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Sex and Race in the Courtroom: Shifting Gender-Role Attitudes in a Changing World

Cameron D. Lippard, J. Scott Carter, Mamadi Corra & Shannon K. Carter

In any social setting, including the courtroom, being a woman or man implies a certain fundamental belief about the acceptability of changing roles for women in U.S. society. We might expect women to be the most understanding and least judgmental of other women who take on new roles such as working outside the home, whereas we might expect men to be less understanding and more judgmental. When race and gender are considered together, however, beliefs and attitudes about the roles of women become a great deal more complicated. How do Black men versus White men respond to changing roles of women in our society? Do Black and White women have different beliefs about women's increased inclusion in the workforce or other areas of society? How do Black and White men compare to Black and White women on issues of gender?

Social scientists argue that due to unique histories and experiences, race and gender work together to create exclusive social categories of people who have different views of society and the world. These different worldviews create different opinions toward various topics, including the changing roles of women (Collins, 2000; Dugger, 1988; Hunter and Sellers, 1998; Kane, 1992). In referring to Black women, Dugger (1988: 425) argues that "racism and sexism should be viewed as combining in such a way that they create a distinct social location rather than an additive form of 'double disadvantage.'" What this means is that we cannot simply "add up" race and gender oppression and conclude that black women are the most disadvantaged in society; rather we need to consider the ways in which race and gender (along with other important social statuses such as socioeconomic status, age, etc.) combine to create distinct social positions in society. These distinct positions provide individuals with different social experiences that shape their attitudes, opinions and world views in different ways.

It is also important to note that life experiences are impacted by social context. Considering it has been several decades since the beginnings of the civil rights movement, life experiences of all groups, including White and Black men and women, have drastically changed in the United States (Kane, 2000). Several factors, including changes in the economy, more women of all races entering college, the workforce, as well as shifts in family structure, have been linked to changing beliefs and attitudes about the appropriate roles of women in our society (Brooks and Bolzendahl, 2003; Twenge, 1997).

This article has two primary goals: 1) to review recent research (Carter, Corra and Carter, 2009) on the interactive effects of race and gender on gender-role attitudes and, 2) to point to findings that might be useful to those in the legal profession. More specifically, we present our research findings on the change in gender-role attitudes of White and Black males and females over a four-decade period. We also discuss possible causes of group differences and reasons for shifts across time. Finally, we discuss the implications of shifting gender-role attitudes by race and gender for the legal profession (attorney-client relations, jury selection, etc.).

The Effect of Race and Gender on Changing Gender-Role Attitudes

Existing research supports the idea that Americans' views of women's roles in various social institutions (such as the workforce, education and politics) have become more egalitarian over time (Blee and Tickamyer, 1995; Bolzendahl and Myers, 2004; Brewster and Padavic, 2000; Chrelin and Walters, 1981; Mason and Lu, 1988; Peek, Lowe, and Williams, 1991; Twenge, 1997; Wilkie, 1993). For example, Chrelin and Walters (1981) find no real attitudinal difference between men and women toward women seeking employment and becoming President in the 1970s. In more recent data, findings show more liberal shifts for men and women in their attitudes toward women entering the work force (Blee and Tickamyer, 1995; Ciabattari, 2001; Twenge, 1997).

There are many possible explanations for this liberal shift. Some researchers pose that this shift in attitudes has followed a shift in "gender expectations about family roles" (Wilkie, 1993:261). Certainly, the United States has witnessed a greater number of dual earner and female-headed families; thus changes in attitudes about the appropriate roles of women may have been born out of necessity. Also, within married households, women and men are expected to take on portions of the household duties because they both work. Moreover, there has been an increasing expectation for women to contribute financially to the family. Researchers have also noted a direct association between gender equality in the workforce and gender equality at home. Others have argued that the liberal shift in gender-role attitudes is not a product of ideological shifts, but due to cohort replacement. That is, older more traditional men and women are being replaced by younger men and women who are more liberal and egalitarian (Brewster and Padovic, 2000; Brooks and Bolzendahl, 2003; Mason and Lu, 1988; Seligman, 1999).

When race and/or ethnicity are considered as possible factors shaping attitudes, it seems likely that shifts in gender-role attitudes will also differ by race and/or ethnic groups. Some researchers argue that race is likely to preempt gender in attitudinal shifts in traditional gender-roles. That is, Black men and women's experience with discrimination and inequality in U.S. society should make them more open to egalitarian gender-role attitudes than their White counterparts (Bolzendahl and Myers, 2004; Kane, 1992). Indeed, Black women are more likely to work outside the home full time (41% of Black women compared to 36% of White women) and are more likely to be head of their households (Farley, 2005). Young Black women from the age of 15 to 19 have higher birth rates than their White counterparts (71.4 and 22.9 per 1,000, respectively). Indeed, Dugger (1988: 426) notes that "[t]wo systems of social relations, that of production and that of reproduction, are primary in the formation of gender-role attitudes and identity [of Black and White women]." Women highly invested in reproduction (i.e., White women) are less likely to participate in the workforce and less likely to see or question social inequality. Moreover, women with greater investment in production (i.e., Black women) are more likely to participate in the workforce and consequently witness or experience social injustices.

