood. This gender difference is perhaps due to the social construction of what it means to engage in sex as a young male versus as a young female (Judson et al., 2013; Mitchell, Hirschman, & Hall, 1999): Young men "come of age" when they have sex, but young women are often encouraged to maintain their virginity. The socially constructed representation of male victimhood erroneously omits the long-term effects sex crimes can have on young men (Denov, 2004). These differences in the meaning of victimhood across gender might explain some of the differences in verdict judgments in such cases.

**Experts and the meaning of authority.** Similar to the way in which legal decision-makers harbor mental representations of what it means to be victimized, jurors also create representations of the meaning of authority that can influence their perceptions of expert witnesses and their verdicts. Jurors might trust male experts more than female experts to testify competently about complex issues relevant to litigation because representations conveyed and reinforced through culture and interpersonal interaction cast men as the prototypical authority. Male experts might be more persuasive than female experts in cases involving male-dominated industries (e.g., construction; Schuller et al., 2001) because the meaning of the expert's authority is more clearly defined in gender-congruent situations. The same is true for female experts who testify in gender-congruent cases: Their authority on case-relevant issues might be better understood and more easily recognized by legal decision-makers because of the meaning their authority conveys. Gender-based differences additionally emerge in the meaning of nonverbal behavior of expert witnesses and how these behaviors convey authority. The socially constructed meaning of eye contact, for example, is more clearly defined for men than it is for women (i.e., a man who makes eye contact is assertive and confident, whereas a woman who makes eye contact might be perceived as inappropriately confrontational). Jurors might perceive male experts who fail to make eye contact with other legal actors during trial as less credible than female experts who fail to make eye contact because the meaning of authority for women does not heavily emphasize this particular nonverbal behavior.

The socially constructed meanings of criminal activity, victimhood, and expert authority are continually modified and reinforced through social interaction. These emergent meanings produce gender roles with which people expect legal actors to comply. Gender roles and associated stereotypes provide novel psychological explanations for observed gender differences, as discussed next.

### *Gender Roles and Stereotypes*

The symbolic interaction framework describes how people and societies prescribe specific behaviors to men and women (West & Zimmerman, 1987). These behaviors, examples of which include displays of kindness on the part of women and displays of toughness on the part of men, constitute what social scientists refer to as gender roles. The conceptualization and enactment of gender roles occur through a process of socialization by which children construct and imitate idealized versions of what it means to be feminine or masculine (Adler, Kless, & Adler, 1992). The construction of gender roles continues throughout childhood and into adulthood as a person's gender role often becomes a central aspect of the self (Stryker & Serpe, 1994). Through feedback during interpersonal interactions and messages from news and entertainment media, sociocultural characteristics maintain these gender roles by encouraging men and women to act in accordance with their gender (Witt, 2000). People are especially likely to enact their gender roles

when gender is salient (Brenner et al., 2014), such as during litigation of a sexual assault case. Even when gender is not salient men and women can act in accordance with their gender roles due to their socialization. That is, men and women act as they believe men and women should act, and most people expect that others' actions will also be gender-congruent.

Whereas gender roles prescribe behavior for men and women (i.e., how men and women *should* behave), stereotypes describe beliefs about how men and women *actually* behave (Davies, Spencer, & Steele, 2005). Social cognitive scientists study expectations and stereotypes to better understand how people make quick and visceral judgments about themselves and about others to reduce the complexities of social thinking (e.g., Shah & Oppenheimer, 2008). Stereotypes describe oversimplified beliefs and schemas that are widely held and unlikely to change even in the presence of new information (Haines, Deaux, & Lofaro, 2016). They can affect peoples' own behavior (Bargh, Chen, & Burrows, 1996) or their expectations for others' behavior, and might be particularly influential in the court room when men and women deviate from expected behavior.

The enactment of gender roles is especially relevant to the way in which legal decision-makers perceive defendants, victims, attorneys, and experts. Prevailing gender roles are additionally relevant to the behavior of legal decision-makers whose gender roles might implicitly influence their interpretation of case facts and their ultimate verdicts. Legal actors who violate gender-based stereotypes face a variety of social cognitive judgments that can lead to both positive and negative outcomes at trial. These outcomes can consist of increased punitiveness or leniency for defendants, increased or decreased responsibility attributed to the victim, more favorable or unfavorable perceptions of attorneys and experts, and more or less biased judgments from legal decision-makers. The following sections describe how gender roles and gender-based stereotypes can account for some of the differential perceptions of defendants, victims, attorneys, experts, and decision-makers in the courtroom.

