

STILL A MAN'S WORLD: SEXISM IN THE LEGAL FIELD

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ABSTRACT

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Modern sexism is very different than the sexism of the past. Modern sexism tends to be much more subtle such as simple word choice or associations. This study tries to observe such acts of sexism specifically in the courtroom. This is a qualitative study that looks largely at word usage and the interaction between the different genders and different positions held in the courtroom. A select number of transcripts were collected from the legal research service, Westlaw, and reviewed for events of sexism. The study found little to no examples of direct sexism. However, the use of gendered or sexist terms was observed. A trend for women in the courtroom to be more likely involved in combative interactions was also noted. The number of women involved in the proceedings reviewed factored into the results as well.

KEY WORDS: Sexism, Legal field, Profession, Gender, Word choice, Courtroom, Attorneys, Judges, Lawyers

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CHAPTER I

INTRODUCTION

There are a number of professions that have historically been a men's club. An attorney is one such profession. The question this thesis explores is, now that women have made it into the profession, have women made it into the club. Gender inequality has been likened to a glass ceiling. The idea is that when a woman makes it into a position of power, she breaks through that glass ceiling. Previous research indicates, however, that breaking into a male-dominated profession does not break down all the barriers within that profession. Researchers have looked at sexism in the workplace generally, but despite this research, sexism still exists in the workplace even in fields where women have made steady gains, such as the legal profession.

Researchers have difficulty observing everyday life without altering it with their very presence. Therefore, the subtler ways that sexism and patriarchy affect the lives of women in the workplace are still difficult to understand. This issue must be addressed a little at a time, so this proposed research will focus on experiences of female attorneys, who have practiced in a variety of areas of law and in a variety of locations, and how those experiences may differ from the experiences of male attorneys. Specifically, I will review court transcripts from Texas District Courts, California Superior Courts, and Delaware Superior Courts. These transcripts will be analyzed for uses of 'terms of endearment' as well as other forms of benevolent and hostile sexism and the relationships of the attorneys, judges, and other court staff present in the cases. This will allow researchers to look a little closer at one section of 'everyday life,' but since courts are

already open to the public and records already made of the proceedings, the research should have minimal, if any, impact on the subjects and their behavior.

Modern-day sexism is not, usually, as brash as sexism once was. Often it is very subtle. Subtle sexism, however, is no less harmful. Subtlety, in fact, is becoming the biggest obstacle to gender equality. Building on the researchers who have come before, reviewing sexism in the courtroom will help us understand how sexist structures operate in these subtler ways.

CHAPTER II

CONTEXT AND BACKGROUND

The legal profession is one of the oldest in existence, with its roots being traced back all the way to the orators of ancient Athens. Societies' founders and leaders have often been lawyers. Using the United States as a prime example, fifty-six men signed the Declaration of Independence. Twenty-five of those men were lawyers. Even more significant, fifty-five men aided in creating the Constitution. Thirty-two of them were lawyers. The influence of attorneys did not end with our founding fathers, though. Twenty-six of the forty-six U.S. presidents, 141 members of the House, and thirty-three of the one-hundred senators are lawyers. Women, however, have only recently been allowed into this influencing profession.

In 1869, Arabella Mansfield became the first woman recorded to practice law. (Merril and Nash 2017: 39). While at first glance this may seem like an early acceptance of women compared to other professions, Mansfield was an extreme rarity in her year and in years to come. Female lawyers' very existence was challenged everywhere. For example, in 1869, Ada Harriet Kepley became the first woman in the United States to graduate from law school (Merril and Nash 2017: 38). Despite her law degree, though, Kepley was not allowed to practice law in Illinois (Merril and Nash 2017: 38). She was never actually allowed to practiced law (Merril and Nash 2017: 38). Even as late as 1977, some judges still refused to allow women to practice in their court (Merril and Nash 2017: 38).

As of 2017, women make up approximately 36% of the legal profession and slightly over 50% of the law school graduates, but there has been little improvement for

female attorneys since 2001 (American Bar Association 2017: 1&4-5). Another important issue to note is the pay gap between male and female attorneys. While the gap has shrunk, women still only receive 89.7% of a male attorney's salary (American Bar Association 2017: 6). The disparity increases as the overall wage increases with "the typical female equity partner in the 200 largest firms [earning] 80% of the compensation earned by the typical male partner" (American Bar Association 2017:6). Recent studies are also still finding unconscious bias against female attorneys in juries and judges alike (Lee 2016).

Gender and the Ideal Attorney

There is a common idea that 'a lawyer is a shark.' In fact, *Legally Blonde: The Musical* has a song written specifically about this idea of what an attorney is supposed to be. Unfortunately for female attorneys, this ideal attorney is a man (Acker 1990; Acker 2006).

Our society is still very patriarchal. The three staples – male dominance, male identification, and male centeredness – are still there (Johnson 2005: 5). Male dominance refers to how positions of authority are generally reserved for men (Johnson 2005: 6). For example, heads of state, CEOs, even religious leaders tend to be men under patriarchy (Johnson 2005: 6). Male identification is used to explain that in patriarchal societies the core cultural ideas about what is considered good, desirable, preferable, or normal are culturally associated with how those in the patriarchal society think about men and masculinity (Johnson 2005: 7). Male centeredness means that the focus of attention is primarily on men and boys and what they do (Johnson 2005: 10). For example, there are more stories printed in newspapers about men and their actions than women (Johnson

2005: 10). As Johnson (2005) is very quick to point out, though, patriarchy is not the equivalent to all men. Both men and women participate in patriarchy just as both participate in gendering. Further, both men and women can suffer from patriarchy. There are assumptions made about men just as there are assumptions made about women in a patriarchal society. When those assumptions are not met, those men suffer. Gender inequality in the workplace does not only affect how women are treated in male-dominated professions. Studies have found that men in women-dominated professions such as nursing experience a ‘glass escalator’ effect (Williams 1992). In other words, they often experience separation from their female colleagues and an expectation to move into more supervisory positions. (Williams 1992).

The United States and many other modern societies have a binary gender system where the two genders are man and woman. In other words, our society is “two and only two” when it comes to gender and sex. However, as Lorber put it “talking about gender... is the equivalent of fish talking about water” (Lorber 1994: 13). We must narrow down what we mean by gender. Gender is different than sex, and gender is a cultural and social construct. Further, *Doing Gender* makes clear distinctions between sex, sex category, and gender (West and Zimmerman 1987: 127). However, the three terms are like three circles on a Venn diagram. Sex is determined by physical traits. Sex category is determined by signals that claim a person’s membership to one category over another. Gender is determined more by actions and interactions than just identifiable characteristics. While sex, sex category, and gender can contradict each other, the socially determined ‘norm’ is for all three to match which is why they often overlap. Gender is largely based on societal standards of femininity and masculinity. We cannot

escape gender. It is literally in everything we do. Often it is as innocent as using earrings to determine that a child is a girl, but sometimes it can be more harmful.

We gender everything. We even gender jobs. Who do you picture when you think of a nurse? A doctor? While people are no longer completely barred from certain professions simply because of their gender, we still feel the need to clarify with terms such as “male nurse” or “female doctor” or, in the case at hand, “female lawyer” (West and Zimmerman 1987: 129). While the term ‘cultural genitalia,’ which describes gender presentation, is usually used in reference to transgender individuals, the term could be transformed to look at the ‘gender’ of professions (Schilt and Westbrook 2009: 441). Since the ‘ideal lawyer’ presents primarily masculine characteristics, the profession of lawyer has male ‘cultural genitalia.’

