

Commentary: Observations and Concerns on the Bigendering of Our Forensic Fields

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The study by Neal *et al.* of mock jurors in the penalty phase of a homicide case led me to observations on gender changes over the past few decades in the professions of law and forensic psychiatry and psychology. From an earlier paucity of women in these professions, today their percentages have greatly increased. Yet, as in this study, there are differences that work to the advantage of men in how the genders are perceived as expert witnesses. Suggestions for addressing gender discrepancy are offered, along with a cautionary note, such as in the area of experts in cases involving abortion.

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Nary a woman in sight was often an accurate observation for those of us who worked in the fields of forensic psychiatry and psychology and the law not too many years ago. From there to the study by Neal *et al.*¹ has been a road that I think it will not be wasteful to glance at, while acknowledging Santayana's caution about repeating the past. I will then offer a few comments for today and the path ahead. All this is aided not only by my number of years in these fields—a senior member, while not the most senior!—and by my being the father of three daughters.

Beginning in the early 1970s, my work came to include a position at the Washburn University School of Law where I functioned in various capacities. In a legal intern developmental group,² one of the few female interns was asked by a colleague how she would fit in and get ahead in such male-dominated work. She quickly responded, “Sleep with a senior partner.” Around the same time, a graduating female student had applied for work at various law firms. A partner (male, of course) in one of these firms called me at my Menninger Foundation office to ask about her; his attitude of a contact in the old

boys' network had a distinct air of, “What in the world kind of woman becomes a lawyer!”

I do not know which firm this new attorney went to work for, but she was the kind of woman whose subsequent accomplishments included being the first woman elected president of a State Bar Association and the kind who chaired an important committee of the American Bar Association (ABA).³ A part of this story almost as striking is a recent conversation with a current female Washburn law student at this time when some half of the students are women. This woman seemed oblivious of the barriers her female predecessors had overcome for her and had hopefully done so without compromising their integrity.

Turning to medicine and psychiatry from the same years, I'll present some samples-of-convenience gender information rather typical for our profession. My 1962 McGill University Medical School entering class of 112 included 13 women.⁴ In 1966, 93 of us graduated, but there only 7 were women.⁵ Some of the absent women had just not wanted to deal with the nature of the predominantly male medical school environment. My 1967 Menninger School of Psychiatry class of 20 had no women, then there was a trickle of female residents, until, in more recent years, almost half of the residents have been women.⁶

The American Academy of Psychiatry and the Law (AAPL), founded in 1969, had its first female presi-

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dent 22 years later in 1991–92, Kathleen M. Quinn, then the second in 1997–98, Renée L. Binder.⁷ At the time of the 1980 Annual Meeting of AAPL, the executive, and the members of the Education and Program committees were all men.⁸ (This male majority did not preclude the selection of some presentations dealing with women and by women.) By 2007 one-third of the then 15-member executive were women, and while for that year the program chair was a man,⁹ for the prior and subsequent years, it was a woman.

When incorporated in 1976, the American Board of Forensic Psychiatry had nine members, all male.¹⁰ It had its first female president in 1988–89, Naomi Goldstein.¹¹ (There was not another female president before the board was dissolved to give way in 1994 to certification in forensic psychiatry by the American Board of Psychiatry and Neurology.)

Turning to psychology, in view of the female legal intern's comment regarding sleeping with a (male) senior partner to get ahead, a reminder of related behavior in the field of psychology is not out of place, not that psychiatry is immune to this difficulty. In 1979 a study in *American Psychologist* identified significant sexual activity in psychology programs on campus, mostly between male psychology faculty and female students.¹²

The American Psychological Association division of forensic psychology was started in 1981. They had their first female president in 1984–85, Elizabeth F. Loftus, and the second in 1987–88, Shari Seidman Diamond. This forensic area is now called the American Psychology-Law Society, also known as Division 41.¹³ Forensic psychology as a specialty area was recognized in 2001; in 2011 its members were one-third women.¹⁴

It is too flippant to say, "The times they are a-changin'," in part because they have changed; but Neal *et al.*¹ alert us to some concerns.

As the authors are aware of and discuss, such a study of mock jurors has many limitations, yet its findings do point to problems that arise in real courtrooms. The study pool of 265 students, with a mean age of 19.64 years and a standard deviation of 2 (and 51% female), was rather younger than typical jurors. The study did not show any effect of age or gender on the results (that is, female students did not privilege female expert witnesses), but as far as the students' ages go, the age range was narrow and may have shown effects over a more realistic juror age range.

