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**MOCKING EQUALITY: REPRODUCTION OF GENDER  
HIERARCHY IN COLLEGIATE MOCK TRIAL**

by

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**SUBMITTED TO SCRIPPS COLLEGE IN PARTIAL FULFILLMENT OF THE  
DEGREE OF BACHELOR OF ARTS**

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## **ACKNOWLEDGEMENTS**

Firstly, my undying love and gratitude goes out to my mock trial teammates, who have made the past four years of mock trial so enjoyable (despite the sexism). If I didn't have a car full of Scripps women to complain with over judge comments and In-N-Out Burger as we drive home from a tournament, I don't know how I would handle those ballots. Secondly, I have to thank Joanie, Adam, and Sam, without whom this thesis would not have been possible, although I don't think that I'll be giving Sam the 50% authorship credit that he claims is his due.

And lastly, an ironic nod goes to the many, many sexist judges that I have encountered over my mock trial career. Your ridiculous behavior is helping me graduate, so...thanks, I guess.

## CHAPTER ONE

### Introduction:

During the information sessions that the Scripps Mock Trial Team hosts at the beginning of the school year for those interested in mock trial, it's customary for all the returning team members to talk about why we decided to join mock trial in college. My older teammates have grown somewhat tired of my story. We had no team at my high school, but at the end of my senior year, my AP American Government teacher decided that having a mock trial in class would give us valuable insight into the American legal system. I was chosen to give the closing statement for the defense, while the closing statement for the plaintiff would be delivered by my evil ex-boyfriend, who had broken my heart only a few months before. I completely crushed him, and thus I found my calling. My competitive spirit had found an outlet where it was not hampered by the unathletic body that housed it: competitive arguing.

So to an extent, my first impressions of mock trial—as revenge on the boy who had broken up with me—were already gendered. But the gender-normative nature of the competition did not hit me quite as strongly until I became part of the mock trial team at Scripps. One of our older members, who has since graduated, was hyper-vigilant about correct trial attire. She was always the person who gave the “courtroom dress” talk to the new members. I vividly remember her rules from when I was a first-year. They included:

- Always wear heels—basic, closed-toe black or brown pumps, although black is

better.

- Always wear nylons—nude or black.
- Wear pearls
- Lace is not appropriate in the courtroom
- Be conscious of your hairstyle. If you have bangs, make sure they are pinned back. And if you are an attorney, avoid wearing your hair in a high ponytail—it will make you look “like a bitch.”

I was shocked. This was a women's college! How could they be this stringent about femininity? Could mock trial competitions really be that sexist? It turns out that they absolutely are. An example: two years ago, I was delivering a closing statement that earned me two eights (out of ten) from both judges. After the trial, the coach from the opposing team came up to me and told me that my charm bracelet was reflecting light, and since I move my hands a lot when I speak, it was distracting. He advised me not to wear jewelry in the courtroom. But not only was my bracelet completely covered by my sleeve from the jury's point of view, but it is also a medical ID bracelet that I must wear because of my epilepsy.

I have never heard anything even close to these attire critiques addressed to male competitors. Although I have heard secondhand (something that would never be admissible in court) about judges commenting on a man's choice of tie, in my experience, sexism from the bench seems to be exclusively reserved for women.

But it is not only judges who police gender. I have also noticed sexism being perpetrated by other teams as well. Some of this is explicit—for example the male

member of the opposing team who made a *Legally Blonde* reference as our team entered the courtroom. But some sexism is more insidious. As an all-female team, deciding the gender of our witnesses is not a concern. But with co-ed teams, I have noticed a pattern in which parts in the trial get assigned to men, and which parts get assigned to women. Women are more likely to be witnesses, especially witnesses who are supposed to be sympathetic, whereas attorney teams are more likely to be male-dominated.

I noticed this pattern by my second year of mock trial, and it fascinated me. What was the reason for this strict adherence to gender norms? Was it because the teams themselves were sexist? Was it because of the individual participants' strengths and weaknesses, and any gender correlation was merely a coincidence? Or was it just that women are better at being witnesses, and men are better at being attorneys? I decided during the 2011 Regional Tournament in February to make gender and mock trial the topic of my senior thesis.

This may seem like a trivial topic. After all, mock trial is such a niche hobby. Most colleges don't even have teams. Why is the way in which a few hundred college kids perform gender any importance to the real world? Well, as following chapters will show, sexism in the actual legal field is well-documented. Which is, to an extent, unsurprising. We live in a sexist society. When white women make 77 cents to every white man's dollar, black women make 69 cents to every dollar, and Latina women make only 52 cents to every dollar, there is no way to claim that we have achieved gender equality in this country. But what makes the legal profession different from others is how slowly gender progress is being made. While there is plenty of literature speculating as

to the reason for this lag, there has been almost no correlation made between the actual profession and legal microcosm that is collegiate mock trial.

This is why my research is so important. I have not been able to find any scholarly text that examines the ways in which mock trial teams themselves adhere to gender-normative patterns. My research will be the first of its kind, and I believe that it will be invaluable to an understanding of how gender roles are performed in the legal profession.

#### Literature Review:

As I mentioned above, there has been a fair amount of scholarship theorizing why the legal field remains such a bastion of gender inequality. Most of the explanations put forward by scholars are part of my hypothesis, but none of them take the holistic approach that I employ when determining the reason for persistent sexism.

One common school of thought is that gender inequality in law is a result of the implicit gender biases held by lawyers. Justin D. Levinson and Danielle Young argue for this theory in their article “Implicit Gender Bias in the Legal Profession: An Empirical Study.” They conducted a study of law students in order to determine if the students possessed any preconceived biases in regards to men and women as judges and lawyers, and if so, whether those biases influenced their decisions on hiring judges and associate attorneys, as well as making budget cuts to student organizations geared towards women.

To test implicit biases, Levinson and Young employed two implicit association

tests (IATs), where participants were shown words on a computer screen and instructed to classify them into two groups as quickly as possible. The first study related to desirability of certain traits in judges. The students were shown words that had previously (and unbeknownst to the students) been coded by a different student group as “masculine,” “feminine,” or “neutral.” As the researchers expected, participants were more likely to choose “masculine” traits as those that would be necessary for a judge. The second IAT asked the students to classify words relating to careers. Again, as the researchers predicted, career-related words were more often assigned to men, whereas words like “home” and “family” were more likely to be assigned to women.

But despite these alleged gender biases, the second half of their study shows no evidence of sexism. When presented with two similar resumes, one with a male name and one with a female name, participants actually chose the woman's resume more often. Nor did they show any male preference in judicial appointments, and when they were asked to cut funding from various student organizations, the Women's Law Association was not targeted for cuts any more than the other organizations. This disparity between the implicit gender biases and the outcome of these biases casts doubt on the effectiveness of Levinson and Young's study. They themselves point out several problems with their methodology. The tests were administered to the participants by women, and that, plus the questions' focus on gender, may have hinted to the students that sexism was the focus of the study. Not wanting to appear bigoted, the participants made sure their responses were politically correct.

