

GENDER OF AN EXPERT WITNESS AND THE JURY VERDICT

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Can jurors separate their perception of the ideal gender for a profession from the testimony of an expert witness representing that profession? Mock jurors read about a civil case involving an automobile accident. Plaintiff's evidence came from an automotive engineer depicted as either male or female. Individual juror response measures and jury responses indicated no significant effect of gender on the effectiveness of the expert witness. Results are discussed in terms of similar research and implications for civil trials.

Articles discussing the admissibility of expert witness testimony have appeared more frequently as the courts and professionals grapple with the standard to be used for admitting expert testimony (Blau, 1998; Landsman, 1995; Ogloff, 1999; for example). Unlike evidentiary witnesses called to testify at a trial, the expert witness can not only testify to specific facts but also express an opinion about those facts.

Because the influence of an expert can be extremely important to the outcome of a legal proceeding, it is reasonable to ask what variables modulate the impact of the testimony on the jury's decision. Besides variables such as credibility, credentials, manner of presentation, and so forth (Bank & Poythress, 1982), the gender of an expert witness has been implicated as a possible modulator of the effectiveness of testimony. Schuller and Cripps (1998) studied the effect of expert witness gender on a mock juror's individual verdict in a homicide trial in which the battered women syndrome was used as a defense. Results indicated that a female expert witness was more effective in presenting evidence for the battered women syndrome than a male expert. Swenson, Nash, and Roos (1984) used a simulated child custody dispute to examine the influence of the expert's gender. In this investigation, the expert was portrayed as a male or female neighbor, psychiatrist, psychologist, or social worker. Swenson et al. reported a small but statistically significant difference with the female expert being perceived as more likely to provide an expert opinion.

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Memon and Shuman (1998) examined the influence of the gender and race of an expert witness in a medical malpractice case and reported no difference because of the gender of the expert. This result is similar to that reported by Vondergeest, Honts, and Devitt (1993) who varied the gender of an expert testifying as a polygraph examiner and reported no significant differences in the verdicts of how the expert was evaluated by the mock jurors.

Based upon these investigations, what can be said about the influence of an expert's gender on the outcome of trials? In the two studies where a significant difference was reported in favor of the female expert being more persuasive (Schuller & Cripps, 1998, Swenson et al., 1984), the situation before the court was one where a female might be perceived as having more expertise than a male. If this is the case, then it might be reasoned that jurors evaluate the evidence of an expert not from an absolute standpoint but rather in terms of the context of the case. Thus an expert's efficacy might be modulated by the preexisting expectations of the jurors hearing the evidence. In other words, if the expert witness is perceived to have some special insight into the area about which they are testifying (e.g., a female testifying about the battered woman syndrome), then the testimony is attributed more weight than the testimony of an expert without such insight.

Further support for this position comes from a literature review, Shuman, Champagne, and Whitaker (1996) concluded that the "typical juror forms impressions of experts stereotypically, based on the occupation of the experts, and superficially, based on the personal characteristics of the experts" (p. 382). If the occupation of an expert is an important determinant of the efficacy of expert testimony, what might be a juror's impression of an expert's testimony, if an expert's occupation is incongruent with a juror's expectation of the gender of the expert's occupation? That is, if a juror's interpretation of the expert's testimony is not absolute but rather modulated by the context (type of case being considered, etc.) then an expert having an occupation that is not congruent with the juror's expectation for that occupation may not be as effective in establishing his or her case as an expert having an occupation that is congruent with the juror's expectation.

The present investigation was designed to test this hypothesis. Specifically, a description of a civil trial was evaluated by mock jurors where a plaintiff was seeking both compensatory and punitive damages against an automobile maker. Besides the testimony of the plaintiff, an automotive engineer who was qualified as an expert witness presented the majority of the evidence. Couch and Sigler (2001) had previously shown that subjects perceived an automobile engineer as a male specific occupation. If mock jurors' evaluation of the testimony from an expert is modulated by the gender congruity of an expert and his or her occupation, then it would be predicted that the testimony of a female automotive engineer would not be as effective in establishing a case for the plaintiff as the testimony of a male automotive engineer.