This goes back to the concept of male identification. The traits considered good, desirable, or preferable are associated with masculinity. As discussed in *The Gender Knot: Unraveling Our Patriarchal Legacy* by Allan Johnson (2005: 80), patriarchal societies operate from the idea that men are essentially masculine and women are essentially feminine. Johnson lists examples of masculine traits including being aggressive, daring, rational, strong, coolheaded, in control of themselves, objective, dominant, decisive, and self-confident (2005: 80). Feminine traits on the other hand include weak, hysterical, and erratic (2005: 80). These ‘feminine’ traits were even used against the first women attorneys. Clara Shortridge Foltz was the first woman attorney in the state of California. Once in a closing argument, the opposing counsel stated to the jury “She is a WOMAN, she cannot be expected to reason; God Almighty decreed her limitation.... this young woman will lead you by her sympathetic presentation of this case

to violate your oaths and let a guilty man go free." (Schwartz, Brandt, and Milrod 1985:1).

Man is the standard and everything else is less. For example, Bittman and company (2003) found in their study that the amount of money and work hours a wife had affected the hours of housework the wife did. However, the amount of housework done by the husband was not predictable especially after the wife surpassed making an equal salary as the husband (Bittman 2003). Bittman and company put it best when they said, "while wives' employment is now acceptable, husbands are still not supposed to be dependent" (Bittman et al. 2003: 192). Hegemonic masculinity, which is rampant in the legal profession, includes "a clear sense of femininity as different from and subordinate to masculinity" (Wingfield 2009: 12). Therefore, anything 'feminine' is off-limits to a 'real man' and, as an extension, 'real lawyers.'

Women's movements have fought for decades, centuries so that we as a society can say that women don't have to be feminine. Women can do anything. A working woman is a normal thing. However, this only changed women. Men still feel like they must distance themselves from 'women's work' (Bittman 2003; Wingfield 2009). Further, women must become masculine to do 'men's work,' but then, women face backlash for being too masculine. As Acker put it, there is "the occasional biological female who acts as a social man" in power (1990; 139). This only reinforces patriarchy. While studies have shown that women and girls are allowed a little more flexibility with gender stereotypes, women are still expected to behave a certain way (Ezzell 2009; Kane 2006; Martin 1998; Pascoe 2005). For example, Ezzell's research centered around women rugby players. Ezzell found that despite the aggressive and generally 'masculine'

quality of rugby, the players made great attempts to present femininity in their dress both on and off the rugby pitch (2009: 118). Organizations in the past have been dedicated to training women to be less aggressive in their management of men for example (Banerjee 2001). In short, women in male-dominated professions are in a catch-22. Women must be more masculine to achieve success in their profession, yet that same masculinity can become a hindrance because the woman is not conforming to social norms.

Further, as Kleinman (2002: 300) said, “while being labeled ‘one of the guys’ might make women *feel* included, it’s only a guise of inclusion, not the reality.” By striving to be as good as the ‘male attorneys,’ women are saying that a woman is inherently not as good. Acker (1990) attaches this analysis to hierarchical organizations explaining that even the term ‘job’ is gendered. Rosabeth Kanter’s (1977) *Men and Women of the Corporation* and Jennifer Pierce’s (1995) *Gender Trials: Emotional Lives in Contemporary Law Firms* even take the step into the workforce to see the discrimination firsthand. Kanter’s work focused on business structures and how the very structure of a company or industry could prevent women from succeeding. Pierce’s work looked directly at the legal field. Importantly, Pierce’s work found that women in the legal profession do operate in a catch-22. When a woman lawyer acted tough or aggressive, she was seen as brash or obnoxious by men in the firm, but when she ‘lacked toughness,’ she was seen as ineffective.

Types of Sexism

There are many different types of sexism and discrimination. In the professional atmosphere, outright discrimination can be curbed by a level of formality. In the legal field particularly, where issues of discrimination are litigated, obvious discrimination is not the primary form of sexism one is likely to see.

Sexism in word choice. Words have power. Often this age-old truth is looked at from the grand scale of political matters and literature, but sociologists and psychologists also consider this when observing how the use of language can reinforce inequality in day-to-day life. Studies have explored the effect of racial epithets on minorities and the preservation of white supremacy (Embrick and Henricks 2013). These studies have not merely considered intentional use of demeaning language, but also evaluated unintentional reinforcement of white supremacy (Sue et al. 2008). For example, one's racial identity can be minimized or made insignificant when one does not think to include decorations or literature that represents various racial groups (Sue et al. 2007: 274). Kleinman (2002) also notes that the person's intentions do not factor into whether a word can be harmful. Kleinman discusses sexist language such as using "chairman" instead of "chairperson" or using "you guys" when referring to mix-gendered or all-woman groups. Kleinman found that despite the fact that using "you guys" was not meant to exclude anyone, it gave more value to the male-designation. Concerning racism, researchers have begun measuring occurrences of macroaggressions (Allen and Frisby 2017; Kaskan and Ho 2016; Sue et al. 2007; Sue et al. 2008; Sue 2010). Sue et al (2007:72) explained "racial microaggressions are brief and commonplace daily verbal, behavioral and environmental indignities, whether intentional or unintentional, that communicate hostile,

derogatory, or negative racial slights and insults to the target person or group, and are expressed in three forms: microassaults, microinsults and microinvalidations.” A microassault is an explicit insult characterized primarily by a verbal or nonverbal attack meant to hurt the victim (Sue et al. 2007: 274). A microinsult is a communication meant to convey rudeness and insensitivity and demean a person’s racial heritage or identity but is not explicit. Microinvalidations are communications that exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of a person of color. These same tactics are used in the preservation of gender inequality whether intentional or unintentional. The study of microaggressions and their uses have been used to inspect gender inequality as well and found that the public views female athletes as women first and foremost (Kaskan et al. 2016). Specifically, Kaskan found that the public believes women do not belong in the male-dominated world of sports, are inferior athletes compared to males, that they ought to adhere to stereotypic female activities, that they ought to want to be in romantic relationships with men, and that they ought to look attractive and sexy for men. An example given by Kaskan was when a gym class split into teams to play flag football, the teacher split the teams to ensure there were an equal number of girls on each team and declared that any touchdown that included a girl would count as double. Other studies have found objectification of women in music because of word choice (Rasmussen and Densley 2017). Research has even found sexist word usage in things such as women’s magazines and ads (Del-Teso-Craviotto 2006; Alkan 2016). The real issue is often not what words are used but the context. Even when ads try to counter sexism, studies have found great fault in these empowering advertisements. Alkan (2016) accuses such ads of pushing a “new myth” of the modern woman. In short,

sexism does not have to be intentionally evil. Sometimes even attempting to equalize the genders, we stumble into a sexist choice of words.

Benevolent sexism. Sexism can at times offer what some may argue is a ‘benefit,’ such as not having to pay for dinner or being called by a sweet name. This type of sexist language or behavior is called benevolent sexism. Benevolent sexism is defined by Glick and Fiske (1997: 49) as:

a set of interrelated attitudes toward women that are sexist in terms of viewing women stereotypically and in restricted roles but that are subjectively positive in feeling tone (for the perceiver) and also tend to elicit behaviors typically categorized as prosocial (e.g., helping) or intimacy seeking (e.g., self-disclosure).