**Defendants and gender-congruent characteristics.** The effects of chivalry on verdicts might be understood in the context of traditional gender roles. The chivalry hypothesis (Crew, 1991; Erez, 1992) suggests that legal decision-makers show leniency toward female defendants due to a belief that women are too fragile to endure the harsh prison system. Other studies have found a more complicated relationship between chivalry and legal outcomes, suggesting that the application of chivalrous leniency toward women is selective (Herzog & Oreg, 2008; Visher, 1983). Selective chivalry occurs when legal decision-makers render more lenient verdicts to female defendants who enact traditional gender roles compared to those whose behavior is gender-incongruent (Steury & Frank, 1990). Female defendants with traditional marriages and families tend to benefit from chivalrous treatment because legal decision-makers recognize their gender roles as wives, mothers, and family nurturers (Bickle & Peterson, 1991; Corley, Cernkovich, & Giordano, 1989; Crew, 1991). By contrast, female defendants whose behavior is inconsistent with traditional gender roles—such as women who are unmarried or do not have children—receive verdict judgments similar to men (O'Neil, 1999; Steury & Frank, 1990).

Legal decision-makers, therefore, might interpret deviance from traditional female gender roles as evidence that a woman deserves harsh treatment.

The leniency effect is especially potent for women who exhibit stereotypic female characteristics (Visher, 1983). Herzog and Oreg (2008) tested the leniency effect as a function of *hostile* and *benevolent* sexism. Whereas hostile sexism refers to attitudes or behaviors that degrade women, benevolent sexism refers to subtle forms of sexism that might appear prosocial (e.g., offering special help to a woman) but originate in sexist beliefs (e.g., a belief that women are less competent than men; see Glick & Fiske, 1996). Scores on a measure of benevolent sexism were unrelated to perceptions of crime severity, but mock jurors high in hostile sexism found crimes committed by a woman to be more serious than those committed by a man (Herzog & Oreg, 2008). This effect did not occur for mock jurors who scored low on a scale of hostile sexism. These results demonstrate that women with stereotypically feminine characteristics can expect more leniency than women whose characteristics are less feminine, indicating jurors' bias in favor of gender-congruent presentation.

Compared to male defendants with criminal histories, female defendants with criminal histories are less often afforded leniency (Tillyer et al., 2015). Researchers might observe these effects because repeated unlawful behavior violates traditional female gender roles (O'Neil, 1999). The violation of gender roles has great potential to influence sentencing in the prosecution of violent crimes. For example, in the presence of emotional victim impact statements, participants reported feeling more anger toward female (compared to male) defendants (Forsterlee, Fox, Forsterlee, & Ho, 2004). Aggression toward a victim of this type is associated with males more so than females, rendering female defendants in violation of their gender roles as empathetic nurturers.

Research on stereotypes, however, shows that stereotypic (vs. non-stereotypic) perpetrators might be more likely to receive harsh verdicts. Jurors might be more willing to render a harsh verdict judgment toward a male defendant compared to a female defendant because the alleged crimes are consistent with stereotypes of male violence. This assertion is supported by research showing that defendants receive harsher punishment for stereotypic (vs. non-stereotypic) crimes (see Jones & Kaplan, 2003, for a discussion of *race-based* crime congruency). When an alleged perpetrator is non-stereotypic, jurors can more easily attribute the crime to situational motives rather than to disposition (Maeder et al., 2018). For instance, because violent crime is not typically associated with women, jurors might believe that a woman who committed an act of violence must have had a respectable motive for committing the alleged crime. This attribution of honorable motives to female defendants can result in decreased punitiveness.

**Victims and gender-congruent behavior.** Stereotypes regarding the gender of victims are rampant in the court room, especially in the context of sexual assault (see Ellison & Munro, 2009). Male and female victims of sexual assault often receive blame for their victimhood due to gender-based stereotypes about sexual intent and interest. A prevailing stereotype about men, for example, is that men are readily willing to have sex and are therefore unlikely to be the recipients of

unwanted sexual advances (see Denov, 2004; Judson et al., 2013). This stereotype can contribute to negative perceptions of male sexual assault victims, potentially leading jurors and others to question men's allegations. Stereotypes about men's desires for sex can also lead jurors to misattribute responsibility to male victims (Davies et al., 2005). Researchers might observe this effect because jurors expect males to make initial sexual advances that could lead to sexual contact, which could seem to place some of the responsibility on the male victim.