With regard to men, the effect of their social location or race is not so clear (Blee and Tickamyer, 1995; Hunter and Sellers, 1998). While life experiences of Black and White males vary (Connell, 2005), the differences may not necessarily translate into distinct gender-role attitudes. Past research posits that Black men may hold less traditional gender-role attitudes because of their sensitivity to oppression in general and may empathize with women more because they develop close relations with them while being raised by single mothers (Kane 1992). Collins (2000) further states that interdependence of Black men and women in the workforce may create greater egalitarian gender-role attitudes than their White counterparts.

Our Research

To conduct research on how the intersections of race and gender affect gender-role attitudes over time, we used data collected by the National Opinion Research Center's (NORC) General Social Survey (GSS), a nationally representative survey of Americans conducted since 1972. The survey includes a battery of attitudinal measures covering abortion, gun control, the death penalty, immigration concerns, and gender and racial attitudes. This survey has been very useful because researchers can compare many of the demographic and attitudinal measures over decades to measure the amount of change and even the impact of American social movements.

We examined change in gender-role attitudes from 1974 to 2006 for White and Black males and females. We pooled the data into decades (1970s, 1980s, 1990s, and 2000s) and created measures that assessed participants' views of, 1) women's roles in politics and, 2) women's place in the home and the impact of women working on children. Several survey questions were used to create two composite index scores that would serve as dependent variables for this research and the views mentioned above. The first composite index, focusing on views of women in politics, used three questions. For example, one question was, "If your party nominated a woman for President, would you vote for her if she were qualified for the job?" The second composite index focusing on women's roles at home and work also used three questions from the GSS database. For instance, one question asked for agreement or disagreement with the statement, "A working mother can establish just as warm and secure a relationship with her children as a mother who does not work." Importantly, however, the politics questions were asked from the early 1970s to the late 1990s by NORC. The questions regarding women entering the workforce and its impact on children were asked from the 1980s to 2006.

Using statistical regression analyses, we included the respondents' reported sex and race as our primary independent variables. From that, we created four social categories, Black women, Black men, White women, and White men, to examine whether the interaction of sex and race mattered in predicting changing gender-role attitudes. Very few respondents in the GSS data reported another race other than White or Black, so we excluded them from the analysis. Regression analysis allows us to control for other confounding variables that may affect our dependent variable (gender-role attitudes), including marital status, age, income, education, place of residency, and religious fundamentalism. Finally, using separate regression models, we compared White and Black males and females across a three-decade period.

The Interactive Impact of Race and Gender

In general, we find that just using race or gender cannot fully explain the shifting views respondents have about women's roles since the early 1970s. It is the combination of the two that yields the most reliable findings. First, and supportive of past research, we find that overall Whites and males exhibit more traditional gender-role attitudes than Blacks and females. When race and gender are considered together, the joint effect on our dependent measure was more complicated. Overall, and the most consistent result, we find Black women exhibit the most liberal views toward the changing roles of women in politics and in the home and in the workplace as compared with White females, White males, and Black males. Looking at respondents' particular views of women's roles in politics, Black and White males are the most traditional and maintain quite similar attitudes. That is, while Black and White males maintain similar traditional beliefs about women entering politics, White females fall somewhat between White/Black males and Black females. While they report more supportive views toward women entering politics than White and Black men, White women express more traditional views than Black women.

With respect to women leaving the home and entering the workforce, White males and Black males continue to be the most traditional; however, Black males exhibit more liberal attitudes than their White male counterparts. White women, again, tend to be more traditional than Black females but more liberal than Black and White males. Consequently, the important finding is that just focusing on the gender or race of the respondent does not completely explain the differences in opinion about the changing roles for women in our society. Instead, the joint impact of the two provides a more thorough understanding.



Trends over Time

The purpose of the trend analysis is to determine whether the gap that separates White males and females and Black males from Black females is lessening significantly over time. By examining the change in attitudes since the 1970s, we find that each of the social groups is slowly growing more liberal over time. However, the shifts are much more noteworthy for some groups than others, and depend on the specific attitudes measured.

White Males Maintain Traditional Attitudes Toward Women Entering Politics

Compared to Black females, we find most notably that Black men and White women are becoming more liberal toward women entering politics over the three-decade period. By the 1990s, the absolute difference between Black females and these two groups appears to be disappearing. However, the difference between Black females and White males appears to be remaining stable, if not growing more distinct. Through the 1990s, White males report increasingly stronger attitudes toward women entering politics, which suggests that White males continue to be more traditional – a trend that appears to be holding over time, at least with respect to women in politics.