I would point out an even bigger problem with the study; it did not even answer



its own question. The point of the research was to determine why women are less likely to be hired by law firms, and, once they are employed, to be promoted by said law firm. Levinson and Young proposed that this was due to the gender biases of those involved in the hiring and promotion processes. But while the study did indicate that the participants had some biases, those did not seem to impact their hiring choices. So either the study was flawed, or Levinson and Young's hypothesis was completely disproven. If the latter is the case, the researchers make no mention of it. And although they began the article with statistics on the dismal state of gender equality in the legal profession, they do not attempt to provide an alternate explanation for why this may be. Their hypothesis was that the sexism was due to gender biases, their research proved otherwise, and all they conclude is that this means sexism in the law is on its way out.

My belief is that Levinson and Young's scope was too narrow. There are more factors at play in regards to gender discrimination in the legal field than just sexist attorneys. But that brings me to a less common school of thought, one that was proposed by John J. Szmer in his article "Have We Come a Long Way, Baby? The Influence of Attorney Gender on Supreme Court Decision Making."

Unlike Levinson and Young, Szmer examines sexism as perpetrated by judges. In particular, Szmer looks at U.S. Supreme Court judges. His hypothesis is that justices will be less likely to rule for a side represented by a female attorney if she does not fit in with their pre-formed gender "schema," their ideas about what male and female behavior is like. Szmer limited his cases to those where a female attorney was delivering the oral argument for one side against a male attorney from the other side. His conclusion was

that while female attorneys are equally likely to win their cases as male attorneys, they have a harder time convincing individual justices to side with them, unless the issue at hand is perceived to be a “women's issue.” In particular, Szmer noticed that it was more difficult for an attorney to get a vote from a conservative justice than a liberal one.

Like Szmer, I too am interested in how gender impacts court rulings. But I think that Szmer, like Levinson and Young, is not seeing all sides of the issue of sex discrimination. Judges perpetrate it, but in Szmer's data it is revealed that women are far less likely to deliver oral arguments in a case, especially oral arguments for the federal government. Why is that?

In their article “Bias on the Bench: Sex, Judges, and Mock Trial Simulations,” Lynette S. Noblitt, Sara L. Zeigler, and Miranda N. Westbrook also focus on judges perceptions of attorney gender. But these authors are specifically looking at mock trial judges. Their study analyzed the differences in how male and female judges scored competitors of both genders, based on the ballots that teams receive after a competition. This study finally takes advantage of mock trial as a controlled model for the legal field. In addition, their findings are consistent with the sexism I have experienced as a mock trial competitor. But I think that the authors are at fault for ignoring the actual substance of the judges critiques. On a mock trial ballot, judges are given limited space to comment on an attorney or witnesses behavior. The study did record how often that a female attorney got comments on her levels of aggression and control. While the very presence of these types of comments is telling, they definitely lie on a spectrum. Sexism-wise, there is a difference between a female judge giving me a six and telling me that I need to

work on handling a specific form of objection, and her male counterpart giving me a two and telling me that a multi-billion dollar corporation would never hire me because I obviously don't know my case, and that in real life I would be sued for malpractice.

In addition, the authors of this article also focus on too narrow a cause when trying to determine why sexism exists in mock trial. This is what my research will seek to correct. Whereas other studies have examined either attorney OR judicial gender bias, mine will examine both, from a mock trial point of view. Like Levinson and Young's IAT tests, mock trial is an excellent way to see gender schema at work. In the mock trial courtroom, the judge must be obeyed and respected, no matter what, and standing up to him or her will only be detrimental to an attorney and her team. Thus, a judge is free to exercise his own gender biases in a consequence-free environment. Likewise, teams get no points for political correctness, so their aggregate biases come out in competition as well. My hypothesis is that yes, gender discrimination exists in both realms, and it is perpetuated by the need to pander to older, mostly-male judges in order to win cases and succeed. By playing into these biases, attorneys, both real and mock, preserve them, making it difficult for change to infiltrate the legal profession.

This is similar to the thesis of Duncan Kennedy's *Legal Education and the Reproduction of Hierarchy*. Originally distributed as a pamphlet to Harvard law students, the text argues that the rigid gender hierarchy that bestows omnipotence on a judge or similar authority figure is created in law school. Kennedy proposes that law students learn to reproduce this hierarchy because the legal education system presents it as perfectly normal. Students internalize the biases that create this hierarchy, and thus learn

their part in the vicious cycle that is sexism in the legal field.

However, I argue that for any mock trial participant, this indoctrination starts well before law school. By competing in a mock trial tournament judged by actual attorneys and judges, students learn what is considered 'professional' from those who have already gone to law school and been exposed to hierarchy there. In particular, female participants learn what is expected of them by a sexist, archaic system.

#### Methodology:

To prove my hypothesis, I conducted three interviews with other college “mockers” (as we refer to ourselves). Two were juniors at a nearby coeducational school. Both were men. Interviewee #1 had been doing mock trial consistently for three years and was at that time President of this school's mock trial program. Interviewee #2 did mock trial his first and third years, but refrained from competition for most of his sophomore year. Interviewee #2 does not hold any executive board positions. Interviewee #3 is a senior, and a member of an all-female team. She has been competing in mock trial for four years, and is currently the President of her school's program.

I asked my interviewees twenty-two questions. They were as follows:

1. What is your school?
2. What is your year in school?
3. How many years have you been doing mock trial?
4. What kind of roles do you play on your team (attorney or witness)?
5. Has a judge ever made comments to you regarding your attire during a trial?

6. Have you ever heard a judge make comments to a teammate about attire?
7. Was it a male or a female judge?
8. Male or female teammate?
9. Has a judge ever commented about your demeanor during a trial (level of aggression, etc.)
10. Have you ever heard a judge make such a comment to a teammate?
11. Male or female judge?
12. Male or female teammate?
13. Has a judge ever made a comment to you that you felt was gender-specific?
14. Has a judge ever made a comment to a teammate that you felt was gender-specific?
15. Male or female judge?
16. Male or female teammate?
17. Have you ever changed some non-substantive aspect of your trial performance because of a judge's comments?
18. Have you ever observed any instances of sexism during mock trial?
19. How many women on your attorney team for each side?
20. Which witnesses did you call for Opening Round Championships, and what were the genders of those playing the roles?
21. If your team has some sort of governing board, are those positions held by men or women?

After the interviews, I analyzed their answers through the lens of feminist legal theory to

see where their stories fit in the frame of hierarchy reproduction. As I will show, their experiences confirmed what I suspected about the role of gender in mock trial.

### Chapter Organization:

Before I start a discussion of gender in mock trial, it is important of the reader to understand how mock trial works, and the similarities and differences between a mock trial and a regular trial. Chapter Two will provide a description of the structure and rules surrounding mock trial.