Jurors might also misattribute responsibility to female victims of sex crimes due to erroneous expectations associated with women's behavior. Victim-blaming behavior is often studied in the context of sexual assault cases that involve female victims (Davies et al., 2013; Suarez & Gadalla, 2010). For instance, stereotypes regarding women who wear specific types of clothing or makeup that are misinterpreted to convey sexual availability can influence juror perceptions of victimhood. Due to stereotyped thinking, jurors might believe that a woman who arrived at a bar or a party dressed in particular attire expected to have sex. Stereotypes regarding women's style of dress in sexual assault cases can lead jurors to render lenient verdicts against defendants, in part because jurors might perceive female victims as partially at fault (see Grubb & Turner, 2012, for a review of rape myth acceptance).

**Attorneys and gender-congruent presentation.** Jurors tend to perceive male and female attorneys differently, even when features of their presentation styles are held constant (Hahn & Clayton, 1996). Differences in perceptions of attorney presentations as a function of attorney gender might occur due to inconsistencies between attorney presentation styles and socially constructed gender roles. Potential jurors tend to prefer others who enact their gender roles according to societal expectations (e.g., Rudman & Glick, 2001). Male attorneys who convey an aggressive presentation style might be perceived as acting in congruence with their gender roles, producing more favorable ratings among mock jurors compared to male attorneys who convey a passive presentation style characterized by qualifiers and hedged statements (see Newcombe & Armkoff, 1979). On the other hand, female attorneys who convey an aggressive presentation style are comparatively less successful at arguing their cases compared to aggressive male attorneys due to inconsistencies between aggressive female attorneys' behavior and their prescribed gender roles (see Reed & Bornstein, 2018).

**Experts and gender-congruent knowledge.** Legal decision-makers might assume that male experts are more competent than female experts in their gender-congruent topic areas—and vice versa (e.g., Schuller et al., 2001). This assumption is related to gender roles that prescribe particular behavior to men and women. In turn, legal decision-makers might believe that experts of different genders possess unique, gender-specific knowledge. Expertise that conflicts with prescribed gender roles can reduce an expert's persuasiveness because jurors might have difficulty conceptualizing knowledge that seems inconsistent with traditional gender roles. Gender bias in favor of male experts in cases involving high complexity could be explained by observers' belief that men are generally more "expert" in a variety of fields compared to women (Schuller et al., 2001). Jurors might

perceive men as more persuasive experts (compared to women) in highly complex cases because lay jurors might associate the development of professional skills more strongly with men than with women. However, specific skills that are traditionally associated with women, such as family matters or issues of sex discrimination, might be gender role congruent with female expert witnesses. This belief could explain why female experts are more effective at educating jurors on gender-congruent (vs. noncongruent) topics (Carson, 2008; Swenson et al., 1984).

Stereotypes about masculine and feminine behavior influence jurors' perceptions of expert witnesses (Rudman & Glick, 2001). These stereotypes can be based on the knowledge conveyed by experts or based on the way in which experts conduct themselves behaviorally. Regarding knowledge-based stereotypes, male experts might be more persuasive than female experts regarding stereotypically male topic areas, whereas female experts might be relatively more persuasive regarding stereotypically female topic areas (Schuller et al., 2001). A more complex relationship exists between expert gender and stereotypes about expert behavior in court. Gender-based stereotypes involving expert behavior are not always detrimental to experts of either gender. For instance, the stereotypically masculine trait of assertiveness can equally influence ratings of credibility for male and female experts (Larson & Brodsky, 2014), perhaps because assertiveness is a stereotypical trait of any expert regardless of his or her gender. Jurors might perceive experts' assertiveness as evidence of their knowledge of the topic as it is applied to the case at hand regardless of behavioral stereotypes.