Method

Participants

Two hundred fifteen undergraduate students participated in the study. Students were recruited from Introductory Psychology classes and received credit for a subject pool requirement as a result of their participation. There were 66 males and 147 females with two subjects not providing their gender. All procedures were reviewed and approved by the University Committee on the Use of Human Subjects.

Materials

Participants were given a summary of a civil trial. The trial described the plaintiff as a young woman who was injured in a car accident. The injuries were described as facial lacerations that required several hospital stays and left the plaintiff's face permanently scarred. The plaintiff worked as a bank employee who decided to leave her job because of self-consciousness about her facial appearance. The defendant in the suit was the automobile manufacturer. It was claimed by the plaintiff that a defective clamp on her seat belt was a contributing factor to her injuries. Testimony of an expert witness was offered in collaboration with the plaintiff's claim. The attorney for the automotive manufacturer presented evidence that the seat belt clamp was not defective and that the plaintiff's physical condition and the road conditions at the time of the accident were at fault.

In addition to the trial scenario, participants read a set of judicial instructions that were modeled after pattern instructions used in the Commonwealth of Virginia.

Prior to the investigation, a practicing attorney specializing in personal injury cases reviewed the trial scenario and the judicial instructions. Based upon his extensive feedback (Feldman, personal communication, November 11, 1997), the scenario and judicial instructions were modified to be more consistent with current trial practice.

Procedure

Upon arrival for the study, each participant was given an informed consent document. After giving consent the participants read the scenario. Once all subjects were finished reading, the scenario was collected and subjects were given a copy of the judicial instructions. After all subjects had completed reading the judicial instructions, each subject was given a pre-deliberation response sheet containing 13 multiple choice questions about relevant aspects of the scenario. These multiple-choice questions served as a manipulation check. Next were questions concerning the subject's decision in the case and, if they decided in favor of the plaintiff, what amount of compensatory and punitive damages they would award the plaintiff. In addition, the subjects were asked to assign the amount of fault attributable to the plaintiff and the automobile manufacturer and how much weight they gave to the evidence presented by the expert witness. Finally, subjects were asked to indicate their gender.

After collecting the pre-deliberation verdict sheets, subjects were randomly assigned to juries of 6 subjects each. Those subjects not assigned to a jury, because the total number of subjects was not divisible by six, were thanked for their participation and excused. Each jury was assigned a room and asked to deliberate until they reached a verdict. When a verdict was reached, each jury completed a jury response form indicating their verdict. If the verdict was in favor of the plaintiff, the jury was to decide how much compensation would be awarded for medical expenses, pain and suffering, loss of wages, and compensation for loss of enjoyment of life. Next, the jury was to indicate the amount of fault they felt should be attributable to the plaintiff and the automotive manufacturer. Last, the jury was to come to a consensus as to the amount of weight given to the testimony of the expert witness in deciding the case.

Results

Manipulation Check

Participants were correct 85.5% of the time for the 13 manipulation check questions. There were no statistically significant chi-squared values when the multiple-choice options for each question and the gender of the expert witness were used in the analysis. Likewise, there were no significant differences, as evaluated by independent *t* tests, between male and female subjects on the manipulation check questions.

Pre-deliberation Measures

Prior to being assigned to a jury, each subject provided his or her verdict for the case, the degree of fault attributable to the plaintiff and the defendant, the amount of compensatory and punitive damages they would award to the plaintiff if they had found in her favor, and the weight given to the testimony of the expert witness.

In terms of pre-deliberation verdict, Table 1 indicates the frequency of type of verdict and the gender of the expert witness. Of the subjects who read the male expert witness scenario, 78 (62.9%) found in favor of the plaintiff and 46 (37.6%) found in favor of the defendant. In this case significantly more verdicts were returned in favor of the plaintiff than the defendant, $\chi^2(1) = 8.26$, $p = .004$. For subjects reading the scenario with the female expert witness, 64 (70.3%) verdicts were returned in favor of the plaintiff while 27 (29.7%) were returned in favor of the defendant. As with the male expert witness condition, there were significantly more verdicts in favor of the plaintiff than for the defendant, $\chi^2(1) = 15.04$, $p < .001$.

Concerning the effect of the gender of the expert witness on the verdict, a two-variable chi-square test of independence was performed using the data in Table 1. The result of the statistical analysis was a nonsignificant chi-square value, $\chi^2(1) = 1.29$, $p = .26$, indicating that the verdict rendered by the subject is statistically independent of the gender of the expert witness.