In Chapter Three, I will explain why judges hold so much power over attorneys, both real and mock. This power is necessary to perpetuate gender hierarchy in the courtroom.

Chapter Four will discuss the manner in which demeanor is perceived in mock trial, in particular levels of aggression and timidity. I will use anecdotes from my interviews and my own personal experiences to support my assertions.

In Chapter Five, I will delve further into the issue of dress in mock trial, including the problematic gendered conceptions about certain types of attire. This is one area in particular where mockers are just as culpable as judges of policing clothing.

Chapter Six is about mockers' place in the vicious cycle of hierarchy reproduction. I will discuss the ways in which teams assign mockers to different roles, and how this conforms to gender norms.

Finally, my concluding chapter will show why my research on mock trial is so important, and how it can perhaps aid in the deconstruction of a gender hierarchy.

Conclusion:

My thesis will deal with how gender hierarchy gets perpetuated in mock trial and the legal field. Although gender discrimination in the legal profession has been studied, scholars have mostly ignored mock trial. This is a shame, because mock trial provides an environment where judges and competitors can act on their gender biases with no fears of repercussions. It is a much better indicator of adherence to gender schema than an implicit association test. As such, it is an excellent indicator of how gender bias affects female attorneys. By studying mock trial, we can gain a better understanding of the reasons why the law is still such a sexist profession.

But it is pointless to analyze mock trials if the reader does not understand how mock trials are structured. My next chapter will explain how mock trials work, and the importance of each role. Once this is established, the ways in which gender is performed in these roles will become more apparent.

## CHAPTER TWO: AN INTRODUCTION TO MOCK TRIAL

Before I begin discussing the gendered aspect of mock trial, it is important that I explain how mock trials are structured. For my thesis, I will be focusing on collegiate mock trial as sanctioned by the American Mock Trial Association (AMTA). All teams on the collegiate circuit compete with cases written by AMTA and abide by AMTA rules.

There are 623 registered AMTA teams, representing 305 colleges, community colleges, and universities all over the country. Schools commonly have more than one team, often dividing them into “A” teams, “B” teams, and so on, in order of skill level. AMTA member schools compete in invitational tournaments throughout the year, but Regionals do not start until February. Teams that place at their Regional tournament move on to Opening Round Championship (ORCs) in March, then Nationals.

The minimum number of mockers on a team is six—three attorneys and three witnesses. A maximum of nine may be on a team, but any more than that requires a new team, hence the practice of bringing more than one team to a tournament. Rounds are judged by no fewer than two and no more than three judges, although only one will act as the 'presiding' judge. The presiding judge rules on objections, while the other judge(s) stay silent and act as the jury. If three judges are present, the presiding judge does not score the participants. Scores are recorded on AMTA-designed ballots. Each mocker gets a numerical score ranging from zero to ten on every aspect of their performance (with the exception of pretrial matters). For example, an attorney will get a score on their



direct-examination (hereafter referred to as a “direct”), their cross-examination (“cross”), and their opening or closing statement, if they gave one (“opening” or “closing”). This determines which team wins, although there may also be ties. There are also places for comments on each section of the ballot, which are only for the mockers' self-improvement. At the end of the trial, judges also rank attorneys and witnesses first through fourth in order of how the judges think performed best. Individuals who consistently score well may receive an Outstanding Witness or Attorney award at the closing ceremonies for that tournament. Judges are usually attorneys or actual judges from around the area of the tournament, although they may also be law school students, former or current team coaches, or sometimes former mockers.

In August, all teams receive the case packet for the year. This packet, written by AMTA, contains all the materials that may be used in competition. Documents included are legal documents (such as stipulations, special instructions to the jury, complaints, and relevant case law), exhibits, expert reports, and affidavits for the witnesses. In this year's original case, there are ten witnesses who may be called, five for defense and five for plaintiff. This year witnesses are assigned to specific sides, but in the past there have been cases where certain witnesses may be called by either side, potentially forcing mockers to come up with alternate case theories and witness line-ups. Witnesses may testify to what is in their personal affidavit, and ONLY what's in their affidavit, although they may make up details as long as it is not important enough that they should have included it (i.e. a witness for the plaintiff may not say that the defendant confessed to wrongdoing if it is not in the witness's affidavit). All the witnesses are given gender-

neutral names and written so that they may be played by a male or female mocker, but as I will show, that is not always the case.

There are very specific expectations and importance attached to different roles. For example, anchor witnesses are the person upon whom the whole case is focused. For this year's case, the anchor witness is the grieving spouse of a person killed on a scuba diving trip. The couple went on a vacation offered by Neptune Underwater Expeditions, a company that takes customers on diving trips all over the world. The plaintiff (Andy Allen) is suing Neptune for the death of his or her spouse, Lee Allen. Predictably, Andy is usually played in a way that is meant to gain the jury's sympathy. His/her testimony usually contains information that is not really relevant to the trial, but that is meant to make her seem more human and sad. It is often mentioned that s/he and Lee were planning on starting a family after returning from their Neptune vacation.

The defendant in this year's case is Neptune Underwater Exhibitions, represented by Hayden Hathaway, the CEO. In his/her affidavit, Hayden occasionally comes off as more concerned about money than safety of the divers, so it is important for teams to try and counteract this by making the witness as likeable as possible. Other Neptune employees may be called as well. The most common employee to act as a defense witness is Reggie Rodgers, the dive leader on the expedition in which Lee Allen died. Reggie is the only living person who knows the whole story of how Lee died underwater that day. Reggie is also much easier to portray as a likeable witness. His/her affidavit does not make him/her out to be as money-oriented as Hayden's. There is a fair amount of information in her affidavit that may be damaging to his/her credibility, but a good

Reggie may easily play that off as trivial. I know this from personal experience, as I played Reggie for the entirety of the 2012-13 season.

Another type of witness is the character witness. Character witnesses must still be credible, but their main function is to provide some entertainment for the judges. A common way to give witnesses a “character” is to have the person playing him/her fake an accent. They may also say present testimony in a way that fits with their persona. For example, a witness being played with a southern accent may use folksy colloquialisms as considered appropriate.

The third type of witness is the expert witness. Examples from recent cases include doctors, police officers, forensic experts, accident reconstruction experts, oceanographers, and one forensic entomologist. The rules for expert witnesses are very specific. As defined by AMTA rule of evidence 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or otherwise specified knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case. (AMTA)

If an expert is determined to have not met these qualifications, the crossing attorney may request the judge to disqualify the witness as an expert. Experts are sometimes played with a bit of a character, but they must always come off as credible.