All are Becoming More Liberal Toward Women Entering the Workforce

Here, the differences between Black females and all of the other groups, including White males, appear to be diminishing over the three decade period. However, the shift does not appear to be as significant as those mentioned above. Thus, not enough evidence is available to support a growing convergence of the groups with Black females. Black females continue to hold the most liberal views while White and Black men appear to hold the most traditional views toward women moving into the workforce which appears to be holding into the current decade.

While there may be several ways to interpret our findings, we caution the reader from interpreting our findings that being a woman makes one more liberal in their views of gender-roles in contemporary U.S. society. We also see that being White or Black does not necessarily explain the trends. Certainly, being Black or being a woman does make one more prone to support nontraditional gender roles for women because both of these groups have dealt with the social restrictions and stigma assigned to these two identities. In this research, it appears that the more liberal attitudes expressed by Black males may be due to an "investment in gender inequality as providing some compensation for... racial inequality," as Kane (2000:426) noted. In addition, the differences between Black and White women's attitudes could be due to historical situations in which Black women entered the workforce in large numbers much earlier than White women. Thus, the recovery we find in White women's views of gender roles may be due to their more recent entry in the workforce in comparison to Black women who have already been in the workforce. Interestingly, though, while White men's attitudes have become less traditional, they continue to exhibit more conservative views than the other groups. Their more conservative views may result from their positions of greater privilege in the workplace and politics compared to the other groups.

Implications and Applications

It is well established in the social science literature that the intersection of race and gender impacts not only how members of different groups see and evaluate the social world, but also how they are seen and evaluated by other members of society. This body of literature emphasizes that it is important to look at the specific social locations that emerge from the intersections of multiple social categories rather than looking at just one factor, such as gender or race. As eloquently explained by Patricia Hill Collins (2000), who has examined the strife that Black women have faced in America, one concept or factor cannot accurately be used to predict any attitude or belief, or the amount of discrimination or oppression one faces in society. As Collins finds, Black women do face more oppression and discrimination compared to White women. However, Black women often do better in obtaining college degrees and jobs compared to Black men (e.g., Browne and Misra, 2003; Burn and Kao 2008). Thus, there must be more to the issue of predicting attitudes, beliefs, experiences, or even trial outcomes because we cannot determine a single person's worth or rank in American society based on one variable or social identity, but by the interlocking of several social variables. We also must consider that the possibilities of advantage or disadvantage rely on context, in which time and place matter. Thus, our research, as well as that by Collins and others supports the idea that we must consider a number of social and contextual factors in any given social situation to explain any issue we come across in human relations – be it on the street or in the courtroom.

As an example, former Secretary of State Condoleezza Rice did well as an African American woman. However, she came from an affluent background and knew the right people who helped her overcome obstacles based on her race and gender. It also helped that times have changed – women and Blacks can now hold public office. However, Rice is the exception, not the rule. As Collins points out in her discussions of oppression, African American women face a "matrix of domination" (or matrix of power) in which race, gender, and social class heavily determine their fate in America. Again, Condoleezza Rice was able to overcome the oppression associated with being an African American woman but she still had to display a feminine persona. She is also a conservative Black woman, which does not fit with the typical American stereotype of Black women. Thus, her race, class, gender and political ideologies combined in such a way to provide both unique obstacles and unique opportunities.

Of course, opportunities, obstacles, experiences and attitudes differ based on the person or group in question. We should consider other social factors that may be involved in this matrix – including age, sexual orientation, religious affiliation, citizenship status, etc. – to determine shifts in attitudes, beliefs, privileges or oppressions. Collins also instructs us to consider the circumstances of the moment in which things either go right or wrong for a group or person. For example, Blacks are more likely than Whites to get pulled over by police while driving (Tomaskovi-Dewey, Mason and Zingraff, 2004). In this situation, being White is an advantage for avoiding racial profiling or “driving while Black.” But, research also points out that racial profiling is not the only culprit in creating this trend, but also the social class stereotypes associated with certain makes and models of cars, the race of the police officer, as well as whether there is a heavier police presence in minority or majority areas. Therefore, this body of theory and research makes us consider the multiple factors involved in explaining the outcomes of any situation at hand.

Applications: What does this all mean for me?

We see four ways in particular that legal professionals can use our research.

(1) Assessing Clients, Concerns, and Guiding Interactions.

First and foremost, our research can be useful in guiding interactions with clients, assessing clients’ worldviews, and considering how clients will be viewed by others. Obtaining a full background description of your client will give you more insight into how to better prepare your case, as well as understand your client’s concerns and attitudes. This may also build a level of trust between you and the client because it shows you are interested in their circumstances for not only the case at hand but their overall well-being. In other words, really knowing your clients shows sympathy and may allow the client to confide in you information necessary to the case. Recognizing your client’s position in society, and the impact that social position has on individuals’ life experiences and worldviews, may assist you in understanding your clients’ behaviors, goals and desires. This understanding may help you persuade a jury to see the world through your clients’ point of view. In addition, recognizing that race, gender and other social statuses intersect to create specific positions in society can help you assess how your client will be viewed and evaluated by others. As our research indicates, part of the way your clients will be perceived depends on the race and gender characteristics of the individuals who are doing the perceiving. This knowledge can be used to prepare clients to portray themselves in ways that will be best perceived by their target audience. For example, knowing that White men in general are more traditional in their gender-role attitudes than other groups, a female client may gain more sympathy from a jury filled with White men if she portrays a more traditionally feminine persona. The same woman may earn more sympathy from a mostly female jury, especially a mostly Black female jury, if she portrays herself in more non-traditional ways.