**Decision-makers and gender-congruent judgments.** Much jury research indicates that male jurors render harsher verdict judgments, on average, than female jurors (e.g., Haney, 2005). This relationship is especially perilous in capital cases wherein men are more likely than women to vote in favor of the death penalty (O'Neil et al., 2004) and receive death qualification due to their more favorable attitudes toward the death penalty (Lambert et al., 2016; O'Neil et al., 2004). The tendency for men to render harsher verdict judgments compared to women can be explained by jurors' enactment of culturally prescribed gender roles. For instance, men might be more likely than women to vote for harsh sentences because punitiveness and aggression are more closely associated with masculinity than femininity. In contrast, women might be more likely than men to favor rehabilitation of defendants because caregiving and nurturing are more closely associated with femininity than masculinity (see generally Applegate, Cullen, & Fisher, 2002). The enactment of gender roles helps explain why women are more likely than men to favor principles of restorative justice, which emphasize rehabilitation over punishment for wrongdoing (Daly & Stubbs, 2006).

These gender-dependent associations between jurors and their judgments are reversed in the presence of several circumstances and case characteristics. For instance, in cases that involve sexual assault or child victims, the relationship between gender and punitiveness tends to reverse: Women render harsher verdicts compared to men (e.g., Quas et al., 2002). Although seemingly contradictory to socialized masculinity and femininity, these patterns of juror judgments can also be explained by socially constructed gender roles. As compared to men, women who

enact traditional gender roles tend to perceive children as more believable and have more empathy for victims (Bottoms, 1993), in part related to women's roles as "nurturers" of children. Although punitiveness toward defendants is seemingly contradictory to women's gender roles, women might seek justice for victims whom jurors perceive as particularly defenseless. The effect of juror gender on verdict decisions in sexual assault cases is partially explained by female jurors' ability to empathize with victims (Haegerich & Bottoms, 2000; Plumm & Terrance, 2009). The enactment of gender roles provides a psychological explanation for women's punitive judgments in the presence of specific case characteristics.

Judges, like jurors, are also influenced by the enactment of their socially constructed gender roles. Socialized gender roles can explain some counterintuitive findings related to judges' rulings in cases in which gender is salient. It might be surprising that male judges, compared to female judges, are significantly more likely to rule in favor of the plaintiff in gender discrimination cases (Terpstra, Honorée, & Fridel, 2013). A layperson might assume that female judges would be more likely than male judges to rule in favor of the plaintiff because gender discrimination tends to affect female professionals at higher rates than male professionals (Nieva & Gutek, 1980). One way to explain these findings is in the context of gender role socialization, which can bias male judges in favor of protecting female plaintiffs in gender discrimination cases. Female judges, in contrast, do not enact the same socially prescribed gender roles that encourage men to protect women. The effect of judge gender on rulings in sex discrimination cases, therefore, is elucidated in the context of gender roles.

Prevailing gender roles consist of a set of appropriate behaviors for men and women (West & Zimmerman, 1987). These gender roles are reinforced through interactions with others and with society at large via media and culture. They can create expectations and stereotypes for how men and women should think, feel, and act in the court room. Legal actors who are socialized to practice and expect traditional gender roles might experience surprise or discomfort when others break from these expectations or violate these stereotypes. The following section describes the formation of gendered expectations and stereotypes and how these preconceived notions of gender-appropriate behavior can influence perceptions and outcomes at trial.

People can also have stereotypes for *their own* behavior (Bargh et al., 1996). Findings that verdicts rendered by women tend to be more lenient than those rendered by men in the context of most criminal cases (Haney, 2005; but see Myers et al., 2002) can be elucidated in the context of stereotypes jurors have for their own behavior on the basis of their gender. Stereotypes for men often include aggressiveness and protectiveness, which influence their behavior in court. Male jurors might render harsher verdicts because aggression toward norm-violators and protection for victims are gender-based stereotypes that men attempt to enact both implicitly and explicitly (Bickle & Peterson, 1991). Traits like aggressiveness and values like protectiveness that help define men's expectations for their own behavior are contrasted with women's gender-based values of kindness and empathy. Female jurors might be more likely to render lenient verdict judgments



compared to men due to the stereotype that acts of aggression, such as expressing favorable attitudes toward capital punishment, are not “womanly.”