There is not as much variation in attorney presentation, but there are definitely different expectations based on the role of the attorney in the case. If an attorney is

crossing the grieving widow(-er) in our present case, s/he would not want to be as aggressive or tough as s/he would with, say, an expert witness or the CEO. The attorney giving the opening statement must tell the story of the case without being too argumentative—arguments in an opening will result in point deduction. In contrast, the closing statement is almost all argumentative. The job of the closer is to pick apart their opponent's case, while making their own look much better in comparison. Power and persuasiveness are very important in a closing, which may last up to nine minutes. As with all aspects of a case, attorneys are expected to memorize their closing, which once led me to memorize fifteen pages in preparation for Regionals.

Clearly, mock trial is an intense extracurricular. It requires a huge amount of preparation and investment. No one “mocks” half-heartedly. Thus, the subtle influences of sexist schema and gender hierarchies are even more dangerous. When gender normativity is so pervasive in an activity that is so absorbing, it becomes even easier for mockers to internalize it. Much of the pressure to conform comes from judges, which I will discuss in the next chapter.

## CHAPTER THREE

### THE ORDER IN THE COURT

Every mocker has stories of ridiculous comments made by judges. From a judge who would not allow attorneys to move in the courtroom at all to the defense attorney

acting as presiding judge who called the child molesters her represents in real life “child enthusiasts,” judges' total immunity to reproach gives them license to say or do anything that they want. Mock trial judges volunteer their entire weekend to watching the same case play out four times, so the entire structure of the tournament involves an aura of gratitude towards them for that sacrifice. To comment on a judge's behavior would be seen as the height of disrespect. This is true in the actual courtroom as well. As Duncan Kennedy writes on page 39 of *Legal Education and the Reproduction of Hierarchy*:

A second hierarchy is that of the judicial system, in which judges play the role of tin gods, exacting an extraordinary servility from their court personnel and the lawyers and litigants who appear before them. Judges are free to treat, and often do treat those who come before them with a degree of personal arrogance, a sense of entitlement to arbitrariness, and an insistence on deference that provide and extreme model of everything that is wrong with legal hierarchy.

Like mock trial participants, real courtroom actors cannot stand up to a judge. The judge has absolute power, and any rebellion may jeopardize the chance of getting a favorable verdict. In extreme cases, a trial participant may even be found in contempt of court for disobedience to a judge, and thus incarcerated. Even in jury trials, juries may be negatively influenced by an impertinent witness or attorney.

Because of this absolute authority, trial participants are subject to any schema or biases that a judge might hold. Often these may not seem like obvious biases, but they still exist. As Interviewee #1 said when I asked him if he had ever observed any instances of what he thought was sexism in mock trial:

Again, it's like...very, very, very tough to say because I think at least from, like, my experiences it's very rarely, like, blatantly...“Comment: You are a girl. Minus three points,” right? It's also probably not something I'm paying that much attention to, like, as a guy....But it does seem like a...different kind of approach that people take toward judging...

Both male mockers that I interviewed volunteered that their male privilege probably made these biases more invisible to them than it would be to a female competitor. They were hard-pressed to think of specific instances of gender-specific comments made to them or a teammate, or any comments about courtroom attire. That makes sense. As men, they are not the Other in the courtroom, so they don't have to be conscious of their gender during a trial.

In contrast, Interviewee #3 could easily recall instances of sexism that she and her all-female team have encountered. She also noticed that gender specific comments seem to come from female judges more often than male judges:

I hear more [about attorney demeanor] from female judges, but I think it's because they, like, they think that they can say this....I definitely have gotten a comment from a female judge being like, "I know this is unfair, but women in the real world get judged more harshly"--like, she straight up said that. So she was like, "So, I'm going to judge you guys the way I would be judged."

Although these female judges think that they are doing mockers a favor by introducing them to how gender functions in the actual legal field, they are really just perpetuating that sexist system. They are telling mockers that they must act in a certain gendered way, otherwise they will not succeed in that legal world. And they are almost always giving these criticism in front of male mockers, thus ingraining the idea in them that they are better than women, that they are not subject to as much scrutiny, and that they are at the top of the gender hierarchy.

Judges are also quick to comment on the absence of a gender hierarchy. Interviewee #3 and I commiserated on the many times that we have had male judges comment on how odd it is for our teams to be all female. After a round in my first

tournament, the first thing that the judge said to the two teams after the trial was, “Are we a nation of laws or women?” a bastardized John Adams quote. Another judge my sophomore year asked our team if we were a women's college, before correcting himself that “those don't exist anymore.” Since it was before the round began, we were not allowed to tell him what school we were representing, but we assured him that such school do still exist, and gave examples: “Scripps, Wellesley, Smith...” before he cut us off with, “Smith is coed—my buddy went to Smith.” He categorically refused to believe us when we tried to convince him that Smith is, in fact, a women's college.

To judges who have become assimilated into the gender hierarchy mindset by their legal education, a team without men is unthinkable. Who is at the top of the hierarchy? It's like a body without a head. It's so unbelievable to them that they act either with incredulity, like the second judge, or make a joke of it, like the first judge did with his Adams quote. Interviewee #3 said, “They almost make it seem like we're at a disadvantage because we don't have any men on our team.”

These are just a few ways in which judges reinforce the system. There are also specific patterns of judge comments that further serve to strengthen the hierarchy, which I will discuss in the next two chapters.

## CHAPTER FOUR

### “I HATE AGGRESSIVE ATTORNEY BITCHES”

That quote was one of the comments that my teammate got from a female judge at a tournament in Arizona this year. It is not at all unusual. In fact, all the mockers that I interviewed mentioned instances of judges making comments to female attorneys about aggression. I've certainly had judges make such comments to me. During a round in Las Vegas this winter, I made so many sustained objections that the attorney crossing my witness was only about to ask two questions. Although they could have been easily argued and probably overruled, she just did not know how to respond. I'm a very competitive person, so I am extremely proud of my performance during that cross. I consider it one of my biggest mock trial accomplishments. Every mocker attorney wants to decimate an opponent. However, the two judges were not impressed. Despite the fact that I succeeded in keeping all substantive negative evidence out of the cross, the only comments that they made to me on it were that I should have backed off.

Although men occasionally get comments about being overly aggressive, the way in which the comment is made differs between men and women. As Interviewee #1 said, “Yes, like, a guy will get comment about aggressiveness....But it's much more, like, maybe a side comment and not the main thesis of whether or not you're a good attorney.”

In the legal field—and the mock legal field—femininity is policed. Aggression is a large part of how that is accomplished. Aggression is seen as a male characteristic, and thus is impermissible for women. However, when a male attorney was crossing me at a



tournament in Newport Beach last month and would not let me finish any of my answers, he was complimented by the judges.

But at the same time that women are discouraged from being too masculine, we are also discouraged from being too feminine. Behavior that is seen as stereotypically feminine is shunned. A good example of this is the female voice. In *Gender On Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace*, Holly English quotes a female attorney describing an experience she had at the beginning of her career

Two guys in my very early career said two things to me that taught me about style. ...The second time, another guy out of the blue said to me, “You know, you're thirty years old, and you still sound like a little girl. You have a high-pitched voice, a whispery voice.” He was right, it was like Jackie O. That's all he said, he never said another word. And I thought about it. I practiced dropping my voice to a very authoritative level. I thought, “If he thinks I'm a little girl, what impression am I making with others?” (180)

This woman associated an “authoritative” voice with a deeper voice, a more male voice.