(2) Assessing Jurors and Assisting Jury Selection Decisions

As Lisnek (2003) and Kressel and Kressel (2004) point out, there is no such thing as an impartial jury; everyone has opinions and they are hidden in the very folds of our numerous identities and life-stories. The authors suggest that jury decisions frequently go back to "gut instinct," or relying on faith and chance. What this really means is that they may often rely on their own social positions and the attitudes and experiences associated with them rather than the evidence when making verdict decisions. Our research shows that Black women are the most liberal in terms of gender-role attitudes, followed by White women, Black men and White men. This basic trend can be used to quickly assess potential jurors for different cases. Of course, additional information about jurors will need to be obtained, so we do not wish to overstate the implications of our research. Nevertheless, we do observe general trends in attitudinal differences by gender and race that may serve as a useful starting point in selecting jurors.

For example, in representing a female client who engages in more traditional female gender roles, such as a stay-at-home mom or a woman fighting for custody of her children, our research suggests that White men might be the most sympathetic to a woman in such a situation because White men hold the most traditional gender-role attitudes. When representing female clients in more non-traditional roles, such as working women with young children, single women or single women with children, women facing workplace discrimination, or women who are being charged with committing criminal acts, our research suggests that female jurors in general may be more sympathetic, particularly Black female jurors, whereas White male jurors may be the least sympathetic. Although our research focused specifically on attitudes toward women's roles, we would expect that those who are supportive of more non-traditional roles for women would also be more supportive of non-traditional roles for men. Therefore, our research can be used to assess jurors when representing male clients as well. A White male juror may be more likely to be more supportive and sympathetic to male clients who engage in traditional roles. Conversely, a male client who engages in less traditional gender roles, such as a stay-at-home dad or a dad fighting for custody, may gain more support and sympathy from women, particularly Black women.

(3) Examining Your Own Social Position and Anticipating Others' Perceptions

As Parks-Stamm (2008) points out in a previous article in this publication, being a successful woman litigator does not mean being perceived by a jury or peers in the same light as male lawyers. The effects of gender are further compounded by other social statuses, particularly race. Recognizing that race and gender impact both how individuals are perceived and how they perceive the world can be useful for determining, in a group practice who may be best received in representing each case, or in an individual practice what kind of persona will be best received depending on the jury, the client, and the issue at hand.

For example, in a case with a female client who does not adhere to traditional gender roles, a predominantly White male jury (who are statistically more likely to maintain traditional views of gender) may be better persuaded by a White male attorney, whereas a female jury may be better persuaded by a female attorney. If such selection is not available, a female attorney and her client may want to portray themselves in more traditionally feminine ways (through clothing and appearance as well as mannerisms and topics brought up) for a White male audience than for other audiences.

(4) Understanding the Changing Trends In Time

Our research demonstrates that attitudes change over time and specifically group views of women's roles in American institutions have become less traditional. Even though men still hold on to more traditional views than women, they can change with decades of exposure to women in different roles. Legal professionals may benefit from staying abreast of changing attitudes. In addition, it is important to recognize that attitudes change in social context. Thus, legal precedents and seemingly impossible shifts in political attitudes do not happen overnight, but instead transform slowly as individuals change their views or as older generations are replaced by younger generations. This is why we see more states slowly passing legislation that recognizes same-sex marriage. The political and social climates are right for change after decades of denial, because same-sex couples are more prevalent in social life and the media, and many believe there are more pressing issues to consider right now, such as health care reform.

One tangible way legal professionals can stay abreast of changing attitudes and beliefs is through local and national news, as well as empirical research, such as that found in this publication. We also suggest you use attitudinal and opinion-based data collections, reports, and research articles as resources in preparing for trial and jury selection. Today, you can find this information through several credible organization websites. For instance, the National Opinion Research Center website (<http://www.norc.org/homepage.htm>), where we obtained our survey data, provides data and publications covering several topics, including issues germane to the criminal justice system. Gallup's website (<http://www.gallup.com/Home.aspx>) is also particularly useful because it has an almost running ticker of attitude questions.