## **Directions for Future Research**

Although research regarding the effects of gender at trial has revealed important findings and existing psychological explanations provide valuable insight into how these processes affect legal actors, there is still much to be learned. These topics are especially relevant to today’s world, as research informs a more nuanced understanding of gender that will continue to influence trial. Future research should examine changing perceptions of gender in the legal system, study the effectiveness of updated judge’s instructions to reduce gender bias, identify additional moderators and higher order interactions, and adopt psychological theory to explain mixed effects and inform new hypotheses.

### ***Perceptions of Gender in the Legal System Continue to Change***

The way that people think about gender has changed rapidly in recent years. For example, by the year 2000, females comprised 28.8% of all practicing attorneys (U. S. Census Bureau, 2000). That number rose to 35% of practicing attorneys in 2017 (American Bar Association, 2018). Similarly, the percentage of female state court judges has risen from 25 to 33% from 2008 to 2018 (The American Bench, 2018). As such, future research should attempt to replicate gender effects discovered several decades ago because the way legal actors think about gender is arguably changing quite quickly. The increase in the number of women legal professionals could be changing the nature of gender roles and stereotypes in this context.

Research should investigate the effects of gender in the courtroom beyond the male/female binary. Decision-makers’ perceptions of transgender or gender nonbinary legal actors remain generally unstudied. As transgenderism becomes more widely recognized and accepted (Clark & Jackson, 2018), gender nonbinary defendants and decision-makers will exert increased influence on perceptions and outcomes at trial. Plumm and Leighton (this volume) note that transgender (vs. cisgender) people are at a higher risk for being victims of gender-motivated crime, increasing the likelihood that jurors must evaluate transgender victims’ credibility during trial. Jurors’ perceptions of gender nonbinary or nonconforming victims, attorneys, and expert witnesses will become increasingly pertinent as our collective understanding of gender continues to evolve.

Investigations of differences in legal outcomes for gender nonconforming (vs. cisgender) defendants and victims are also a relevant avenue for future research. For

instance, it is currently unclear whether female leniency effects (Cox & Kopkin, 2016; Sommer et al., 2015; Starr, 2012) hold for male-to-female transgender defendants who are women both legally and psychologically. Alternatively, male-to-female defendants could receive *harsher* judgments due to their nonadherence to traditional gender roles. Similarly, defendants, victims, or attorneys who prefer gender-neutral pronouns or have an appearance that is not clearly feminine or masculine might receive harsher judgment because they are not “doing gender” in the socially prescribed manner. Future research should explore these topics.

### ***Updated Judge’s Instructions Might Reduce Gender Bias***

A potential avenue for future research is the examination of the effect of judge instructions to a jury to ignore victim gender in rendering a verdict judgment. Inadmissible evidence often influences juror judgments regardless of judge’s instructions to ignore such evidence (for meta-analysis, see Steblay, Hosch, Culhane, & McWethy, 2006). An empirical examination of the effectiveness of judge’s instructions related to gender could reveal new ways to write more effective instructions. If people who are made aware of their controlled and automatic biases are better able to correct for them (e.g., Pronin & Kugler, 2006), education on gender-related biases for judges and jurors might reduce differences in perceptions of and outcomes for legal actors who do not accommodate traditional gender roles (i.e., gender nonconforming victims or defendants). Updated and comprehensive jury instructions could reduce gender bias—but this hypothesis remains largely untested.

### ***Additional Moderators and Higher Order Interactions Can Inform Theory and Practice***

Sparse research has investigated variables that moderate gender effects, especially for judges. Research on moderators of this relationship among jurors can inform these investigations. Empathy, which differentially affects jurors’ decisions on the basis of their gender (e.g., Myers et al., 2002), might also moderate this effect among judges; as might superfluous characteristics of defendants and victims such as physical attractiveness (Vrij & Firmin, 2001) or status as a parent (Supriya et al., 2007). A judge’s propensity to morally disengage might influence his or her judicial decisions. For instance, a higher propensity to morally disengage might strengthen gender effects if judges are able to justify unequal treatment of defendants on the basis of their gender (for a measure of moral disengagement in a legal context, see Kirshenbaum, Miller, Cramer, Neal, & Wilsey, 2018).

More research is necessary to examine higher order gender interactions between various legal actors. All five of the legal actors discussed in this chapter are often present during the course of one trial, yet most research has examined only two-way gender interactions (e.g., juror gender x attorney gender). These two-way interactions might vary depending on third, fourth, or fifth factors. For instance, the symbolic interaction framework predicts that men and women jurors might differentially construct the meaning of assault depending on the gender of the victim and that of the perpetrator. Although effects of these moderating variables and higher order interactions can be inferred, empirical examination should test this speculation.