To her male colleague, her female voice made her sound like a little girl, and she internalized that. English quotes another woman, this one a state supreme court judge, as saying

There is nothing more sonorous in a courtroom matter than a booming low voice. I see it in oral argument: a high voice comes across as shrill. That's still my own stereotype. It's probably psychologically more calming to hear a lower voice. (165)

Although this woman, who is in a position of authority, presumably has a higher, female voice herself, she still associates a low voice with power. Obviously, this is not true across all arenas. If high voices are “shrill,” why are most female lead parts in operas and musicals written for sopranos? But in a courtroom, where an attorney must project an aura of assurance, a deep voice is thought to better accomplish that goal.

Although I have a fairly low voice for a woman, I have heard comments like these made to teammates. At the end of a mock trial round, there are a few minutes set aside for the judges to provide feedback to the competitors. During my first ever tournament in 2009, I sat at the counsel table as a middle-aged male judge told my teammate why he couldn't take her seriously. "It just your voice—it's so high up there. And it's not your fault! I mean, God did this to women, so you have to deal with it."

Because my fellow mocker had a high-pitched voice, this man viewed her as less credible than a male mocker. I never see male mockers getting comments related to voice. At our tournament in Newport Beach, one of the men on the other team had a speech impediment that made him pronounce the letter R as a W. Not one of the judges mentioned it to him, and he ended up winning an Outstanding Attorney award for the whole tournament. And while perhaps judges would feel rude commenting on a speech impediment, such a comment is no more rude than telling my teammate that her high voice, an aspect of her person that she cannot change, makes it impossible to take her seriously.

In addition to having non-authoritative voices, women are often criticized as being too passive. When I asked her if she had ever received comments on her demeanor during a trial, Interviewee #3 said, "Definitely my freshman and sophomore year, I got comments on how I wasn't strong enough...I'm not sure if that's because of my gender or my personality." Although it is impossible for her to know for sure whether or not she was receiving those comments because she is a woman, a tendency to be quieter or more timid is still largely associated with women. English quotes a woman that she describes

as “a female partner in her late thirties who heads a thriving department is frustrated by women who don't state their opinions vigorously” speaking about an attorney that she fired

The woman who was let go, part of it was, the clients didn't feel comfortable that she was really guiding them because she was very tentative in her advice. She was very feminine, which is good, but she didn't convey a sense of strength or authority. Several clients asked me to have her taken off their accounts. (164)

Although the comment that the fired attorney did not convey a sense of authority would be a legitimate criticism in another context, here the speaker's association of that lack of confidence and strength with being feminine is problematic. She is buying into the stereotype that women are in of themselves non-authoritative.

In this respect, women are expected to conform to a male standard. And while some feminists believe that women should be considered on an equal playing field with men, this is one area in which women cannot reach that standard. We are *literally* speaking in “a different voice.” No matter how much my teammate tries to drop her voice, she is never going to sound like a man. These stereotypes about masculine authority create a bar that women cannot overcome.

But at the same time that women are punished for not acting enough like men, they are also punished for acting *too* much like men. As I discussed above, levels of aggression in women are as closely monitored as levels of passivity. Interviewee #1 discussed this.

But it does seem like actually...well...with attorneys and witnesses, there's kind of this indirect process where, you know, girls are very, very, very often get the comment about, “Hey, oh, you're too bitchy,” or, “You're too timid,” right? And it seems like a lot of the time, even when they're getting, like, good comments...it's characterized as, “Hey, you did a good job, because you were neither too bitchy

nor too timid,” right? And that's just a comment that, like, yes, like a guy will get comments about aggression...but I think it's rarely, like, put into those kind of, like, just strictly like “one or the other” terms.

Real women in law are also subject to this aggression/passivity catch-22. English writes,

In actuality, most of the women I interviewed said that at some point they had made some adjustment in their ordinary manner or personality because of gender expectations. They tended to accept the dictum that women can't be too aggressive or too passive, and created detailed methods for walking that fine line. These women assumed that they can't just be themselves, and that they must sculpt an acceptable work persona that doesn't offend entrenched norms. They are acting by “creating strategies of gender management.” (117)

Women accept that dictum because the way that they have been educated in the law—be it law school or perhaps mock trial—teaches them that that is just and proper. On page 16 of *Legal Education and the Reproduction of Hierarchy*, Kennedy explains

Because most students believe what they are told, explicitly and implicitly, about the world they are entering, they behave in ways that fulfill the prophecies the system makes about them and about that world. This is the link-back that completes the system: students do more than accept the way things are, and ideology does more than damp opposition.

This acceptance of gender norms reinforces them and thus strengthens near-impossible standard to which women must conform. Be aggressive, but not *too* aggressive. Be feminine, but not *too* feminine. Be confident, but not *too* confident. Sound as much like a man as you can. With the legal system demanding that female attorneys display so many contradictory traits, it is inevitable that some will not be able to overcome these unrealistic expectations. And those who do must spend so much time and energy fighting to be taken seriously that they are too distracted to focus on dismantling the system that is oppressing them. Setting standards for women that they cannot hope to meet is a time-honored patriarchal strategy meant to prevent us from succeeding and challenging the

status quo.

But levels of masculinity and femininity are not just policed in demeanor, a fact that I will address in my next chapter.

## CHAPTER FIVE

## “YOU'RE NOT PRETTY—WEAR MAKE-UP”

I mentioned in my introductory chapter the lecture on courtroom attire that one of our older mockers always took it upon herself to give the new team members. The title of this chapter is a verbatim quote from that lecture my first year. It was the most striking aspect of her whole presentation. She said it jokingly, but I knew that she expected us to follow her orders. And I continue to follow every one of her dictums to this day. I always wear heels, nylons, minimal jewelry, make-up, and a blue skirt suit. This has become what “courtroom dress” means to me. As a more aggressive attorney, I chose a skirt suit to soften my appearance. An attorney with a similar demeanor to mine was told that the combination of a pant suit and a persistent and assertive style made her seem “too masculine.”

Interviewee #3 is frustrated by judges' focus on clothing. I asked her if she had ever heard a judge make a comment to either herself or a teammate that she felt was gender-specific. She responded:

I always feel like we get comments on our, like, clothes a lot. Which really bugs me, cause, like, you spend god knows how long prepping this, and you're going to tell me about clothes? Like, that's the last thing I want to hear. But, I mean, then we spend so much time, like, making sure we look appropriate. Which sucks, but then it's like, well, you have to do it so you *don't* hear that.

Once again, the judges use their position of authority to police women's behavior—in this case, their clothes.