Conclusions

Current social science research and theory demonstrate that a number of social factors and contexts must be considered when predicting behaviors (e.g., attitudes, beliefs, and judgments). Based on our research (Carter, Corra and Carter, 2009), we find that the interactions of race and gender help to explain differences in gender-role attitudes. We also find that these attitudes have changed for many groups due to historical changes that have occurred since the 1970s. This leads us, as well as other social scientists, to suggest that professionals should investigate, consider, or be wary of how any given attitude, belief, or courtroom decision can be influenced by a number of variables. We encourage legal professionals to examine how the intertwining factors of who their clients are and how others will perceive them will impact their overall trial outcomes.

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We asked two experienced trial consultants to provide their responses to this article. On the following pages, Cynthia Cohen & La Verne Morris offer their thoughts.

Cynthia R. Cohen response to Lippard, Carter, Corra, & Carter

Cynthia R. Cohen, Ph.D. (ccohen@verdictsuccess.com), currently ASTC President, is soon to celebrate 25 years as a jury consultant. Verdict Success LLC in Los Angeles, CA, specializes in jury research, trial strategies, and settlement decision-making.

Gender Role Perceptions. "Mommy, boys can't be lawyers!" This comment from Isaac, the five-year-old son of an active trial-lawyer mom and a stay-at-home dad, along with Lippard, Carter, Corra, & Carter's article, highlight shifting attitudes toward working women. Lippard et al.'s literature review makes one reflect on historical social injustice in the workplace and changes in perceptions of gender roles. The smart use of an interaction between gender and Blacks & Whites in assessing "traditional vs. liberal" views gives insight into each group view (i.e., Black Females, White Females, Black Males & White Females) and discusses intervening factors (e.g., SES, birthrates, age). The findings that gender-role attitudes are progressively more egalitarian over the last 30 years is worth noting. There are helpful hints in understanding social status and gender role perceptions. While the authors note that other factors come into play in the courtroom, I'm a bit skeptical of their applications to client assessment, jury selection, and determining who should try the case. Below are suggestions to further those applications.

Venue and Race. While the authors use an interaction between gender and Blacks/Whites and note that numbers from other races were not sufficient for their study, Hispanics are in the majority in many of our venues and Asians have sufficient numbers as well. Blacks are 12.8% and Hispanics are 15.4% in the U.S. Census Bureau's 2008 national estimate. In California, where it is 36.6% Hispanic and 6.7% Black statewide, the venue matters a lot, especially if you break it down by county. Los Angeles County is 47.7% Hispanic and 9.4% Black and in long cause cases, the demographics dramatically change. Other counties in California, Arizona, and Texas have significantly higher Hispanic populations. In some venues race dichotomy as used in Lippard's research would rarely apply. It will be interesting to see what 2010 Census data looks like.

Experience Matters Most. Isaac's mom knows that we all have our own world-view. Experience trumps demographics in world-view and viewing a case. It is best to know the underlying experiences that matter most in the particular trial. Jurors' experiences at the epicenter of cause challenges have the greatest potential strength for influence in deliberations if jurors survive challenges. A trial lawyer ought not use race or gender alone (or even in combination) in jury selection, not only for fear of a *Batson* challenge, but one unmistakably errs when severely stereotyping. When voir dire is restricted and there are no other data points about jurors other than demographics, trial lawyers are forced to consider perceptions of gender roles.

Attitudes are Fluid. I disagree with Lippard's notion that it takes the younger jurors replacing the older generations in the jury box for attitudes to change about acceptability of women in "non traditional" roles. A woman's attitude about gender roles is not set for life by giving birth. Some women enter the work force after raising children and their attitudes as well as their family members' perceptions about gender roles change. A stay-at-home mom who begins a career at 55 may have daughters who started careers in their 20s. An older adult may be very accepting of career women although most of her life she stayed home. Experience in the home environment and in the world matter more than a stereotypic attitude.

Gender Role Perceptions within the Civil Justice System. Lippard's findings of gender role perceptions are most applicable when attitudes toward working women are questioned or judged. Employment cases immediately come to mind, especially if you have someone barred from breaking the glass ceiling or another issue directly related to discrimination. For instance in a sexual harassment case, judgment of the case hinges on perceptions of the parties especially if there are no blatant graphic documents to support the claims. That is, if the sexual abuse lacks red flag email traces or other harassing written documents, scrutiny on the parties is magnified – bring in the gender perception detectors because jurors will be looking at appearance, nonverbal and verbal behavior.

Knowing jurors' gender role perceptions could be helpful in trial strategy. Several levels of gender perceptions operate simultaneously in a trial with the parties, the witnesses, the jurors and the trial lawyers. Choosing an expert witness based on fit between traditional role and gender role expectations is a good idea. We tested mock jurors' perceptions of gender differences in experts' credibility in the 1980s and found male doctors were seen as more expert than female doctors. This finding might parallel Lippard's trend.

Dress Appropriately. Another place to use gender perceptions is whenever someone deviates from traditional roles. If a business trial has a dispute between a male and a female business partner, jurors might suspect a sexual relationship or that someone felt rejected. In witness preparation, evaluate the relationship with the partner to determine behind-the-scenes issues. If jurors suspect the two were romantically involved and the female felt slighted, jurors would evaluate the case based on traditional roles. If the relationship is pure business and the woman aggressively misappropriated funds, traditional values would be jolted. Recommend that men wear a business suit to court rather than a sports jacket and tight pants, especially if there is any sexual innuendo in the personal relationship between the partners. Jurors judge gender roles based on appearance and expectations.