Women are not necessarily offended by being called “sweetie” which creates a unique and difficult issue for the study of gender inequality. Glick et al. (1997: 491) even had difficulty coining a term to encompass this phenomenon. In earlier research on this topic, benevolent sexism was usually only seen accidentally in studies that were focusing on unrelated topics, such as looking at helping behavior and noting a woman is more likely to receive help than a man (Glick et al. 1997). Benevolent sexism, however, should not be excused or minimized. In fact, benevolent sexism is more difficult to fight. Boasso and colleagues (2012:543) even note that “women who are referenced by a term of endearment who do not wish to be seen as warm but incompetent representatives of their gender may not wish to directly indicate that the term is discriminatory. Instead, they may undercut the stereotypic perception by behaving in a warm but highly agentic fashion.” Boasso and colleagues’ (2012) research explored the likability of a person who called a woman ‘hun’ when making a request. The study did find that using the term “hun” lowered the likability of the man who made the request (Boasso 2012). However, the

likability of the woman who made the request using “hun” dropped significantly, and the subjects preferred the woman in the traditional role of responding to the request (Boasso 2012). Battling benevolent sexism is extremely difficult, and more research is needed.

Benevolent sexism, such as ‘terms of endearment,’ is a problem whether the individual addressed is offended or not. Any form of sexism reinforces patriarchal authority. Women’s education, for example, can be affected when they experience sexism in school (Kuchynka et al. 2018). Kuchynka found that protective paternalism (a benevolent form of sexism) negatively predicted female students in STEM self-efficacy. In fact, gendering often occurs early in school settings. Martin (1998) traced the different body language of boys and girls to lessons, usually unintentional, taught in preschools. An example given was of two five-year-old girls. One of the girls’ shirt came up as she bent over to reach for something, and the other came over, pulled the first girl’s shirt down to cover the exposed skin, and then gave it a little pat to secure it in place. This was just one example of how the clothes given to young girls to wear affected their movements.

Further, hostile and benevolent sexism can affect women differently. Women who experience hostile sexism, such as sexual harassment, in the workplace have lower job satisfaction and increased absenteeism, depression, and physical illness symptoms (Fitzgerald 1993). Experiences with benevolent sexism are more likely to cause self-objectification and body shame (Calogero and Jost 2011). Interestingly, while more people may be affected when they experience hostile sexism, benevolent sexism’s effects evade more aspects of their lives (Kuchynka et al. 2018). Benevolent sexism also impairs women’s cognitive performance more than hostile sexism (Dardenne, Dumont, and

Bollier 2007; Vescio, Gervais, Snyder, and Hoover 2005). Dardenne, Dumont, and Bollier (2007), for example, found that when given a test as part of a job recruitment process, subjects did worse when exposed to benevolent sexism during the testing process than when the subjects were exposed to hostile sexism. Benevolent sexism creates different difficulties and could have different and distinct effects on gender inequality than hostile sexism because of the subjectively positive aspect of the comments and or actions. Women in the legal profession suffer the unconscious bias described by Lee (2016) such as a preference for a male attorney or being perceived as overly aggressive, but also face benevolent sexism and outright discrimination.

Relationships are also affected. Williams (1992) in her study “The Glass Escalator: Hidden Advantages for Men in the ‘Female’ Professions” looked at the relationships between co-workers and supervisors of differing genders. According to the glass escalator theory, female co-workers tend to place men in women-dominated fields into leadership roles, men in these fields bond with their male supervisors, and these relationships propel men in women-dominated fields into higher-ranking positions (Williams 1992). While Wingfield (2009) found this to not be true when looking at men of color, relationships were still key in accessing the glass escalator. Even the subtlest cues can distance two co-workers. Therefore, unconscious bias or refusing to walk through the door a woman holds open can create distance and hinder a woman’s advancement in the field. However, being a minority group could create a strong bond between the members of that group. On the other hand, the minority group members can also view other members as direct competition (Kramer and Harris 2019). If only one woman is going to be hired, then your enemy is that other woman. Relationships can

similarly be strained between male and female co-workers. When looking at opportunity as a limited resource, there are only so many pieces of the pie to go around. Acker's discussion on privilege hits the same point. "Top male executives who are secure in their multiple advantages and privileges may be more supportive of reducing inequalities than male middle managers who may lose proportionately more through equality organizing" (Acker 2006: 460). In the end, whatever form sexism or discrimination takes, gender inequality is holding women back in the legal field. "Social structures shape individuals, but simultaneously, individuals shape the social structure" (Risman 2004:432).

CHAPTER III

CURRENT STUDY

Sexism still prevails in society. Numerous studies have shown this. Sexism, however, presents itself differently in different situations. One would expect sexism to be more subtle in professional environments if for no other reason than there are laws meant to prevent sexism in employment. In this study, I set out to see how sexism operates specifically in the courtroom. This study will address how often, if at all, terms of endearment are used in the courtroom setting, how often other examples of benevolent sexism occur, and whether hostile sexism is present in the courtroom.

As discussed earlier, studies have investigated benevolent sexism and microaggressions. Studies have investigated sexism in the legal field. Those studies, though, focused on the business side of the legal field or used reflective data methods such as asking questions of jurors after a trial. This study, however, focuses on the sexist language and actions in the courtroom itself during hearings and trials and how that sexism operates in that environment. The courtroom offers a unique environment due to the power structures inherent there. The judge runs the courtroom. There are rules as to when an attorney or a witness should be speaking. The courtroom, therefore, allows one to see how patriarchal power structures can disrupt or align with these professional power structures.

Because of the formal setting of the courtroom, sexism is understandably more subtle in the courtroom. Sexism may be present through ‘terms of endearment.’ Since these can often be considered complementary rather than insulting, the formal setting will be less of a deterrent. However, ‘terms of endearment’ are unlikely the only forms of

benevolent sexism that will be present. As discussed above, past studies have found evidence of benevolent sexism by accident. Because of the nature of transcripts, this study will be able to look for examples of benevolent sexism from a distance similar to the past studies reviewing data. Also, since the interaction is created in the natural work environment and not an experiment atmosphere, any examples of benevolent sexism cannot be written off as a product of the experiment.

Lastly, this approach will allow hostile sexism to be identified in a much more natural setting. Further, because of the inherent power structures and different authority levels in a courtroom, we will be able to see how positions of relative power may affect the presentation of sexism.

CHAPTER IV

DATA

For this study, I have collected data by gathering and reviewing 50 formal court transcripts ranging from 2 to 34 pages each. We can then see if discrimination and sexism appear in the most formal of professional settings. Formal transcripts are written records of all verbal comments made in court as part of a hearing or trial. Transcripts are also public records, so they are accessible to the public. Transcripts only pick up what is on the record. 'On the record' does not cover all things said and done in a courtroom. However, transcripts will also remove bias which could occur with observations.

Westlaw is a legal research service that, on top of many other functions, collects and stores selected court transcripts from a few different states. Westlaw does not have set criteria for the cases they select. However, the database provides a reasonably accessible sampling frame. A convenience sample is appropriate in this case because, as discussed above, the purpose of the research proposed here is to see if there is sexism in the courtroom and how often this may occur.

First, I only focused on the lower state courts such as Texas District Courts. As discussed above, the circumstance surrounding the cases on this database already make these more formal events in the courtroom. However, the higher level the court, the more formal the setting will be and the less likely a person is to behave poorly, unprofessionally, or in a sexist manner. Federal courts also tend to be more formal than state courts. Since the courtroom is already such a formal setting, in order to gather the best sample, this research will look at the lowest courts available within the database.

Westlaw provides district court or the equivalent level court transcripts from three different states. While this study would not allow us to generalize the results, taking samples from each state would provide an opportunity for the data to possibly show geographical trends that could guide future research. Therefore, I analyzed 20 transcripts from Texas, 20 from California, and 10 from Delaware from the district court or equivalent in each state.