In regard to a few of the other study findings, when each expert was rated similarly low on likeability (warmth), the male expert was then rated as more credible and had more agreement with his opinion than did the female expert.¹ There were several other conditions (see Fig. 1 in Neal *et al.*¹) in which the male expert under apparently similar conditions garnered higher credibility and agreement ratings. While these findings are statistically significant, the small differences may have less real or practical application. (Put another way, the study had high statistical power.) On another study limitation I'll quote the authors:

Although intermediate decisions yielded the expected results (i. e., credibility ratings and substantive agreement), when it came to the ultimate decision a juror must make (the sentence, in this case), no significant differences were found. These findings suggest that although stereotypes of men and women may influence intermediate judgments, ultimate decisions may not be influenced by such stereotypic cues [Ref. 1, p 495].

As the authors also noted, the ratings of agreement in the study were not further examined in evaluations of subsequent mock jury deliberations, as would occur in actual trials.

And So From Here

Accepting that women in our forensic fields have come a long way from earlier decades but that gender-based discrepancies remain, what are some concerns and possibilities from here?

If a group's president is a woman or if a program committee for a meeting includes significant female members, one would expect more attention to women's concerns in the group, which I've observed with AAPL over recent decades. All this is not to say that attention to the problems of women as examinees, victims, sexual behavior, and experts, for example, does not occur when the members are primarily male, but there are matters that it is easier for a member of each gender to see and understand.

In terms of what is sometimes a model for an intermediate stage of broader female acceptance, I trust Neal *et al.*¹ will not mind my using their work illustratively for a pattern I've seen with AAPL members. At least with the lead author here, this study seems partly a matter of her teaming up with a more senior male forensic psychologist, Stanley L. Brodsky, who gave her some help in this study of what is called a male-gendered area ("a masculine occupational role"

[Ref. 1, p 495]). (There are at least six citations to Brodsky in the references. As the authors' affiliations show, two of the three female authors have advanced to other positions, details of which can be easily found with web searches.)

If an expert witness is (still) seen as a masculine role, this perception can be addressed, such as in the media. A desire to increase such exposure could lead, for example, to interested persons contacting the writers and directors of the myriad crime programs on television and in the movies to try to make female forensic experts more visible.

I did not research this subject, but what are the areas where female experts are at an advantage over male experts, when all else is as equal as it can be? What does jury research show regarding perpetrators, victims, injuries, and so on that may favor female experts?¹⁵

Finally, while we may have some complacency in the United States and similar countries regarding gender equality, there are major parts of the world where this is not the case. There are also some U.S. scenarios that may concern us. In such states as mine, where things are said to be wrong with Kansas, the forces against abortion are anything but restrained, nor do they act particularly upright and ethical.

Our prior attorney general Phill Kline has had a rather infamous career in prosecuting, with limited success, abortion providers. His very questionable actions led to an ethics panel review wherein they stated that he "repeatedly misled other officials or allowed subordinates to mislead others." The panel recommended that he "should be indefinitely suspended from practicing law."¹⁶ Kline is now fighting the recommendation before the Kansas Supreme Court. (In this strident anti-abortion context, one of the country's few late-term abortion providers was murdered, Kansas physician George Tiller.¹⁷)

In atmospheres such as this, it is easy to imagine an abortion-related case where a prosecutor attempted to exclude a female expert witness essentially because as a woman the expert would be biased. Are there jurisdictions where judges would allow such exclusion? Even if not, might a jury in certain parts of the country hear such a comment on a witness's expertise and agree? This is not to ignore other possible case scenarios where bias against a female expert may be alleged.

I began this article discussing our sister profession (an interesting gender word in the context of this commentary) of lawyers and their education, and I'll end my discussion by returning to legal education. Our former Kansas attorney general is now a visiting professor at Liberty University School of Law in Virginia, where his areas of interest and teaching include bioethics and the law and lawyering skills.¹⁸ This is "a law school committed to academic and professional excellence in the context of the Christian intellectual tradition."¹⁹ Regarding women's concerns, this may nonetheless be a law school that does not inculcate in all of its students restraint in casting the first stone.

The gender wars are not quite over.

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