Mothers Have Standards. Women may be more likely to be sympathetic and award damages. Female Blacks tend to award higher damages. My aggregated research shows that not all women show sympathy although women may be twice as likely as men to award damages. Women with children are harder on a mother as a plaintiff who appears to be negligent in a products liability case. For example, a mother not having locks on a kitchen cabinet where poisons are stored or a baby grabbing hold of a beer bottle that explodes. Mothers hold other mothers to high standards in personal responsibility.

Gender Role Perceptions within the Criminal Justice System. Lippard states that juror perceptions of the defendant may be influenced by gender-role attitudes; in that, "Black women are the most liberal in terms of gender-role attitudes, followed by White women, Black men and White men." Since a number of capital cases reveal a gender role bias, it would be interesting to interview the jurors from capital cases. Consider for example, two separate instances in which both women were convicted of killing their respective sons and in which premeditation was undetermined (Heberle, 1999). Darlie Routier, described as an aloof, atypical mother-figure, was sentenced to death while Susan Smith, a feminine, energetic mother was given life in prison even though both women committed the same crime. Heberle (1999) says the way these women were perceived with regard to gender roles had a significant influence on jury verdicts.

Although women commit crimes eligible for death sentences less frequent than men, they are often placed under harsher scrutiny – not because their crimes are considered worse by law, but because they fail to meet gender expectations. Consider Karla Faye Tucker, a Texas woman held to her shocking confession that she experienced orgasm each time she struck her victims. The confession statement sexualized her crimes and underscored the gender-role reversal that she performed before a society with established codes of male/female behavior, leading to the jury's overall distaste of her character (Heberle, 1999). While intuition makes it easier to imagine a jury as more sympathetic towards women facing criminal charges as compared to their male counterparts, being female may have the reverse effect, especially when gender roles are violated.

Conclusions. Lippard et al. make an important empirical point. While it is generally known that race and gender independently affect attitudes and judgment decisions in the legal system, the possibility of an interaction between the two may be useful to trial lawyers or consultants in drawing inferences about how the average White female/White male might conceptualize a case in comparison to his/her Black counterparts. Further, the gender/race interaction may help consultants predict how a case involving violation of gender roles may be perceived by jurors who fit into White/Black male/female categories. However, future research should be inclusive of the expanding Latino race.

The article does a nice job of recognizing that the degree to which individual jurors relate to the defendant, especially in regard to gender role adherence, may bear weight in judgments of character, and, in turn, final verdict or sentencing decisions. However, it is important to be mindful that using stereotypes or generalizations in order to gain insight into how a potential juror might empathize with the defendant does not hold up in all situations. Aside from demographics such as gender and race, case-related facts such as

physical evidence, eyewitness testimony, expert testimony, and the life experiences of individual jurors all play a significant role in final judgments.

Would I use gender role perceptions in consulting on a case? Absolutely. Gender is an everyday consideration when I evaluate the client, when I pick a jury, and when I help determine who should try the case. I would also voir dire Isaac. Why do you want to be an architect instead of a lawyer? Is it because an architect is more creative? Do you think being a lawyer is boring? “No, that’s not why. It’s just, a lawyer – that’s for girls.”

Thanks to the social scientists for making us think about social injustice in the courtroom. Thanks to Amanda Clemente, my intern, for probing discussions while reviewing this article. And thanks to Rebecca Weinstein Bacon for sharing Isaac’s worldview.

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La Verne O. Morris responds to Lippard, Carter, Corra, & Carter

La Verne O. Morris, M.P.S. (lmorris@trialgraphix.com) is a jury consultant with Kroll Ontrack | TrialGraphix based in Chicago, Illinois. She conducts jury research and consults on a variety of civil litigation matters nationwide.

The basic premise of the authors’ research -- that race and gender impact how one perceives information as well as how one is perceived -- is one that most seasoned litigators and trial consultants agree with and consider in their practices. The literature and data conclude that the combination of race and gender is a more powerful predictor than race or gender alone. While this is true, I believe it is only part of the story, that is, the combination of a multitude of variables is the strongest predictor of juror behavior – race, gender, class, education, socio-economic status to name a few. The authors indicate that context is important in determining outcome, and a multitude of variables need to be considered. That is why when a client asks me, as an African American, how I think African Americans will do on a jury, I cannot give any other answer than “it depends”. No group of Americans is monolithic in its thinking, and certainly African Americans are no exception. It depends on the worldview perceptions and experience of the African Americans within the venue. In other words, this question can only be answered more accurately if more information is available.