Gender Makeup of Sample

The sample's gender makeup was surprising. While the American Bar Association ("ABA") is reporting that women make up approximately 36% of the legal field, female representation varied greatly in the three different states as can be seen in Table 1 (American Bar Association 2017: 1&4-5). In Texas, the percentage of female attorneys was actually very close to the ABA's findings, even higher, at almost 38%. California had a lower percentage but was still close at over 28%. However, in Delaware, females only made up 17% of the listed attorneys. Further, only 3% of the listed attorneys in the Delaware transcripts were women and spoke. None of the female attorneys in the Delaware transcripts actually presented anything to the court. The speaking female attorneys only introduced themselves and or thanked the court after being dismissed.

Table 1. Presence of Women Attorneys & Judges

	Texas	California	Delaware	Total
Presence of a woman attorney	38%	29%	17%	24%
Presence of a speaking, woman attorney	38%	18%	3%	14%
Presence of a woman judge	35%	25%*	5%	26%
Number of Transcripts	20	20	10	50

Note. Some attorneys and judges were counted twice if they appeared in more than one transcript. To be considered a Speaking Female Attorney, the attorney only had to say a single word on the record.
**15% of judges are of unknown sex.*

Looking at the female-to-male breakdown within a single transcript, only 10 transcripts included more than one female attorney. In only 4 of those 10 did both women speak during the hearing. One of these cases was in Texas. The other three were in California. Table 2 breaks down the gender composition of all transcripts.

Table 2. Gender Composition of Transcripts

	Total	Texas	California*	Delaware
Man Judge, all men attorneys	28%	30%	18%	40%
Man Judge, all women attorneys	2%	0%	6%	0%
Man Judge, men & women attorneys	43%	35%	47%	50%
Woman Judge, all men attorneys	13%	20%	12%	0%
Woman Judge, all women attorneys	4%	5%	6%	0%
Woman Judge, men & women attorneys	11%	10%	12%	10%

Note. *15% of the transcripts were excluded from this table as the gender composition of attorneys and judges cannot be established.

A surprising gender dynamic this study was not originally looking at was the number of female-to-male experts. Out of the 50 transcripts analyzed, 17 included testimony from expert witnesses. Only 1 of those 17 witnesses was a woman. Further, as you will see more in the analysis of this paper, this female expert was the only expert to never be called by her proper title and was admonished by the male judge multiple times during her testimony.

CHAPTER V

METHOD

When reviewing the selected cases, I noted several aspects of the environment such as the gender of all people present in the courtroom proceeding, the type of case, the type of hearing, and the location of the court. However, the focus of the study was on the acts of sexism that occurred. The form of sexism (benevolent or hostile) was also considered. Benevolent sexism is defined by Glick and Fiske (1997: 491) “as a set of interrelated attitudes toward women that are sexist in terms of viewing women stereotypically and in restricted roles but that are subjectively positive in feeling tone (for the perceiver) and also tend to elicit behaviors typically categorized as prosocial (e.g., helping) or intimacy seeking (e.g., self-disclosure).” Whereas hostile sexism is more attuned to traditional prejudice defined as “an antipathy based upon a faulty and inflexible generalization” (Allport, 1954:9). Adjusting these conceptual definitions into operational definitions requires looking at the acts that fit these definitions practically. The operational definition for benevolent sexism is any helpful action or kind comment made towards a person because of their gender. For example, when a male attorney calls opposing counsel ‘young lady.’ This can be considered a kind comment since being young and being a lady are generally considered positive attributes. The comment, however, is being made because of the opposing counsel’s gender. Hostile sexism is any harmful action or unkind comment made towards a person because of their gender. An example of hostile sexism would be a judge reprimanding a female attorney in front of a jury for wearing pants instead of a skirt to court.

Any use of ‘terms of endearment’ would be noted separately from other forms of benevolent sexism. A ‘term of endearment’ is any word used in place of a person’s name that is not another formal title. Examples of formal titles are judge or counselor. To be clear, there should be ‘terms of endearment’ and ‘other acts of benevolent sexism.’ While the two categories could be combined in later analysis, ‘terms of endearment’ are of importance to the research questions proposed separately from other forms of benevolent sexism. Which ‘term of endearment’ was used would also be noted. Later researchers could then verify that the term is a ‘term of endearment’ by the standards of society and not the bias of the current researcher. The terms can be categorized to some extent including groups of terms such as sweetie and sweetheart or honey and hon.

Lastly, the acts of sexism noted should only be those that took place in the courtroom. Acts of sexism described in the transcript but that occurred outside of the hearing should not be counted. For example, if the transcript is that of a discrimination case, the worker explaining that her boss called her ‘honey’ should not be counted. However, if during her testimony the defense attorney called her ‘dear,’ that should be counted.

CHAPTER VI

ANALYSIS

Modern sexism is subtle. While the formal setting of the courtroom during a hearing or trial most likely played a significant role in how subtle in the selected transcripts, the results here also show how subtle sexism is today. Further, the lack of women and, particularly, the lack of speaking women in the courtroom, certainly played into lack of observable sexist events. Surprisingly, there was no use of terms of endearment found in this study. There were no directly hostile sexist events to note either. However, there were clear examples of language that conveyed or implied that the genders were unequal and or different. Further, there were trends in the relationships between women and others in the courtroom.

The Things We Say

While the selected transcripts did not have examples of terms of endearment being used in the courtroom, gendering and sexism can still be heard in words used. A total of 67 gendering or sexist word choice events occurred within the sample. These events can be further subcategorized into 8 different types. The breakdown can be seen in Table 3.

Table 3. Conceptual vs. Operational Definitions

Conceptual Variable	Operational Definition
Unnecessary Gendering Words	Number of times when a gender specific word is used when a gender-neutral word such as person or human could have been used.
Gender Mistakes or Slip	Number of times when there was confusion as to the gender of a particular person.
Gender Assumptions	Number of times when a group of persons' gender was assumed or the person's role was assumed based on their gender.
Gender Stereotypes	Number of times when a person's hobbies or interests were referenced as normal or typical based on the person's gender.
Title Mistakes – Females	Number of times when a gendered title is used instead of a female witness, attorney, or judge's earned title such as doctor, counsel, or judge.
Titles Mistakes – Males	Number of times when a gendered title is used instead of a male witness, attorney, or judge's earned title such as officer, counsel, or judge.
Gender Relations	Number of times when the person's relation to others is gender stereotyped or the relation is otherwise based on gender.
Gender Implications	Number of times a comment implies gender differences and the comment does not fit into the other categories.

The first category is Unnecessary Gendering Words. This category is meant to capture default use of masculine or feminine terms. For example, individuals often default to calling the chairperson of a committee a *chairman* or when one uses he/him pronouns when the gender of an individual is unknown. An example from one of the transcripts is a witness' reference to "street guys" when speaking about a non-specific group of drug users.

The second category, Gender Mistake or Slip, captures when the speaker was confused as to the gender of a person. Often the individuals that were misgendered were not present in the courtroom, so the confusion did not stem from appearance. The cause

of the confusion in this category is unclear. For example, in one transcript, the judge asked for clarification as to whether a party to a contract was missus or miss, but the attorney clarified the party was a mister.

The category Gender Assumptions included any time an individual's gender was assumed based on facts given about the individual even if the assumption was correct. A common place example could be assuming Dr. Smith is a man. An example from the transcripts would be an attorney assumed that a landlord was a man. The Gender Stereotype category includes any time an individual's hobbies or interests were noted as normal or expected. An example from the transcripts would be when a witness referenced her husband's love of tools.

The next two categories go hand-in-hand, Title Mistakes. Title Mistakes are when a gendered title such as mister or miss is used instead of an earned title such as doctor or judge. A clear example of this can be found in the one transcript with a female expert witness who is referred to as miss instead of doctor. Title Mistakes is separated into two categories. One for when women are referred to by female-specific titles, and one for when men are referred to by male-specific titles.