Enforcing proper standards of dress is a common way for an oppressive, male-dominated society to restrict women's behavior. One need only look at how many times that the clothing of a victim has been mentioned in sexual assault trials. Although women in professional positions have a narrower range of clothing that is considered work-appropriate, they are still faced with choices every time they open their closet. However, standards of professional dress are changing, and not necessarily for the better.

As English writes in *Gender On Trial*, the first generation of female lawyers faced a dilemma in regards to professional attire. The image of the prototypical lawyer was that of a man, so women breaking into the field tried to dress like men. However, in the late 80s and early 90s, many professional women decided that they were unhappy with that androgynous style of dress. On page 22, she writes:

Another woman recalls leafing through women's magazines in the late 1980s, seeing features on colorful new fashions for professional women, and realizing with a start that there were ways to dress other than the "uniform." Women felt they had been robbed of their true identities. They hadn't made the decision to break the gender mold—it had been thrust upon them. They wanted to reassert control with a traditional appearance, which looked fresh and defiant and "new," in contrast to dressing like men.

English goes on to describe how female lawyers started dressing in a more "feminine" manner, and how that led to acceptance of a more gendered style of dress. She presents this as positive and liberating.

But while the courage of the women who decided to defy constricting standards of professional attire and instead dress in a manner that expressed their personality is to be applauded, English errs in presenting this shift as one that was positive for every woman. She generalizes that women felt "robbed of their true identities." But not every woman

wants to dress in a feminine manner. Some women express themselves in a more androgynous fashion, and some just aren't interested in spending much time on their personal appearance and prefer the simpler nature of "masculine" clothing. What English claims is a woman's true identity is certainly not the truth for every woman.

Furthermore, she is reinforcing the socially-constructed binary that tells us that there are such things as "masculine" and "feminine" clothes. There is nothing about a skirt or make-up that makes them inherently more suited to be worn on a female-bodied person. Yet English presents those aspects of appearance as inherently feminine, things that all women desire to wear.

This essentialization of masculinity and femininity enforces a hierarchy by creating the categories that make it up. If men were not expected to be masculine, and women were not expected to be feminine, where would men get their authority? Without the categories of "man" and "woman," men cannot be placed above women on the gender hierarchy. Their masculinity is what distinguishes them from women, the Other. If they are indistinguishable, how can they be superior?

This development of a new, "feminine" standard of dress also creates more rules and expectations for women. Just as women cannot be too aggressive, women cannot be too masculine, lest they suffer the fate of Ann Hopkins, an employee of Price Waterhouse who was denied a partnership at the firm. The head partner of her division advised her that to succeed, she should "walk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry" (Goldstein 211). Hopkins sued Price Waterhouse, and the case eventually went to the Supreme Court. The Court found fault with the



burden of proof and thus remanded the case to the lower courts, but they agreed that expecting an employee to conform to those standards of femininity in order to receive a promotion constituted gender discrimination under Title VII of the Civil Rights Act of 1964 (*Price Waterhouse v. Hopkins*). Yet despite that finding, adherence to gender norms is essential for women in professional positions. An article called “Developing a Professional Image: Enhance Your Chances For Success By Becoming a Career-Minded Woman” published in *Woman Engineer* in 1990 lists a number of guidelines for female dress. Those include such tips as “Hidden in-seam pockets are the most slimming,” and “Diagonal pockets are also slenderizing” (Lowenstein). In fact, many of the tips mention styles designed to make a woman appear thinner. In this article, professionalism is tied to femininity, which is tied to attractiveness.

Even in law, one of the most conservative of professions, women are expected to dress femininely in order to get ahead. *Gender On Trial* provides numerous examples of this. On page 23, English writes:

A law firm partner, Maureen, described a younger woman she worked with, a superb practitioner who looked “too much like a hausfrau” and more “like a little brown mouse.” Her looks were getting in the way of a coveted partnership. Maureen, advising that an attorney needs to be “*au courant* and crisp” and not a “nebbish,” helped the younger woman revamp her wardrobe so that she appeared more confident and attractive.

Once again, femininity is tie to attractiveness, which is a prerequisite for success in the field.

A traditionally feminine appearance is also thought to project more power. A woman who served as the executive director of a non-profit public interest group felt that she wasn't being taken seriously enough, so she changed her appearance:

I was careful when I had board meetings to dress up. To give myself the added authority that I lacked because I was a woman and because I was young. I always work lipstick to make sure I looked older. Not to look more feminine, but to look a little more official, a little bit more professional. Lipstick is a polishing thing. Makeup and clothes can be your armor. (English 23)

But what of the woman who doesn't want to wear lipstick? Where is her armor?

Of course, women cannot dress *too* femininely. That is not professional either. In her article “Changing Clothes: Gender Inequality and Professional Socialization,” Carrie Yang Costello writes about how law students learn how to dress in law school. She uses a student named Lydia as an example:

When Lydia first crossed the threshold of the law school, it appeared she had taken her dress cue from watching the popular American TV lawyer program *Ally McBeal*. Like the title character from that program, Lydia was wearing a rather dramatic business outfit, with a short skirt revealing a lot of leg, and high-heeled strappy shoes further enhancing her leggy display. Lydia's hair was disheveled in a calculated manner like Ally McBeal's; in the television program this look is meant to temper the authority of attachés and suits with a supposedly endearingly feminine air of vulnerability. (144-145)

However, Lydia soon realized that real lawyers “do not wish to look sexy, or worse yet, vulnerable” (Costello 145). She was ridiculed and bullied by her professors and fellow students. Her feminine style of dress was indeed perceived as vulnerable and unprofessional. So she underwent an attire transformation:

From the drama of her glamorous first-day dressing-up, Lydia dressed herself down to near-invisibility. ...She wore simple shirts, avoiding any feminine signifiers—no pink, no flowers, no ruffles. She had her hair styled into a simple shoulder-length bob, stopped wearing much makeup, and pared her jewelry down to small stud earrings and a single ring. (Costello 145)

After that change, Lydia was able to assimilate into the law school student body. She became part of the gender hierarchy that devalues genuine modes of expression in favor of a rigidly-defined standard of femininity.

Of course, men are also faced with standards of professional dress to which they must adhere. But both male mockers that I interviewed acknowledged that it is much easier for them to navigate the field of courtroom attire than it is for their female colleagues. Interviewee #2 said:

Men dress the same, right? They always wear the suit—the two-button suit with the tie, with the exception of maybe the witnesses....But you can't really wear—like, what am I going to wear that's going to look inappropriate? Unless I show up in a t-shirt, it's not like I could wear shorts that are too short or “too revealing.”

Once again, men's privileged position at the top of the gender hierarchy enables them to go into the courtroom without being hyper-aware of their attire and whether or not they are dressed in a manner that is acceptable for someone of their gender.