The overall politicization of your case

Some cases have more political issues intertwined than others (driving while black, employment discrimination, for example). In such cases, understanding juror views of gender roles in politics and the workforce should be a component of developing a case strategy; you must also consider the venue and other factors impacting the worldview of potential jurors – education, employment, life experiences. The research findings may also prove helpful if faced with a limited voir dire scenario, as in federal court, where you may not get much more than basic demographic information (name, marital status and employment, etc.). Perhaps if all else remains equal, and you are left to decide whether to keep a white male or black female on your jury, you determine your strike based on whether you need someone more or less liberal for your case.

How then can attorneys use the information provided by the research data?

Sympathy is not synonymous with victory

It is quite possible for a juror to be sympathetic to your client, yet render an adverse verdict. Mock trial research data as well as post trial juror interviews confirm this fact. It is not uncommon for a juror to say how bad she felt for the litigant, but she put her sympathy aside (as instructed by the court) and made a decision “based on the evidence”. Juror sympathy, as it pertains to juries more often correlates with juror anger towards the defendant and the amount of any damage award (the greater the anger at defendant and greater the sympathy for the plaintiff, the greater the potential for a large damage award). The authors’ research is more suited to determining whether or not jurors are more sympathetic to your case issues. The best way to determine this is through mock trial research, careful crafting of voir dire questions, and/or through the use of supplemental juror questionnaires.



Jury Selection

Imagine the following scenario: you are a white female defense attorney in a medical malpractice case defending a white female doctor. The plaintiff is a black female mother of two young children who was a full time working mom until her injury. You are questioning a black female single mother for jury selection. You recall that black females are more liberal in gender roles. You think the juror will likely identify with the plaintiff. You say to yourself “I must strike her”. Not so fast – she may be Condoleeza Rice in disguise! (Turns out the prospective juror holds a doctorate in French and was raised in a very exclusive suburb.) The authors’ present findings are that black females hold the most liberal attitudes toward entry into the workplace as well as liberal leanings for the role of women in politics, but the intersection of race and gender in and of itself cannot determine if a juror will be adverse to your case. This is evidenced by the large body of research concluding that

oftentimes women are harder on women litigants than men. Even if you have a hunch she is adverse, don’t be too quick to strike her – there may be someone else on the panel who is far worse that you should use that precious strike on.

It is not possible to control who will be part of the jury pool, therefore the goal of any successful voir dire is to remove the worst jurors for your case. And while the research findings make distinctions as to whether men, or women, blacks or whites may be better suited for certain cases, *Batson* prohibits striking of jurors in a protected class; the reasons for peremptory strikes must be race and gender neutral. Craft voir dire questions designed to reveal preconceptions and world view, and ask open ended questions designed to get jurors talking about themselves so that your decision is based on more than a preliminary juror profile or a hunch. Stereotypes, even the generalizations put forth by the authors, are dangerous unless placed in context.

Most often, the decision as to who will be trying the case, or the substantial portions of it is determined before jury selection begins. Therefore, attorneys will have to assess their need to convey to the jurors their femininity or work behavior accordingly. For instance, a female attorney with a majority white male jury may consider demonstrating some traits associated with femininity as she interacts with the trial team and jurors through gesture and/or feminine touches in dress (Parks-Stamm, 2008).

Case and Witness Preparation

The authors make a good point when they encourage attorneys to take time to get to know their client and develop a better understanding of their client’s worldview. In crafting case themes and the overall story of the case, it is important to remember you won’t be the only one telling the story – you will need your fact and expert witnesses to tell it as well. And you must consider this in tandem with who will be in the audience listening to your story.

In preparing witnesses, I cannot begin to count the number of times witnesses have shared information with me which could be used in strengthening our case and that was information useful to developing the case strategy. Attorneys often look at the witness puzzled and ask why they never mentioned the information before. The witness says, “nobody asked me.” What is clear is that no one on the legal team took the time necessary to develop a rapport with the witness beyond the legal elements of the claim or developed an in depth understanding of their view of the case. Instead, a decision was made on how the case would be tried, and the witness will be