Gender Relationships refers to instances where a person is noted only based on their gendered relationship to another named individual. For example, referring to John Smith's mom as opposed to Jane Smith would be included in the Gender Relationships category.

The last category, Gender Implications, is a catch-all type of category. While these events did not fit into the other categories, they clearly showed a separation of genders that needed to be included in this study. For example, in one transcript, a female

judge stood in for a male for judge to read the jury's verdict, and she commented, "While you were deliberating, Judge Cortez had a sex change." Another example occurred after a male judge comments the attorneys should wear name tags so he could remember their names. The only present female attorney states "I submit. I'm conspicuous and I don't have to." A female attorney, who was also the plaintiff in the hearing, describing herself as hysterical is another example.

The clearest example of gendering or sexist word choice, specifically within the Title Mistakes – Females category, was with the one female expert witness found in the selected transcripts. The witness had a total of four degrees post-high school including a Ph.D. in industrial psychology. As an expert witness, her education was discussed and was extremely important to her testimony; yet every attorney and the judge, all of whom were men, addressed her as miss instead of doctor.

THE WITNESS: I am an industrial psychologist, and my area of expertise is human factor psychology and, in particular, warnings and instructions.

PLAINTIFF'S ATTORNEY: Your Honor, at this time, we'd like to move to admit Plaintiff's Exhibit Number 58, which is Ms. Luther's¹ CV.... Okay. Thank you. Ms. Luther, can you tell the jury a little bit about what your educational background is?

THE WITNESS: Well, I graduated from Donna High School in Donna, Texas, and went to Rice University where I got a bachelor's in English and biology and a teaching certificate. And I taught high school science for a number of years, and I went back and got a master of science in psychology and went on back to Rice to get a Ph.D. in industrial psychology with a specialty in human factors.

PLAINTIFF'S ATTORNEY: Okay. Have you, in fact, taught the subject of human factors as it relates to cautions and warnings?

THE WITNESS: Yes. After I got my doctorate, I stayed on at Rice for eight years doing research there. And I was also on the faculty at Baylor College of Medicine in Houston where I did research in human factors. And during that time and still up until the last year or so, I taught a course at the University of Wisconsin twice a

¹ Names and law firm names have been replaced with pseudonyms.

year for industry on how to develop and evaluate warnings for products.

The judge did call her doctor once as a general title but did not attach it to her name.

THE COURT: Well, you might have lost track of the question, Doctor.

THE WITNESS: I'm sorry.

While not recognizing a woman's education is on its own a clear example of sexist actions, intentional or not, not using her appropriate title here is particularly alarming. Even the plaintiff's attorney, who called her as an expert, did not call her doctor. An attorney wants their expert to have numerous degrees and endless experience, yet the plaintiff's attorney here did not give his expert the inherent boost in believability that being called doctor can provide. Every other expert witness called was male. There was a total of six times these male experts were not called by their proper title, but five of those six times the speaker corrected themselves. The one other time a male expert was misidentified as mister instead of doctor, the speaker used the correct title the next time he spoke.

PLAINTIFF'S ATTORNEY: All right. I'm showing Mr. Stahl the Notice of Taking Deposition and Production of Documents dated on the August 19th of '09....

PLAINTIFF'S ATTORNEY: And I have a copy of Mr. Stahl -- Dr. Stahl's curriculum vitae.

The language in the selected transcripts was also often gendered. One witness, for example, called herself "a country girl" despite being a retired grandmother which also came out in her testimony. Whereas a male witness who was on his second career was sure to state that "when he *was* a boy...." While it is common for adult women to be

referred to as ‘girl,’ a term that means female *child*, an adult man would rarely if ever refer to himself as a ‘boy,’ the term for a male child (Kleinman 2002).

More interestingly, however, was how the attorneys and judges used gendered language. In one transcript, neither male attorney ever referred to the women who owned the piece of property at issue in the case by name. They would state the man’s name and then refer to the woman owner by her relationship to the man such as John Doe and his wife or Tom Smith’s mother. For example, when the Court asked, “And who owned it prior to him?” One male attorney responded with “Joe Berrett and his mother.” Another example can be seen when the other male attorney stated, “Mr. Morris’s property and his wife’s property are the two lots that are right here.”

In another transcript, the plaintiff had two female attorneys. Only one of the female attorneys was present at the hearing. These two female attorneys were apparently sisters as well as co-counsels. The male attorney kept referencing the plaintiff attorneys’ familiar relationship despite this relationship being irrelevant to the proceedings. For example, he stated, “he had told counsel for the plaintiff, Ms. Nickles and/or her sister, Ms. Danes....” Ms. Nickles and Ms. Dane’s relevant relationship was that they were co-counsel, not that they were sisters.

The overall occurrences of each conceptual variable can be found in Tables 4, 5, and 5. Table 4 addresses the percentage of transcripts which contained examples of each conceptual variable. Table 5 addresses the frequency of each conceptual variable. Table 6 addresses the mean number of occurrences per transcript.

Table 4. Gender and Sexist Language: Percentage of Transcripts

	Total	Texas	California	Delaware
Any	50%	60%	50%	30%
Unnecessary Gendering Words	8%	15%	5%	0%
Gender Mistakes or Slip	10%	10%	15%	0%
Gender Assumptions	16%	14%	20%	10%
Gender Stereotypes	4%	5%	0%	10%
Title Mistakes – Women*	2%	5%	0%	0%
Titles Mistakes – Men*	12%	15%	15%	0%
Gender Relations	8%	15%	0%	10%
Gender Implications	12%	25%	5%	0%

Note. *These sections include title mistakes of witnesses, attorneys, and judges.

Table 5. Gender and Sexist Language: Frequency of Occurrences

	Total	Texas	California	Delaware
Any	69	50	16	3
Unnecessary Gendering Words	4	3	1	0
Gender Mistakes or Slip	6	2	4	0
Gender Assumptions	15	7	7	1
Gender Stereotypes	3	2	0	1
Title Mistakes – Women	21	21	0	0
Titles Mistakes - Men	6	3	3	0
Gender Relations	8	7	0	1
Gender Implications	6	5	1	0

Note. These data represent the raw frequencies occurring within the entire sample.

Table 6. Gender and Sexist Language: Mean Number of Occurrences per Transcript

	Total	Texas	California	Delaware
Any	2.76	4.17	1.6	1
Unnecessary Gendering Words	1.5	1.67	1	0
Gender Mistakes or Slip	1.2	1	1.33	0
Gender Assumptions	1.88	2.33	1.75	1
Gender Stereotypes	1.5	2	0	1
Title Mistakes – Women	21	21	0	0
Titles Mistakes - Men	1	1	1	0
Gender Relations	2	2.33	0	1
Gender Implications	1	1	1	0

Note. These means are limited to the transcripts which contained any gendered or sexist language.

The Things We Do

The most subtle but also most interesting trend found in this study was that having women involved in a courtroom exchange increased the likelihood that the questions or debate would become combative. To clarify, when lawyers are debating an issue, their presentations are called their arguments. Combative here does not just mean there was a disagreement. Of the eight transcripts where the questioning or debate escalated to a point where the parties were speaking over each other and or the judge was required to stop them, a woman was involved in the hearing. The roles and genders of those involved in combative exchanges are broken down Tables 7 and 8. Table 9 addresses the genders of all attorneys and judges present in the transcripts where combative exchanges occurred.