Independent *t* tests comparing juror's opinions as to the amount of

Table 1

Frequency of Pre-deliberation Verdicts and Gender of Expert Witness

Gender of Expert Witness	Verdict	
	For Plaintiff	For Defendant
Male	78 (54.9%)	46 (63.0%)
Female	64 (45.1%)	27 (37.0%)

damages, both compensatory and punitive, amount of fault to ascribe to the plaintiff and defendant, and the amount of weight given to the testimony of the expert indicated that only for the amount of compensatory damages to be awarded was there a significant difference, $t(197) = -2.35$, $p = .02$. In this case, those jurors who read the scenario with a female expert awarded more compensatory damages than did jurors from the male expert witness condition,

In terms of the gender of the subject, there were no significant effects on any of the pre-deliberation measures.

Jury Results

Thirty 6-person juries deliberated to a final verdict. Seventeen juries had read the male expert witness scenario and 13 juries had read the female expert witness scenario. As shown in Table 2, 26 juries found in favor of the plaintiff with the remaining 4 juries finding for the defendant. For all juries, a verdict was reached in an average of 11.5 min with a standard deviation of 6.45 min.

Table 2

Frequency of Jury Verdicts and Gender of Expert Witness

Gender of Expert Witness	Verdict	
	For Plaintiff	For Defendant
Male	16 (61.5%)	1 (25.0%)
Female	10 (38.5%)	3 (75.0%)

In terms of the influence of the gender of the expert witness on the jury verdict, a chi-square test of independence indicated that the verdict and gender of the expert are independent, $\chi^2(1) = 1.89$, $p = .17$. Thus the gender of the expert did not significantly influence the jury verdict.

Independent t tests using data from the other response measures (amount awarded for medical expenses, amount awarded for pain and suffering, amount awarded for loss of wages, percentage of fault attributable to defendant, percentage of fault attributable to plaintiff, weight given to expert testimony, and time to deliberate) indicated no differences between the juries who had read the scenario with the male expert as compared to juries who had read the scenario with the female expert.

Discussion

Based upon previous research it was hypothesized that a juror's evaluation of an expert witness's testimony would be influenced by the congruency of the expert's professional affiliation and the expert's gender. That is, when the expert's profession is incongruent with the juror's expectancy concerning the expert's profession, it was hypothesized that the expert's testimony would be undervalued and not as effective in determining the verdict. In the case of the present experiment, where a female expert witness was portrayed as an automotive engineer, it was predicted that her testimony would not be as effective as that of a male automotive engineer in effecting an outcome favorable to the plaintiff for whom the expert testified. The results did not support this hypothesis. That is, there were no differences due to the gender of the expert witness in either pre-deliberation verdict or jury verdict. The only statistically significant difference was in terms of the amount of compensatory damages awarded with jurors exposed to the female expert awarding a larger amount of damages than did jurors reading the male expert witness scenario.

How can the present results be reconciled with the results of Schuller and Cripps (1998) and Swenson et al. (1984) showing a significant difference in favor of the female expert witness. Perhaps the difference is in terms of the trial scenario. That is, for Schuller and Cripps and for Swenson et al., the expert was testifying in a case where a female might be considered as having more expertise than a male. If this were the case, then for the present investigation it would have to be reasoned that the mock jurors viewed the female and male expert as equal in terms of their expertise as it pertains to automotive issues. This explanation would call into question, at least as it relates to the present case, the influence of an incongruity between the perceived gender specificity of an expert's profession and juror's evaluation of the expert's testimony. Were this result to hold up in future experimental studies it would mean that jurors are able to evaluate the testimony of an expert witness separate from any psychological incongruity they might feel concerning the expert as a professional. This, of course, would be in the best interests of our system of justice.

Another possible explanation of the present result is that college students reading about an automotive accident resulting in disfiguring facial injuries to a young woman would be predisposed to find in favor of the plaintiff in the civil action. To test this explanation would call for other investigations where the facts of the scenario are systematically varied. That is, would the present results be replicated if the plaintiff had been a male? Or a scenario where the injury was not disfiguring? Answers to these questions await further investigation.

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