

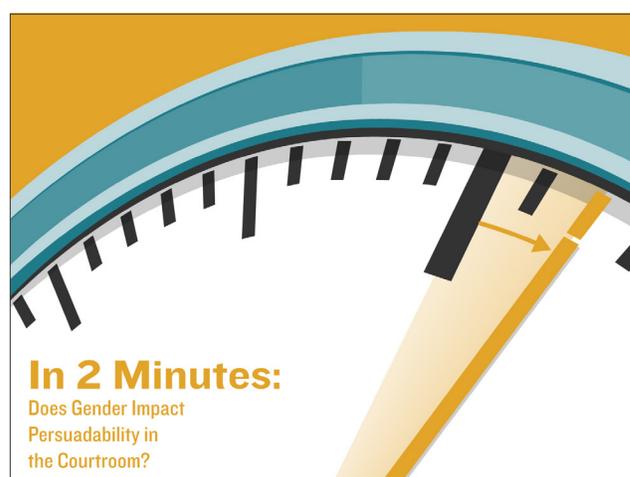


By James B. Stiff, Ph.D. | May 2017

## The Science of Persuasion: Does Gender Impact Persuadability in the Courtroom?

To be an effective advocate, a lawyer must be familiar with the characteristics of message receivers that may affect their susceptibility to be influenced by persuasive courtroom messages. This article examines whether the sex of message recipients is an indicator of the likelihood they will be swayed by persuasive messages. Paul Mongeau and I first reviewed the research on gender differences in persuadability in Chapter 9 of *Persuasive Communication*. This paper discusses the application of those research findings to jurors in the courtroom.

In 1978, social psychologist Alice H. Eagly, reviewed research conducted prior to 1970 on the topic of gender differences regarding persuadability. Most studies pointed to men's greater ability to influence, as well as women's greater tendency to be influenced. Eagly pointed to reasons, other than sex and gender, which would account for this discrepancy.<sup>1</sup> She suggested that these studies tended to use topics of persuasion that were skewed to subject matter about which men generally might possess greater knowledge. Differences in persuadability were also attributed to the higher social status men had in organizational settings, not to gender per se. In addition, she noted possible researcher bias, as most researchers conducting the persuasion studies were male.



In 1981, Eagly and psychologist Linda L. Carly, used meta-analysis, a statistical method that integrates the results of a set of several research studies so as to determine the statistical significance of the findings as a whole, to examine prior gender research. They examined the conclusions reached by a set of independent studies that tested the hypothesis that women were more easily influenced than men. (While most studies had determined that women were more persuadable, some of these prior independent studies had found no significant differences in persuadability between the sexes.) Their meta-analytical review found that,

In August of 2016, Jim Stiff and Paul Mongeau published the third edition of *Persuasive Communication*. The book is a comprehensive review of the theory and research on persuasive communication that spans more than 80 years of academic work in the fields of communication and social psychology. This research note is part of a series that briefly discusses topics related to the science of persuasion. It describes the practical implications persuasive communication techniques offer to lawyers practicing their craft.

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while there were statistical differences in the extent to which women and men were persuaded in prior attitude change and conformity studies, the size of this effect was small. Subjects' gender accounted for about 1% of the variation in subjects' persuasibility and conformity.<sup>2</sup>

Researchers Michael Burgoon and Renee Storm Klingle took issue with the conclusion that gender differences were inconsequential, noting that "between 20 and 25 percent of women (in studies reviewed by Eagly and Carly) tended to be more persuadable than the population of men. This is clearly neither a small nor trivial difference."<sup>3</sup> These authors did, however, attribute the difference to the fact that a certain percentage of men refused to change their attitudes and beliefs *under any circumstances*, rather than to the susceptibility of women to persuasive appeals. Indeed, Carli noted that some men were particularly unlikely to change their attitudes when the message source was female.<sup>3</sup>

The implications of these studies for lawyers in the courtroom points to the idea that gender should not be considered as a meaningful determinant of a person's likelihood of being persuaded. To the extent that significant gender differences regarding influenceability ever existed in the academic research, they may have been an artifact of the message topics that appealed to stereotypical male or female gender roles, roles which are much less clearly defined than they were 40 or 50 years ago when much of the research was conducted. As well, they may have come about due to subjects' normative assumptions that men had specialized authority or knowledge, as they were more likely to hold professions outside the home. Indeed, Eagly noted, in a 1983 article, that if social change proceeded to the point that men and women became equally represented at all levels of most hierarchies, those aspects of sex differences that were by-products of formal status inequalities would disappear.<sup>4</sup>

Although the effects of gender on persuadability are negligible, Mongeau and I assert that conclusions reached during research on gender and persuadability

do have ramifications for lawyers in the courtroom. Namely, it is the fact that these studies suggested that hierarchical roles and degree of knowledge are factors that have a high probability of determining a person's likelihood to be influenced or to influence others. Knowledge about the social or organizational status and areas of expertise of jurors and witnesses can help a lawyer determine the results his or her persuasive courtroom messages are likely to yield.

- Those in high-status positions and those who are perceived to have a high degree of knowledge in areas relevant to the case will be more likely to persuade others. Consideration of this fact will be important to attorneys when choosing expert witnesses. It will also serve as an important predictor of outcomes during deliberations, when a juror or jurors has made claims to possession of special knowledge or experience concerning the subject matter of the case. We have consistently observed, over the past 27 years, that jurors who made claims to possession of special expertise or knowledge had a disproportionate amount of influence over others who were less knowledgeable. It bears mentioning that self-proclaimed experts sometimes lack true qualifications as such, but their proclamations can be persuasive to those who lack personal knowledge about a topic.
- Those in high-status positions or in possession of greater knowledge concerning an action's subject matter are more likely to resist being influenced by conflicting persuasive appeals. Likewise, those jurors who maintain fixed certitude for their own viewpoints will hold fast to their opinions regardless of the quality of arguments and evidence supporting an opposing viewpoint. Gender research has hinted that males, more than females, may tend toward such adherence. In some jury deliberations, "staying power" trumps "persuasive power." Those who are most resistant to influence become most influential in affecting final verdict decisions.
- Those who are relatively ignorant about a topic are more likely to yield to the suggestions of those

perceived more knowledgeable. Likewise, people who perceive themselves to be of lower social or authoritative hierarchical status, will often comply with those of perceived higher stature. The extent to which persons comply with the requests of those who have such authority has been demonstrated by social psychologists.<sup>5</sup>

- Taken together, these findings suggest that *voir dire* requires special attention to jurors who proclaim to have personal knowledge or experience with subject matters, definitive attitudes about the parties or case issues, and indications of dogmatism and authoritarianism that might restrict them from considering opposing viewpoints. Jurors with such characteristics potentially could prove an advocate's best allies, or worst nightmares, during jury deliberations. While tricky to accomplish, it would be best to make *a priori* determinations of juror predilections, and the directions to which these predilections sway.

- Depending on the bent of the opinions of strong-minded jurors, attorneys will, as well, want to consider whether their cases might benefit from inclusion of some jurors unfamiliar with trial topics. In order to have the most persuasive power, it is the knowledge, status, and viewpoint mix, not gender mix, with which attorneys need concern themselves when they make determinations about which jurors to include at trial.

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