Table 7. Combative Gender Combinations

Gender & Role Combative Combinations	Number of Transcripts Featuring Combative Exchanges
Man Attorney & Man Attorney	1
Man Attorney & Man Judge	4
Man Attorney & Man Witness	1
Woman Attorney & Man Witness	2
Woman Judge & Man Witness	3
Woman Witness & Man Attorney	5
Woman Witness & Man Judge	1

Note. Four of the Female Witness and Male Attorney combative exchanges occurred in transcripts where the Female Witness was also a Female Attorney but was present as a plaintiff for said transcripts.

Table 8. Combative Gender Combinations: Percentages

Gender & Role Combative Combinations	Percentage of Transcripts Featuring Combative Exchanges
Total: Any Combination	16%
Man Attorney & Man Attorney	2%
Man Attorney & Man Judge	8%
Man Attorney & Man Witness	2%
Woman Attorney & Man Witness	4%
Woman Judge & Man Witness	6%
Woman Witness & Man Attorney	10%
Woman Witness & Man Judge	2%

Note. Four of the Female Witness and Male Attorney combative exchanges occurred in transcripts where the Female Witness was also a Female Attorney but was present as a plaintiff for said transcripts.

Table 9. Gender Composition of Combative Transcripts

	Total	Texas	California*	Delaware
Total: Any Combination	16%	15%	25%	0%
Man Judge, all men attorneys	2%*	5%*	0%	0%
Man Judge, all woman attorneys	0%	0%	0%	0%
Men Judge, men & women attorneys	8%	0%	20%	0%
Woman Judge, all men attorneys	2%	0%	5%	0%
Woman Judge, all women attorneys	0%	10%	0%	0%

Note. *Witness was a woman expert.

Again, one of the most notable examples is in the testimony of the female expert witness. There were several times during the cross examination of this witness when the witness and the male defense attorney became clearly combative. For example, in the following quote from the applicable transcript, the defendant's attorney is a male attorney, the witness is the female expert witness, and the Court represents the male judge's comments.

DEFENDANT'S ATTORNEY: So you are assuming that -- so you are not --

THE WITNESS: I have no assumptions. That's --

DEFENDANT'S ATTORNEY: Right.

THE WITNESS -- what I told you --

DEFENDANT'S ATTORNEY: So then --

THE WITNESS: -- one way or the other.

DEFENDANT'S ATTORNEY: Okay. So --

THE COURT: Don't talk over each other, either one of you. The reporter can only take down one person at a time. That must be clear to both of you.

The male judge's comments, however, clearly showed he blamed the female expert for the disruption because he believed she was not answering the questions asked. The male judge would interrupt the witness to inform her that the question was a yes or no question even without an objection from the defense attorney. Once the male judge even gave her a lecture on who was in charge and how she should now better as someone who had testified before.

THE COURT: What's that?

PLAINTIFF'S ATTORNEY: What is that opinion, ma'am?

THE COURT: I think she just gave it.

THE WITNESS: I wasn't finished.

THE COURT: You know, you've testified quite a bit, haven't you?

THE WITNESS: Yes, sir.

THE COURT: How many judges have you run into that are going to give you this kind of leeway?

THE WITNESS: I don't recall.

THE COURT: I'm in charge here and not you.

THE WITNESS: I certainly understand that.

THE COURT: Good. Then I want you to understand that and answer the question you are asked, give the defense a fair opportunity to object when it's appropriate, and I want you to be responsive. And I think with your education, you understand responsive.

THE WITNESS: I certainly do.

THE COURT: I thought they taught it at Rice.

THE WITNESS: Oh, I'm sure they do.

THE COURT: Well, good. Go harken back to that and be responsive.

THE WITNESS: I'll try to remember.

THE COURT: Speak when you are spoken to and not otherwise.

THE WITNESS: Yes, sir.

THE COURT: All right. Next question, please.

The male judge even later comments openly in front of the jury about the female witness.

DEFENDANT'S ATTORNEY: I'm going to try to ask it a little bit more globally, which may --

THE COURT: Oh, God. I'm not sure global is good with this witness.

Another transcript involving a hearing with no witness, a male judge, a male attorney, and a female attorney, also provided a good example of this phenomenon. Interestingly in this hearing, the judge found in favor of the female attorney, but when the female attorney repeatedly attempted to correct a misconception on the record, the judge shut her down saying the hearing was over. The court references a male judge's comments, the plaintiff's attorney is a woman, and the defendant's attorney is a man.

PLAINTIFF'S ATTORNEY: But my problem is that now that Mr. Richards has put all of this stuff on the record that I feel is inaccurate, that if I don't respond, he has set up a situation -- and I don't have any problem producing Dr. Barnes on the 15th. I'm not really arguing about that. I'm arguing about this man making what I feel to be --

DEFENDANT'S ATTORNEY: Your Honor, I'm going to respond to every one of these attacks and I'm going to want the Court's time to do it.

PLAINTIFF'S ATTORNEY: Your Honor --

THE COURT: This hearing is over.

DEFENDANT'S ATTORNEY: Thank you, Your Honor. May we be excused?

PLAINTIFF'S ATTORNEY: Well, Your Honor --

THE COURT: This hearing is over.

PLAINTIFF'S ATTORNEY: All right. Then --

THE COURT: This hearing is over. Thank you very much. You're excused.

PLAINTIFF'S ATTORNEY: Thank you, Your Honor.

Another interesting example to note is one where the female witness was also a female attorney who was petitioning the court for a protective order from a male attorney. The male attorney and defendant represented himself, but the female attorney and petitioner were represented by a different male attorney. The judge was also male. This case was interesting because of the people with multiple titles and roles and because the hearing was for a protective order. The male judge from the beginning is clear that he is skeptical about the reasons for the protective order saying:

I understand there was a protective order that was issued in this case. So I want to cut to the chase. Why is this here instead of not being in front of Judge Sharp and you getting a referee to deal with your discovery disputes? Before we get into how close they came and the history of disputes, why isn't this in front of a referee to deal with discovery because this, quite frankly, is your old-fashioned, a little bit over the top, lawyer dispute over discovery. Tell me why it isn't that.

In end, however, the judge grants the protective order telling the male attorney and defendant:

I'm going to grant the protective order for the maximum period of time of three years. I'm basing my conclusion that there was clear and convincing evidence that, one, that disposition had been cancelled and it was cancelled at your request, you specifically stated there was no appearance regarding the deposition, you had a process server with you. Whatever the process server's actions, that may have been legitimate. Had you come in there, you should have been phoning or, alternatively, going through the reception area. Certainly, people lock their doors. We know of many incidents when lawyers have been shot and killed by an irate

litigant, not necessarily other attorneys, although it can happen. It certainly is a legitimate concern of any lawyer to be protected, and it appears that certainly the Casper Firm, recognizing that, had a proper reception area and also had an area that was specifically locked. I find it a little disturbing that an officer of the court and a lawyer would transcribe over those boundaries. That suggests that you simply don't understand the importance of boundaries. So the court is going to give you a little help on that. I'm going to issue the protective order. That will be the court's ruling.

The fact this is a protective order case is interesting because protective orders are stereotypical to protect women from men. Nothing in the law supports this presumption but the majority of protective orders are for the protection of a woman. This hearing, which lasted over four separate transcripts, is only one of two hearings that had men in a combative exchange with men. This matter, however, completely revolved around the relationship between a male attorney and a female attorney.

The only other transcript in which two men had a combative exchange was when there was a female judge. In this transcript, the male witness even ended up in a combative exchange with the female judge.

PLAINTIFF'S ATTORNEY: Isn't it true that, in the end, you had completed the deposition?

THE WITNESS: Since you're talking about it, I got a phone call. Then you got upset; you said you were going to call me back the next day.