Rigidly gender normative dress also presents a problem that Costello refers to as “identity dissonance” (141), a discomfort in a style of professional dress that does not seem “natural” to the individual. I have alluded to this when I commented on English's assumption that all women consider a more traditionally feminine look to be their “true” identity. That is simply not true. But a woman who would perhaps prefer the more androgynous professional style of the 1970s is faced with a decision: does she dress in a manner that suits her personality, but perhaps disadvantages her professionally, or does she put on the lipstick and the skirt suit at the expense of her identity? The only way to avoid a sacrifice of either her individuality or her career is to find another line of work, thus eliminating another threat to the gender hierarchy.

## CHAPTER SIX

### “VOTE FOR ELLE!”

In the preceding chapters, I discussed how judges create gender hierarchy in the mock trial courtroom. But this hierarchy would not keep perpetuating itself if mockers did not internalize it and act in a way that further strengthens it.

And speaking as a mocker, it is very difficult to avoid playing into this sexist system. There are so many forces pressuring us to conform. There is the desire to score well, the need to respect the judge, and the reluctance to let down one's team. Even if we do decide that we would rather stand up to a judge than score well ourselves, we are still in some way responsible for the scores of five to eight other people. No one wants to be the reason that their team scores badly, even if it is for a righteous reason.

So we do conform, and after a while, it just feels natural. As I mentioned in the last chapter, I dress in a manner that was not originally comfortable for me in order to score better. After a while, I became more used to my suit and heels, and now I enjoy wearing them. They make me feel confident and powerful. Yet there's nothing inherently more professional about a high heel than a flat shoe. The only reason I feel otherwise is because I've been conditioned to think so by the gender-normative mock trial standards.

The ways in which we mockers play into the gender hierarchy are obvious. Men are in positions of power all over. On the executive board of Interviewee #1's team, every position is held by a man. And although female team captains are certainly not a rarity, in my experience it is unusual to see two female captains of the same team.

Usually teams are captained by two people, and this is much more likely to be either a man and a woman or two men.

These positions of power make it easy for men to denigrate women. Two years ago, one of our teams walked into a courtroom before a round and were greeted with a sarcastic “Vote for Elle!” from a man on the opposing team. He was referencing the movie *Legally Blonde*, presumably as a comment on the all-female team (although the connection is spurious—no one on the team was even blonde). His position at the top of the hierarchy made him feel confident enough to mock our team's gender, just as the judge who made the John Adams reference did.

But the biggest way in which I see teams reproduce a gender hierarchy is in the roles that they assign team members. Interviewee #3 felt the same way. When I asked her if she had ever observed any instances of sexism in her mock trial career, she said:

I'm not sure if it's, like, sexism...but I always feel like, at least with how the teams are laid out, I always feel like witnesses are heavily female and lawyers are heavily male....And you know what? Honestly, if I was running a team, that's what I would do, because I feel like judges are more receptive to male lawyers.

Interviewee #2 said something similar when I asked him the same question:

I mean, I guess there's just the, the standard sort of way that certain roles get attributed to women or men more often than the other way around. For example, in our current trial, male Andy Allens you don't see very often. I mean, everybody seems to like the image of the grieving, you know, widow, rather than the grieving male widower. They seem to think that it's more powerful.

I had noticed this phenomenon as well—indeed, that's what made me want to write my thesis about gender and mock trial in the first place. I am usually an attorney on my team, and with the exception of two tournaments this season, I always give the closing statement. However, as a female closer, I'm definitely in the minority.

So during the Regional and Opening Round Championship tournaments this season, I decided to take data about the gender makeup of teams. For every round in the tournaments, I wrote down how many attorneys were female, which roles those women had (opening, closing, etc.), and which types of witnesses were played by women. My expectation was that most schools cast women in sympathetic roles, while experts would primarily be played by men. I was particularly curious about the role of Reggie Rodgers, the scuba diving leader that I played throughout the year. At our first tournament, I only saw one other Reggie--played by a woman--but throughout both trials all other parties mistakenly referred to Reggie as "Mr. Rodgers." Even my own team would sometimes take the crossing attorney's lead and refer to me as a man when we were on defense. I wondered if that was because it was more common to see male Reggies, or if the role of an expert scuba diver just seemed like a male role to many mockers.

In regards to attorneys my prediction was that attorney teams would be composed primarily of men. In my experience, opening attorneys may be male or female, but closing attorneys are almost always male, especially at higher levels of competition. This fit with my theory that teams assign roles based on gender expectations; the most powerful, commanding speaker is usually a man.

The tables on the next few pages show my results:

<b><u>GENDER BREAK-DOWN BY ROLE—REGIONAL TOURNAMENT</u></b>		
<b><u>Role</u></b>	<b><u>Percentage Female</u></b>	<b><u>Percentage Male</u></b>
Opening Attorney	0.00%	100.00%
Middle Attorney	75.00%	25.00%
Closing Attorney	50.00%	50.00%
Andy Allen, Plaintiff, widow(er) of Lee Allen	100.00%	0.00%
Frankie Fernandez, recreational scuba diver	50.00%	50.00%
Angel Duncan, Neptune deckhand, convicted felon	33.33%	66.66%
Hayden Hathaway, Neptune CEO	NOT CALLED	
Reggie Rodgers, Neptune dive leader	66.66%	33.33%
Bailey Johnson, entrepreneur and scuba diving expert	66.66%	33.33%
River Tran, medical doctor	0.00%	100.00%
Quincy Montgomery, medical doctor	0.00%	100.00%
Jordan Nelson, physicist	NOT CALLED	
Carey Connor, U.S. Coast Guard Agent	0.00%	100.00%
<b>Total Attorneys</b>	<b>41.18%</b>	<b>58.82%</b>
<b>Total Witnesses</b>	<b>50.00%</b>	<b>50.00%</b>

<b><u>GENDER BREAK-DOWN BY ROLE—OPENING ROUND CHAMPIONSHIP TOURNAMENT</u></b>		
<b><u>Role</u></b>	<b><u>Percentage Female</u></b>	<b><u>Percentage Male</u></b>
Opening Attorney	33.33%	66.66%
Middle Attorney	16.66%	83.33%
Closing Attorney	0.00%	100.00%
Andy Allen	50.00%	50.00%
Frankie Fernandez	100.00%	0.00%
Angel Duncan	50.00%	50.00%
Hayden Hathaway	50.00%	50.00%
Reggie Rodgers	50.00%	50.00%
Bailey Johnson	50.00%	50.00%
River Tran	66.66%	33.33%
Quincy Montgomery	50.00%	50.00%
Jordan Nelson	NOT CALLED	
Carey Connor	50.00%	50.00%
Loren Bondo, former Neptune chef (new witness for ORCs)	0.00%	100.00%
<b>Total Attorneys</b>	<b>16.66%</b>	<b>83.33%</b>
<b>Total Witnesses</b>	<b>50.00%</b>	<b>50.00%</b>



I should note the limitations of this data. For one, data on witnesses is skewed by the frequency at which teams call them. For example, my team only encountered one River Tran at Regionals, so my data represents the witnesses as being played only by men. However, that may not be indicative of the witness's trend as a whole. Obviously, I am also limited by the fact that this data is from five teams (per tournament). But however small my sample size may be, I can still analyze the results, with the caveat that they might not be representative of the entire collegiate mock trial program.