### ***Future Research Should Be Theory-Based***

Much of the research reviewed herein found mixed effects of gender. Research should continue to examine the causes of these mixed findings in an attempt to organize findings into a comprehensive framework that explains and predicts gender-related perceptions and outcomes at trial. For instance, researchers might investigate variables that predict the circumstances in which female judges will be *more* or *less* favorable toward female plaintiffs in women's issues cases, and why these relationships might exist. Mixed findings in the present data could be due to individual differences among samples that currently remain untested.

Future studies should adopt specific theories as their bases. Much of the research presented above tests hypotheses derived from common sense and past findings. Future research can more specifically test the theories discussed above. For instance, we speculated above that women who are married with children get more lenient sentences than women who are single or childless because they fit the socially prescribed gender roles. This could lead jurors to believe that the woman has stereotypical feminine characteristics of being a caregiver and nurturer—someone undeserving of the harsh punishment of prison. Studies have supported this chivalry hypothesis that women receive more lenient verdicts compared to men (Gavin & Scott, 2016; Meaux et al., 2018; Strub & McKimmie, 2016). Yet, this assumption about the reasons for chivalry (i.e., jurors' beliefs and stereotypes) is untested. Researchers should test specific hypotheses about jurors' beliefs and stereotypes derived from an understanding of social cognition. These investigations can reveal mediators of the relationships between gender and verdict.

Similarly, we speculated above that jurors might have expectations and stereotypes for their own behavior. As part of their socially prescribed gender roles, men might feel the need to be more aggressive whereas women might feel the need to be more nurturing. Indeed, research has identified that men often give harsher verdicts than women (with certain caveats such as case type; see Dunlap et al., 2015; Osborn et al., 2018). As such, men and women might believe they should give verdicts according to these socially prescribed roles. However, research has not specifically identified whether this thought process actually occurs either implicitly or

explicitly. Questions could measure such explicit beliefs, and tools such as the Implicit Associations Test (Greenwald, McGhee, & Schwartz, 1998) could test these implicit beliefs. Such individual differences could be mediators. Alternatively, beliefs in the importance of “proper gender roles” might moderate some of the gender effects described above. Based on empirical work related to implicit beliefs, it could be hypothesized that jurors who believe it is important (vs. unimportant) that men and women play the roles and have the characteristics assigned by society will perceive cases more strictly in terms of gender. This individual difference could produce a stronger effect of defendant gender on verdict judgments. This and other moderators should be explored.

Future research should draw testable hypotheses from symbolic interactionism and a social psychological understanding of gender roles and stereotypes to address the effects of gender-variant legal actors on trial perceptions and outcomes. For instance, if people are more likely to act in accordance with their prescribed gender roles when gender is made salient (Brenner et al., 2014), it could be hypothesized that the presence of a gender nonconforming defendant or victim in the courtroom could exacerbate juror gender effects. It is also possible that the mere presence of a gender nonconforming defendant could elicit unfavorable evaluations from both men and women who themselves enact traditional gender roles, thus perceiving gender nonconformity as deviant or a characteristic of one’s outgroup. Investigations of these matters will continue to inform scientific understanding and legal policy and practice. In sum, specific questions and methods—drawn from the theories discussed above—would determine whether our speculation about the causes of gender effects are accurate.

## Conclusion

Research has produced evidence of gender effects during litigation both experimentally (e.g., Mazzella & Feingold, 1994) and in analyses of actual legal judgments (e.g., Starr, 2012). This chapter has synthesized the myriad ways in which the gender of five legal actors can relate to perceptions and outcomes at trial. The effects of gender are often mixed but can be explained from various psychological approaches including symbolic interactionism and meaning-making (Alver & Caglar, 2015; Blumer, 1973), gender role enactment (Davies et al., 2005; West & Zimmerman, 1987), and stereotypes (Haines et al., 2016). Each of these psychological perspectives offers a unique social psychological perspective on the origins of observed gender effects during litigation. Future studies should more directly apply these theories to determine whether they can explain the effects described above. A comprehensive understanding of gender at trial can inform both research and practice relevant to psychology and the law.

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