PLAINTIFF'S ATTORNEY: Your Honor, objection.

THE WITNESS: He asked me the question.

PLAINTIFF'S ATTORNEY: Argumentative. Move to strike.

THE COURT: Are we going along the lines of this question, or are we moving on?

PLAINTIFF'S ATTORNEY: We are moving on, your Honor.

THE COURT: Okay. We're going to move on.

THE WITNESS: Okay. I'm not allowed to defend myself. That's fine.

THE COURT: We're moving on. Next question.

The stereotype is that men are more aggressive than women, so women being involved in each example of combative interactions is not an intuitive finding. The women never really started the hostility, however. One could argue that the female attorney who brought the petition for a protective order 'started' the combative exchange by bringing the case or by speaking emotionally instead of letting the male attorney representing her speak on her behalf. The female attorney and plaintiff stated:

The Petitioner: He came in through a locked door in the back. The only way you can get in there is if you're an employee and you have a security pass code. He waited in the hallway for an employee to open up that door and then grabbed the door from behind her, barged past her and came in through the back to what we would consider to be our file area.

One may also claim that when a female attorney, the defendant's attorney in the follow excerpt, attempted to impeach a male witness, she set an combative tone going forward.

DEFENDANT'S ATTORNEY: And, Doctor, while you don't recall it, it was your testimony that -- starting on Page 41, Line 18 that, "If the statements of Mr. Hollister and you are true, OSHA was -- TVA was in horrible violation of OSHA during that period; isn't that correct?"

Each of these actions is common in the courtroom though. In the case of the female attorney's impeachment of the male witness, it is actually part of her job. In many cases not only did the women not start the combative exchange, but they attempted to defuse it by reverting to polite "no, sir" or "yes, sir."

THE WITNESS: Well, I'm not sure what you are asking me. You are asking me if the manufacturer --

THE COURT: Wait a minute. Just tell him you are not sure what you are asking, then let's see if he wants to pursue that and say, Well, what is it you don't understand? Or he may take a different tactic, say, Let me rephrase. If -- if you can't comprehend what he is saying, say, I don't comprehend that.

THE WITNESS: I don't exactly comprehend it.

THE COURT: So it's just kind of a rhetorical device that you don't understand what he is asking you?

THE WITNESS: No, sir.

THE COURT: Okay.

THE WITNESS: I'm saying that I don't understand all parts of the question.

THE COURT: All right. Then ask him to rephrase and let's see how that works.

Women were still directly involved in combative exchanges in all eight noted transcripts. Women may be involved in these more hostile situations for two reasons. These female attorneys may be attempting to 'act more masculine' to fit into this 'man's occupation.' While women were not the ones starting the combative exchanges and at times they attempted to defuse, there were instances when a female may have escalated the combative exchange when she attempted to keep order. The defendant's attorney in the following excerpt is a woman.

THE COURT: Which part is hearsay?

THE WITNESS: What I'm about to tell you

THE COURT: Then don't tell me if it's hearsay.

THE WITNESS: So I'll just tell you and let you decide if it's hearsay

I was informed by --

DEFENDANT'S ATTORNEY: Objection, Your Honor, hearsay.

THE COURT: You can't answer if it's hearsay.

Another possibility is the women's involvement in these combative exchanges is an example of subconscious sexism. This subconscious sexism could stem from the idea

that women don't belong in the courtroom so when they are, men become annoyed or angry. The female witness involved in the combative exchange was an expert witness. She was another highly educated woman in a predominately male field. The subconscious sexism could come from many stereotypes of women being placed on the female attorneys and witnesses such as the old sexist idea that women are not as smart as men or that women nag.

CHAPTER VII

DISCUSSION AND CONCLUSIONS

This study did not find what it originally sought to find. The lack of findings, though, may largely be due to lack of women in the courtroom. Johnson's (2005) three dimensions of patriarchy were prominent in this study's sample. The position of attorney, judge, and even expert are positions of authority, and these positions were largely reserved for men within the transcripts reviewed here. The lack of female representation in this study could be due to male dominance. If these positions of authority are being reserved for men, then this is another barrier women must overcome to get into the courtroom. The fact that there is not a written rule or law keeping women out of the courtroom only makes overcoming it more difficult. Moreover, when women were allowed to grace these positions of power, a large number of those women remained silent representing Johnson's (2005) male centeredness. Even when women were in the court, the attention remained on the men.

As mentioned before, the courtroom is a unique environment. While judges and attorneys are positions associated with power, judges are only meant to make rulings on issues brought to them. Judges should not make objections or comment on a witness's testimony. Attorneys, similarly, do not testify. Attorneys ask the questions, but every one of their statements must be proven with physical evidence or the testimony of a witness. Returning to my analysis concerning the female expert witness, however, the careful structure and power dynamic are thrown out the window as patriarchal norms could not allow a woman to be in a position of authority, the center of attention, and representing positive attributes such as intelligence and confidence. In other words, this female expert

challenged all three of Johnson's staples and not even the rigid structure of a courtroom could hold back the patriarchal pattern.

The dearth of women in the selected transcripts clearly impacted this study, but this makes the fact that women were always present when a combative exchange occurred even more interesting. The reason courtrooms are so rigidly structured is because most of the time people are in court because there is a disagreement. Nearly every hearing or trial has two opposing individuals and their attorneys. Court rules are in place to keep disputes civil. Interestingly, these rules tended to break down in the selected transcripts when (1) a woman was in a position of power, such as when there was a female judge (challenging male dominance), (2) a woman was the focus of the dispute, such as when a protective order was brought to protect a woman (challenging male centeredness), or (3) a woman was expressing positive attributes, such as a female attorney aggressively trying to put something on the record (challenging male identification). More research will of course be needed to evaluate support of a causal explanation for this trend of women to be involved in more combative exchanges in the courtroom, but the observation here is that the patriarchal structures and norms override even those of the courtroom. Interestingly, I theorized at the beginning of this study that modern sexism would be more subtle. This theory originally was focused on increased subtlety in sexist word choices. While there does appear to be increasing subtlety in sexist word choices, the staples of patriarchy have become more subtle as well. At one time, not too long ago, women were expressly excluded from being attorneys and judges. Today women are allowed in the court, but the staples of patriarchy are still keeping them

quiet either by literally keeping them silent or breaking down the rules in place to give each party meaningful time to speak.

Another interesting and surprising observation made in this study concerns geographic patterns. A generally accepted stereotype is that southern states are more sexist than northern states. Generally, California is thought of as a state that focuses on equality. Whether these stereotypes or assumptions are true, they are widely accepted. However, this study throws a wrench into these assumptions. While it is true that the Texas transcripts provided the most examples of gendered language or female involved combative exchanges, Texas also had the highest percentage of females present and engaged in the court proceedings.

As we saw in Table 1, Texas had the fewest listed female attorneys, but it also had the fewest listed total attorneys. The Texas percentage of female attorneys was actually the highest of the three states and higher than the total percentage of females in the legal field as reported by the American Bar Association. Also, all 11 female attorneys that were mentioned in the Texas transcripts actually spoke and presented at least a portion of an argument to the court. In Delaware, only three of the 16 listed female attorneys spoke and none of them did more than introductions, passing a witness, or thanking the court. California was better than Delaware with 12 of the 19 listed female attorneys actually speaking, but this still leaves 7 listed female attorneys sitting silently in the courtroom. Texas also had the highest number of female judges and the only female expert.