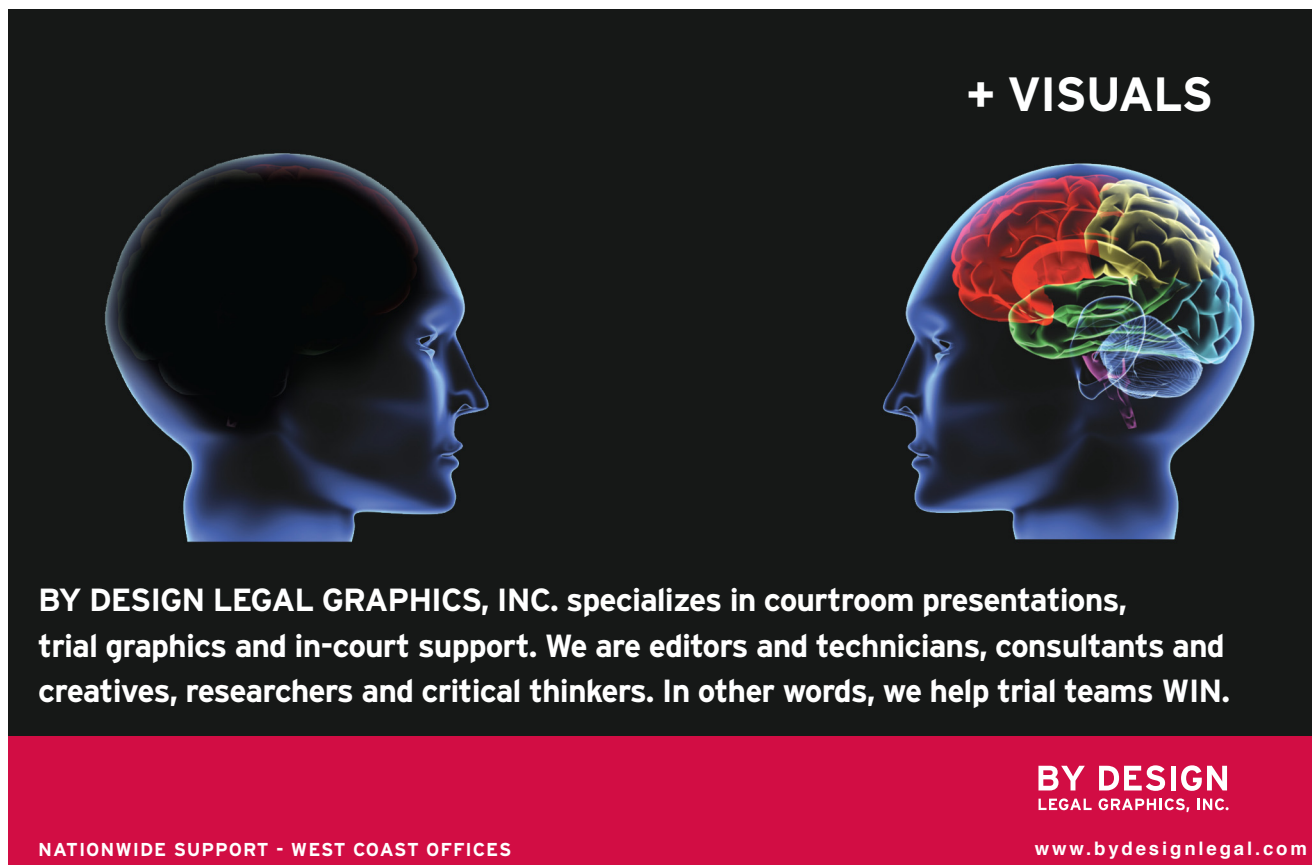
made to fit this blueprint. You will get a huge return on your investment of time building this rapport by uncovering ways in which to examine the witness more effectively, and making sure to include points enhancing the jurors' perceptions of your client.

The authors' research covers four decades ending with the 1990s; however, it must be noted that the new millennium has given us a brand new dynamic to politics – an African American president, a strong female contender for the nomination to the office of president, a female candidate for vice president in a conservative party, as well as a female contender for a position of power and influence at the head of a conservative, traditional values party. It will be interesting if the authors reexamine their research at the close of the decade when additional GSS data is available and see if there is any change in their findings as it pertains to gender roles in politics and the workforce, as well as further implications for African American litigators.

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Editor's Note

This is a very cool issue of *The Jury Expert*. We have an array of articles we think you'll find interesting, thought-provoking and fun to read. First, we have a look at gender and race in the courtroom over time and recommendations for how litigators might use this information with reactions from two trial consultants. Then a look at how the internet has been intruding into the courtroom (it isn't just with jurors) and recommendations on how litigators and judges can minimize the impact through clear and specific education and instruction. Third, we have an article on how research into damage assessments can inform settlement negotiations. Following that, we have a introductory bibliography on the GBMI/NGRI verdicts with thoughts from three trial consultants on learning about this specialty niche, educating jurors, and voir dire. We all pay attention when jurors nod. But what does it mean and when should you really pay attention? Read our fifth article and find out. Our sixth article takes lessons an experienced trial consultant has learned over three decades about communication in the courtroom (and more decades on the stage). Learn about common mistakes and best practices as well as the identity of Konstantin Stanislavski.

Most of us already know who Antonin Scalia is but did you know it's not a good idea to 'poke Scalia'? What can litigators learn from observing our Supreme Court in action? And finally, an instructive piece on 3D animation (with lots of examples) accompanied by an overview of the 3D animation process and recommendations on when to use 3D and when to not use it.

November's issue of *The Jury Expert* also features advertising for the very first time. Publishing this journal has been a very exciting undertaking for the American Society of Trial Consultants (ASTC) but not one that has been without cost. We are grateful to our growing readership base and we are especially grateful to those advertisers who believe in us and show their support by advertising on our website and in the downloadable pdf version of [The Jury Expert](#).

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