First, the Regionals table. As I suspected, attorneys were more likely to be men than women, although the difference between the two numbers was not very large. I was surprised by the number of women giving closing statements, but not by the number acting as the middle attorney. The middle attorney gives neither a closing nor an opening, and thus basically forfeits any chance they may have at winning an Outstanding Attorney award in the tournament. It is the bottom role in the attorney hierarchy.

Witnesses did not surprise me either. As I predicted, the experts were all men, with the exception of Bailey Johnson. My theory behind Johnson being played by mostly women is that Johnson is a very easy witness to dislike. It is easy to cross him/her and expose a lot of bias. Looking at the table, I see a definite correlation between gender and the need for witness likeability. Andy Allen and Reggie Rodgers both desperately need juries to like them in order for their side to win, and both witnesses were most often played by women, which lines up with the stereotype that women are “nicer.”

However, that tendency disappeared at Opening Round Championships. This tournament, abbreviated as ORCs, is the next level after Regionals. Seven teams

progress from Regionals to ORCs, and then the seven that qualify at ORCs go to Nationals. Thus, teams take great pains in creating their ORCs line-up. The competition is tough, so they must do everything they can to be perfect.

In this tournament, witness distribution was much more equitable than at Regionals. Experts were marginally more likely to be played by women, and Reggie Rodgers and Andy Allen were equally likely to be played by men or women. But this tournament definitely confirmed my suspicions about attorney roles. Only three out of eighteen attorneys were women, and none of them gave a closing.

This ties into my argument about attorney voice in Chapter Four. In a high-stakes tournament like ORCs, teams are trying to design a line-up that will win against a group of extremely talented competitors. Thus, they choose the attorneys that they think are most likely to score well, and those are apparently men. Mockers have absorbed the belief that men project more authority and confidence than women, and they use that as a basis on which to structure their teams. Thus the gender hierarchy is perpetuated with no challenge from those whom it most disadvantages—the next generation of professionals.

## CONCLUSION

Sexism and gender hierarchy do not exist in a vacuum. Men are not born inherently superior to women. The only reason that men sit at the top of the gender hierarchy is because our society routinely advantages them at the expense of women (although this certainly varies according to race, class, sexuality, ability, gender identity, and a number of other factors).

The legal field is one in which gender hierarchy is pervasive and obvious. Despite the large number of female attorneys, there are still more male partners and judges. There are also entire branches of law that are coded as masculine, such as tax law or corporate law. Why is this so? Why is the gender hierarchy in law still so stratified?

It is because of the students. In training to become lawyers, we are subjected to an environment where we have no choice but to submit to the gender biases of judges without complaint. In doing so, gender hierarchy is reproduced in all of us. Even we feminist Gender & Women's Studies majors can find ourselves telling a new generation of female mockers that they must always wear nylons. It may not be a conscious process of accepting sexism, when the entire team's score hangs on winning the approval of the judges, mockers will do all that they can to win that approval, be that something as small as a female attorney subconsciously trying to drop her voice during a cross-examination, or something as significant as a team removing a woman from their attorney line-up before ORCs.

We do this to pander to the judges, and because those judges tell us that we need

to behave a certain way to succeed in the legal field. Like the female judges that Interviewee #3 described, many judges offer unfair criticism because they feel it will prepare us for work as actual attorneys.

But not every mocker becomes an attorney, and not all attorneys were at one point mockers. So doesn't that invalidate this theory of reproduction of gender hierarchy through mock trial? No, it does not. In fact, it makes that perpetuation of gender norms even more serious. Future lawyers undergo an assimilation process in law school of the kind described by Duncan Kennedy and Carrie Yang Costello. They would experience that even if they weren't mockers first; mock trial just gives them a head start. But the mockers who have this hierarchy and gender-normativity thrust upon them and then *don't* go into law are just taking the biases that they have learned to other fields. The evils of hierarchy are spread across all fields. Duncan Kennedy writes

Students themselves, through their activities after they graduate from law school, reproduce this very world, with amazingly little change from generation to generation. The system is there only because they remake it anew every day. They do this in part because law schools persuade them that it is the best possible system, while at the same time disabling them, individually and collectively, from doing anything effective against it if the ideology doesn't "take." (44)

The system disables students from taking action by providing every material incentive not to. If mockers pander to judges gender biases and assign a man to deliver the closing argument as opposed to his higher-voiced female teammate, they receive good scores. Perhaps the man gets an Outstanding Award, the team places, and they continue on to the next level of competition. But what if an equally-talented woman gives the closing for a judge who, like the female state supreme court judge whom English interviewed, considers a woman's voice to sound "shrill" in the courtroom? Then the team gets a

lower score and no one gets any awards. Although the mocker might believe she did well, she is not getting any reinforcement of that from the judges. Because of their biases, they will always find her less credible than a man, and will score her as such. When mockers look at written judge comments after a round, they can see the comments and scores given to members of the other team. So if that talented female mocker sees that men are consistently scoring better than she is, she may not consider that those inexplicably higher scores may be a result of latent sexism, and instead may believe that she is actually less credible than men. She will accept the place allotted for her in the gender hierarchy. And then if she becomes a judge, she will associate men with greater credibility, just like the women in English's book who believed that the only way to command authority was to have a low voice.

Although Duncan Kennedy asserted that legal hierarchy is established in law school, he mentions gender only a few times. That is what makes my research and findings so important. Other studies have tried to explain why women are having such problems achieving equality in the legal field, but almost none have looked at legal education as a perpetuator of *gender* hierarchy specifically. And while Noblitt, Zeigler, and Westbrook did look at how gender correlated with judge scores, they did not examine how mockers themselves adhere to gender stereotypes. A consistent gender hierarchy cannot exist if the new generations don't internalize and reproduce it.

Although I have found so many elements of mock trial to be problematic, I still love it. My experiences in mock trial have been some of the most rewarding of my life, even if the good memories are mixed in with the memories of judges telling me that my

skirt was too short during my first trial ever. And I do think that mock trial offers one of the best opportunities for breaking down the gender hierarchy. It will require the complicity of individual mockers and their teams, but if everyone can agree to sacrifice some competitive edge for a righteous cause, then perhaps mockers will find the courage to stand up to judges who criticize their high voices, or who feel it necessary and appropriate to comment and joke about a lack of men on the team. Although it may not feel like it to mockers, mock trial is a comparatively low stakes environment. If a mocker upsets a judge, it is not going to result in the loss of a multi-million dollar lawsuit. Thus, mock trial offers the best hope of resistance to legal gender hierarchy. By exposing that hierarchy, I hope that I have started a process that will result in its ultimate abolishment.

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