One could speculate that the low percentage of female attorneys in Delaware is due to the high volume of corporate law cases that occur there. More generally the lower percentages in both California and Delaware in this sample could mean that women are

just less likely to be involved in litigation with a high enough profile for the transcript to end up on Westlaw. The Texas transcripts in this sample, however, did not have this issue. Even though Texas appears to have the highest number of sexist events, at least Texas seems to be more likely to let women into the game. Could it be that Texas is not really any more sexist than Delaware or California, but rather Texas just has more sexist events because women are more involved in Texas?

Examining this phenomenon through Johnson's three staples again, Texas, in this sample, seems to have lower male dominance than California and Delaware because Texas seems to be the most likely to allow women into the positions of power historically reserved for men. Texas, however, still presents many issues with male centeredness and male identification. For example, it was in one of the Texas transcripts that every female owner of property was referred to by her relationship to a man such as "Joe Jone's wife's property." It should also be noted again that Texas had the highest number of combative exchanges involving women. Women were allowed in court, but patriarchy still prevented them from speaking by having men talk over them.

The fact that women were involved in every transcript where a combative exchange was found could also be related to the studies researching relationships between co-workers. Williams' (1992) study on the glass escalator theory found that even very subtle and unconscious cues can create distance between coworkers. Further, Acker (2006) discussed how men at certain professional levels may feel threatened, consciously or subconsciously, by increasing equality because they are afraid of losing their position. These stressors may contribute to escalating disagreements in the courtroom. While it may be due to the low number of women present in the transcripts, it should be noted that

none of the found combative exchanges were between two women which may conflict with Kramer and Harris's (2019) theory that members of a minority group see each other as competition.

Speculating on the silent female attorneys, Bittman's research may shed light as to possible reasoning as well. Bittman's study (2003) concluded that while it is more accepted for wives to have jobs, husbands still felt the need to distance themselves from women's work. This can be related to this study in a few ways. First, future studies may turn the focus and look at the number of men in more women-dominated legal fields such as court reporters. Second, perhaps this subconscious need to separate men's and women's work is what leads to female attorneys remaining silent in the courtroom. There may be a subconscious notion that it is ok for women to be there as long as they are still second to men. Further, the three female attorneys who spoke in the Delaware transcripts only made introductions, passed a witness, or thanked the court. These actions are presentational and polite etiquette of the court, very feminine aspects of an attorney's job.

While unexpected trends were found in this study, no examples of terms of endearment were found. This may have been due to the limitations of this study. A factor that was not considered when selecting this sample was the number of females in the courtroom or how male centeredness and male dominance would affect the sample. Twelve or nearly a fourth of the hearings and trials depicted in this sample did not have any women involved. Again, this could be due to male dominance in our society. Another four transcripts had a female attorney present who never spoke. As discussed before, women only make up approximately 36% of the legal profession according to the American Bar Association.

Observing the interactions between male attorneys and male judges with male attorneys is necessary to develop a baseline of behavior. For example, in this sample at least, women were not interrupted in court more than men. Women did not apologize more often than men. Men were not more likely to call the judge a 'judge' as opposed to 'your honor' than women. These trends or lack of trends became clear largely because of the observations made when all parties were men. However, to observe sexist events in interactions and relationships between men and women in the courtroom, one must observe both men and women in the courtroom.

The simple observation that so many hearings and trials in this sample did not involve any women and more still did not have significant participation of women is something that should be considered and is a finding in itself. While the number of female attorneys may be rising, the male dominance and male centeredness of our patriarchal society is still preventing equal representation. Further, female attorneys may be avoiding, by choice or pressure, consciously or subconsciously, the most 'masculine' areas of the law such as litigation which requires an extreme amount of confrontation and at times aggression. Moving forward, future studies may benefit from accounting for this imbalance and attempt to create a sample with a more equal representation of men and women.

This research was needed. Pierce's study of women in law firms was published in 1995, more than 20 years ago. Further, the research did not take place in the courtroom but in the firms' offices. As discussed earlier, the courtroom is a very unique environment. Courtrooms are designed to equalize individuals. Justice is (supposed to be) blind. While courts may fail in this attempt, the purpose of the court structure is to

provide fairness in the application of the law. As Pierce's (1995) and Kanter's (1977) research showed, the very structure of corporations is sexist. Other research on bias in the courtroom was largely from self-reporting which can be unreliable when looking for more subtle forms of sexism. Further, the unexpected trends such as the women centered combative exchanges would be unlikely discovered with self-reporting data. This research did open a door to everyday life interaction in the courtroom, but trials and hearings are still very formal settings and transcripts do not capture everything. Also, the fact that gendered language exists to such a degree even in the formal and restrictive setting of a hearing or trial in the courtroom indicates that such word choices are made in less formal settings. Further, if patriarchal power structures can break down the rigid structures of a courtroom, the less rigid structure of an office, even a law office, would not stand a chance. It is likely that even more blatant gendered or sexist language is used and sexist events occur in less formal settings in the legal field.

Further, because Westlaw's collection methods are not controlled, the results of this study are not generalizable. However, this study has been an insightful glance into this world. The next step is to study a more controlled collection of transcripts or observational studies in the courtroom. Creating a sample from transcripts selected based on the gender of those involved in the proceedings could lead to more widely noticeable trends in the treatment of women in the courtroom.

There still need to be more studies done on the existence and types of sexism in the courtroom, and research on how sexism in the courtroom affects the legal profession is also needed. We found very different issues in the different state courts as well. In Texas courts, there were more examples of sexist events and word choices. In Delaware

courts, there were significantly fewer female attorneys involved. Which issue has a worse effect on the women in the legal profession?

The cause or reasoning behind these acts of sexism should also be explored. The trend for women to be involved in the most combative exchanges in the courtroom creates a question of correlation or causation. This trend may be more of an effect of sexism in the courtroom than an example of it. What are the effects of this workplace sexism? How do women react or adjust? Do male attorneys recognize these issues and what, if anything, do they do about it? How does it affect the relationships of attorneys of the same or different genders? More research will also be needed in other professional fields such as with doctors or expert witnesses or industrial psychologists.

Another very important caveat that needs to be researched is how intersectionality affects these issues. Intersectionality has a very important impact on gender inequality. Gender does not exist in a vacuum. Every woman also has a class and a race just like every man. Ignoring intersectionality can be very dangerous. Crenshaw (1991) makes this point very clear when she attempted to get the statistics from the Los Angeles Police Department on domestic violence. Both anti-racism and domestic violence activists did not want the statistics to be released but for different reasons (Crenshaw 1991: 1252-1253). Similarly, in this study, women may have an issue with being considered brash or obnoxious when they are assertive, but people of color may be considered aggressive in a negative way if they are assertive. Consider, for example, the 'angry black woman' stereotype. It is important to see how the gender inequality seen in this study may be affected by a subject's race.

Further, intersectionality is at issue with men of minority races or of lower classes as well. Consider the unsubstantiated assumption by many that men of color are more violent. Interest in hegemonic masculinity is high currently because of this (Connell and Messerschmidt: 829-830). Masculinity and male dominance are not a one-size fits all phenomenon. However, we cannot let this be used to discredit the existence of patriarchy. Johnson (2005) is right when he says that people do not want to believe that patriarchy exists. People who do not want to recognize the patriarchal society we live in will use an example of seemingly contradictory behavior to continue living with their heads in the sand. However, if we further embrace intersectionality, we help more people by recognizing issues that occur in these subgroups that do not exist in the larger collective, and we can explain that these ‘contradicting’ examples are not truly contradicting but a result of intersectionality.

In short, there are a lot of questions left to answer. One thing is clear, however. Sexism in the courtroom may be subtle, but it is very much there. Not even the rigid world of law and order can overcome the power structures of patriarchy.

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